

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2087 OF 2024

Clint Rodrigues

... Petitioner

Versus

Convent View Co-op. Hsg. Society Ltd. and Ors.

... Respondents

.....

Advocate Kirit Hakani a/w. Rahul Hakani, Niyati Mankad and Aakanksha Bansode, Advocates for the Petitioner.

Mr. P. G. Sawant, AGP for the State/Respondent Nos. 4 to 6.

CORAM : R. M. JOSHI, J.

DATED : 26th AUGUST, 2024.

P.C. :

1. This petition takes exception to the order dated 20.10.2022 passed in Revision Application No. 214 of 2015 confirming order dated 23.04.2015 passed in Appeal No. 20 of 2015, under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (for short “**the Act**”).

2. The Petitioner is a son of Mrs. Stella Rodrigues (now deceased). Mrs. Stella was a member of respondent No.1 society. During her lifetime i.e. on 29.06.1997 she nominated petitioner in respect of flat No.10, Ritz Building. Mrs. Stella died on 17.03.2013 leaving behind her last Will dated 23.03.2011. The Petitioner applied to respondent No.1 society for the membership by application dated 18.04.2013. This application was filed in the capacity of the nominee of the deceased. All required

conditions for obtaining membership were complied with. Respondent No.1 society by a letter dated 24.05.2013 called upon petitioner to submit Indemnity Bond in prescribed form. It was also intimated to the petitioner about the two objections received for granting membership from respondent Nos. 3 and 4. Petitioner by letter dated 21.06.2013 provided specific information as asked for by the society. Indemnity Bond was also submitted as per the requisition. In the meantime, respondent Nos. 2 and 3 filed Civil Suit bearing Civil Suit No. 3323 of 2013 before the City Civil Court at Mumbai challenging the Will of Mrs. Stella and also for partition of flat No. 10. It is the case of the petitioner that there was no interim relief granted by the said Court in favour of these respondents. Petitioner on 30.07.2014 through his Advocate called upon respondent Society to complete the formalities for transfer of shares in favour of the petitioner. Since the respondent No.1 society failed to appoint petitioner as member of the society, he filed application bearing Application No. 20 of 2015 under Section 22(2) of the Act. The said application came to be rejected by order dated 23.04.2015 by Deputy Registrar. Revision was filed under Section 154 of the Act bearing Revision Application No. 214 of 2015 before the Divisional Joint Registrar. By passing impugned order the said application came to be dismissed. The Suit filed by respondent Nos. 2 and 3 also came to be dismissed on 15.09.2018. Being aggrieved by the order

passed by Assistant Registrar which is confirmed by the Divisional Joint Registrar.

3. In spite of service of notice, respondent Nos. 1, 2 and 3 have failed to cause their appearance. This indicates, these respondents have no intention/ inclination to oppose the petition.

4. Learned counsel for the petitioner submits that there is no dispute about the fact that the mother of the petitioner has nominated petitioner in respect of the flat in question. According to him, it is settled position of law that the nomination conclusively determines the right of the nominee to become member of cooperative housing society. He placed reliance on the Judgment of the Division Bench of this Court in the case of *Om Siddharaj Co-operative Housing Society Limited vs. The State of Maharashtra and Ors.* reported in 1998 SCC OnLine Bom 243 : (1998) 4 Bom CR 506 and Judgment of this Court in Civil Writ Petition No. 11833 of 2016.

5. Perusal of the record as well as the orders impugned indicates that the flat in question was purchased by Mr. Joseph, father of petitioner and husband of Mrs. Stella. He by his last Will bequeath the said flat in favour of Mrs. Stella and she was nominated. Mrs. Stella executed Will dated 17.03.2013 and the petitioner has been nominated to become member in respect of the flat in question. No dispute is made by parties with regard

to the fact that petitioner has been nominated by his mother to become member of society. Similarly, there is no denial of compliance of requisitions sought by respondent society from petitioner. The communication addressed by the respondent No.1 society to the petitioner indicates that there is compliance of all requisitions made by the society such as, providing copy of death certificate of Mrs. Stella, copy of nomination form registered with the society, application in form No. 34, undertaking and entrance fees.

6. The sole reason for rejection of the claim of membership is the objection raised by respondent Nos. 2 and 3 for the same claiming right in the flat in question. Orders passed by Deputy Registrar as well as Divisional Joint Registrar indicate that the reason for rejection of the claim of the petitioner is only on the ground that objection has been raised by respondent Nos. 2 and 3 for membership of petitioner on claim of share in subject flat and the suit is filed before the City Civil Court, Mumbai being pending. It is thus clear that the application filed under Section 22(2) has been rejected not on any other ground but for filing of the suit for partition in the flat in question by respondent Nos. 2 and 3.

7. At this stage, it would be relevant to take into consideration the Judgment of the Division Bench of this Court in the case of ***Om Siddharaj Co-operative Housing Society Limited*** (supra) is squarely applicable. The

Division Bench in paragraph 5 has observed as under:

“5. On a plain reading of section 30, it is clear that on death of a member of the society, it is incumbent on the society to transfer the share or interest of the deceased member to “a person or persons nominated in accordance with the Rules”. It is only in the event of there being no nomination of any person, the society can transfer the share or interest of the deceased member to “such person as may appear to the committee to be the heir or legal representative” of the deceased member. The language of the section is clear and unambiguous. If a person is nominated in accordance with the Rules, the society is obliged to transfer the “share and interest of the deceased member” to such nominee. It is no part of the business of the society in that case to find out the relation of the nominee with the deceased member or to ascertain and find out the heir or legal representatives of the deceased member. It is only if there is no nomination in favour of any person, that the share and interest of the deceased member has to be transferred to such person as may appear to the committee of the society to be the heir or legal representative of the deceased member. The contention of the learned Counsel for the appellant that the nomination can be only in favour of an heir or legal representative is not tenable on the face of the clear language of section 30 of the Act.”

8. Similarly, learned Single Judge in Writ Petition No. 11833 of 2016 relying upon the said judgment of Division Bench has observed that the conferment of the membership by itself would have no relevance to the issue of title between the inheritors or successors to the property of the deceased. It is further held therein that as per the nomination made, the society is under obligation to transfer the share and interest of the deceased member to the nominee.

9. These judgments are squarely applicable to the present case. In view of the undisputed fact that the petitioner is the nominee of Mrs. Stella who was nominee of Mr. Joseph, there is no reason or justification for society to

refuse to accept petitioner as a member of the society. Assistant Registrar as well as Divisional Joint Registrar have committed serious error in not appreciating the relevant facts involved in the present case and law on the point.

10. As a result of above discussion, impugned orders cannot sustain and are set aside. Petition stands allowed in terms of prayer clause (a). As a consequence thereof, application filed by petitioner for membership with respondent No.1 society stands allowed.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2024.08.29
17:28:51
+0700

(R. M. JOSHI, J.)