

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8953 OF 2024

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| 1. Kishore G. Shahdadpuri |) | |
| Aged about 64 years, Occupation : Service, |) | |
| Having address at 18, Sindhu Baug – A, |) | |
| Tilak Road, Ghatkopar (E), Mumbai – 400 077 |) | |
| 2. Suresh Narayandas Chawla |) | |
| Aged about 71 years, Occupation : Service |) | |
| Having address at 4B, Sindhu Baug-A, |) | |
| Tilak Road, Ghatkopar (E), Mumbai – 400 077. |) | Petitioners |

Versus

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| 1. Happy Life 'A' Co-operative Housing Society Ltd. |) | |
| Through its Chairman / Secretary |) | |
| Having address at Plot No. 94 and 100, |) | |
| Survey No. 93(Part), Sindhu Baug-A, |) | |
| Tilak Road, Ghatkopar (E), Mumbai – 400 077. |) | |
| 2. Amar S. Tekchandaney |) | |
| Aged about 68 years, Occupation : Service, |) | |
| Having Address at 01, 01A, Sindhu Baug-A, |) | |
| Tilak Road, Ghatkopar (E), Mumbai – 400 077. |) | |
| 3. Jaiprakash G. Shahdadpuri |) | |
| Aged about 66 years, Occupation : Service, |) | |
| Having Address at 18-B, Sindhu Baug-A, |) | |
| Tilak Road, Ghatkopar (E), Mumbai – 400 077. |) | Respondents |

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- Mr. Ashutosh M. Kulkarni a/w. Mr. Gaurav Sharma, Advocates for the Petitioners.
- Mr. Ashish Kamat, Senior Advocate a/w. Mr. Bhushan Deshmukh, Ms. Neha Mehta and Ms. Aayushi Gohil and Mr. Umair Merchant i/b. M/s. M.T.Miskita & Co., Advocates for Respondent No.1.

CORAM : R. M. JOSHI, J.

DATED : 19th AUGUST, 2024.

JUDGMENT :

1. This Petition takes exception to rejection of interim relief by order dated 29.11.2023 passed in Dispute No. CC/II/32/2023 passed by the Co-Operative Appellate Court whereby relief for stay of resolution dated 02.02.2020 passed by respondent stood refused and which order is confirmed the order dated 20.04.2024 passed in Appeal from Order No. 4 of 2024, by Co-Operative Appellate Court.

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

3. The petitioners are members of respondent No.1 society. Being aggrieved by the Resolution dated 02.02.2020 passed by respondent No.1, petitioners filed dispute petition bearing No. 32 of 2023 before the Co-Operative Court, Mumbai. It is the case of the petitioners that the resolution passed by the society infringes the fundamental rights of the petitioners. It is claimed that the petitioners have right to challenge the illegal and arbitrary resolution passed by respondent No.1 usurping on the lease hold rights on the petitioners which have been in existence since 1961. It is claimed that since the petitioners have moved various Court of law for adjudication of their rights, respondent No.1 has taken vindictive attitude and resolved to recover exorbitant legal expenses from the petitioners in order to pressurise the petitioners to withdraw the said

proceedings. It is alleged that resolution dated 02.02.2020 passed by the respondent society is unilateral and has withdrawn the compensation of Rs.10 lakhs resolved to be paid to the original members of the society vide resolution dated 30.11.2014. It is contended that the said resolution of year 2014 came to be passed in view of the agreement to lease of 29 plots and the committee had obtained NOC from each member and against which compensation of Rs.10 lakhs was to be paid against each plot. It is further contention of the petitioners that the respondent No.1 society is tenant ownership / tenant co-partnership housing society and as such there remains no justification of revocation of earlier resolution.

4. The petitioners moved proceedings before the Co-Operative Court in the above mentioned dispute and an application under Exhibit-5 was moved for stay of the impugned resolution passed by the respondent society. The said application came to be dismissed by Co-Operative Court by passing order dated 29.11.2023. Being aggrieved by the said order appeal came to be filed before Co-Operative Appellate Court. The learned President of Co-Operative Appellate Court rejected the said appeal by impugned order dated 20.04.2024. Hence, this petition.

5. Learned counsel for the petitioners submits that by virtue of resolution dated 30.11.2014 right has been created in favour of the petitioners to receive Rs.10 lakhs towards compensation for according no

objection for development of the property. It is his further submission that it is not open for the respondent society to overturn the said resolution by passing impugned resolution dated 02.02.2020. It is contended that the right which has been created in favour of the petitioners by virtue of lease of the property cannot be taken away by passing such resolution. It is his submission that the contention of the respondent society about the amount of Rs.10 lakhs to be distributed to the persons having constructed units in each plot is incorrect. According to him, the lease rights entrusted upon the petitioners cannot be even surrendered, much less can be taken away by passing of the resolution.

