

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10768 OF 2024

Bima Nagar Co-Operative Housing Petitioner
Society Limited Thr. Its Secretary
Jayaprakash Uchil

Versus

The Divisional Joint Registrar Co- Respondents
Operative Soc. And Ors.

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Adv. Amar Habib i/b Adv. Chirag Thakkar, for the Petitioner.
Adv. Aloka A. Nadkarni, AGP, for Respondent Nos.1 & 2 – State.
Adv. Laxman Kalel, for Respondent No.3.

CORAM : R. M. JOSHI, J.

DATE : 23rd SEPTEMBER, 2024.

P.C. :

1. Heard.
2. By consent of both sides, heard finally at the admission stage.
3. This petition takes exception the order dated 10th April, 2024 passed by the Respondent No.1 by which order dated 28th March, 2022 passed by Deputy Registrar directing the Petitioner to admit Respondent No.3 as a Member is confirmed.
4. The facts which lead to the filing of this petition can be narrated in brief as under:

5. The Petitioner is a Co-operative Housing Society. Respondent No.3 is undisputedly widow of deceased Member of the Petitioner/Co-operative Society. On the death of the member, she applied for the membership with the society and was granted a provisional membership. The Petitioner/Society since did not grant membership to the Respondent No.3 and application was filed before the Deputy Registrar. This application came to be allowed by the order dated 28th March, 2022 whereby, the society was directed under Section 22(2) of the Maharashtra Co-Operative Housing Societies Act, 1960 of admitting the Respondent No.3 as a Member and issuance of share certificate. The Petitioner/Society carried this order in the revision before the Divisional Joint Registrar and Co-operative Society unsuccessfully.

6. Being aggrieved by the order dated 10th April, 2024 passed by the said Authority this petition is filed.

7. Learned counsel for the Petitioner has submitted that the issue before this Court is about to the interpretation of the term “family arrangement” as contemplated in section 154B-13 of the Maharashtra Co-Operative Societies Act, 1960. It is his submission that this arrangement would apply only in case of “Hindu Undivided Family” (HUF), and that in such case the family arrangement between the members of HUF will be treated as a family arrangement

under Section 154B-13. It is his further submissions that in case of single person who is the heir of the deceased member, it would be obligatory on the part of such person to seek succession certificate in order to get transferred the interest of deceased member and therefore in the instant case, Respondent must obtained a succession certificate. To support his submission, he has placed reliance on the judgment of this Court in case of Writ Petition No.12468 of 2022.

8. On the other hand, learned counsel for Respondent No.3 has opposed the said contention by pointing out that there is no dispute about the fact that the deceased Member had left behind himself, Respondent No.3(Widow) and two major children. Further undeniably the major children of the deceased and Respondent No.3 have executed deed of relinquishment in favour of Respondent No.3. This according to him this family arrangement is covered by the relevant provision. Apart from this, it is his submissions that there cannot be a mandate that in each case membership or the interest of a deceased Member can be transferred only on obtaining succession certificate. This according to him may be required in case of a dispute with regard as to who is the heir of the deceased amongst number of claimants.

9. In order to appreciate the aforesaid contention it would be relevant to take into consideration the provision of Section 154B-13

which reads thus;

154B-13. Transfer of interest on death of a Member

On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with the rules:

Provided that, society shall admit nominee as a provisional Member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member:

Provided further that, if no person has been so nominated, society shall admit such person as provisional Member as may appear to the committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed.

10. A bare perusal of the said provision indicates that on a death of a member of society, the society is bound to transfer share, right, title and interest in the property of the deceased to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the person, who are entitled to inherit the property of the deceased member.

11. The term “family” or “family arrangement” has not been defined by the Act. Hence, general meaning of these terms need to be considered. The family is group of persons related to each other by marriage, consanguinity, adoption etc, which would further be considered in the light of personal laws applicable to the parties. Here in this case, admittedly deceased had left Respondent No.3 (Widow) and two children. Thus, these persons consist a family. Undoubtedly, children of the deceased have executed deed of relinquishment in favour of Respondent No.3, mother. Thus, there is no iota of doubt, that this is a family arrangement between the heirs of deceased in respect of the interest of the deceased Member in the society, as contemplated by Section 154B-13 of the Act.

12. This Court finds, no substance in the contention of the counsel for the Petitioner that the family arrangement could be considered only in case of HUF. Such interpretation is not permissible as the same would amount to adding something which legislature never intended to. As per settled position of law, it is not permissible to add or substitute anything from statute, and it only can be interpreted by counsel. The plain and simple meaning which can be attached to the same is that if there are more than one heir of the deceased Member and they enter into a family arrangement, that would be sufficient to

enable the Co-operative Society to transfer membership in favour of a single person.

As far as, the contention of the Petitioner that Respondent No.3 is required to obtain succession certificate is concerned, since this issue is not involved in this petition, this Court finds no reason to decide the said issue.

13. Reverting back to the facts of this case, admittedly deceased left behind him three heirs including Respondent No.3. The other two heirs have relinquished their right in favour of Respondent No.3. This Court therefore finds no reason or justification not to accept the said relinquishment by the other two heirs in the favour of Respondent No.3 as family arrangement. Having regard to this fact, there is no perversity in the findings recorded by the Authorities below and the orders impugned.

14. As a result of the above discussion, the petition stands dismissed.

(R. M. JOSHI, J.)