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

WRIT PETITION NO.11833 OF 2016

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Sushama Vishwanath Konde
(Smt. Sushama Ravindra Patil) & Anr. ... Petitioners

V/s.

The Honourable Joint Registrar,
Pune & Ors. ... Respondents

WITH

WRIT PETITION NO.3691 OF 2019

Sushama Vishwanath Konde ... Petitioner

V/s.

The State of Maharashtra
Through Its Secretary to Department of
Co-op. Textile and Marketing & Ors. ... Respondents

Mr. Abhay Anturkar with Mr. Harshwardhan
Suryawanshi i/by Ms. Kalyani Tulankar for the
petitioners in WP/11833/2016.

Mr. Shailendra S. Kanetkar for the petitioner in
WP/3691/2019.

Mr. J. P. Patil, AGP for the State/respondent No.1.

Mr. Sanjeev Sawant i/by Mr. Sachin D. Kadam for
respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13 2024

P.C.:

1. Rule. Rule is made returnable forthwith.

2. The challenge in these writ petitions is to the order dated 14th October 2015 passed by respondent No.1 in Revision Application No.199 of 2015 directing respondent No.2-housing society to enter the names of respondent No.3 and petitioner No.1 jointly in the records of respondent No.2-society based on nomination and also the order of conferment of deemed membership on respondent No. 3 based on earlier nomination.

3. The facts relevant for the adjudication of present writ petitions, in short, are as under:

4. One Vishwanath Dhondiba Konde was the owner of property bearing Plot No.9/A in Survey No.81/A of respondent No.2-society. petitioner No.1 and respondent No.3 are the legal representatives of deceased Vishwanath Dhondiba Konde who died on 30th April 2013.

5. Vishwanath Dhondiba Konde on 23rd August 1999 had nominated respondent No.3 in the nomination form submitted to respondent No.2-society about the plot in question. However, subsequently, on 18th September 2009, the deceased Vishwanath Dhondiba Konde substituted nomination by nominating petitioner Nos.1 and 2 as nominees. Respondent No.2-society, by resolution dated 7th December 2009, accepted petitioner Nos.1 and 2 as nominees and accordingly, entry was made in the record of respondent No.2-society.

6. On the death of Vishwanath Dhondiba Konde, petitioner No.1 on 29th November 2013 applied to transmission of membership of the plot in question to respondent No.2-society.

7. On 13th January 2014, respondent No.3 applied for membership with respondent No.2.
8. On 27th January 2014, respondent No.2-society communicated to the petitioners and respondent No.3 to get their dispute resolved through the Court and the decision of society shall be subject to the decision of the Court.
9. On 20th October 2014, the petitioners filed an application with the office of the Deputy Registrar for a direction to the housing society to include the petitioners' names as members. On 20th January 2015, respondent No.3 applied intervention.
10. The Deputy Registrar, by order dated 6th June 2015, directed that petitioners Nos.1 and 2 agree on the conferment of membership rights on either of them and accordingly housing society to enter the name of such agreed person in the membership register.
11. Aggrieved thereby, respondent No.3 filed a revision before the Divisional Joint Registrar who by order dated 14th October 2015 allowed the revision by directing the housing society to decide on the conferment of membership of both legal representatives as per the provisions of the Act, Rules and Bye-laws.
12. Aggrieved thereby, the petitioners filed Writ Petition No.11833 of 2016.
13. During the pendency of the aforesaid writ petition, respondent No.3 filed an application under section 22(2) with the

Deputy Registrar for conferring the status of deemed member. The Deputy Registrar, by order dated 7th January 2017, granted respondent No.3 the status of deemed member and further directed the petitioner to get the rights of ownership adjudicated from competent authority.

14. Petitioner No.1 challenged the order dated 7th January 2017 by Revision Application No.106 of 2017. The Divisional Joint Registrar, by order dated 4th February 2019, dismissed the revision application. Hence, petitioner No.1 filed Writ Petition No.3691 of 2019.

