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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2953 OF 2025

Kishore C. Waghela & Ors.

... Petitioners

V/s.

Hemprabha Coop. Housing
Society Limited

... Respondent

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Mr. Vishal C. Ghosalkar with Mr. Mohd. Moin Khan for
the petitioners.

Mr. N.N. Bhadrashete with Ms. Priyanka Bhadrashete
for the respondent-Society.

CORAM : AMIT BORKAR, J.

DATED : MARCH 3, 2025

P.C.:

1. The petitioner, who is the original opponent in the dispute filed under Section 91 of the Maharashtra Cooperative Societies Act, 1960, has been subjected to proceedings initiated by the respondent-Society, wherein it is alleged that the petitioner was engaged in the service of the Society and, upon the cessation of such service, failed to vacate the premises occupied by him. The Society has, therefore, sought possession primarily on the ground that the petitioner does not qualify as a member of the Society. The gravamen of the Society's case rests upon the assertion that the premises were provided to the petitioner solely in his capacity as an employee and, consequently, upon the termination of such

employment, the petitioner has no legal right to continue in possession.

2. The petitioner has vigorously contested the dispute by placing reliance on his alleged induction into the premises by the original owner, one Diwaliben Khodidas Waghela, who, according to him, had employed him as a sweeper and, in furtherance of such employment, created a monthly tenancy in his favor. It is the case of the petitioner that the respondent-Society was registered in the year 1971 and, upon its formation, it continued to engage the petitioner's services on similar terms and conditions as had been originally agreed upon with the said Diwaliben Waghela. The petitioner contends that there existed an understanding between him and the Society, wherein a portion of his remuneration was deducted towards compensation for his occupation of the premises. The petitioner further submits that upon the demise of the original owner in the year 2002, his services continued uninterrupted under the same contractual arrangement. However, in the year 2004, the Society issued a notice directing the petitioner to vacate the premises by 15th July 2005, and simultaneously, his services were terminated with effect from 18th July 2005.

3. In determining the rights and obligations of the parties, it is imperative to examine whether the petitioner's occupation of the premises is merely incidental to his employment or whether he has acquired an independent tenancy right. Where an employer provides accommodation to an employee as an incident of service, the right to occupy ceases upon termination of employment, unless

an independent tenancy or leasehold right is established. The burden, therefore, rests upon the petitioner to substantiate that he was not a mere licensee whose right to occupy was coterminous with his employment but, rather, a tenant enjoying an independent right.

4. Upon meticulous scrutiny of the documentary evidence, it emerges that the original landlord executed a registered deed of conveyance in favour of the respondent-Society, specifically concerning the land beneath the structure bearing Plot No.68 in Block No.1. This evidence, being uncontroverted, suffices to establish that the Society possesses title to the underlying land and, by extension, the superstructure located thereon. As the building was in existence as of the date of registration, the Society's superior rights to both land and superstructure stand confirmed. In these circumstances, the burden shifted onto the petitioners to substantiate their right to remain in possession of the premises. Although the petitioners have contended that their occupancy is protected by statutory tenancy, they have failed to adduce any definitive documentary evidence—be it rent receipts, lease agreements, or records of payment—to support their claim. This deficit of proof is fatal to the plea of statutory tenancy, as in the facts of the case it is imperative by placing on record cogent documentary proof to establish a valid tenancy.

5. It has been argued on behalf of the petitioners that a co-employee of the original owner admitted, in oral testimony, the petitioners' status as tenants. In principle, oral evidence can supplement documentary evidence in establishing contractual

relationships. For a landlord-tenant relationship to be inferred, there must exist some instrument or receipt of rent or other transaction reflecting the landlord's acknowledgment of tenancy. While an unequivocal admission by or on behalf of the landlord in a proceeding instituted against the alleged tenant may sometimes operate in favour of the occupant, such an admission must be made by a person duly authorized by the landlord or recorded in official documentation. In the present scenario, the property belongs to the respondent-Society, a legal entity distinct from the original owner. Hence, any alleged admission by a third party cannot be construed to bind the Society or create a statutory tenancy in favour of the petitioners.

6. Furthermore, it remains an established principle, emanating from Section 23 of the Maharashtra Cooperative Societies Act, 1960, that any individual desirous of occupying premises in a cooperative housing society must first qualify for membership on the basis of valid title documents or a subsisting legal interest recognized by the Society. In the absence of such membership or title, the occupant cannot assert any indefeasible right to remain in the premises. The membership of a housing society and the concomitant compliance with its bye-laws are prerequisites to enjoying the benefits of occupancy. The courts below have carefully appreciated the evidence on record and arrived at the conclusion that the petitioners have failed to establish a tenancy claim to the property. Consequently, their lack of documentary proof or recognized membership justifies the order directing them to vacate the premises.

7. In view of the foregoing, no ground for appellate or revisional interference is made out. The impugned order, being in accordance with law and based on well-reasoned findings, does not warrant any disturbance in writ proceedings. The writ petition is, therefore, dismissed. No costs.

8. The period granted by the Appellate Authority to vacate the premises is extended for four weeks from today.

(AMIT BORKAR, J.)