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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6188 OF 2023

Samarth Garden CHS Ltd,
Plot No. 8, Datta Mandir Road,
Bhandup (West), Mumbai – 400 078

.....Petitioner

Vs.

1. Mr. Narendra Kumar Dubey

2. Mrs. Sadhana Narendra Dubey,
Both adult, Indian Inhabitant,
Flat No. G-1404, 14th Floor, G Wing,
Asha Jyoti, Plot No. 8, CTS No. 303,
Datta Mandir Road, Bhandup (west),
Mumbai – 400 078

**3. Assistant Registrar, Co-Operative
Societies, S – Ward, Room No. 202,
2nd Floor, Kokan Bhavan, C.B.D.
Belapur, Navi Mumbai – 400 614**

**4. The Divisional Joint Registrar,
Co-Operative Societies, Mumbai
Division 6th Floor, Malhotra House,
Opp. G.P.O. Fort, Mumbai – 400 001.**

**5. State of Maharashtra
Through Govt. Pleader**

....Respondents

Mr. Girish Godbole, Senior Advocate a/w Mr. Yogesh Deshpande a/w Mr. Ashutosh Gale, a/w Mr. Mahesh Karule i/b YKD and Associates Advocate for the petitioner

Mr. Sharan Jagtiani, Senior Advocate and Mr. Mayur Khandeparkar a/w Mr. Siddharth Joshi and Mr. Maulik Tanna for respondent nos. 1 and 2

CORAM : GAURI GODSE, J.

RESERVED ON: 24th JANUARY 2024

PRONOUNCED ON: 26th APRIL 2024

JUDGMENT:

1. Pursuant to the order dated 8th May 2023, this petition was finally heard at the admission stage. Petition is filed to challenge the order dated 2nd March 2023 passed by the Divisional Joint Registrar, Cooperative Societies, dismissing the revision application filed by the petitioner. The petitioner society filed the revision application for challenging the orders passed in favour of respondent nos. 1 and 2 ('respondents') under Section 23(2) and Section 154B–27(2) of The Maharashtra Co-operative Societies Act, 1960 ('MCS Act') for admitting the respondents as members of the society.

2. The order impugned in this petition is a common judgment and

order passed in a total of 157 revision applications challenging orders in favour of various flat purchasers for admitting them as members of the society. The Divisional Joint Registrar dismissed all the revision applications filed by the society by passing a common order. However, the society has challenged the order of the Divisional Joint Registrar only to the extent of rejecting the revision application for challenging the order passed in favour of the respondents, admitting them as members of the society. Record shows that 157 flat purchasers had filed separate applications under Section 23(2) of the MCS Act for admitting them as members. Hence, 157 revision applications were filed by the society, but the Divisional Joint Registrar rejected them by passing a common judgment and order. However, society has chosen only two of the original applicants i.e. respondents in the present petition to oppose the grant of their membership.

Brief facts as stated by the society in the petition are as under:

3. By a development agreement dated 30th March 2009, development rights were assigned for the construction of 'F' and 'G'

buildings by executing an agreement in favour of M/s S.A. Developers. In the year 2010, the construction of building nos. 'A' to 'E' was completed, and construction of building nos. 'F' and 'G' were under construction. The chief promoter, i.e. M/s. K. Mahadev and Company Private Limited arranged a meeting on 7th February 2010 with the flat purchasers of the building nos. 'A' to 'E' for the formation of the society. The main issue regarding the formation of the society was with respect to common amenities; hence, flat purchasers had suggested that there should not be a common society and common amenities for the proposed/under construction of new buildings 'F' and 'G'. Hence, the chief promoter suggested that as and when the two buildings are developed, an additional increase in common amenities shall be provided to new buildings, i.e., buildings 'F' and 'G'. Thereafter, a resolution was passed for the formation of the petitioner society. The chief promoter appointed a different developer, i.e. M/s. S. A. Developers for construction of buildings 'F' and 'G'.

