

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2364 OF 2024

Shubh Ashirwad Co-operative
Housing Society Ltd.
through ad hoc Committee
Members & Ors.

.Petitioners

Versus

The Hon'ble Minister of
Co-operation, State Govt.
of Maharashtra & Ors.

.Respondents

Dr. V. G. Bhartu a/w. Mr. Shahzad M. Panday, Advocates, for the
Petitioners.

Mr. Abhay L. Patki a/w. Ms. Usha Rahi, AGPs, for Respondent Nos.1
to 3.

CORAM: MADHAV J. JAMDAR, J.

DATE: 16.07.2024

P. C.:

1. Heard Dr. Bhartu, learned Counsel for the Petitioners and
Mr. Patki and Ms. Rahi, learned Additional Government Pleader for
Respondent Nos. 1 to 3.

2. Learned Counsel for the Petitioners states that Respondent
No.4 has been served. He states that affidavit of service is filed to that
effect. However, none appears for Respondent No.4.

3. The challenge in this Writ Petition preferred under Article 226
of the Constitution of India, is to the legality and validity of the Order
dated 04.10.2022 passed by the Assistant Registrar, Co-operative
Societies, F-N Division, Mumbai under Sections 79A(3)(a) of the
Maharashtra Co-operative Societies Act, 1960 ("said Act"). The said

impugned Order dated 04.10.2022 passed by the Assistant Registrar was challenged before the Divisional Joint Registrar by filing a Revision Application No.624 of 2022. The said Revision Application No.624 of 2022 was dismissed by Order dated 19.12.2023. The Petitioner challenged the said Order dated 19.12.2023 before Hon'ble the Minister for Co-operation by filing a Revision Application No.125 of 2023. However, the said Revision Application was rightly dismissed by the Hon'ble Minister by Order dated 15.03.2024 on the ground that the same is the second Revision Application. Thus, in effect the Petitioners are challenging by the present Writ Petition impugned Orders dated 04.10.2022 and 19.12.2023.

4. By the impugned Order dated 04.10.2022, the Assistant Registrar had disqualified the Chairman, Secretary, Treasurer and Committee members of Shubh Ashirwad Co-operative Housing Society Ltd. from being members of the Managing Committee of any Society or for being continued as a member of such committee for a period of six years. The said action was *inter alia* taken on the basis of the report dated 28.04.2022 of the Assistant Co-operative officer. As per the said report, the Society has accepted the transfer fees of Rs.3,75,000/- on 03.02.2017. In the said report, it is stated that as per the Circular issued by the Co-operative Department dated 09.08.2018, the maximum transfer fees which can be demanded is only Rs.25,000/-. By the impugned Order dated 19.12.2023, said Order dated 04.10.2023 is confirmed.

5. It is the submission of Dr. Bhartu, learned Counsel for the Petitioners that Respondent No.4 had purchased a flat in the said society in the year 2016. On 05.11.2016, the Share Certificate was transferred in favour of Respondent No.4-Company and the Respondent No.4 had made voluntary donation for repairs of the society building on 05.02.2017. He submitted that said amount is not accepted as donation for transfer of the Share Certificate. He further submitted that a complaint was belatedly lodged on 09.11.2021 i.e. after about four years and nine months regarding said alleged donation. He further submitted that after the complaint was lodged, although it was a voluntary donation towards building repairs, the society decided to refund the said voluntary donation to the Respondent No.4 and accordingly issued cheques to that effect on 17.06.2022. However, the said cheques were not encashed by Respondent No.4 and therefore the said donation amount of Rs.3,75,000/- has been refunded to and deposited in the account of the Respondent No.4 via NEFT on 15.11.2022.

6. Perusal of the impugned Orders shows that this relevant aspect that the Share Certificate was already transferred on 05.11.2016 in favour of Respondent No.4 and that the said alleged voluntary donation was made on 05.02.2017 has not been taken into consideration.

7. It is also important to note that the complaint is filed after a period of four years and nine months and said amount has been

refunded back by the Petitioner-Society. The impugned Order records that Respondent No.4 had orally informed the Assistant Registrar that the said amount has not been refunded back by the Society. However, it is required to be noted that two cheques dated 07.06.2022 were earlier issued by the Petitioner-Society in favour of Respondent No.4 amounting to Rs.2,00,000/- and Rs.1,75,000/- i. e. aggregate amount of Rs. 3,75,000/-. However, the said cheques were not encashed by the Respondent No. 4 and thereafter the Petitioner refunded the said amount of Rs.3,75,000/- to the Respondent No.4 on 15.11.2022 via NEFT. The impugned Order of the Assistant Registrar was passed on 04.10.2022. As the amount was refunded, it is not necessary to decide the aspect whether the said amount of Rs.3,75,000/- was paid by Respondent No.4 as a voluntary donation towards repairs of the society building or as donation for transfer of shares. In any case, the factual position on record shows that the Share Certificate was transferred on 05.11.2016 by the Petitioner-Society in favour of Respondent No.4 and the said donation was made after about three months i. e. on 05.02.2017. Therefore, the same cannot be termed as “transfer fees” or donation for transfer of shares. In any case, it is required to be noted that the Respondent No. 4 has filed a complaint after a period of more than four years and nine months i.e. on 09.11.2021 and the said amount has been refunded by the Petitioner-Society to the Respondent No.4 on 15.11.2022.

8. For the above reasons and in view of the peculiar

circumstances of this case, the impugned Orders i.e. Order dated 04.10.2022 passed by the Assistant Registrar, Co-operative Societies, F-N Division, Mumbai as well as the Order dated 19.12.2023 passed by the Divisional Joint Registrar in Revision Application No. 624 of 2022 are quashed and set aside and consequently, the complaint filed by Respondent No. 4 against the Petitioners is dismissed.

9. Accordingly, the Writ Petition stands disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]