

Nikita

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

WRIT PETITION NO.245 OF 2024

Aparna Shriyal Padte and Ors.

... Petitioners

V/s.

The Divisional Joint Registrar
Co-Operative Societies
Mumbai Division and Ors.

... Respondents

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Mr. Atul Damale Sr. Adv. a/w Mr. Amit Pradhan a/w
Ms. Twinkle Gadhiya i/b Pradhan and Rao, for the
Petitioner.

Mr Kundlik R. Panchangane for Respondent No.4.

Nambiar Sasikumar T. C. Padmanabhan for Respondent
No.2.

Mr. S D. Rayrikar, AGP for the State-Respondent Nos. 1,
3 and 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 4, 2024

P.C.:

1. Rule. Rule is made returnable forthwith.

2. By the impugned order the Revisional Authority has remanded back the proceedings filed by the Cooperative Housing Society challenging the order of grant of membership in favour of the petitioners by the Deputy Registrar of Cooperative-Housing Society.

3. The petitioners are the purchasers of the newly constructed flats by respondent No.4. In the present petition, respondent No.4 is a Developer who constructed the buildings in relation to which the petitioners applied membership. Based on sale deed executed by respondent No.4/Developer, *the* petitioners applied for membership with respondent No.2/housing society.

4. *On 20th June 2021* Managing Committee of Respondent No.2 approved membership applications filed by the petitioners and the Society communicated by the petitioners that it has accepted membership request of the petitioners. According to the petitioners, they have paid necessary amount of entrance fees. However, in absence of their names entered in a membership register, the petitioners applied before the authorities under Section 22 of the Cooperative Societies Act, 1960.

5. The Deputy Registrar by order dated 27th April 2023, *28th April 2023, 8th May 2023 & 9th May 2023* directed respondent No.2 to add petitioners as the members.

6. The respondent No.2 challenged the order of Deputy Registrar by filing revision applications. By the impugned order, Revisional Authority has remanded the matter back to the Deputy Registrar mainly on the ground that the applications filed by the petitioners are not as per requisite forms under bye law No.38 and 19.

7. On perusal of the impugned order, in my opinion, the Revisional Authority could not have been remanded the proceedings back to the Deputy Registrar. It is evident that findings

are recorded by the Deputy Registrar that the Managing Committee of respondent No.2 had accepted petitioners as members by way of resolution. Once the Managing committee of respondent No.2 has accepted petitioners as members of the society, the entries of names of petitioners in the membership register is a ministerial Act.

8. There is no dispute between the petitioners and respondent No.2 that petitioners are eligible for being members of the Society.

9. According to Society respondent No.4, has not provided copies of tripartite agreement to earlier allottees before redevelopment. In my opinion, on such ground, the respondent No.2/ Society cannot object for enrolling petitioners as members of housing society.

10. In view of the fact that petitioners are eligible for being enrolled members of the housing society and the managing committee had already passed a resolution to accept them as member of housing society, in my opinion, the impugned order passed by Divisional Registrar cannot be sustained. Hence, following order:

11. Rule is made absolute in terms of prayer clauses (b) and (c).

12. The writ petitions stands disposed of in above terms.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 6 March 2024. The corrections are shown in italicize.