

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8520 OF 2024

The Tenants Cooperative Housing Society Limited)
 Having its registered office at Samarth Nagar,)
 Chunabhatti (East), Mumbai – 400022)... Petitioner

Versus

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|---|--|------------------|--|
| 1 | State of Maharashtra |) | |
| | Department of Cooperation, |) | |
| | (TO be served through the Government Pleader |) | |
| | (State), High Court, Appellate Side, Bombay) |) | |
| 2 | The Deputy Registrar, Cooperative Societies, |) | |
| | 'L' Ward, Mumbai |) | |
| | Having Office at Room No. 311, |) | |
| | Konkan Bhavan, 3 rd Floor, CBD Belapur, |) | |
| | Navi Mumbai – 400614. |) | |
| 3 | Jayashri Arvind Nimkar |) | |
| 4 | Manisha Shashikant Athalye |) | |
| | Nos. 3 and 4 both Adults, |) | |
| | Residing at 58, Burma Nagar, Shiv Srushti, |) | |
| | Kurla (East), Mumbai – 400024 |)... Respondents | |

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Mr. Kishor Tembe, Advocate for the Petitioner.

Mr. J. P. Patil, AGP for Respondent- State.

Mr. Shekhar B. Prabhavalkar, Advocate for Respondent Nos. 3 and 4.

CORAM	: R. M. JOSHI, J.
RESERVED ON	: 10th SEPTEMBER, 2024.
PRONOUNCED ON	: 25th SEPTEMBER, 2024.

JUDGMENT :

1. Petitioner is a Co-operative Housing Society and being aggrieved by the impugned order dated 17.05.2024 passed by the Deputy Registrar of

Co-operative Societies directing the petitioner society to issue NOC for development of lease plot belonging to respondent Nos. 3 and 4.

2. The facts which led to filing of this petition can be narrated in brief as under:

3. Petitioner is a cooperative housing society and respondent Nos. 3 and 4 are its members. A lease agreement dated 18.03.2000 was executed in respect of plot No.7 between petitioner society and predecessor in title of respondent Nos. 3 and 4. According to the petitioner Clause No.2(iii) and 2(iv) provide that no transfer of demised property shall be taken except after obtaining prior written permission of the petitioner and on payment of premium equal to 50% of consideration receivable. It is alleged by the petitioner that respondent Nos. 3 and 4 executed development agreement dated 25.05.2012 with the developer without obtaining written permission of the petitioner and without paying agreed premium. It is also alleged that without making any application to the petitioner society, respondent Nos. 3 and 4 moved respondent No.2 on 04.12.2018 seeking direction to the society to issue NOC for redevelopment. By order dated 30.08.2019 respondent No.2 Deputy Registrar of Co-operative Societies directed respondent Nos. 3 and 4 to comply with the conditions of lease agreement and to pay agreed premium and subject thereto NOC was to be granted by the society to them.

According to the petitioner respondent Nos. 3 and 4 did not pay the agreed payment nor offer to pay the same in writing till February-2024. Thereafter, another application was moved before respondent No.2 and by order dated 17.05.2024 petitioner was directed to issue NOC, hence this petition.

4. Learned Counsel for the petitioner submits that admittedly there is a lease deed which contents clause requiring respondent Nos. 3 and 4 to seek prior permission of petitioner society for redevelopment of the lease plot and to pay 50% of premium receivable. It is his contention that the contesting respondents entered into development agreement without obtaining any permission from the society. It is his grievance that not even a formal application was made to the society for issuance of NOC and in spite of the said fact, an application was moved before Deputy Registrar of Co-operative Societies for issuance of NOC. It is his submission that the Deputy Registrar of Cooperative Society has no jurisdiction to direct issuance of any such NOC as the dispute if any between the party is arising out of contract i.e. agreement of lease and the same is amenable to the jurisdiction of Civil Court. It is his submission that the impugned order passed by the Deputy Registrar is without jurisdiction as the issue is not covered by Section 154-B (27) of the Maharashtra Cooperative Societies Act, 1960 (for short “**the Act**”). It is his submission that the impugned

order has been passed without taking into consideration the fact that the amount of premium as payable in terms of the lease deed has not actually been paid or offered and hence the order cannot sustain.

5. Learned counsel for the contesting respondents opposed the said submission by drawing attention of the Court to the fact that the order dated 30.08.2019 passed by the Deputy Registrar directing issuance of NOC by the Petitioner to the respondents has not been challenged and as such the said has attained finality. It is his further submission that the respondent Nos. 2, 3 and 4 were within their right to move an application under Section 154-B(27) of the Act as the order passed by the Deputy Registrar was not complied with by the Petitioner. On instructions, he makes statement that these respondents are ready and willing to pay 50% amount of premium receivable to the petitioner society and as such there is no legal impediment in issuance of NOC by the petitioner to these respondents.

6. There is no dispute about the fact that the respondent Nos. 3 and 4 are lessee of subject plot and an agreement of lease came to be executed in this regard between the petitioner society and the predecessors of present respondents. The lease is admittedly for a period of 999 years. It contents provision in respect of the obtainment of permission from the society for the development subject to payment of 50% premium. In this regard, it

would be relevant to refer to the relevant clauses of the lease agreement which read thus :

“III. Not to assign, underlet or part with possession of the demised premises or any part thereof without such previous consent in writing of the Society.

