

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

WRIT PETITION NO.2250 OF 2021

Hatkesh Udyog Nagar

...Petitioner

Versus

Paresh Satyendra Vohra and Ors.

...Respondents

Mr. Dilip V. Sawant i/b. Mr. Akshay D. Shukla for the Petitioner.

Mr. S. S. Patwardhan i/b Mr. Kisan Sukre a/w. Mr. Sandesh
Deshpande for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 15th MARCH, 2024.**

P. C. :

1. By this petition the challenge is to the order dated 10th May 2021 passed by the State through Hon'ble Minister for Co-operation in case No.RVA/2017/PK 670/15-S by which the delay in filing the Revision Application was condoned and the order of the Divisional Joint Registrar dated 26th December 2016 rejecting the Application for condonation of delay was quashed and set aside and the Divisional Joint Registrar was directed to hear the matter on merits.

2. Petitioner is an Industrial Premises Co-operative Society and had filed an application in July, 2008 under Section 9 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) seeking registration of the

society as tenant co-partnership society. After holding an inquiry as contemplated under the MCS Act, the Deputy Registrar by order dated 11th November 2008 issued certificate of registration to the petitioner-society. The Respondent No.1-the builder developer who had developed the land and had constructed industrial galas but had neither formed the Society nor conveyed the land to the Society. An Application was filed by Respondent No.1 under Section 21A of MCS Act being Application No.5/2015 seeking de-registration of the Society on various grounds including fraud and mis-representation. As the Application was filed in the month of June 2015 in order to explain the delay it was contended that notice of the Application under Section 9 was sent to an incorrect address of the respondent No.1. It was further contended that the fact of registration of the Society came to the knowledge of respondent No.1 on 15th January 2015 when summons was served upon respondent No.1 in Civil Suit instituted by the petitioner-Society. Respondent No.1 contended that an Application under Section 21A was filed on 20th May 2015 before the Joint Registrar which was the wrong forum and was advised to file the same before Divisional Joint Registrar which was done after the Application was returned along with communication dated 3rd June 2016 .

3. The parties were heard and the Divisional Joint Registrar by order dated 26th December 2016 rejected the Application seeking condonation of delay. The Divisional Joint Registrar held that it was necessary for respondent No.1 to file a separate Application for condonation of delay along with sufficient explanation and no such Application for condonation of delay was filed by respondent No.1. The Divisional Joint Registrar considered the pleadings in the Application, the written submissions as well as the oral arguments on the aspect of condonation of delay and held that no sufficient cause has been made out for condoning the delay and rejected the Application.

4. As against this, respondent No.1 preferred a Revision Application before the State through the Minister of Co-operation. By order dated 10th May 2021 the Hon'ble Minister held that the Application was filed under Section 21A of the MCS Act which does not provide for any limitation. It was further held that the specific case of respondent No.1 was that he was not aware of the registration of the Society and the same came to his knowledge when the notice of the summons was received in Civil Suit which was filed and that thereafter necessary papers were procured under the Right to Information Act, 2005. It was further held that upon a perusal of the documents, the claim of respondent No.1

appears to be that the registration has been obtained on basis of fraudulent documents and in respect of the land there was a dispute pending in the Civil Court as well as the Criminal Court. The Hon'ble Minister held that under Section 17 of the Limitation Act, 1963 in respect of forged and fraudulent document, the limitation would commence from the date when the same comes to the knowledge which in the present case was in the year 2015. It was held that the matter was required to be heard on merits and as such condoned the delay.

5. Heard Mr. Dilip V. Sawant, learned counsel for the petitioner and Mr. S. S. Patwardhan, learned counsel for the Respondent No.1.

6. Learned counsel for the petitioner would submit that it was the statutory obligation of the promoter under Section 10 of the Maharashtra Ownership of Flats Act, 1963 to register the society after the minimum number of members prescribed for the formation of the Society have taken flats which has not been done in the present case. He submits that the property has been developed in the year 1979-1980 and till the year 2008 despite requests, the Society was not formed. He submits that therefore in the year 2008, an Application was made by the members of the Industrial Galas which was constructed by the respondent No.1 for

the purpose of registration of the society under Section 8 of the MCS Act. He submits that after proper inquiry, the certificate of registration was granted on 11/11/2008. According to him the respondent No.1 has thereafter wrongly invoked the provisions of Section 21A of the MCS Act seeking de-registration of the society. He contends that it was necessary for an appeal to be filed under Section 152 of the MCS Act against an order passed under Section 9 of MCS Act. He submits that notwithstanding the same even if it is taken that Application under Section 21A is maintainable, Section 137 of the Limitation Act, 1963 prescribes the limitation of 3 years. He would emphasize that Section 17 of the Limitation Act, 1963 provides for period of one year from the date when the fraud is discovered which in the present case is in the year 2015 and as such the Application filed after period of one year was barred by limitation. He relies upon the decision in the case of *Airoli Neha Apartment C-op. Housing Society Ltd . Vs. State of Maharashtra and Ors., 2023 (3) Mh. L. J.*

