

SA Pathan

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

WRIT PETITION NO.11888 OF 2022

Rasana Vijay Joshi Alias Nilima
Balkrishna Nene

... Petitioner

V/s.

The State of Maharashtra Through
Government Pleader & Ors

... Respondents

Ms. Neha Nagotanekar, for the Petitioner.

Mr. Kishor Siram, for Respondent No.4.

Mr. Prashant P. Kulkarni a/w Ms. Rachna Mamnani, for
Respondent No.5.

Mr. Y. D. Patil, AGP, for State/Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 4, 2024

P.C.:

1. The writ petition arises out of dispute between the nominees and their representatives. The original member of cooperative housing society died nominating the petitioner, father of respondent No.5 and other two persons as nominees.
2. Based on the gift deed executed by one of nominee, the donee applied for membership of housing society.
3. The Assistant Registrar rejected the application. However, the Divisional Joint Registrar allowed the revision and directed the society to enter name of respondent no.5 as member of society.

4. On perusal of the record, it is evident that there is neither conveyance nor Will in favour of nominees or their representatives which confers right on such persons. The petitioner in addition being nominee claims to be class-II heir. Father of respondent No.5 was also nominee. Therefore, it is necessary for the parties to approach the Civil Court to get their title over the flat in question adjudicated. It is the Civil Court, which can adjudicate on the title of persons and their rights over the flat No.12/B.

5. It appears that after filing of writ petition, the petitioner has approached the Civil Court seeking declaration that the gift deed executed in favour of respondent No.5 is not binding on the petitioner. It also appears that various prayers are made by the petitioner in the said suit.

6. Therefore, it is directed that parties to the petition shall not claim any rights as a member of housing society and shall maintain status quo as regards status of share certificate during pendency of suit as regards flat in question. The rights of the parties over the flat in dispute shall be subject to final decision of Suit No.2665 of 2022.

7. It is made clear that the rights of the parties shall be decided by the Civil Court uninfluenced by the observations made in the present order or in the impugned orders.

8. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)