

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9039 OF 2024

Mrs.Mubeen R. Betaraj Petitioner

V/s.

The State of Maharashtra & Ors. Respondents

Mr.Vishwajeet Kapse a/w Ms.Kartavya Oswal, for the Petitioner.
Ms.V.S. Nimbalkar, AGP, for Respondent Nos.1 to 3-State.

CORAM : R.M. JOSHI, J.

DATE : 23rd AUGUST 2024

P.C:-

. This Petition takes exception to the orders dated 8th December 2020 passed in Appeal No.55 of 2019 and 28th April 2022 passed in Revision Application No.42 of 2021 whereby the claim of the Petitioner for declaration as a member of the Respondent no.4-Society stood rejected.

2. A notice was issued to the Respondents for final hearing of the Petition at the stage of the admission. All Respondents are duly served, absent. This indicates that, contesting Respondents have no inclination to oppose the

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Petition.

3. It is the case of the Petitioner that, she entered into an agreement for the purchase of the flat bearing No.502, Ramdarshan, Yashwant Nagar, Vakola, Santracruz (E), Mumbai-400 055 on 2nd April 2009. It is claimed by her that, Respondent No.5-Developer gave possession of the said premises to her husband after receipt of the entire consideration on 17th April 2009. It is claimed that, there were disputes between the parties with regard to the demand of the extra money by the developer and even Criminal complaints came to be lodged in this regard.

4. It is further claimed that Saeed Shah Mohammed Khan had filed suit bearing No.4567 of 2009, at the instance of Respondent No.5 under Section 6 of the Specific Relief Act, 1963, for possession of the subject flat. The said suit came to be dismissed by order dated 2nd September 2015 and this order has attained finality. A suit also came to be filed bearing No.3524 of 2015 by Developer which came to be dismissed on 10th February 2017.

5. An Application was moved by the Petitioner before the Society for membership. This Application was rejected hence the proceedings under provisions of Maharashtra Co-Operative Societies Act (for short 'Societies Act') being Application No.55 of 2009 came to be filed unsuccessfully. The Revisional Authority has also upheld the order passed by the Assistant Registrar, hence this Petition.

6. The learned counsel for the Petitioner submits that, on the sole ground that there is pendency of the suit before the City Civil Court in respect of the subject flat, it is held that, there is serious dispute with regard to the ownership of the said flat and the same has resulted into rejection of his Application. It is his submission that, the suit bearing No.954 of 2021 has been dismissed for want of prosecution by the City Civil Court on 22nd November 2022. In response to specific query made by this Court with regard to the order of dismissal of the suit being set aside by any Court and restoration of the said suit, the learned counsel for the Petitioner, on instructions, from the Petitioner who is present in this Court makes solemn statement that the suit

has not been restored till date. He further undertakes to file affidavit of the Petitioner to that effect in this Court. His statement is accepted.

7. Perusal of the record indicates that, there is registered agreement under the provisions of the Maharashtra Ownership of Flats Act, 1963 executed in favour of the Petitioner by developer. There is no dispute made by the society with regard to the fact that the Petitioner is in possession of the flat and the maintenance bills are also raised against the Petitioner, which are being duly paid by the Petitioner till date. Even, otherwise Respondent society had only asked for the copy of agreement in respect of the flat in question and letter of possession letter from Developer.

8. Needless to say that, the purpose of letter from Developer of possession would be only to ensure that entire consideration is paid and possession has been received by the Petitioner of the flat in question. The dismissal of the suit filing by the developer against the Petitioner confirms the fact that no dispute survives between them. The Petitioner is a lady aged about 79 years. In the peculiar facts of the case, this Court does

not find it appropriate to call upon the Petitioner to approach the Assistant Registrar for placing these facts on record indicates dismissal of the suit etc.

9. Since, the Application of the Petitioner was rejected solely on the ground of pendency of the suit and since the said ground no more exist, there is no impleadment to allow Application for membership of Petitioner. Impugned order therefore are quashed and set aside. Application No.55 of 2019, stands allowed. Respondent Society is directed to allot membership of the Society to the Petitioner. Petition stands allowed in terms of prayer clause (a).

10. All pending Civil/Interim Applications are disposed of.

(R.M. JOSHI, J.)