

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.76 OF 2024
IN
WRIT PETITION NO.2203 OF 2023

Sudesh Sitaram Nalawade & Anr. ...Petitioners
V/s.
The State of Maharashtra & Ors. ...Respondents

Mr. Deepak Pandey for Applicants/Petitioners.
Mr. P.B. Chavan, AGP for Respondents Nos. 1 to 3.
Mr. R.M. Pethe for Respondent Nos. 5 to 7.

CORAM : MADHAV J. JAMDAR, J.

DATE : 22nd October 2024

P.C. :

1. Heard Mr. Pandey, learned Counsel for the Applicants, Mr. Chavan, learned AGP for Respondent Nos.1 to 3 and Mr. Pethe, learned Counsel for Respondent Nos. 5 to 7.
2. By the present Review Petition, the Petitioners are seeking review of the Order dated 23rd August 2023 passed by this Court in Writ Petition No. 2203 of 2023.
3. By the said Order, the Writ Petition has been dismissed. The reasons are set out in paragraph Nos. 4 and 5 of the said Order, which reads as under:-

“4. Perusal of record shows that there were total 13 buildings in the original Society i.e. Respondent No. 4 -

NMM Kamgar Co-operative Housing Society, Kalwa, Thane. Out of those 13 buildings, 12 buildings were constructed about 40 years back and therefore, the same have become dilapidated. Building No. 3 was constructed in 1995 and relatively the said building is in a better position. Therefore, the members of building No.3 opposed the redevelopment. However, as the other 12 buildings have become extremely dilapidated, Respondent No. 4- Society moved a proposal for division of the Society, one society consisting of 12 buildings and another society consisting of only building No. 3.

5. *It is significant to note that the **total members of the Society are 408. The present petition has been filed only by two members**, who are occupying flats in building Nos. 4 and 8. It is the contention of Mr. Pandey, learned Counsel appearing for the Petitioners that 64 members have opposed said sub-division before the Deputy Registrar. In any case, it is admitted position that **the Respondent No. 4- Society has applied for said bifurcation supported by overwhelming members of the society.** Perusal of the impugned order shows that the same has been passed by taking into relevant aspects. Therefore, this is not a case where interference by this Court is required under Article 227 of the Constitution of India.”*

(Emphasis added)

4. Mr. Dipak Pandey, learned Counsel for the Petitioners submitted that there are two grounds seeking review of the Order dated 23rd August 2023 passed by this Court.

(i) The land to the building No.3 and other buildings have been bifurcated /divided based on number of the flats occupied by them. Building No.3 is having 24 flats as per the

sanctioned plan of the Thane Municipal Corporation, however, the bifurcation was done by taking into consideration 44 unauthorised flats i.e. total 68 flats and therefore building No.3 has been allotted larger area.

(ii) Although the Writ Petition has been filed by 2 members, there are other members who are opposing excess land allotted to building No.3.

5. To substantiate the first contention raised by the Petitioners, Mr. Pandey, learned Counsel relied on letter dated 23rd July 2019 of Executive Engineer, Urban Development Department of Thane Municipal Corporation. In the said letter, it is stated that as per the sanctioned plan of building No.3, only 24 flats are legal and 44 flats are constructed unauthorisedly. However, it is required to be noted that the challenge in the Writ Petition No.2203 of 2023 is to the Order dated 13th July 2018 passed by Deputy Registrar, Co-operative Societies, Thane City, Thane as confirmed by the Order dated 14th May 2019 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai in Appeal No. 132 of 2018 and Order dated 28th July 2022 passed by Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai in Appeal No.107 of 2018. The impugned orders are regarding bifurcation of original Society, N.M.M. Kamgar Cooperative Housing Society in two

societies- one consisting of 12 buildings and another consisting of only building No.3. It is also required to be noted that there are total 408 members of said Respondent No.4- Society before bifurcation and only 2 members, who are having flats in building Nos. 4 and 8 have challenged the said bifurcation in the Writ Petition. It is also required to be noted that even the present Review Petition has also been filed by only these 2 persons. The point regarding illegal construction of some flats in said building No. 3 is totally different from bifurcation and area allotted to two separate Societies in bifurcation. The overwhelming members of the Society have taken conscious decision to bifurcate the Society and allot the area of land as allotted to the building No.3 and remaining buildings. Even if the contention of the Petitioners is assumed to be correct that some more area has been allotted to the building No.3, then also it is required to be noted that overwhelming majority of the society members have supported the bifurcation and therefore, this Court in Order dated 23rd August 2023 has observed that no interference is required under Article 227 of the Constitution of India.

6. As far as the contention raised by Mr. Pandey, learned Counsel for the Petitioners that the other members are also opposing said bifurcation, reliance is placed on a note prepared by Urban Development Department dated 21st December 2021 wherein list of

all members i.e. 384 members of the bifurcated Society of 12 building is set out and further with respect to each member, it is mentioned whether the member is agreeable for the development by the concerned developer and whether the members have executed the agreement with the developer. On the basis of said noting, it is submitted that as 64 members have not executed the agreement with the developer, they are opposing even the bifurcation. The said contention has no basis.

7. In any case, even assuming that 64 members are opposing the bifurcation, then also it is required to be noted that the said Co-operative Housing Society, Kalva, Thane before bifurcation has 408 members and even after bifurcation also, the Society consisting of 12 buildings have 384 members and out of that 64 members are opposing bifurcation. Even assuming that 64 members out of 384 members are opposing the said bifurcation then also the same is even less than by 18% of the total members.

8. Thus, there is no substance in the Review Petition. Accordingly, the Review Petition is dismissed, however with no order as to costs.

9. In view of dismissal of the Review Petition, the Interim Application does not survive and the same is also disposed of.

(MADHAV J. JAMDAR, J.)