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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10029 OF 2019

The Hon. Secretary/Chairman,
Mahim Makarand Co-Op Hsg.
Soc. Ltd

.....Petitioner

Vs.

The State of Maharashtra through
the Div. Jt. Registrar C.S. Mumbai
Div. And Ors

.....Respondents

Mr. Avirat Sonawane i/b Mr. Umeshchandra Yadav for the petitioner
Mr. Rupesh Tukaram Padwal for Respondent Nos. 3 and 4
Smt. M. S. Bane, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 13th FEBRUARY 2024.

P.C.

1. Heard. This Petition takes an exception to the order dated 10th May 2019 passed by the Divisional Joint Registrar Co-operative Societies allowing the Revision Application of the Respondent Nos. 3 and 4. The said Revision Application was filed by the said

Respondents for challenging the order passed in Appeal preferred by them under Section 23(2) of the The Maharashtra Co-Operative Societies Act, 1960 ('MCS Act').

2. By the impugned order, the said Respondents are admitted as members of the Petitioner-Society in respect of Flat No. 13 and the Society is directed to transfer the shares in the name of the said Respondents.

3. Learned counsel for the Petitioner submitted that in view of Section 154B-13 of the MCS Act, said Respondents are required to submit succession certificate as they are claiming right on the basis of the nomination registered by original members who were also added as members on the basis of nomination registered by the original member. Learned counsel further referred to the nomination form in favour of the said Respondents which is annexed at page 48 of the Petition. He submits that the said nomination was registered by Netra Murudkar and Shubhangi Kushte, having 50% share each on the basis of the earlier nomination, however, the nomination registered by them is not in proportion to their original nomination. He submits that Netra

and Shubhangi at the most could have nominated their own 50% share each in the Society.

4. Learned counsel for Respondent Nos. 3 and 4 supports the impugned order on the ground that once nomination is registered, the Society is under obligation to transfer shares as per the nomination. He submits that so far as procedural requirements are concerned, the said Respondents have complied with the requirements and if any other procedural requirement is pending, the same would be complied by the said Respondents. He submits that there is no substance in the argument on behalf of the Society that unequal distribution of shares has been done in the nomination form. He submits that the nomination form at page 48 is a common form signed by both the members. He submits that the said nomination form is accepted by the Society and thus once the nomination is registered, Society is not entitled to raise any dispute with respect to the same, at a later stage.

5. I have considered the submissions. Perused the record. So far as the nomination registered in favour of Respondent Nos. 3 and 4 is concerned, there is no dispute that the nomination form was accepted

by the Society and the same is registered with the Society. The reliance placed by the learned counsel for the Petitioner on Section 154B-13 read with Bye Law No. 34 of the MCS Act is concerned, I do not find any merit in the said submission. Section 154B-13 indicates that either of the conditions contemplated in the said Section are to be complied with. Thus, once the nomination is registered, the Society is under obligation to admit the nominee. The proviso to the aforesaid Section provides that the Society shall admit the nominee as a provisional member after the death of the original member till heirs or any person entitled to the flat and the shares in accordance with the Succession Law or under a Will or a testamentary document are admitted as members in place of such deceased member. The second proviso further contemplates that if no person has been so nominated, the Society shall admit such person as provisional member as may appear to the Committee to be heir or legal representative of the deceased member in the manner as may be prescribed.

6. Thus, in view of Section 154B-13, once a person is nominated in accordance with the Rules, the Society is required to admit the

nominee as a member by following the procedure. It is well established principle of law that nomination, once, validly registered, Society is mandated to admit the nominee as member and transfer the shares. Thus, such transfer shall only be binding on the Society and shall have no relevance to the issue of title between the inheritors and successors of the deceased, if any. In the present case, it is not contended that any person is claiming any right on the basis of succession law or under Will or any testamentary document.

7. So far as Bye Law No. 34 relied upon by the learned counsel for the Petitioner is concerned, the same provides for the procedure to be followed for admitting the member on the basis of nomination. Perusal of the impugned order indicates that the same is passed after taking into consideration the relevant provisions and by considering the nominations which were registered. All the objections raised on behalf of the Society are considered by the Divisional Joint Registrar and allowed the Revision by referring to the relevant provisions for admitting the nominee as a member.

8. I do not find any infirmity or illegality in the reasons recorded in

the impugned order.

9. The Petition is devoid of any merits. Hence, the petition is dismissed.

[GAURI GODSE, J.]