



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5121 OF 2023

Shivram Co-Operative Housing
Society Ltd. Kolhapur

...Petitioner

Versus

The Divisional Joint Registrar
Of Co. Operative Societies, Kolhapur Div. And Ors.

...Respondents

Adv. Chetan G. Patil, for the Petitioner.

*Adv. Aditya S. Raktade, Dnyanesh Patil, Aarti Shah, Anup Kamble and Sumit V.
for Respondent No. 3.*

Adv. M. S. Bane, AGP for Respondent Nos. 1 and 2.

Coram : Sharmila U. Deshmukh, J.

Date : July 29, 2024.

P. C. :

1. By this Petition, the challenge is to the order dated 12th September, 2022 passed by Respondent No. 1 in Revision Application No. 92 of 2022 arising out of order dated 21st January, 2022 passed by the Respondent No. 2 herein.

2. The facts of the case are that the Petitioner is a Co-operative Housing Society Ltd. One Sharad Hari Deshpande was a member of the Petitioner Society who expired on 17th March, 2017 leaving behind him surviving his legal heirs Respondent No. 3, Subhash Chandra Deshpande and Sangita Dilip Bhoir. An affidavit came to be filed with

the Petitioner-Society giving consent for admitting Subhash Chandra Deshpande as a member of the Society and recording the names of the Respondent No. 3 and Sangita Bhoir as associate members. Subsequently, the legal heirs of the original members decided to partition the plot amongst themselves to which no objection was given by the Society without prejudice to the right and interest of the Petitioner-Society.

3. An Application came to be filed by the Respondent No. 3 seeking permission to sell one guntha land which was her share. As the Petitioner-Society did not issue No Objection Certificate (NOC) for sale of the share of Respondent No. 3, an Application came to be preferred before the Respondent No. 2 seeking direction to the Society to issue the (NOC) for sale of the Respondent No.3's share. This Application came to be resisted by the Petitioner Society. Vide order dated 21st January, 2022, the Application came to be allowed along with a direction to the Petitioner-Society to issue the NOC and also to enroll purchaser of the plot as class-B member of the Petitioner Society.

4. As against this, the Petitioner filed Revision Application No. 92 of 2022 before the Respondent No. 1 which was dismissed upholding the order of Respondent No. 2.

5. Heard Mr. Chetan Patil, learned counsel for the Petitioner, Mr. Aditya Raktade, learned counsel for the Respondent No. 3 and M. S. Bane learned AGP for the State.

6. Learned counsel for the Petitioner would submit that the Application itself was not maintainable before Respondent No. 2 as the appropriate remedy was to file a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960. He submits that despite having no jurisdiction, Respondent No. 2 allowed the Application without noticing the condition imposed by the concerned Authority dated 24th July, 1968, which provided that no sub-division of the plot can be allowed. He would further point that subsequent to the partition which had taken place, without obtaining the permission of the Sanctioning Authority, the legal heirs of the original members have sub-divided the plot into 5A, 5B, and 5C. He submits that the same constitutes violation of clause-XIII of the order of the Sanctioning Authority dated 24th June, 1968 which specifically prohibits the sub-division of the plots. He submits that subsequent thereto, a separate Village Form 8A has been issued in the name of the Respondent No. 2 which was without any authority.

7. He submits that any permission given to sell the sub-divided plot of Respondent No. 3 will amount to violation of the condition of

the order sanctioning the layout and would entail consequences for the Petitioner-Society.

8. *Per contra*, learned counsel for Respondent No. 3 would submit that similar permission was given to one other plot holder, and once the Society has permitted the same in respect of other member, the same treatment is required to be given to the present Petitioner. He would however fairly concede that while sub-dividing the plot into 5A, 5B and 5C, there is no permission which was obtained from the Collector and the sub-division is on the basis of the partition which was effected inter-se. He would further submit that the Application which was made to the Respondent No. 2 was not specifically under any provision of the MCS Act and as no objection was refused by the Society, the Application came to be filed before the Registrar.

9. Considered the submissions and perused the record.

10. The facts are undisputed that by order of 24th June, 1968 while sanctioning the layout, the Collector has specifically prohibited the sub-division of the plots and also imposed the condition that no plot shall admeasure less than 3,000 sq. ft. Even if the legal heirs of the original members were brought on record and the plot would have remained undivided, the permission could have been given for sale of

the undivided share in favour of the third party. The prospective purchaser would then step into the shoes of the co-owners and would remain in joint possession of the property as co-owner. In the absence of any order of the Sanctioning Authority permitting the sub-division of the plots, the inter-se sub-division of the plots into 5A, 5B and 5C is clearly in violation of the order dated 24th June, 1968. The Society having obtained the sanction of the layout subject to certain conditions cannot be expected to issue a NOC to a member who has sub-divided the plot without any order of the Competent Authority and Mr. Patil is right in his apprehension that any objection given by the Society would be in violation of the order of the Collector sanctioning the layout. That apart there is no provision which has been pointed out to this Court under the Maharashtra Co-operative Societies Act, 1960 under which, the present Application could have been filed before the Respondent No. 2 seeking direction to the Society for issuance of the NOC. The Respondent No. 2 has not only directed the Society to issue the NOC but has gone one step forward and directed the Society to enroll the prospective purchaser as clause-B member which is certainly not within the jurisdiction of the Respondent No. 2. Respondent No. 2 has also not considered the submissions canvassed as regards the conditions imposed while sanctioning the layout.

11. In that view of the matter the order of the Respondent No. 2 was clearly without jurisdiction. The Appellate Authority without noticing the same has upheld the findings of the Respondent No. 2 and the order therefore suffers from legal infirmity. Considering that no permission was obtained for sub-division of the plot from the Sanctioning Authority, it will be open for the Respondent No. 3 to follow the procedure of law and apply for the sub-division of the plots. Thereafter it will be open for Respondent No. 3 if the plot is permitted to be sub-divided, to apply for necessary NOC to the Society which the Society may consider on its own merits.

12. Writ Petition stand allowed in the above terms.

[Sharmila U. Deshmukh, J.]