

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18353 OF 2024

Vijay Nilkanthrao Bhorkar

... Petitioner

V/s.

District Deputy Registrar,
Co-operative Societies(3) and ors.

... Respondents

*Mr. Vishwajeet Kapse i/by Mr. Bharat G. Thorat, Advocates for the
Petitioner.*

*Mr. Niranjan Mogre with Mr. Nikeet M. Rasal and Ms. Tanvi Nadkarni,
Advocates for the Respondent No.3-society.*

Mr. Kushal Amin, "B" Panel counsel for the State.

CORAM : SANDEEP V. MARNE, J.

Dated : 04 February, 2025.

PC. :

1. The challenge in the present petition is to the order dated 26th August, 2024 passed by District Deputy Registrar, Co-operative Society dismissing the Revision Application preferred by the Petitioner and confirming the Recovery Certificate order dated 30th June, 2023 passed by the Deputy Registrar issuing Recovery Certificate under provisions of Section 154B-29 of the Maharashtra Co-operative Housing Societies Act, 1960.

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2. The contentious issue between the Petitioner and Respondent-society is about permissibility to levy penalties in respect of alleged encroachment in common spaces. It is the contention of the Petitioner that for security purposes he has constructed grill, door and steps at his premises and that the construction thereof has duly being acquiesced by the society by securing an amount of Rs.5,000/- vide resolution adopted in a meeting held on 12th October, 1995. Petitioner relied upon the order dated 1st April, 2004 passed by the Competent Authority-MHADA under which the Estate Officer was directed to accept an amount of Rs.1,000/- in respect of the said alleged additional construction. According to the Petitioner, the said order dated 1st April, 2004 passed by the Competent Authority-MHADA amounts to regularization of such additional construction. It is also the case of the Petitioner that he has not carried out any additional construction over and above the one covered by General Body Resolution dated 12th October, 1995 and MHADA's order dated 1st April, 2004. Perusal of the impugned order passed by the District Deputy Registrar would indicate that no exercise is undertaken to verify whether the Petitioner has carried out any construction over and above the one in respect of which Special Body Resolution dated 12th October, 1995 was adopted and order dated 1st April, 2004 was passed by MHADA. It appears that the levy in respect of the alleged construction is made with effect from December, 2019. The society will therefore have to demonstrate before the District Deputy Registrar that the Petitioner has carried out any additional construction over and above the one covered by resolution dated 12th October, 1995 and MHADA's order dated 1st April, 2004.

3. In that view of the matter, it would be appropriate to remand the proceedings before the District Deputy Registrar for being decided afresh by conduct of inquiry into the allegation of carrying out additional construction/encroachment by the Petitioner over and above the General Body Resolution and MHADA's order.

4. Accordingly, order dated 26th August, 2024 passed by the District Deputy Registrar is set aside and Revision Application No.34/2023 is restored on the file of the District Deputy Registrar who shall proceed to decide the same on its own merits without being influenced by any of the observations made by this Court in the present order. The District Deputy Registrar shall conduct a factual inquiry as to whether the Petitioner has carried out any additional construction/ encroachment over and above the one covered by the General Body Resolution dated 12th October, 1995 and MHADA's order dated 1st April, 2004. All rights and contentions of parties on merits are expressly kept open.

5. Parties would be at liberty to file such other additional evidence and documents as may be necessary in support of their respective claims.

6. With the directions, the petition is partly allowed and disposed of.

(SANDEEP V. MARNE, J.)