4. On 9th July 2017, the society learnt that the developer would not be able to fulfil his commitments made in the meeting dated 7th

February 2010; hence, the society arranged a special general body meeting on 9th July 2017. In the meeting, the society's general body passed a resolution that membership should not be given to flat purchasers of buildings 'F' and 'G', as the common amenities were insufficient for buildings 'A' to 'E'. The society contends that as per the record of the municipal corporation, the occupation certificate is not granted to 17th floor of building 'F' and above 15th floor of building 'G'. The original owners of flat no. G-1404 in wing 'G', purchased the flat from M/s. S. A. Developers, however, the first owner had never filed any application for membership. By an agreement dated 11th May 2018, the respondents purchased the said flat from the first owner.

5. On 11th January 2021, respondents filed an application before the society for membership. The society, vide its reply dated 12th April 2021, refused to grant membership to the respondents on various grounds mentioned in the letter of refusal. Hence, the respondents filed an appeal under Section 23(2) of the MCS Act. The society filed a reply opposing the said appeal. By order dated 17th December 2021, the Assistant Registrar, Cooperative Societies, allowed the said

appeal directing the society to admit the respondents as members. Hence, the society filed Revision Application No. 498 of 2022, which was dismissed by passing the impugned order.

6. Since the order was not complied with, respondents had filed a complaint before the Divisional Joint Registrar, Cooperative Societies, to enforce the order passed by the Assistant Registrar, Cooperative Societies. By order dated 17th October 2022, the Assistant Registrar appointed an authorized officer under section 154B–27(2) of the MCS Act to admit the respondents as members of the society. Hence, the society filed an appeal before the Divisional Joint Registrar challenging the order dated 17th October 2022. In the said appeal, by an order dated 15th November 2022, the parties were directed to maintain status quo. The respondents appeared in the said appeal and filed their reply. By an order dated 16th January 2023, the Divisional Joint Registrar rejected the application for grant of stay. Hence, the society filed Writ Petition No. 1538 of 2023 in this Court, challenging the rejection of their application for grant of stay to the appointment of the authorised officer for admitting the respondents as

members. By order dated 8th February 2023, this Court directed the Divisional Joint Registrar Cooperative Societies to decide the revision filed by the society, and the order dated 17th October 2022 passed by the Assistant Registrar Cooperative Societies appointing an authorized officer was kept in abeyance.

7. In the meantime, on 23rd January 2023, the application filed by the society for grant of unilateral deemed conveyance was allowed. The District Deputy Registrar passed a corrigendum on 6th February 2023 to the order granting unilateral deemed conveyance. The said order of grant of unilateral deemed conveyance is challenged by the developer by filing Writ Petition No. 6819 of 2023, which is still pending.

8. By order dated 2nd March 2023, the Divisional Joint Registrar dismissed the society's Revision Application No. 498 of 2022 for challenging the order of Deputy Registrar Cooperative Societies, admitting the respondents as members of the society. Hence, the present petition.

Submissions on behalf of the society:

9. Learned senior counsel for the society submitted that the petitioner society is formed for building nos. 'A' to 'E'. The respondents are flat purchasers of the building/wing 'G'. The petitioner society was registered on 12th December 2010, and the respondents are claiming membership based on an agreement in their favour executed on 30th June 2017. The society was formed by specifying a description of the property of the society at the time of registration of the society. The society had specifically contended before the Assistant Registrar, Cooperative Societies and the Divisional Joint Registrar Cooperative Societies that the developer at the time of formation of the society had agreed to form a new society for two buildings which were under construction. The society had relied upon a resolution passed by the petitioner society in their special general body meeting held on 9th July 2017, wherein the society unilaterally decided that membership shall not be given to the flat purchasers of buildings 'F' and 'G'. He, thus, submitted that by said resolution, the earlier resolution passed in the meeting held on 7th February 2010 stood revoked. By the resolution passed in the meeting held on 9th

July 2017, the society decided not to give membership to the flat purchasers of buildings 'F' and 'G', as the common amenities were insufficient and the developer had failed to abide by his promise regarding increase in the common amenities. All these arguments on behalf of the society were not considered by both the authorities while deciding the application for admitting the respondents as members of the society.

