



IN THE HIGH Court OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3814 OF 2022

Jogesh Pranlal Patel & Anr. ... Petitioners
Versus
Shivaji Nagar She Ganesh CHS Ltd. & Ors. ... Respondents

Mr. Dushyant Krishnan, for Petitioners.
Mr. Ajit Jakhad, a/w. Mr. Rajesh Parab, Mr. Amol Chile for
Respondent No.2
Mr. A. P. Vanarase, AGP for Respondent No.3.

CORAM : **SANDEEP V. MARNE, J.**
DATE : **04 OCTOBER 2023.**

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of parties, Petition is taken up for final hearing and disposal.

2. By this petition, Petitioners challenge order dated 22 October 2021 passed by Divisional Joint Registrar, Cooperative Societies in Revision Application No.518 of 2018. By the impugned order, the Divisional Joint Registrar has set aside order dated 22 November 2018 passed by the Deputy Registrar and has remanded the proceedings to Deputy Registrar for fresh consideration and decision on merits. By order dated 22 November 2018, the Deputy Registrar had allowed the

Petitioners' application under section 22(2) of the Maharashtra Cooperative Societies Act 1960 directing Respondent-Society to admit Petitioners' as member and issue them share certificate.

3. Briefly stated, facts of the case are that Petitioners claim to have purchased Flat No.1/5 in Shree Ganesh Cooperative Housing Society by registered sale deed dated 22 January 2004 from Ms. Shantabai Shivajirao Desai. Petitioners applied to the Society on 22 January 2004 for membership. The Society issued no objection certificate for admission to membership. Petitioners accordingly submitted application to Maharashtra Housing and Area Development Authority (MHADA) seeking its permission for the said transaction.

4. Respondent No.2 Kanchan Ashok Desai along with one Ashvini Shinde claimed rights in the flat and objected before MHADA opposing the Petitioners' application. MHADA therefore expressed inability to grant permission for transfer of the flat citing pendency of criminal case before 7th Metropolitan Magistrate, Dadar and arising out of complaint filed by Respondent No.2, MHADA and requested Petitioners to submit reply before the Magistrate's Court. The said complaint came to be dismissed by the Metropolitan Magistrate on 23 July 2007.

5. Petitioner No.1 filed SC Suit No. 1552 of 2004 against Ashwini Shinde, Kanchan Desai and the original vendor Shantabai Desai seeking declaration that Defendant was not entitled to evict him from the

suit flat as well as seeking injunction not to disturb his possession of the suit flat. The suit was decreed on 31 January 2011 declaring that Defendants were not entitled to evict Petitioner No.1 from suit premises without following due process of law. Defendants were also restrained from disturbing, obstructing or interfering Plaintiff's possession over the suit premises. Aggrieved by the decree, Ashwini Shinde and Kanchan Desai have filed First Appeal No. 602 of 2011 before this Court, which has been admitted without granting any stay to the decree.

6. Respondent No.2 thereafter made a complaint to MHADA on 01 February 2011 and acting on that complaint, MHADA directed the Society to delete the names of Petitioners from membership register on the ground that names of Petitioners have registered without obtaining prior permission of MHADA. Since the Society failed to act on MHADA's later dated 10 February 2011, Respondent No.2 filed application before Deputy Registrar under section 25A of the Act of 1960. That Application was allowed by the Deputy Registrar by order dated 20 September 2014 directing Society to cancel membership of Petitioners. Petitioners filed Revision Application before the Joint Registrar of Cooperative Societies which came to be dismissed by order dated 15 March 2016. Petitioners filed Writ Petition No.7522 of 2016 before this Court challenging the decisions of Deputy Registrar and Divisional Joint Registrar. However, the Writ Petition was withdrawn on 24 July 2017 with liberty to file an application before Deputy Registrar

under section 22 of the Act of 1960 in view of grant of conveyance in favour of Society, which no longer requires MHADA's NOC.

7. Accordingly, Application under section 22 of the Act of 1960 was filed by the Petitioners before the Deputy Registrar. That Application came to be allowed by the Deputy Registrar by order dated 20 November 2018 directing Society to enter the name of the Petitioners in the membership register and to issue share certificate.

8. Respondent No.2 challenged the order of the Deputy Registrar before the Divisional Joint Registrar by filing Revision Application No.518 of 2018. The Divisional Joint Registrar has allowed the Revision Application and while setting aside the order of the Deputy Registrar dated 22 November 2018, has remanded proceedings for fresh decision.

