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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3174 OF 2023

Rekha Premchand Safari and Another ... Petitioners
Vs.
The State of Maharashtra and Another ... Respondents

WITH
INTERIM APPLICATION NO. 16309 OF 2023
IN
WRIT PETITION NO. 3174 OF 2023

Chairman Ramkrupa CHS Ltd. ... Applicant
In the matter between
Miss Rekha Premchand Safari & Anr. ... Petitioners
Vs.
The State of Maharashtra and Others ... Respondents

Mr. Rekha Premchand Safari –Petitioner no. 1 in person.
Mr. M. A. Khan for the Respondent No. WP/3174/2021 and for the
Applicant in IA/16309/2023.
Ms. M. S. Kajle, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 6th FEBRUARY 2024

P.C.

1. Heard. This petition challenges order dated 26th December 2022 passed by the Deputy Registrar, Co-operative Societies under Section 154B-29 of Maharashtra Co-operative Societies Act, 1960 ("MCS Act"). By the said order the petitioners were directed to make payment towards the dues of the society.

2. Petitioner No. 1 appears in person for herself and petitioner no. 2. She submits that the petitioners though had filed an application, were not made members of the society, hence the society was not entitled to seek recovery certificate under Section 101 of the MCS Act. She further submits that the society is not entitled to recover any dues from the petitioners, from the year 2003, as the claim of the society is time barred.

3. She further submits that detailed written submissions were submitted before the Deputy Registrar, Co-operative Societies, however, the same are not considered before passing the impugned order. She submits that they are occupying the premises pursuant to the registered agreement dated 6th February 2001. However, she

submits that since the petitioners were never made members, the society cannot claim the dues from the petitioners.

4. Learned counsel appearing for respondent no. 2 states that the recovery certificate issued under Section 101 was challenged by the petitioners by filing Revision Application no. 11 of 2011, the same was dismissed on 30th November 2012. He submits that the dismissal of the Revision Application was challenged by the petitioners by filing Writ Petition No. 525 of 2013. He submits that the said writ petition is dismissed on 17th April 2015. He therefore submits that the challenge of the petitioners against issuance of recovery certificate under Section 101 of MCS Act has failed and the same has attained finality.

5. He further submits that since the dues as per the recovery certificate were not paid, the society had initiated proceedings under section 154B-29 of the MCS Act and by the impugned order the application is allowed directing the petitioners to make payment of the outstanding dues. He submits that the petitioners were heard at the time of passing order and hence there is no substance in the argument made that the written submissions were not taken into consideration.

6. With reference to the submissions that the claim of the society is time barred, he submits that the recovery certificate once has attained finality, there is no question of any limitation in initiating proceeding for execution of the recovery certificate. He states that the petitioners are occupying the premises since the year 2001 and they were also part of the formation and registration of the society. He further submits that since the petitioners had not complied with the requirement of making payment towards contribution as per the resolution passed by the society, the application for membership was not processed for want of compliance.

7. Learned counsel for respondent no. 2 further relies upon order passed by the Division Bench of this court on 23rd February 2023 in Writ Petition No. 3146 of 2022. He submits that pursuant to the orders passed by this court share certificate is issued. He also relied upon clause (c) of paragraph 4 of order dated 23rd February 2023 which reads as under :

(c) We make it clear that society having issued the share certificates in compliance with this order, it will not absolve petitioners from paying their dues to the society

and it is open to the society to take such steps, as advised to recover these amounts from the petitioners.

8. He therefore submits that there is no substance in the argument made on behalf of the petitioners. He thus, submits that the petitioners are liable to make payment as per the impugned order.

9. I have considered the submissions made by both parties. Perused the record. It is not disputed that the petitioners are occupying the premises much prior to the formation and registration of the society. So far as the grievance of party-in-person that written submissions filed by the petitioners was not considered is concerned, a perusal of the impugned order indicates that the party-in-person was present before the Deputy Registrar, Co-operative Societies and the submissions made by her are considered and the impugned order is passed. The reasons recorded in the impugned order indicates that after taking into consideration all the relevant factors the impugned order is passed.

10. Perusal of order passed by the Division Bench of this Court on 24th February 2023 shows that it was clarified that issuance of share

certificate will not absolve the petitioners from paying their dues to the society and it is open to the society to take steps to recover the dues. Order dated 17th April 2015 passed in Writ Petition No. 525 of 2013 indicates that the petitioners' challenge to the issuance of recovery certificate under section 101 has failed. Thus, there is no reason to examine the validity of issuance of the certificate under section 101 of the MCS Act.

11. Considering the well reasoned impugned order and the aforesaid facts and circumstances, I do not see any ground to interfere by invoking powers under Article 227 of the Constitution of India. Petition is devoid of any merits.

12. For the reasons stated above Writ Petition is dismissed.

13. At this stage, the petitioner in person requests to stay the impugned order for a period of three weeks. Learned counsel for respondent no. 2 submits that the petitioners had suppressed the orders passed by this court in Writ Petition No. 525 of 2023 as well as in Writ Petition No. 3146 of 2022 at the time of filing this petition. Hence respondent no. 2 was required to file interim application for

recalling ad-interim relief passed on 22nd February 2023. He therefore objects for extension of any ad-interim relief which was already granted. Considering the aforesaid facts and circumstances, prayer for extension of ad-interim relief is rejected.

14. In view of the disposal of the Writ Petition, interim Application is disposed of as infructuous.

[GAURI GODSE, J.]