10. Learned senior counsel submitted that the chief promoter of the petitioner society was M/s. K. Mahadev and Company Private Limited. By development agreement dated 30th September 2009, M/s. K. Mahadev and Company Private Limited assigned their development rights in favour of M/s. S. A. Developers. The agreement in favour of the respondents is executed by M/s. S. A. Developers and in the flat purchase agreement in favour of the respondents, it is specifically stated that the original developer, i.e. the developer who constructed buildings 'A' to 'E' has informed the developers of the respondents that the cooperative society is already formed in respect of the wings/buildings 'A' to 'E' keeping in view that the purchasers of

wings/buildings 'F' and 'G' would become members of the said society. However, it is further also stated in the agreement that the purchasers were put to notice that they will be joined as members of the said society; however, in case the society does not admit the purchasers as its members, the developer would form a separate society of the purchasers of wings 'F' and 'G'. Learned senior counsel relied upon clauses 19 and 20 of the flat purchase agreement of wings 'F' and 'G' and submitted that the flat purchasers of buildings 'F' and 'G' were thus clearly intimated that if they are not made members by the petitioner society, the developer would form a separate society for wings 'F' and 'G'.

11. He, thus, submitted that once the society, by giving reasons, has refused to grant membership to the respondents, i.e. flat purchasers of buildings 'F' and 'G', there is no vested right in favour of the respondents to claim membership of the petitioner society. He, thus, submitted that it is obligatory on the part of the developer of buildings 'F' and 'G' to form a separate society for the flat purchasers of buildings 'F' and 'G'. He submitted that considering the requirement of

sufficient common amenities for all the buildings, the developer had agreed at the time of the formation of the petitioner society that additional amenities would be given to the petitioner society. However, the developer failed to abide by his commitment. Hence, the assignee of the developer of the petitioner society is obliged to form a separate society for flat purchasers of buildings 'F' and 'G', and the petitioner society has a right to refuse membership to the flat purchasers of building nos. 'F' and 'G'.

12. He, thus, submitted that it is necessary to remit the matter before the Assistant Registrar, Cooperative Societies, to consider the contentions raised on behalf of the society. He further submitted that all these contentions cannot be for the first time examined in this petition under Article 227 of the Constitution of India and that the said contentions are required to be examined by the Assistant Registrar Cooperative Societies while deciding the appeal under section 23 (2) of the MCS Act.

13. In support of his submissions, learned, senior counsel relied upon the decisions of the Hon'ble Supreme Court in the cases of

ORYX Fisheries Private Limited v. Union of India and Others¹, State of Orissa v. Dhaniram Luhar², Kalpana Vyas v. Raj Kumar Rangwani³ and Union of India and Others v. E. G. Nambudiri⁴.

14. Learned senior counsel relied upon the decision in the case of *ORYX Fisheries* to support his submissions that, when decisions affect any party prejudicially, it is necessary for the decision making authority to record reasons; even a quasi-judicial authority is required to record reasons in support of its conclusions; recording of reasons is meant to serve wider principles of justice, and that recording of reasons also operates as a valid restraint of any possible arbitrary exercise of judicial and/or quasi-judicial powers; reasons recorded are for reassuring that the discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. He thus relied upon paragraph 40 of the said decision in support of his submission that it was necessary for the Assistant Registrar, Cooperative Societies, to examine all the contentions raised by the society and record reasons considering them. Learned senior

¹ (2010) 13 Supreme Court Cases 427

² (2004) 5 Supreme Court Cases 568

³ (2019) 17 Supreme Court Cases 677

⁴ (1991) 3 Supreme Court Cases 38

counsel relied upon paragraphs 7 and 8 of the decision, in the case of *State of Orissa v. Dhaniram Luhar* and submitted that recording of reasons by the decision making authority is an indispensable part of a sound judicial system and its salutary requirement of natural justice and spelling out reasons in the order made.

15. Learned senior counsel relied upon the decision in the case of *Kalpana Vyas* and submitted that in writ jurisdiction under Article 227 of the Constitution of India, it is not possible to examine the issue on facts in detail like the appellate authority. Hence, it is necessary to remit the matter back to the Assistant Registrar, Cooperative Societies, for deciding the appeal of the respondents afresh. By relying upon the decision in the case of *Union of India and Others v. E. G. Nambudiri*, learned senior counsel submitted that the general principles of natural justice require that opportunity of hearing should be given to a person when the decision would adversely affect a party. Thus, with these submissions, learned senior counsel on behalf of the society submitted that this is a fit case to remit the matter back to the Assistant Registrar, Cooperative Societies, for deciding the

respondents' appeal for grant of membership afresh.