15. Mr. Kanetkar, learned advocate for the petitioner in Writ Petition No.11833 of 2016 and Mr. Anturkar, learned advocate in Writ Petition No.3691 of 2019 relying on Division Bench judgment of this Court in **Om Siddharaj Co-operative Housing Society Limited vs. The State of Maharashtra & Ors.** reported in 1998 SCC OnLine Bom 243 : (1998) 4 Bom CR 506, submitted that the transfer of membership of a housing society shall be governed by the provisions of sections 29 and 30 of the Maharashtra Cooperative Societies Act, 1960 read with Rule 25 of the Maharashtra Cooperative Societies Rules, 1961. In their submission, the Division Bench has held that if a person is nominated in accordance with the Rules, the society is obliged to transfer the share and interest of the deceased member to such nominee. Therefore, they submitted that on the date of death of Vishwanath Dhondiba Konde, the petitioners in Writ Petition No.11833 of 2016 were only nominees and, therefore, only their names ought to have been directed to be recorded by the

authorities under the Maharashtra Cooperative Societies Act, 1960.

16. Per contra, Mr. Sawant learned advocate for respondent No.3 submitted that a civil suit for ventilation of rights of the petitioners and respondent No.3 is already pending. There is a dispute about the nomination entered in favour of the petitioners. According to him, the nomination will not confer any right on the nominee and it is the duty of the nominee to distribute such property amongst the legal representatives. Nominees themselves cannot claim any right over the property for which they are nominated. He submitted that since the civil suit between both the parties is pending, the *status quo* as of today needs to be continued till the decision of the civil court.

17. I have heard both sides and perused the relevant provisions of the Act. From the facts narrated above and after considering the record, following factual scenario emerges:

- (i) Vishwanath Dhondiba Konde was the exclusive owner of Plot No.9/A.
- (ii) On 23rd August 1999, Vishwanath Dhondiba Konde nominated respondent No.3 in respect of the plot in question.
- (iii) On 18th February 2009, Vishwanath Dhondiba Konde substituted petitioner Nos.1 and 2 as nominees which was accepted by respondent No.2-society on 7th December 2009 and accordingly petitioners' names were entered in the records of respondent No.2-society.

- (iv) On 30th April 2013, Vishwanath Dhondiba Konde died.
- (v) On 29th October 2013, the petitioners filed an application for membership with respondent No.2-society which society replied by directing parties to get their rights adjudicated by the Civil Court.
- (vi) On 16th June 2015, petitioner No.2 gave his no objection in favour of petitioner No.1 to enter the name of petitioner No.1 as an exclusive member of respondent No. 2 society.
- (vii) Therefore, the petitioners approached the authorities under the Maharashtra Cooperative Societies Act, 1960 for conferment of membership rights.

18. Having considered the facts stated above, it appears that on the date of death of Vishwanath Dhondiba Konde, the petitioners' names were recorded as nominees of Vishwanath Dhondiba Konde. Therefore, the judgment in the case of **Om Siddharaj Co-operative Housing Society Limited** (supra) is squarely applicable. The Division Bench in paragraph 5 has observed as under:

“5. On a plain reading of section 30, it is clear that on death of a member of the society, it is incumbent on the society to transfer the share or interest of the deceased member to “a person or persons nominated in accordance with the Rules”. It is only in the event of there being no nomination of any person, the society can transfer the share or interest of the deceased member to “such person as may appear to the committee to be the heir or legal representative” of the deceased member. The language of the section is clear and unambiguous. If a person is nominated in

accordance with the Rules, the society is obliged to transfer the “share and interest of the deceased member” to such nominee. It is no part of the business of the society in that case to find out the relation of the nominee with the deceased member or to ascertain and find out the heir or legal representatives of the deceased member. It is only if there is no nomination in favour of any person, that the share and interest of the deceased member has to be transferred to such person as may appear to the committee of the society to be the heir or legal representative of the deceased member. The contention of the learned Counsel for the appellant that the nomination can be only in favour of an heir or legal representative is not tenable on the face of the clear language of section 30 of the Act.”

19. In the light of the law laid down by the Division Bench of this Court, respondent No.2-society was under obligation to transfer the share and interest of the deceased member to the nominee. Therefore, the authorities below could not have conferred the status of deemed membership on respondent No.3 nor could have directed entry of joint names of petitioner No.1 and respondent No.3. Respondent No.2 is, therefore, obliged to enter petitioner No. 1's name as per the nomination form dated 18th September 2009 and as per no objection given by petitioner no. 2.

20. It is made clear that the conferment of membership by itself would have no relevance to the issue of title between the inheritors or successors to the property of the deceased. Hence, following order:

21. Rule is made absolute in terms of prayer clause (b).

22. However, it is made clear that the right, title and interest of

the petitioners and respondent No.3 which is the subject matter of the civil suit shall be governed by the decree passed in the civil suit.

23. With the above clarification, the writ petitions stand disposed of. No costs.

(AMIT BORKAR, J.)