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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3331 OF 2023

Tejaswi Park Co-operative
Housing Society Ltd.
through its Chairman Rabindranath Cheppayil
P & T Colony, Gandhi Nagar
Dombivali (East), Dist : Thane

... Petitioner

Vs.

1. Nishikant Jagannath Shelar
Residing at Flat No. 203
Tejaswi Park Co-operative Housing
Society Ltd.
P & T Colony, Gandhinagar
Dombivali (East), Dist . Thane
2. The Divisional Joint Registrar Co-
operative Societies, Kokan Division, At.
Navi Mumbai
Kokan Bhavan, 3rd Floor, Room No. 308
CBD Belapur, Navi Mumbai- 400 614
- 3 The Deputy Registrar Co-operative
Societies, Dombivali, Tarte Plaza,
Anenx Shital
Gandhinagar, Dombivali (East)
Taluka Kalyan, Dist. Thane

4. Hon'ble Minister of State for
Co-operation
Government of Maharashtra
Mantralaya, Mumbai
5. The State of Maharashtra

Mr. Dadhichi S. Mhaispurkar for the Petitioner.

Mr. Allen Mathew a/w. Mr. Chetan Yadav i/b. R. V. and Company for
Respondent No. 1.

Mr. P. P. Pujari, AGP for Respondent Nos. 2 to 5.

CORAM: GAURI GODSE, J.

DATE: 16th JANUARY 2024

Oral Judgment

1. Heard.
2. Rule. Rule made returnable forthwith. Mr Mathew waives service on behalf of respondent no. 1 and learned AGP waives service on behalf of respondent nos. 2 to 4. By consent taken up for final disposal.
3. This petition is filed to challenge the order dated 3rd May 2022 passed by respondent no. 4 – The learned Minister of State for Co-operation in a Revision Application filed by respondent no. 1. The

Revision Application was filed by respondent no. 1 for challenging the rejection of his delay condonation application by respondent no. 2 - the Divisional Joint Registrar Co-operative Societies on 28th September 2021.

4. Learned counsel for the petitioner states the proceeding initiated before respondent no. 4 was not maintainable as the order impugned before respondent no. 4 was a rejection of the application for delay condonation. Application for delay condonation was in a revision filed for challenging the recovery certificate issued by Deputy Registrar Co-operative Societies. However, respondent no. 4 entertained the non-maintainable proceeding numbered as Appeal Application No. 23/2023, and instead of examining the order of rejection of the application for delay condonation, he quashed and set aside the recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act").

5. Learned counsel for the petitioner further submits that respondent no. 1 approached respondent no. 4 as he was aggrieved by the rejection of his delay condonation application. Hence, he submits that the petitioner has no objection if the delay is condoned

and the Revision Application for challenging the recovery certificate is heard on merits by the Divisional Joint Registrar Co-operative Societies-respondent no. 2.

6. Learned counsel appearing for respondent no. 1 as well as learned AGP does not dispute the aforesaid submissions that the proceeding was not maintainable before respondent no. 4 and the only challenge was to the rejection of the delay condonation application.

7. It is not in dispute that the Revision Application by respondent no. 1 before respondent no. 2 i.e. Divisional Joint Registrar Co-operative Societies was not heard on merits and only the application for condonation of delay was heard and decided.

8. Given the aforesaid facts, the petition can be disposed of by condoning the delay in filing the Revision Application of respondent no. 1 before the Divisional Joint Registrar Co-operative Societies filed for challenging the recovery certificate dated 30th November 2018 and directing the hearing of the revision application on merits.

9. Learned counsel for respondent no. 1 states that if the order passed by respondent no. 4 is quashed and set aside by which the

recovery certificate was canceled, respondent no. 1 be granted protection for a limited period to enable him to file an appropriate application before respondent no. 2. He submits that the petitioner has deposited certain amount with the petitioner and hence he may be granted liberty to make an application before respondent no. 2 for waiver of the statutory deposit of 50% of the amount as per the recovery certificate.

10. Learned counsel for the petitioner disputes that any amount is deposited by respondent no. 1 pursuant to the recovery certificate. Hence, without examining the merits of the revision application and the rival contentions regarding the deposit of the amount pursuant to the recovery certificate, I am inclined to grant interim protection to respondent no. 1 for a limited period only to enable him to file an appropriate application before respondent no. 2 seeking appropriate relief as permissible in law.

11. Hence for the reasons recorded above the petition is disposed of by passing the following order :

ORDER

(i) Order dated 3rd May 2022 passed by respondent no. 4/the Minister of State for Cooperation and Order dated 28th September 2021 passed by respondent no. 2/ the Divisional Joint Registrar Co-operative Societies are quashed and set aside.

(ii) Application dated 1st October 2019 (Exhibit D) filed by respondent no. 1 for condonation of delay in filing Revision Application for challenging recovery certificate dated 30th November 2018 is allowed and delay of 307 days is condoned.

(iii) Revision Application of respondent no. 1 for challenging recovery certificate dated 30th November 2018 be registered and the same be heard and decided by respondent no. 2/the Divisional Joint Registrar Co-operative Societies on merits.

(iv) No coercive action to be taken against respondent no. 1 pursuant to the recovery certificate dated 30th November 2018 for three weeks from today to enable respondent no. 1 to make

appropriate application as permissible in law before respondent no. 2.

(v) Application for interim protection if made by respondent no. 1, the same to be decided by respondent no. 2 on its own merits uninfluenced by the interim protection granted by this order.

(vi) If an appropriate application is not made before respondent no. 2 within two weeks from today, interim protection granted by this order shall stand vacated.

(vii) Writ Petition is disposed of in the above terms.

All concerned to act on an authenticated copy of this order.

[GAURI GODSE, J.]