9. Petitioners are aggrieved by the order passed by the Divisional Joint Registrar and have filed the present petition.

10. Mr. Jakhad, the learned counsel appearing for Petitioners would submit that the order passed by the Divisional Joint Registrar remanding the proceedings is *ex facie* illegal as the Deputy Registrar had taken decision on 20 November 2018 after due consideration of all the issues involved before him. That the Divisional Joint Registrar recorded finding about non consideration of issues of pendency of First Appeal and earlier order dated 30 September 2014 passed under section 25A of

the Act of 1960. He would submit that both the aspects are duly taken into consideration by the Deputy Registrar. He would further submit that Respondent No.2 has absolutely no right, title or interest in the flat and has been deliberately harassing Petitioners. That by virtue of the decree passed by the City Civil Court, Petitioners' rights over the flat has been duly established and Respondent No.2 has deliberately been misusing the machinery under the Act of 1960 for harassing Petitioners. He would pray for setting aside the order of Divisional Joint Registrar.

11. *Per Contra* Mr. Krishnan, the learned counsel appearing for Respondent would oppose the petition and support the order passed by the Divisional Joint Registrar. He would submit that since the Deputy Registrar had already taken a decision on 30 September 2014 disentitling the Petitioners to membership of the Society, the very same authority could not have reversed his own decision and granted membership in Society to Petitioners. He would submit that on account of order passed on 30 September 2014 in proceedings under section 25A of Act of 1960, Petitioners cannot be granted membership of the Society. He would submit that in the Civil Suit, Petitioners did not seek a declaration of ownership and therefore the decree passed in their favour would not cover rights and entitlements in respect of flat. He would submit that Petitioners have got the purchase deed executed in their favour by misleading the vendor, who was illiterate at a throwaway price in ignorance of rights created in favour of responding No.2 in respect of flat.

Lastly, he would submit that since the Divisional Joint Registrar has merely remanded proceedings, interference by this Court is not warranted. He would pray for dismissal of the petition.

12. Rival contentions of the parties now fall for my consideration.

13. Petitioners and Respondent No. 2 are at loggerheads with regard to right, title and interest in Flat No.1/5 situated in Respondent No.1 Society. Petitioners have apparently purchased the flat vide registered sale deed dated 22 January 2004. Though Respondent No. 2 claims right, title and interest in that flat, she has not challenged the registered sale deed dated 22 January 2004 in any Court of competent jurisdiction. On the strength of that sale deed, Petitioners are attempting to get membership in the Cooperative Society. Further, it must be observed that mere grant of membership/share certificate by a cooperative Society does not determine right, title and interest of parties in respect of a flat. Regardless of transfer of share certificate in the name of any member, his /her rights can always be independently challenged in a Civil Suit, whose decision would determine rights and entitlements of parties to the flat.

14. Perusal of the impugned order passed by the Divisional Joint Registrar would indicate that he has remanded the proceedings by recording a finding that the Deputy Registrar ought to have taken into

consideration the vital aspects of (i) pendency of First Appeal No.602 of 2011 in this Court and (ii) passing of earlier order dated 30 September 2014 by the Deputy Registrar under section 25A of the Act of 1960.

15. The relevant findings recorded by the Divisional Joint Registrar read thus :-

It seems that the Respondent Deputy Registrar while passing the impugned order dated 22/11/2018 has not dealt with the order dated 04/12/2012 of Hon'ble High Court in the First Appeal No.602 of 2011 filed by the Applicant herein. Further, from the official site of Hon'ble High Court, it seems that the aforesaid Appeal has been admitted and thus the said matter is subjudiced. Further, the Respondent Deputy Registrar while passing the impugned order has not considered the earlier order dated 30/09/2014 u/s 25(A) of the M.C.S. Act, 1960 passed by his predecessor thereby directing the Respondent Society to cancel the membership of the Respondents No. 2 & 3 herein from the records of the society and submit the compliance report within 15 days. Further, the said order dated 30/09/2014 was confirmed by the Ld. Predecessor of this Authority by order dated 15/03/2016 in Revision Application No. 417/2014. Therefore, it seems that the Respondent Deputy Registrar while passing the impugned order has not made detail enquiry of the case before him. Hence, I am of the view that the impugned order suffers legal infirmity and violation of principle of natural justice.