7. *Per contra*, learned counsel for respondent submits that there was no notice given to the Respondent No.1 of the Application of registration initiated under Section 8 of the MCS Act. Pointing out to the cause title of the Application filed under Section 21A, he submits that

incorrect address was given inasmuch as correct address of the respondent No.1 is at Borivali and site is at Ghodbunder whereas notice shows that the same has been served at Bhayander (E) which is incorrect address. He submits that by virtue of grant of certificate of registration, petitioner-society has formed a tenant-co-partnership society and will be held to be the owner of the land in respect of which the dispute is pending in the Civil Court as well as Criminal Court. He submits that apart from the initial members there are number of additional members who have joined in the formation of the society and on the basis of unauthorized constructions claims membership which would be detriment of the right of the respondent No.1 to develop, particularly when the dispute is pending in the Civil Courts. He submits that there is no period of limitation prescribed under Section 21A seeking de-registration of the Society and only by way of abundant precaution pleadings were made in the Application for explaining the delay. He submits that in fact there is no delay as the fact of registration came to his knowledge only in the year 2015. He submits that the order of the Divisional Joint Registrar after holding that no Application for condonation of delay has been filed has thereafter considered that there was no sufficient cause shown for condonation of delay and has rejected the Application. He submits that the Hon'ble Minister has rightly considered the statutory provisions and

condoned the delay.

8. Considered the submissions and perused the record.

9. The undisputed fact is that by way of Application filed under Section 8 of the MCS Act request was made for registration of the society. The Deputy Registrar after being satisfied that there is compliance with the procedure prescribed under the MCS Act Rules had granted certificate of registration in favour of the petitioner society in the year 2008. Subsequently in the year 2015, an Application has been made by Respondent No.1-Developer under Section 21A seeking de-registration of the society. It will be apposite to refer to the provisions of section 21A of MCS Act which reads thus:

“21A. De-registration of societies.- (1) If the Registrar is satisfied that any society is registered on mis-representation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society:

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such

notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the deregistration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records, and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any officer below the rank of a Joint Registrar of Co-operative Societies.”

10. Upon perusal of the said provision, it is clear that upon a satisfaction being arrived at by Registrar that the Society is registered on misrepresentation after giving an opportunity of being heard to the members of the Society and the committee, the Registrar may de-register the Society. The provisions of Section 21 A do not prescribe any period of limitation within which an application can be made to the Registrar. Section 152 on which reliance has been placed by the petitioner provides for an appeal against the order and decision under Section 9 and the same provides for a period of limitation of 2 months from the date of communication of the order or decision. The provisions of Section 21A operate in different field and provides for the de-registration of the Society on the ground of mis-representation or where work of Society is exhausted. The provisions of Section 152 provide for an appeal against order passed under Section 9 of MCS Act including order of refusal of registration. Section 21 A and Section 152 operates in different fields and where the specific relief sought is de-registration of Society on ground of mis-representation, provisions of Section 21A are to be invoked. Accepting the submission that appeal under Section 152 is the only option available to the person for de-registration of the society would render Section 21A redundant. The provisions of Section 21A do not

provide for any period of limitation. Section 17 of the Limitation Act, 1963 on which reliance is placed by learned counsel for the petitioner prescribes period of limitation in case the Application is based on fraud or mistake and defers the commencement of starting point of period of limitation prescribed under the Limitation Act to start from the date of the knowledge of the said fraud or mistake. As there is no period of limitation prescribed for filing the Application under Section 21A of the MCS Act, Section 17 of the Limitation Act has no application.

11. Despite there being no period of limitation prescribed for filing an Application under Section 21A, the same is required to be filed within a reasonable period and cannot be preferred after inordinate or unexplained delay. As to what is a reasonable time is a matter to be decided in the facts of each case. In the present case, the Application has been preferred seeking to explain the delay that the knowledge of the registration itself was acquired in the year 2015 pursuant to which Application was filed before a wrong forum. The material on record indicates that the Application was in fact filed before the Joint Registrar which was thereafter returned by communication of 3rd June 2015. The petitioners have not demonstrated from the record that the respondent No.1 had knowledge about registration of the Society. That being so,

there was an explanation for the delay in approaching the Registrar by way of a composite Application on the merits as well as the reason for delay in filing the Application.

12. The Divisional Joint Registrar was not right in holding that a separate Application for condonation of delay was required to be filed inasmuch as there is no period of limitation prescribed for filing of the Application under Section 21A. What is expected is that the Application should give an explanation for the period lapsed from the date of registration till the filing of application where there is considerable time period.

13. The Hon'ble Minister has rightly considered that the provisions of Section 21A do not prescribe any limitation and the respondent No.1 has filed the Application after acquiring knowledge of the registration in the civil proceedings. The Hon'ble Minister has therefore condoned the delay and remitted the matter to be decided on merits. The condonation of delay is not in essence the same as under Section 5 of the Limitation Act, 1963 where if the period is prescribed for the filing of the Application and the proceedings have been filed after the period of limitation, an Application is required to be made and the

provisions of Section 5 of Limitation Act, 1963 are applicable. By reason of the impugned order what has been done is that the explanation set out in the Application under Section 21A for approaching the concerned Authority after a certain lapse of time is accepted and the matter is directed to be heard on merits. The decision relied upon by learned counsel for the petitioner in the case of *Airoli Neha Apartment C-op. Housing Society Ltd. vs. State of Maharashtra (cited supra)* is inapplicable as the same pertains to the decision on merits as regards the adjudication by the Registrar as to de-registration of the Society. The said decision not being one on issue which was involved in the present case is inapplicable to the facts of the case.

14. The impugned order rightly considers the explanation tendered that the application has been filed after acquiring knowledge pursuant to which information was collected and it was learnt that the registration has been obtained on mis-representation. It cannot be said that the discretion exercised by the Hon'ble Minister in accepting the explanation for the lapse of time in filing the application for de-registration is arbitrary. As such there is no infirmity in the impugned order.

15. Having regard to the discussion above, the petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)