



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7432/2022

Vijay Laghuvetan Karmachari Sahakari Gruhnirman Society, Achalpur Tq.
Achalpur, District Amravati, through its Secretary Prafull Damodarrao
Wankhade

...Versus...

Divisional Joint Registrar, Co-operative Societies, Amravati Division, Amravati
and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.V. Gawande, Advocate for petitioner
Mr. H.D. Futane, AGP for respondent Nos.1 and 2
Mr. S.D. Khati, Advocate for respondent Nos.3 to 5
Mr. R.S. Suryawanshi, Advocate for respondent No.6

CORAM : SACHIN S. DESHMUKH, J.

DATE : 28/07/2025

1. The petitioner-Society, which is registered under the Maharashtra Cooperative Societies Act, 1960 (for short hereinafter "Act of 1969") as 'Gruhnirman Society' allotted plot to the father of the respondent Nos.3 to 5 way back in the year 1995 and eventually possession of the same was also handed over. Thereafter, in the year 2010 owing certain expenses incurred by Society, the members of the petitioner-Society were called to make necessary payment towards those expenses, as such, notices were issued to the defaulting members for payment of Municipal taxes and other necessary charges.

2. It is the case of the petitioner that even paper publication was issued in Daily Deshonnati on 12/10/2010 in

that regard with eventual resolution in its meeting dated 11/08/2013 for cancelling the membership of defaulting members of the petitioner-Society was passed including the membership of the father of respondent Nos.3 to 5.

3. Per contra, the learned Counsel for respondent Nos.3 to 5 submitted that after allotment of plot in favour of their father, who died on 16/05/2010 it cannot be regarded as notice was ever served before passing resolution in the year 2013 cancelling membership of the father of these respondents. Even paper publication cannot be regarded as proper service when admittedly the father of the respondent Nos.3 to 5 died much prior to it. After the death of the father of the respondent Nos.3 to 5, a succession certificate was obtained by these respondents. On the strength of the succession certificate, a request was made to ensure that necessary steps be initiated for recording the names of these respondent Nos.3 to 5, pursuant to allotment in favour of their father.

4. Since the plot was allotted to the father of the respondent Nos.3 to 5 way back in the year 1995, the resolution passed cancelling the membership is not in conformity with the bye-laws vis-a-vis Section 35 of the Act of 1960, therefore, an application was presented before the Assistant Registrar by the respondent nos.3 to 5 for ensuring allotment in the name of the applicants being legal representatives of the deceased member. The Assistant Registrar while considering the claim of the respective sides directed the petitioner-Society endorsing the claim of the

respondent Nos.3 to 5 being legal representatives of deceased member of the petitioner – Society to ensure that they are put in possession in the wake of the fact that the father of the respondent Nos.3 to 5 was member of the Society and was put in possession. Necessary payments were also made in accordance with Rules and Regulations by the father of the respondent Nos.3 to 5 is also considered and pertinently the death of the father i.e. on 16/05/2010 therefore, the notices issued for calling upon to pay necessary fees and eventual resolution cancelling the membership after death of father cannot be regarded as lawful.

5. Considering these vital aspects the claim of the respondent Nos.3 to 5 has been upheld by the Assistant Registrar. Aggrieved by the same, the petitioner – Society approached the Divisional Joint Registrar by presenting revision under Section 154 of the Act of 1960. The Appellate Authority while taking into account the sequence of events stated hereinabove in relation to allotment of plot, payment of necessary charges and further infraction with mandate of Section 35 of the Act of 1960 while passing the resolution and pertinently after the death of the father of the respondent Nos.3 to 5 held that the resolution is in gross violation of Section 35 of the Act of 1960, as such, the said resolution is held to be illegal. Even the provisions of Section 30 of the Act of 1960 are taken into account, which obligate the Society to ensure that the nominee of the member of the Society or its representative, plot is to be handed over or transferred in favour of such person, who is either legal representative or

representative of the deceased member and in absence of necessary approval to the cancellation of membership which is rather warranted as contemplated under Section 35 of the Act of 1960. Therefore, the resolution cancelling the membership passed in the year 2013 is held to be illegal. As such, the entitlement of legal representatives of the deceased member is endorsed by the Assistant Registrar with further direction to the respondent No.6 to approach the competent Tribunal is a subject matter of challenge in the present petition.

6. Heard the respective Counsel for litigating sides. Undoubtedly, the father of the respondent Nos.3 to 5 was member of the Society way back in the year 1995. In the process the necessary fees in that regard was paid. Equally, it is matter of record that the death of the father of respondent Nos.3 to 5 is dated 16/05/2010, as such, the notice and necessary paper publication is subsequent to the death of the father, therefore the eventual resolution cannot be regarded in conformity with Section 35 of the Act of 1960, nonetheless in absence of necessary approval to that effect by the competent authority.

7. Apart from the aforestated aspect, the Society is not absolved while making departure with mandate of Section 30 of the Act of 1960 in the event of death of member of the Society, the legal representatives are entitled for the transfer of the suit plot. Thus, these vital aspects are completely breached by the petitioner-Society, as such the authorities below have concurrently upheld the entitlement of respondent Nos.3 to 5, is in accordance with the statutory

provisions and bye-laws. The resolution is in gross violation of principles of natural justice and also in derogation of mandate of Section 35 of the Act of 1960. Resultantly, no error could be noted in the order rendered by the authorities below. As such, no interference is warranted. Resultantly, the writ petition is dismissed. No order as to costs.

(SACHIN S. DESHMUKH, J.)

Wadkar