The submissions on behalf of the respondents:

16. Learned counsel for the respondents submitted that there are total 237 original members of the petitioner society consisting of buildings 'A' to 'E'. So far as the buildings 'F' and 'G' are concerned, there are total 212 flat purchasers, out of which 157 flat purchasers applied for membership of the petitioner society. Since the society rejected all the applications for membership, 157 applicants (flat purchasers) filed appeals under Section 23 (2) of the MCS Act. Thus, there were total 157 appeals filed, which were allowed directing the society to admit the applicants/flat purchasers as members of the society. Hence, the society filed 157 revision applications before the Divisional Joint Registrar objecting to grant of membership to the flat purchasers of wings 'F' and 'G'. By a common Judgment and Order, the Divisional Joint Registrar rejected all the 157 revision applications filed by the society. However, the Society has chosen only two applicants, i.e. present respondents, for challenging grant of membership.

17. He further submitted that at the time of formation of the petitioner society, the developer had contributed on behalf of all the wings, including wings 'F' and 'G'. The record of the formation of the petitioner society would indicate that the developer had also shown the contribution towards the share of two wings as specifically reflected in the balance sheet. The contribution made by the developer on behalf of the wings 'F' and 'G' is reimbursed by the flat purchasers of the said wings. Thus, at the time of formation of the petitioner society, even these two wings were made part of the society. At the time of the formation of the society, a scheme was prepared, which is part of the documents for the formation of the society. As per the scheme, these two wings are also made part of the formation of the society. Thus, by passing a unilateral resolution in the year 2017, the petitioner society is not entitled to refuse the right of the flat purchasers of these two wings to be added as members of the petitioner society. He submitted that the petitioner society accepted the formation of their society for all the wings, including wings 'F' and 'G'. Learned counsel for the respondents thus submitted that once the

society never raised any challenge to the society's registration, which included all the wings, the society is bound by the earlier formation of the society, which includes wings 'F' and 'G'.

18. Learned counsel for the respondents relied upon Section 2(c) of The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ('MOFA'). He submitted that as per the definition of promoter, assigning rights by the promoter is permissible. Hence, even after assignment by the original developer in favour of M/s. S. A. Developers, the original developer, continues to be a promoter. Thus, the original promoter, i.e. M/s. K. Mahadev and Company Private Limited and assignee, i.e. developers are promoters and M/s. K. Mahadev and Company Private Limited also continue to be lessee/owner. He submitted that refusal by the society to grant membership to the respondents has to be for a sufficient cause as indicated in Section 23(1) of the MCS Act. He submitted that perusal of the rejection letter by the society does not indicate any sufficient cause for the rejection of the application. He submitted that because in the flat purchase agreement of the

respondents, the developer had agreed to form a society, the same cannot be justifiable ground for the petitioner society to refuse the grant of membership. He thus submitted that there is no substance in the argument made on behalf of the petitioner society. The petitioner society has thus not given any justifiable reason for refusing to admit the respondents as members of the society.

19. Learned counsel for the respondents further submitted that out of total 157 appeals allowed by the Assistant Registrar Cooperative Societies directing the flat purchasers of wings 'F' and 'G' to be admitted as members of the society, 156 orders have attained finality as the society never challenged the rejection of their revision applications qua 156 applications. Thus, society has accepted other flat purchasers of wings 'F' and 'G' to be admitted as members of the society. He, therefore, submitted that once the orders directing 156 flat purchasers to be admitted as members of the society have attained finality, there is no justifiable reason on the part of the society for refusing membership to the respondents. He submitted that after the rejection of the revision applications filed by the society, there were

subsequent orders passed in the execution appointing authorized officer to admit flat purchasers of wings 'F' and 'G' as members; however, society has chosen not to challenge the said orders in execution and thus accepted the respondents of other flat purchasers of wings 'F' and 'G' as members of the society. He thus submitted that revision applications challenging the orders passed in 157 appeals are decided by the Divisional Joint Registrar by passing a common order, and other flat purchasers who are party to the common Judgment and Order are not before this Court. Hence, Society is not entitled to take a different stand, only qua the respondents.