16. In this regard it is opposite to reproduce findings recorded by the Deputy Registrar in order dated 22 November 2018 which reads thus-

आज रोजी अर्जदार हे सदनिका क्र.१/५ चे खरेदीदार असून सदर खरेदीखत कोणत्याही न्यायालयाने रद्द केलेले नाही. संस्थेच्या जमिनीचे अभिहस्तांतरण

झालेले असून अभिहस्तांतरण झाल्यानंतर मुंबई मंडळाकडून सदनिका हस्तांतर नियमित करण्याची आवश्यकता नाही. अर्जदार यांनी संस्थेकडे सभासद होण्यासाठी केलेला अर्ज संस्थेने विहित मुदतीमध्ये निर्णय न घेता प्रलंबीत ठेवलेला आहे. उपविधीतील तरतुदीनुसार अर्जदार हे सभासद होण्यास पात्र आहेत. त्याचबरोबर अभिहस्तांतर झाल्यानंतर सदनिका हस्तांतर नियमित करण्याची आवश्यकता नाही. सदनिकेच्या मालकी हक्काबाबत न्यायालयामध्ये दावा प्रलंबित असून न्यायालयाचा निर्णय संबंधितांवर बंधनकारक असेल. मात्र अर्जदार हे मानीव सभासद घोषित होण्यास पात्र असून त्यांना मानीव सभासद घोषित करणेबाबत मी खालीलप्रमाणे आदेश पारित करित आहे.

17. Thus, perusal of the order passed by the Deputy Registrar would indicate that pendency of First Appeal has been taken into consideration by the Deputy Registrar and he has directed that decision in the First Appeal would bind the parties. So far as the other aspect of passing of earlier order dated 30 September 2014 in proceeding under section 25A of the Act of 1960 is concerned, Deputy Registrar has held that NOC of MHADA is not required for grant of conveyance in favour of the Society.

18. The order dated 30 September 2013 was passed by the Deputy Registrar only on account of MHADA's letter holding that grant of membership to Petitioners without grant of NOC by MHADA was illegal. This is the only reason why Deputy Registrar had passed order dated 20 September 2004 refusing Petitioners' membership on account of non-procurement of permission of MHADA for the sale transaction. Grant of membership without obtaining permission the sale transaction was held to be illegal. However, after passing of order dated 20 September 2014 there has been alteration in the situation. Society applied

for grant of conveyance in its name to MHADA. Accordingly, MHADA has conveyed land in favour of Society by conveyance deed dated 13 November 2013. Since the MHADA is no longer the landowner, its permission for transfer of membership in the Society is no longer required. This aspect has been taken into consideration by the Deputy Registrar while passing order dated 20 November 2018. The Divisional Joint Registrar has proceeded on an erroneous assumption that the effect of order dated 30 September 2014 was ignored by the Deputy Registrar. In that view of the matter finding recorded by the Divisional Joint Registrar that Deputy Registrar did not make detailed enquiry is clearly erroneous. The Divisional Joint Registrar ought to have determined correctness of the finding recorded by the Deputy Registrar with regard to requirement of NOC of MHADA for transfer of membership. Without doing so, Divisional Joint Registrar has arrived at an erroneous conclusion that Deputy Registrar has ignored the said aspect.

19. I do not find any error in the finding recorded by the Deputy Registrar that permission of MHADA is no longer necessary on account of conveyance of land by MHADA in the name of Society.

20. So far as pendency of First Appeal before this Court is concerned, rights and entitlements of parties to the flat in question would be determined in that Appeal and the Order passed therein would be binding on all the parties including the Society. As of now, there is no stay to the decree passed by the Trial Court. Respondent No.2 has not

instituted any proceedings to challenge the sale deed dated 22 January 2004 executed in favour of Petitioners. The only ground on which Respondent No.2 was successfully preventing the Society from granting membership to Petitioners was non-grant of permission of MHADA. Now permission of MHADA is no longer necessary as Society is the owner of the land. In that view of the matter, I do not see any impediment why Petitioners cannot be granted membership of the Society.

21. Grant of such membership to Petitioners would however be subject to the final orders that would be passed by this Court in the pending First Appel as well as any other civil proceedings filed by Respondent No. 2.

22. Writ Petition accordingly succeeds. Order dated 22 October 2021 passed by the Divisional Joint Registrar is set aside and order dated 20 November 2018 passed by the Deputy Registrar is confirmed. Writ Petition is allowed in above terms. Rule is made absolute.

SANDEEP V. MARNE, J.

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