

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2944 OF 2025

Maryan Irshad Desai & Ors.

... Petitioners

V/s.

Joint Divisional Registrar, C.S.,
Mumbai Division & Ors.

... Respondents

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GANESH
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Ms. Seema Chopda for the petitioners.

Ms. Dhruvi Kapadia, AGP for respondent Nos.1 & 2-
State.

Mr. Amogh Singh with Mr. P.V. Shekhawat for
respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 26, 2025

P.C.:

1. The challenge in the present writ petition arises from the proceedings initiated under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960, wherein the petitioners have questioned the decision of the respondent No.4-Society pertaining to the transfer of membership and interest in respect of Flat No.A-103 and Flat No.B-406 situated in the building premises of respondent No.4-Society. The said dispute essentially revolves around the issue of ownership and entitlement to the said flats, which arises in the context of familial succession and inter vivos transfer.

2. The facts giving rise to the present controversy are not seriously in dispute. It is an admitted position that the properties in question, viz., Flat No.A-103 and Flat No.B-406, were jointly owned by the father and mother of the petitioners and respondent No.3. It is further not in dispute that the mother of the parties, during her lifetime, executed a registered Gift Deed dated 13th August 2018, thereby transferring her 50% undivided share in both flats in favour of respondent No.3. It is also not in dispute that the said mother had, prior to her demise, executed a registered Will wherein she bequeathed her entire estate, including her share in Flat No.A-103 and B-406, to respondent No.3 exclusively. It is also an undisputed fact that the father of the parties passed away on 2nd July 2022. Significantly, it is not in controversy that the petitioners had executed a Release Deed prior to the death of their mother, thereby relinquishing their respective right, title, and interest, if any, in favour of their mother.

3. In view of the aforesaid admitted position, the undisputed factual matrix can be crystallised as under:

- (a) The original ownership of the flats vested jointly with the father and the mother of the petitioners and respondent No.3;
- (b) The mother had executed a registered Will as early as in the year 2011, wherein she unequivocally bequeathed her share in the aforementioned properties to respondent No.3;
- (c) The mother expired in the year 2024;
- (d) Prior to her death, the petitioners had executed a

Release Deed in favour of the mother, thereby resulting in consolidation of the petitioners' share, if any, into the mother's name, thereby making her the sole and absolute owner of 50% undivided share in the said flats at the time of her death; and

(e) Respondent No.3 had already acquired the remaining 50% undivided share in the said flats during the lifetime of the mother by virtue of a registered Gift Deed dated 13th August 2018.

4. In the backdrop of the above sequence of events, it is apparent that on the date of the death of the mother in the year 2024, the Will executed by her stood operational and enforceable in the eyes of law. In terms of the said testamentary instrument, respondent No.3 stood bequeathed the entire share of the mother in the subject properties. Consequently, respondent No.3, who already held 50% undivided share in the said flats by virtue of the registered Gift Deed, became entitled to the remaining 50% share on account of the Will. Thus, the succession being testamentary and supported by undisputed documentary evidence, respondent No.3 acquired absolute and exclusive ownership over the entire premises comprising Flat No.A-103 and Flat No.B-406.

5. Learned Advocate for the petitioners, while assailing the impugned orders passed under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960, placed reliance upon the judgment of the Hon'ble Supreme Court in *Moreswar Yadavrao Mahajan v. Vyankatesh Sitaram Bhedi (D) through LRs & Ors.*,

Civil Appeal Nos. 5755-5756 of 2011, decided on 27th December 2022 [(2022) LiveLaw (SC) 802]. It was contended that the petitioners, being legal heirs of the deceased parents and claiming a right in the subject property, were necessary parties to the proceedings before the respondent No.4-Society under Section 23. It was argued that non-issuance of notice and denial of opportunity of hearing to the petitioners has resulted in grave miscarriage of justice and rendered the proceedings void ab initio. On this premise, it was submitted that the impugned orders are liable to be quashed solely on the ground of breach of the principles of natural justice, particularly the *audi alteram partem* rule.

6. The submission, though attractive at first blush, cannot be accepted in the teeth of the settled position of law. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh v. Sudhir Kumar Singh*, (2011) 9 SCC 803, has authoritatively laid down the legal position regarding the application of the principles of natural justice. In paragraph 39 of the said judgment, the Hon'ble Apex Court has delineated the nuanced position of law in the following terms:

“39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per

se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

7. From the above authoritative pronouncement, it is clear that while the right to be heard is fundamental, the same cannot be treated as a mere ritualistic formality divorced from the question of actual prejudice. The breach of natural justice, by itself, does not vitiate the administrative or quasi-judicial action unless it is demonstrated that such breach has resulted in real or substantial prejudice. The superior Courts, while exercising jurisdiction under Article 226 of the Constitution of India, are therefore obligated to

consider whether the alleged infraction of natural justice has caused actual prejudice or is merely a procedural irregularity that has not resulted in miscarriage of justice.

8. Adverting to the facts of the present case, which are largely undisputed, it is manifest that respondent No.3 had acquired exclusive ownership of Flat No. A-103 and Flat No. B-406 on the date of the death of the mother. The said ownership flows from two independent and lawful sources: (i) a registered Gift Deed dated 13th August 2018 executed during the lifetime of the mother transferring her 50% undivided share to respondent No.3, and (ii) a registered Will, which came into operation upon the death of the mother, thereby bequeathing the remaining estate in favour of respondent No.3. Furthermore, the petitioners had, prior to the demise of the mother, executed a Release Deed in her favour, thereby extinguishing any competing claim. Thus, even if an opportunity of hearing had been afforded to the petitioners in the proceedings under Section 23(2), the outcome would not have been different, and no purpose would be served by setting aside the impugned orders on the ground of breach of natural justice, particularly when no prejudice, legal or factual, has been demonstrated by the petitioners.

9. The writ petition, being devoid of merit, does not warrant interference under Article 226 of the Constitution of India. The petition is accordingly dismissed. There shall be no order as to costs.

10. However, it is clarified that the dismissal of this petition shall not preclude the petitioners from seeking appropriate relief before the competent Civil Court. If the petitioners are so advised, it is open to them to institute a civil suit for declaration, partition or any other relief as may be available in law. It is further clarified that any observations made in the present judgment or those made by the Authorities under the Maharashtra Cooperative Societies Act, 1960, shall not be construed as an expression of opinion on the merits of the rival claims and shall not influence the Civil Court in adjudicating the rights of the parties.

(AMIT BORKAR, J.)