20. With regard to the submissions made on behalf of the petitioner that there are no reasons recorded by the Assistant Registrar Cooperative Societies for allowing the appeal of the flat purchasers, he submitted that perusal of the order passed by the Assistant Registrar would indicate that same is a speaking order, and the reasons recorded by the Assistant Registrar would show all the parameters of Section 23 seeking membership were complied with and hence no fault can be found in the order passed under Section 23

(3) of the MCS Act.

21. He submitted that the relevant quality reasons are required to be seen, and the quantity of reasons cannot be the ground to challenge the order passed by the Assistant Registrar Cooperative Societies. He thus submitted that the Assistant Registrar, by a well reasoned order, has allowed the appeal of the respondents. With reference to the arguments made on behalf of the petitioner that, in view of the specific clause in the flat purchase agreement stating that the developer would form a separate society, he submitted that the same cannot be a ground available for the society to refuse the membership, as the said clause in the flat purchase agreement is only to safeguard the interest of the flat purchasers and thus the said clause is not available to the society to justify to refusal of membership. Once the society accepted the formation of the society, which included even these two wings, i.e. wings 'F' and 'G,' he submitted that there was no substance in the arguments made on behalf of the petitioner society.

Consideration and Findings:

22. I have considered the submissions made by both parties. I have

perused the papers. It is not disputed that the original developer, promoter/owner M/s. K. Mahadev and Company Private Limited had arranged a meeting with the flat purchasers of wings 'A' to 'E' to form society. It appears that some issues were raised regarding common amenities, and in response, M/s. K. Mahadev and Company Private Limited had suggested that as and when the development would be completed, additional increase in common amenities would be provided to the new buildings, i.e. wings, 'F' and 'G'. Subsequently, M/s. K. Mahadev and Company Private Limited assigned its development rights to M/s. S. A. Developers in the year 2009. It appears that M/s. M/s. S. A. Developers have developed the subsequent wings, i.e. wings 'F' and 'G'. A perusal of the development agreement in favour of M/s. S. A. Developers indicate that the original developer/owner has assigned its rights to develop two wings. Accordingly, wings 'F' and 'G' are developed by M/s. S. A. Developers and the agreement in favour of flat purchasers of these two wings is executed by M/s. S. A. Developers based on the assignment of development rights. However, the ownership continued with M/s. K.

Mahadev and Company Private Limited.

23. I have perused the flat purchase agreement executed by M/s. S. A. Developers in favour of flat purchasers of wings 'F' and 'G'. Learned senior counsel for the society is right in submitting that there is a specific clause in the flat purchase agreement of wings 'F' and 'G' intimating the flat purchasers that the original developer had already formed the society with respect to wings 'A' to 'E' keeping in view that flat purchasers of wings 'F' and 'G' would become members of the said society. Clause 19 of the flat purchase agreement indicates that the flat purchasers were put to notice that they would be joined as members of the already formed society. The clause further provides for a safeguard to the flat purchasers that if the already formed society does not admit the flat purchasers as its members, the developer would form a separate society of the flat purchasers of wings 'F' and 'G'. Clause 20 of the agreement further indicates that in such case, i.e. in case the society refuses the membership, the purchasers, along with other purchasers of the flats in wings 'F' and 'G' shall join in forming and registration of the society of flat owners or a society or a

