

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1053 OF 2024

Savitri Ben B. Patel Thr. Constituted
Attorney ... Petitioner

V/s.

The Divisional Joint Registrar
Co-operative Societies Mumbai Division
and Ors. ... Respondents

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Mr. H.R. Pawar, a/w Ms. Charusheela S. Garad for the
Petitioner.

Mr. Sanket M. Mungale for Respondent No.3.

Mr. Ashok Shetty a/w Ms. Rita K. Joshi, for Respondent
No.4.

Mrs. V.S. Nimbalkar, AGP for the State-Respondent Nos.
1, 2 and 5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2024

P.C.:

1. The petitioner is challenging an order passed by the Divisional Joint Registrar confirming order passed by Assistant Registrar directing the Society to grant membership of housing society to respondent No.3.

2. According to the petitioner, the property in question was acquired by partnership firm. Son of the petitioner was one of the partner. Remaining partner allegedly executed gift deed in favour of respondent No.3. According to the petitioner, the registered gift deed is forged and fabricated document. According to the petitioner, the remaining partner had no exclusive right to execute

gift deed in favour of respondent No.3, therefore, the remaining partner could not have executed such gift deed in favour of respondent No.3.

3. Respondent No.3 applied for grant of membership before the housing society. Housing society refused to grant membership to respondent No.3, therefore, respondent No.3 filed an appeal under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. The Assistant Registrar relying a registered instrument of gift deed directed society to enroll respondent No.3 as a member, subject to petitioner's right being decided in civil suit. The order of Assistant Registrar was challenged before the Divisional Joint Registrar under Section 154 of the Maharashtra Cooperative Societies Act 1960. The Revisional Authority confirmed the order of the Assistant Registrar.

4. Learned advocate for the petitioner submitted that respondent No.3 is not entitled to get any benefit of an instrument which was forged and fabricated. The petitioner intends to challenge the gift deed by substantive civil suit and till then rights of the petitioner needs to be protected.

5. Having considered the submissions made on behalf of the petitioner, in my opinion, considering the limited powers of Assistant Registrar, the Assistant Registrar exercising power under Section 23(2) is entitled to consider as to whether the person who applied for partnership is duly qualified to become member of a society. Sub-section (1) of Section 23 casts obligation on the society not to refuse membership to a person who is duly qualified.

Therefore, neither the society nor the Assistant Registrar can adjudicate issue of validity of registered instrument. The validity of the registered instrument or any dispute regarding title of immovable property needs to be adjudicated by Civil Court. It is needless to state that conferment of membership status of respondent No.3 shall be subject to decision of Civil Court and the exclusive society and the petitioner, the petitioner and respondent No.3 shall be bound by the judgment of the Civil Court.

6. Insofar as the submission on behalf of the petitioner to protect the petitioner till the interim relief application of the petitioner is decided is concerned, in my opinion, for the grant of such relief, the Court needs to consider prima facie case in the context of relief prayed in a suit. This exercise will have to be done by Civil Court considering the pleadings, prayers and material furnished by the petitioner. After consideration of such material, the Civil Court is required to be satisfied about parameters of Order 39 Rule 1 of the Code of Civil Procedure, 1908. The petition arises out of adjudication of Assistant Registrar exercising power under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960. This Court cannot have more powers than the Assistant Registrar under Section 23(2). Therefore, relief of limited protection cannot be granted at this stage and such relief needs to be decided by the Civil Court in appropriate proceedings.

7. With this clarification, the writ petition is disposed of. No costs.

(AMIT BORKAR, J.)