6. Learned Counsel for the respondent No.1 opposed the said contention by pointing out the facts that the petitioners are consenting party to the resolution and as such now it is not open for the petitioners to claim that the resolution passed by the General Body is not binding upon them. It is also argued that in fact there is no registered lease but it was only agreement to lease which is a unregistered document. It is submitted that on the basis of such document no rights can be claimed by the petitioners muchless right to receive Rs.10 lakhs individually. Attention is drawn to the agenda and resolution of meeting dated 21.12.2014 in order to submit that as per the said resolution an amount of Rs.10 lakhs was not to be paid only to the lessee of the plot but it was given for the purpose of

further distribution to the unit holders in the construction on the said plot. It is submitted that the petitioners are now estopped from raising any challenge to the resolution once the same has been passed with their consent. It is also contended that in any case there is no dispute made with regard to the fact that while passing the resolution impugned, all requisite conditions therefor are duly complied. It is his submission that the findings recorded by the Co-Operative Court and confirmed by the Appellate Court do not deserves any interference.

7. At the outset it need, to be appreciated that the order impugned has been passed at interim stage of the proceeding i.e. dispute before Cooperative Court. Thus, rights of parties are not finally decided by said Court. The challenge to the interim order would be only to the extent of prima facie case being made out by parties. Keeping in mind this aspect, facts involved in this case are considered for limited purpose.

8. It is not in dispute that the impugned resolution dated 02.02.2020 is passed by the General Body of respondent No.1 – Co-operative Housing Society. There is no challenge to the procedure adopted before passing such resolution. Nor it is a case of the petitioners that the resolution in question has been obtained by any fraud, misrepresentation, etc. Petitioners also do not claim that without understanding the consequence of passing of such resolution, they accorded their approval to the same. It

is thus, absolutely clear from the contention of the parties that the resolution in question has been passed by the General Body of the society in accordance with the provisions of Co-Operative Court Societies Act. Further the petitioners were party to the said resolution and the resolution in question has been passed unanimously.

9. It is undeniable fact that in view of Section 72 of Maharashtra Cooperative Societies Act, 1960, subject to provisions of Act and Rules, the final authority of every society vests in general body of members, in general meeting. It is not the case of petitioner that general body meeting is not convened as per rules. As such there cannot be challenge to the resolution on the ground of authority of General Body to pass resolution and its binding effect on members of society. Similarly, power of general body to pass any resolution includes power to pass further resolution if general body deems so fit.

10. What is sought to be argued before this Court is that the right as a lessee created in favour of the petitioners which cannot be taken away by passing of resolution by the society. In this regard, it is pertinent to note that the documents and averments on record indicate that there was unregistered agreement to lease which was never culminated into a registered deed. Even perusal of the ground (B) of the petition indicates that the petitioners are making grievance about the society deliberately not

taking steps for years together for registration of the said lease and in spite of having an agreement of lease in respect of the plot for the term of 998 years, the registration thereof is delayed by the society. It is thus clear from the admission of the petitioners themselves that there is no registered lease deed but the petitioners' claim is based upon the agreement to lease. Be that as it may, the resolution passed in year 2014, on the face of it indicates that a sum of Rs.10 lakhs was not given for leasee alone but the tenor of resolution dated 02.02.2020 indicates that the said amount was to be distributed between the holders of units / construction standing on each plot. Thus if general body finds it beneficial to give additional area instead of Rs.10 lakhs to the members, it is within its right to do so.

11. Further question is also raised before this Court as to whether it is open for the petitioners to forgo / surrender their lease rights. In the instant case, the surrender of right to get Rs. 10 lakhs is done by conscious decision of all members of society including petitioners. Thus, prima facie it cannot be said that society has taken away any right of member but if any right so exist in favour of members, is surrendered on own volition by them. Though, such submissions are made on behalf of petitioners, but they were not able to substantiate the same. There is no embargo to voluntary surrender of any right by a person, except in the case it regulated or prohibited by law. For e.g. under Bombay Agriculture & Tenancy Act,

unless compliance of relevant provisions is shown, surrender of tenancy by deemed purchaser (tenant) is not accepted. No such bar would attract to the surrender of rights arising out of lease, if any in this case.

12. This Court finds prima face substance in the contention of the learned counsel for the respondent society that giving of additional area is more beneficial as compared to the payment of Rs.10 lakhs and hence all the members of the society including present petitioners have agreed for passing of such resolution.

13. The orders impugned being passed at interim stage of the proceeding, the Court has to see as to whether the parties seeking relief has made prima facie case for grant of relief and the balance of convenience lies in whose favour by grant of refusal thereof. In the instant case, learned Cooperative Court while deciding the interim application has duly considered the contentions of rival parties and prima facie case sought to be made out by the petitioner. In the facts of the case once there is no material on record to indicate that the resolution passed by the General Body of the society which is under challenged before the Cooperative Court is without compliance of the provisions of the Act and Rule and that there was no Authority with the General Body to pass resolution resolution in question, there was no reason or justification for the Trial Court to grant any order of injunction against the against the resolution in question.

Learned Appellate Court has also rightly taken into consideration the material facts as well as the order passed by the Trial Court while confirming the said order. This Court finds no perversity in the orders impugned and the reasoning given therefor. There is no miscarriage of justice caused by impugned order. Thus, exercise of writ jurisdiction this Court is not inclined to cause interference therein. In the result petition stands dismissed.

14. It is clarified that the observations made hereinabove are for the purpose of deciding this petition and are on prima facie consideration of the material on record. The Trial Court shall not be bound by the said observations and the dispute be decided in accordance with law.

(R. M. JOSHI, J.)

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