limited company. Thus, clauses 19 and 20 of the flat purchase agreement of wings 'F' and 'G' indicate that the flat purchasers of wings 'F' and 'G' were informed that they would be made members of the already formed society of wings 'A' to 'E'. It is not in dispute that the buildings of petitioner society, i.e. wings 'A' to 'E' and the subsequently constructed two wings, i.e. 'F' and 'G' are part of the common layout. From the record of the formation of the society, it appears that the developer had also contributed towards wings 'F' and 'G' at the time of the formation of the petitioner society. Thus, the petitioner society accepted the formation of the society, which included wings that were part of the entire project, i.e., wings 'A' to 'G'. However, since the construction of only wings 'A' to 'E' was completed, the flat purchasers of only wings 'A' to 'E' were part of the formation of the society. The scheme, which is part of the formation and registration of the petitioner society, indicates that the flat purchasers of wings 'F' and 'G' were to be made members of the petitioner society. The documents, which are part of the formation of the petitioner society, indicate that the developer did contribute towards

wings 'F' and 'G'. Petitioner society has never raised any objection regarding the formation and registration of the society wherein even the subsequent wings i.e. wings. 'F' and 'G' were made part of the formation of the society. It appears that in view of the dispute between the developer and the society regarding common amenities, the society passed a resolution on 9th July 2017 and decided that flat purchasers of wings 'F' and 'G' would not be given membership as the common amenities were insufficient.

24. The rejection letter by the society refusing to admit the respondents as members indicate that the reason given by the society refers to a clause in the flat purchase agreement by M/s. S. A. Developers that a separate society would be formed for flat purchasers of wings 'F' and 'G'. Another reason for the rejection given by the society is that the developer had collected contributions from the members of 'A' to 'E', and thus, the amount deposited in the bank of the society is only the contribution of members of 'A' to 'E' wings. It is further stated by the society that, thus, nobody else could claim that the builder had paid the amount for 'F' and 'G' wings. Thus, the society

in the rejection letter stated that the society's share capital is as per its total number of members, and it does not provide for the admission of any new members; hence, the subsequent developer, i.e. M/s S A Developers is liable to form a new society, and the petitioner society cannot accept the membership form of the respondents. Thus, the rejection letter does not deal with the contribution made by the developer about wings 'F' and 'G' at the time of the formation of the petitioner society. A perusal of the record of the formation of the petitioner society indicates that the developer had contributed towards wings and 'F' and 'G'.

25. The scheme, which is part of the documents of formation of the petitioner society, records that the building consists of all the wings. Wings 'A' to 'E' comprised of 237 flats, which are constructed and wings 'F' and 'G' consist of 212 flats, and the construction is under progress. The scheme further records that the builder sold 237 flats and possession of the same is handed over to the flat purchasers and that the remaining 212 flats would be handed over to the respective purchasers on completion of the work. Thus, 217 flats indicate flats of

wings 'F' and 'G', which were under construction. It appears that the petitioner society never objected to the scheme, which was part of the formation of the petitioner society. It seems that the petitioner society also never objected to the contribution made by the builder towards wings 'F' and 'G' as the flat purchasers of wings 'F' and 'G' were not part of the formation of the society. The amounts deposited towards unsold flats, i.e. flats of wings 'F' and 'G' are clearly stated in the record of the formation of the petitioner society. Thus, the perusal of the record indicates that wings 'F' and 'G' were part of the formation of the petitioner society. However, without any challenge or raising any objection at the time of the formation of society, which made wings 'F' and 'G' also part of the society, the petitioner society, by way of a resolution passed in a special general body meeting on, 9th July 2017 resolved that membership shall not be given to the flat purchasers of wings 'F' and 'G'. It appears that the said resolution was passed on the ground that common amenities were insufficient for buildings 'A' to 'E'.

26. The second argument on behalf of the petitioner is based on the

assigning development rights by M/s. K. Mahadev and Company Private Limited to M/s. S. A. Developers Private Limited. The development agreement in favour of M/s S A Developers amounts to assigning development rights to M/s S A Developers for the construction of 'F' and 'G' wings, which were incomplete at the time of the formation of the society. There is no challenge to assigning the development rights in favour of M/s S.A. Developers. Thus, based on assigning development rights, M/s. S. A. Developers executed flat purchase agreements with respect to flats of 'F' and 'G' wings. A perusal of the flat purchase agreement of 'F' and 'G' wings indicates that the flat purchasers were put to notice that Society is already formed and they would be made members of the already formed society. The flat purchase agreement also provides for a safeguard that in the event society refuses to admit them as members, the developer would form a new society. Thus, these obligations are qua subsequent developer, i.e. M/s. S. A. Developers and the said clause cannot be a justifiable ground to the society for refusing membership to the flat purchasers of 'F' and 'G' wings. The clauses in the