IV. On every permitted disposition or devolution of or dealing with the said plot and buildings and any part thereof, the LESSEE shall pay to the Society half the premium received by him from the transferee in respect of disposition or development of the said plot.”

7. Thus there is documentary evidence on record to indicate that if contesting respondents were intending to develop the plot, they had to obtain permission of the society on payment of half the premium received. Considering the fact that the lease is for the year for 999 years and also in view of clause No. VIII of the same agreement which states “The LESSEE shall have the right to reconstruct a multi-storeyed building or makes addition or alteration of existing building and let out to the persons of his choice and that the LESSEE shall have plan approved by the LESSOR and such approval shall not be unduly withheld by the LESSOR before submitting to MUNICIPAL CORPORATION of BRIHAN MUMBAI, it is not open for the society to unduly withhold the lessee right to construct a multi-storeyed building or makes addition or alteration of existing building. It is thus clear that once the lessee is ready to pay half the premium received by him in respect of the development of the plot, petitioner society has no right to refuse NOC therefor.

8. Further, undeniably respondents had moved an application before respondent No.2 for issuance of NOC as the same was not given by petitioner society. The said application was allowed by order dated 30.08.2019. Petitioner society was duly heard before passing the said order. At no point of time any objection was raised with regard to the maintainability of the application. Similarly this order has not been challenged till date and as such it has attained finality. It is therefore not open now for the petitioner to take any exception thereto. In any event, since there is no challenge to this order in the petition, contentions sought to be raised in that regard therefore are kept out of consideration.

9. It is in this backdrop and as the petitioner failed to issue NOC, an application was moved under Section 154-B(27)(1)(2) of the Act. It is thus contention of the learned counsel for the petitioner that the said provision would not attract for the purpose of seeking compliance of any particular order but it is a general provision which lays down procedure for compliance of the circulars and orders issued from time to time.

10. It would be relevant to take note of the said provision which read thus :

“154B-27. Obligation of society to take action and Registrar's powers to enforce

(1) If any society is required to take action for performance of its obligations, responsibilities and duties as provided in this Act, rules and bye-laws or to execute the orders issued by the State Government or by the Registrar, from time to time, and such actions are not taken or such orders are not executed, the Registrar suo motu or on an

application may issue directions to take such action or actions or execute such orders.

(2) Where any society is required to take any action or to execute the orders as provided in the foregoing sub-section and such action is not taken or orders are not executed,-

(i) within the time provided in this Act, rules or the bye-laws or in the order, as the case may be;

(ii) where no time is provided, within such time having regard to the nature and extent of the action to be taken as the Registrar may specify by notice in writing, the Registrar may himself or through a person authorized by him take such action or execute such order at the expense of the society and such expenses shall be recoverable from the responsible officer of the society as if it were arrears of land revenue:

Provided that, before issuing an order or direction and fixing the responsibility of payment of expenses an opportunity of being heard shall be given to the officer of society to whom the Registrar considers to be responsible for not taking such action or not executing such orders.”

11. This provision more than clearly demonstrates that order passed by Registrar if not complied can be executed by filing an application under this provision. This Court therefore finds no substance in the contention of the learned counsel for the petitioner that this provision cannot be invoked for seeking execution of order dated 30.08.2019 passed by respondent No.2.

12. Since order dated 30.08.2019 has not been challenged and has attained finality, the said order is sought to be executed. The evidence on record indicates that development agreement was entered into between the contesting respondents and developer. The said agreement was valued at Rs.88,32,500/- and market value thereof was said to be

Rs.1,50,92,500/-. Reverting back to the provisions of lease agreement, clause 2(iv) provides that the lessee is required to pay the society half the premium received by him from the transferee in respect of the development of the said plot. It is thus clear that the amount which has been received in respect of the development is liable to be considered for the purpose of determination of half premium. There is no challenge to the valuation of the development agreement which holds that the agreed value of Rs.88,32,500/-. The respondent Nos. 2 and 3 therefore would be liable to pay 50% of the said amount to the petitioner in order to obtain NOC for development. There is no substance in the contention of the petitioner that the same shall be computed on the basis of market value of the subject property as any such demand would be contrary to the intention of parties as it appears from Clause (iv) of lease agreement. It is therefore held that the respondent Nos. 3 and 4 are liable to pay half of Rs.88,32,500/- by way of premium to the petitioner and the petitioner society is then obliged to issue NOC to these respondents.

13. It is however clarified that contesting respondents will have to make offer of payment in writing for payment of Rs.44,16,250/- to the petitioner and on acceptance of amount, petitioner shall issue NOC forthwith to the respondent Nos. 3 and 4. In the event, such amount offered is not accepted by petitioner, the same shall be deposited with the Deputy

Registrar, the process of issuance of NOC be effected as per impugned order.

14. Petition stands dismissed in above terms.

(R. M. JOSHI, J.)

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by SONALI
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