

Nikita

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

WRIT PETITION NO.4287 OF 2024

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ITUS A-Wing Dinanath Co-operative
Housing Society Ltd. Through Its
Authorised Representative Surindra
Mahadev Rao ... Petitioner

V/s.

Dinanath Co-operative Housing Society
Ltd and Ors. ... Respondents

Mr. Kiran Kulkarni a/w Ms. Shreya Gharat a/w
Shrushti Malushte Kulkarni and Associates for the
Petitioner.

Mr. P. G. Sawant, AGP for the State-Respondent No.5.

Ms. Priyanka Bhadrashete for Respondent No.1

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2024

PC.:

1. The petitioner is challenging order passed by respondent No.5, thereby confirming order passed by Divisional Joint Registrar dated 30th March 2022 setting aside the registration certificate dated 27th August 2021 issued by Deputy Registrar-Co-operative Societies under Section 9(1) of the Maharashtra Co-operative Societies Act, 1960 mainly on the ground that proper opportunity of hearing was not granted to the existing society. The facts relevant for adjudication of the present writ petition are as under:

2. Respondent No.1 is the existing society which was redeveloped. After redevelopment, two buildings were constructed. One building was for the purpose of benefit of existing members and second building was for the new purchasers. New purchasers of second building filed a proposal for registration of their independent Society. The Deputy Registrar referred the issue to the Collector on the ground that the land upon which both buildings were situated was owned by the State Government.

3. The Collector granted opportunity of hearing to both societies and passed an order. Based on such Collector's order, the Deputy Registrar granted the Registration to the petitioner Society.

4. A challenge raised by the existing Society, on the ground that under Section 9 of the Maharashtra Co-operative Societies Act, 1960, before registration of a new society in relation to plot over which existing housing society is registered must get opportunity of hearing. The Divisional Joint Registrar allowed the appeal and set aside the order of registration on the ground that the Registering Officer did not grant opportunity of hearing to the existing society. By the impugned order, the respondent No.5 has confirmed the said order.

5. Learned counsel for the petitioner submitted that the Collector before submitting his report to the Deputy Registrar had granted opportunity of hearing and such hearing is compliance of hearing contemplated under Section 9 of the Maharashtra Cooperative Societies Act, 1960. Therefore, there no need of referring the proceedings back to registering authority.

6. Having considered the Section 9 of the Maharashtra Cooperative Societies Act, 1960 it is elementary that before registration of Society, particularly when the land over which the proposed housing society is seeking registration, the existing society needs to be heard. Therefore in absence of hearing granted by registering Officer, the hearing granted by Collector can not substitute the hearing to be granted by registering Officer before registration of the Society.

7. Therefore, orders passed by authorities under the Maharashtra Cooperative Societies Act, 1960 suffers from no legal infirmity.

8. Considering the facts of the case, the Deputy Registrar shall decide the proposal for registration of the petitioner within three months from the date of appearance.

9. Parties shall appear before the Registrar on 8th April 2024.

10. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)