

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2121 OF 2024

Proposed Neelkanth Woods Villa
Owners Co-operative Housing
Society Ltd. through-
Vrundavan Wani

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. J.S. Kini with *Mr. Aum Kini i /b. Ms. Sapna Krishnappa for the Petitioner.*

Ms. A.A. Nadkarni, AGP for Respondent Nos.1 to 5-State.

Mr. R.S. Datar for Respondent No.6

CORAM: SANDEEP V. MARNE, J.

Dated: 28 February 2025.

Oral Order:

1. **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2. Petition challenges order dated 7 December 2023 passed by the Hon'ble Minister (Co-operation) allowing Revision Application No.155 of 2023 filed by Respondent No.6 and setting

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aside orders dated 28 February 2023 passed by the Divisional Joint Registrar, Thane and 10 August 2022 passed by the Deputy Registrar, Co-operative Societies, Thane City. By order dated 10 August 2022, the Deputy Registrar had merely reserved the name for registration of the proposed society and had permitted opening of account of the society. The net result of the order passed by the Hon'ble Minister is that the process of registration of Petitioner's proposed society is brought to a grinding halt.

3. I have heard Mr. Kini, the learned counsel appearing for the Petitioner, Mr. R.S. Datar, the learned counsel appearing for Respondent No.6 and Ms. A.A. Nadkarni, AGP for Respondent Nos.1 to 5-State.

4. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the hon'ble Minister appears to have set aside the order passed by the Deputy Registrar on 10 August 2022 essentially for three reasons viz., (i) that the scrutiny conducted by the Deputy Registrar was faulty, (ii) that it was agreed under the consent decree that until the project is completed as per the plan approved by Municipal Corporation, Thane, registration of society will not be undertaken, (iii) that Respondent No.6 did not get opportunity before passing order dated 10 August 2022.

5. Under the provisions of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of

Construction, Sale, Management and Transfer) Act, 1963, (**MOFA**), it is the statutory duty cast upon the promoter to submit an application to the Registrar for registration of society immediately upon purchase of minimum number of flats in the project. There is no dispute to the position that minimum number of persons required for formation and registration of housing society under Chapter XIII-B of the Maharashtra co-operative Societies Act, 1960 (**MCS Act**) have purchased the flats, the minimum number being either 5 or 51% of the total number of flats. The Developer is opposing formation of the society essentially on account of anxiety on its part that the Society would obstruct completion of the project and prevent it from carrying out further construction. In my view, this cannot be a ground for delaying statutory obligation imposed on promoter under Section 10 of MOFA.

6. The first reason recorded by the Hon'ble Minister about faulty scrutiny allegedly committed by the Deputy Registrar is preposterous, to say the least. The exact fault in the scrutiny is not indicated in the order. The hon'ble Minister has not recorded any finding as to what prejudice is caused to any party on account of alleged fault in the scrutiny by the Deputy Registrar. There is no finding that any illegality has crept in on account of fault in scrutiny of the Petitioner's application.

7. So far as the consent decree is concerned, the same appears to have been passed in Regular Civil Suit No.42 of 2013

filed by some of the Villa purchasers. The consent terms would not bind those who are not party to the said Suit. Even otherwise the consent terms contemplated non-formation of society for a period of 10 years in order to enable the Respondent No.6-Developer to complete the balance development. The consent terms never contemplated total and indefinite freeze on formation of society forever. The consent terms were filed on 24 January 2013 and the period of 10 years is long since over. In my view, consent decree therefore could not have been the reason not permitting the Petitioner to form and register housing society.

8. So far as the third reason of Respondent No.6 not being heard at the time of passing of order dated 10 August 2022 is concerned, the order merely reserves the name for registration of the society and permits opening of account. So far as the actual registration of the society is concerned, it appears that separate proceedings were filed, which appears to have been rejected by the Competent Authority by order dated 19 July 2023. The said order of the Competent Authority dated 19 July 2023 is subject matter of challenge before the Divisional Joint Registrar in Appeal preferred by the Petitioner-society. Respondent No.6- promoter is thus getting full opportunity of opposing the registration of the society. Non-grant of opportunity of hearing before taking decision for reservation of name and opening of bank account does not therefore cause any prejudice to Respondent No.6. I am therefore not inclined to dismiss the Petition on technical ground of failure on the part of the Deputy

Registrar in hearing Respondent No.6 while passing order dated 10 August 2022.

9. Order dated 7 December 2023 passed by the hon'ble Minister appears to my mind to be clearly unsustainable. Order therefore is liable to be set aside. However, setting aside of order dated 7 December 2023 passed by the hon'ble Minister would not be an impediment for Respondent No.6-Developer to oppose the appeal filed by the society before the Divisional Joint Registrar challenging order dated 19 July 2023. All contentions raised by the parties in the said appeal are expressly kept open.

10. The Petition accordingly succeeds and I proceed to pass the following order:

(i) Order dated 7 December 2023 passed by the hon'ble Minister in Revision Application No.155 of 2023 is set aside.

(ii) Orders passed by the Divisional Joint Registrar dated 28 February 2023 and by Deputy Registrar dated 10 August 2022 are confirmed.

11. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]