agreement of flat purchasers executed by M/s S.A. Developers are only an additional safeguard to protect the interest of the flat purchasers in the event the society refuses to grant membership. Thus, the said clauses would not create any right in favour of the society to refuse membership without any valid cause to refuse membership. Once the society accepted the formation of the society, which included wings 'F' and 'G', the society is under obligation to give membership to the flat purchasers of the said two wings unless the society is able to provide any justifiable reasons as permissible in law for refusing the membership. The rejection letter by the society and the grounds of objections raised in the appeal under section 23 (2) of the MCS Act indicate that the society is objecting to the membership of the respondents by relying upon the agreement between the developer and the respondents. The additional safeguard provided in the flat purchase agreement of wings 'F' and 'G' would not entitle the society to refuse the membership.

27. Section 23 of the MCS Act states that no society shall refuse admission to membership without sufficient cause to any person duly

qualified under the provisions of the Act and its bye-laws to claim membership. The society cannot refuse membership without any sufficient cause. It is not the contention of the petitioner society that the respondents are not qualified to be members of the society in view of any provisions of the Act or its bye laws.

28. It is not disputed that out of 157 flat purchasers of wings 'F' and 'G', the society challenged the orders passed by the authorities to admit them as members only qua the respondents. The orders passed by the Assistant Registrar Cooperative societies, directing admission of 156 flat purchasers as members of the society and rejection of revision challenging the said order, thus has attained finality qua 156 members. Though the orders passed by the Assistant Registrar in the appeal are separate orders, the reasons for admitting flat purchasers as members are identical. The revision applications filed by the petitioner society challenging the orders passed in separate appeals of the flat purchasers are rejected by a common Judgment and Order by the Divisional Joint Registrar. Thus, the reasons for rejecting the objections of the petitioner society are the same. Thus, the society

has chosen to challenge the reasons only qua respondents when orders qua other flat purchasers have attained finality, hence, I do not see any reason to invoke the jurisdiction under Article 226 or 227 of the Constitution of India by taking a different view only qua the respondents.

29. A perusal of both impugned orders indicates that sufficient reasons are recorded by the authorities after examining all the objections raised on behalf of the society. Both authorities also examined the records at the time of the formation of the society. Thus, once the society has never raised any objection to the formation of the society which included wings 'F' and 'G', it is now not open to refuse membership of the flat purchasers of wings 'F' and 'G' only based on the terms and conditions of the flat purchase agreement of the said wings to which society is not a party.

30. A Perusal of the reasons recorded by both authorities indicates that provisions of Section 23 are taken into consideration by both authorities. There is no arbitrary exercise of the powers by both the authorities. There is no breach of the principles of natural justice. It is

not the case of the society that sufficient opportunity of hearing was not given. A perusal of the impugned Judgments and Orders indicates that all the contentions raised by the society are examined. In view of the admitted facts as recorded hereinabove, a detailed re-examination of the issues on facts is not required in the present case; hence, it is not necessary to remit the matter back to the Assistant Registrar, Cooperative Societies, for deciding the appeal of the respondents afresh. Both authorities have concluded that parameters under the MCS Act, Rules framed under the said Act, and the bye-laws are satisfied for grant of membership. Hence, none of the decisions of the Hon'ble Supreme Court relied upon by the learned senior counsel for the society are of any assistance to the society's arguments.

31. I do not find any error or any illegality in the reasons recorded by both authorities. The invocation of powers under Articles 226 or 227 of the Constitution of India is discretionary and equitable. I do not see any reason to invoke these powers in the present case.

32. For the reasons recorded above, the petition is dismissed.

[GAURI GODSE, J.]

33. At this stage, learned counsel for the petitioner seeks extension of interim order dated 8th May 2023 passed in this petition. Learned counsel for respondent nos. 1 and 2 objects for extension of interim relief.

34. However, considering that the said order is operating till date, it is further extended for four weeks from today.

[GAURI GODSE, J.]