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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.205 OF 2024

Silver Beach Hotels Pvt. Ltd.

... Petitioner

V/s.

Divisional Joint Registrar,

Coop. Societies & Ors.

... Respondents

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GANESH
KULKARNI

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Mr. N.N. Bhadrashete with Mr. Kevin Pereira i/by Mr. Chinmaya Acharya (through V.C.) for the petitioner.

Mr. Kedar B. Dighe, Additional G.P. with Mr. Bapusaheb Dahiphale, AGP for respondent Nos.1 and 2-State.

Mr. Prasad Dani, Senior Advocate with Mr. Suraj Iyer and Ms. Gauri Joshi i/by Ganesh & Co., for respondent Nos.3 and 4.

Mr. Mandar Limaye with Mr. Aniesh Jadhav and Ms. Amisha Lolusare for respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 17, 2025

P.C.:

1. The present writ petition questions the legality of the proceedings under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. The society rejected the membership applications of respondent Nos. 3 and 4. The society stated that a civil suit is pending between the predecessor-in-title of respondent Nos. 3 and 4 and the original owner. The society also stated that the validity of the sale deed in favour of respondent Nos. 3 and 4 is in issue in that suit. This formed the basis of the society's refusal.

2. The record shows that the petitioner is the original owner. The petitioner executed a development agreement in favour of National Building Corporation. The Corporation thereafter entered into an agreement under the Maharashtra Ownership Flats Act with Mr Jain in 1986. Mr Jain is the predecessor-in-title of respondent Nos. 3 and 4. Mr Jain later executed a registered sale deed in favour of respondent Nos. 3 and 4 on 19 December 2015. Respondent Nos. 3 and 4 relied on these documents and applied for membership of respondent No. 5 society.

3. Mr Bhadrashete, learned Advocate for the petitioner, submitted that the development agreement in favour of the Corporation was cancelled by a Deed of Cancellation dated 26 May 1988. He submitted that Mr Jain has filed a civil suit seeking specific performance of his agreement with the Corporation. He pointed out that in the said suit, an issue has been framed on the validity of the agreement in favour of respondent Nos. 3 and 4 and that the burden lies on Mr Jain as plaintiff. He submitted that in these circumstances, the society acted within its authority while rejecting the membership application. He further argued that the Registrar, while exercising powers under Section 23(2), has not only directed the grant of membership but has virtually returned findings that amount to decreeing the suit filed by Mr Jain. He contended that such findings are beyond the scope of Section 23(2) and that the impugned orders suffer from serious legal error.

4. On examining the material placed on record, the factual position that emerges at this stage is clear. The petitioner, who is the original owner, executed a development agreement in favour

of National Building Corporation. The Corporation, in 1986, executed an agreement under the MOFA Act in favour of Mr Jain. Mr Jain thereafter executed a registered sale deed in favour of respondent Nos. 3 and 4 in 2015. A civil suit filed by Mr Jain seeking specific performance of the development agreement is pending. In that suit, an issue is framed regarding the validity of the sale deed executed in favour of respondent Nos. 3 and 4. These are the essential facts necessary for deciding the present controversy.

5. On the basis of the above facts, I am of the view that the mere pendency of the civil suit or the framing of an issue in that suit does not prevent the society from granting membership to respondent Nos. 3 and 4. The law requires that the applicant must show a lawful claim traceable to the original owner. Respondent Nos. 3 and 4 have placed on record a registered sale deed executed by their predecessor-in-title. Unless the document is declared invalid by a competent court, the society cannot ignore such a registered instrument. The society must act on the basis of existing rights and not on what may be decided in future litigation.

6. The dispute in the present case is not between a stranger and respondent Nos. 3 and 4. The dispute is confined to persons from whom respondent Nos. 3 and 4 derive their title. Respondent Nos. 3 and 4 claim through a registered instrument executed by a person whose claim flows from the original owner. The membership register of the society shows no other claimant. In such circumstances, persons who hold title through a registered sale deed from the chain of title starting from the owner cannot be

denied membership. Their right to seek entry in the records of the society flows from the ownership already vested in them through the registered conveyance.

7. The petitioner argued that the framing of an issue in the specific performance suit amounts to a dispute that disables the society from granting membership. This argument cannot be accepted. The framing of an issue is a procedural step in a civil suit. It does not, by itself, affect the legal status of a registered instrument. Respondent Nos. 3 and 4 have based their claim on a document of title that stands in their favour. Unless a competent court annuls that document, their rights continue. The presence of litigation between the persons in the chain of title does not by itself defeat the lawful claim of respondent Nos. 3 and 4.

8. The remarks made by the Registrar while acting under Section 23(2) do not bind any civil court or competent authority. The Registrar is required only to examine whether the applicants claim their right to membership through the owner on the strength of a valid registered instrument. Any wider observations made by the Registrar are unnecessary and must be treated as incidental. The adjudication of the substantive issues, including the validity of the sale deed, must be left to the civil court where the suit is pending.

9. In view of the above discussion, the writ petition can be disposed of by clarifying that the grant of membership to respondent Nos. 3 and 4 shall not affect the rights of any party in the pending civil suit or any other proceeding. All such rights will

be examined independently by the courts concerned, uninfluenced by the observations in this order or in the order of the Registrar.

10. In my view, no case for interference under Article 226 is made out. The writ petition stands dismissed. No costs.

11. At this stage, learned Advocate for the petitioner prays for continuation of ad-interim relief. However, for the reasons stated in the order above, the request for continuation of ad-interim relief is rejected.

(AMIT BORKAR, J.)