
(2008) 09 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 6205 of 2008

Ajit Ramchandra Inamdar

APPELLANT

Vs

The Divisional Joint Registrar and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Citation : (2009) 1 BomCR 202

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : G.S. Godbole, instructed by S.S. Kanetkar, for the Appellant; S.D. Rayrikar, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Heard learned Counsel for the parties. Perused the petition.

2. This petition, filed under Article 227 of the Constitution of India, is directed against the order dated 3.5.2008, passed in Revision Application u/s 154 of the Maharashtra Co-operative Societies Act, 1960 ("the M.C.S.Act" for short) by the Divisional Joint Registrar, Pune Division Pune, whereby the order dated 24.3.2006 passed by the Deputy Registrar, Co-operative Societies, Pune City (the Revisional Authority) came to be set aside.

3. The facts, in nutshell, are that originally Late Shri Ramchandra G. Inamdar, father of the Petitioner and Respondent No. 4, was the member of the Girija Co-operative Housing Society Ltd. (Respondent No. 3) ("the Hsg. Society" for short). Mr Ramchandra and Mr Anil, thus, became the members of the Co-operative Society.

4. According to the Petitioner, Late Ramchandra Inamdar wanted to transfer the said property in the name of his two sons; namely, the petitioner -Ajit Ramchandra Inamdar and Mr Anil Inamdar (respondent No. 4). However, it was informed by the Housing Society that there is no provision in the Bye-laws of the Society to admit two persons as members at a time.

5. According to the Petitioner, Late Shri Ramchandra Inamdar by letter dated 16.11.1975 requested Respondent No. 3 Society to admit his elder son Mr Anil Inamdar as a Member in his place. Accordingly, the Managing Director of Respondent No. 3 in a meeting dated 23.1.1976 accepted Respondent No. 4 as a member and the Petitioner was made a nominee.

6. The father of the Petitioner had filed nomination form dated 16.2.1976. It appears that the Petitioner and Respondent No. 4 both have contributed some amount for construction of the bungalow on the plot of land allotted by the Society. Respondent No. 4 herein appears to have executed an agreement in favour of the Petitioner and their mother, whereby it was recorded that the Petitioner as well as Respondent No. 4 have actual right in flat No. 30 of Respondent No. 3 Society and they will be recognised as owners of the said property.

7. The Petitioner and Respondent No. 4 submitted joint application to the Respondent No. 3-Society for admitting the Petitioner - Mr Ajit, as associated member of the Society. The said application appears to have been signed by Respondent No. 4, wherein Respondent No. 4 appears to have given consent to admit the Petitioner as associate member of Respondent No. 3-Society.

8. It appears that Respondent No. 3-Society by letter dated 24.7.2005 rejected the said application on the ground that there was no provision in the Byelaws of the Society to admit two persons as members at a time. At the same time, the Society observed that the application should have been filed by Respondent No. 4 alone. Respondent No. 4, thereafter, appears to have made an application on 29.7.2005 requesting Respondent No. 3 Society to admit the Petitioner as an "Associate Member".

9. It appears that on 16.8.2005 Respondent No. 4 Mr Anil submitted a letter to Respondent No. 3-Society and contended that applications made by him dated 15.7.2005 and 19.7.2005 for admitting the Petitioner as Associate Member, should be treated as cancelled since he was made to apply under coercion.

10. The Society after receipt of the said letter again rejected application of the Petitioner and Respondent No. 4 for admitting the Petitioner as Associate Member.

11. Being dissatisfied by the aforesaid order, an appeal bearing No. 11 of 2005 was filed by the Petitioner before the Deputy Registrar, Co-operative Societies. By an order dated 24.7.2005 appeal was allowed. The respondent No. 3 Society was directed to admit the Petitioner as "Associate Member" with direction to make necessary entries in the record of the Society.

12. Aggrieved by the aforesaid order dated 24.3.2006, Respondent Nos. 3 and 4, again, jointly filed Revision u/s 154 of the M.C.S. Act before Respondent No. 4, being Revision Application No. 167 of 2006.

13. The Petitioner opposed said Revision application by filing written submission. The said revision was heard and was allowed by an order dated 3.5.2008 as

stated in opening part of this order.

14. Being aggrieved by the aforesaid order dated 3.5.2008 the present petition is filed by the Petitioner, contending that the joint revision application filed by Respondent No. 3 Society and Respondent No. 4 Mr Anil was misconceived, as they did not have cause of action to prosecute their revision jointly. He has further contended that Revisional Authority failed to consider judgments of this Court in the cases of R. B. Rajput v. Hiralal Bhagwandas Rajput and Anr. 1990 (1) B.C.R. 310 and Harish G. Bulchandani v. Shri Subhash Mancharlal Arora and Ors. 1999 (2) B.C.R. 462, which lay down that the Society can refuse to admit a member if the applicant does not fulfil the conditions enumerated in Section 23 of the M.C.S.Act, 1960 or the Rules or Bye-laws of the Society. It was further urged that the Petitioner had produced the evidence that he has been residing in the said flat that by itself was sufficient to show that intention of father that he wanted to transfer the subject flat in the joint name of the Petitioner and Respondent No. 4. However, these submissions did not find favour with the Revisional Authority.

15. Mr Godbole, the learned Counsel for the Petitioner also placing reliance on the judgment of Laxmi Cooperative Housing Society Ltd. Vs. Kantilal Champaklal Kothari and Others, and another judgment of the learned Single Judge of this Court in the case of Wadala Shri Ram Industrial Premises Co-operative Society Limited Vs. Kotecha and Company and Others, , urged that the enquiry in the appeal filed u/s 152 of the M.C.S. Act challenging order u/s 13 has to be limited, as to whether Registrar had rightly exercised his jurisdiction while passing order u/s 13 of the Act? He has also relied upon judgment of the Supreme Court in the case of Smt. Dayawati and Another Vs. Inderjit and Others, the highlight difference between a suit and an appeal.

16. Mr Godbole further went on to contend that once the consent is given by Respondent No. 4 to admit the Petitioner as an Associate Member, it was neither open for him to withdraw his consent nor was it open for the Society to reconsider the issue of membership on the consideration that the application was made by Respondent No. 4 under coercion. He, thus, submits that the Society was not justified in rejecting the application of the Petitioner to be an Associate Member along with Respondent No. 4.

17. Mr Godbole also urged that the Revisional Authority has also committed an error in relying upon the withdrawal of consent so as to deny Petitioners right to be an Associate Member of the society.

18. Having heard Mr Godbole, learned Counsel for the petitioners, one has to consider the submissions made on the touchstone of the law laid down by the Apex Court in the case of Laxmi and Co. Vs. Dr. Anant R. Deshpande and Another, the Supreme Court observed as under:

It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of

interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes, if the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the court also takes notice of such event. If the property which is the subject-matter of suit is no longer available the court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice.

19. In the case of *Hasmat Rai and Another Vs. Raghunath Prasad*, , the Apex Court observed as under:

Where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration subsequent events. Once an appeal against decree or order of eviction is preferred, the appeal being a continuation of suit, the landlords need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate Court has to examine, evaluate and adjudicate the same.

20. In the case of *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, the Apex Court observed as under:

In a suit for eviction on the ground of bona fide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession of the tenant. In appropriate cases, the court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events.

21. In the case of *Govind Vs. Dr Jeetsingh*, the Apex Court observed as under:

Whether in a particular situation the need was reasonable or bona fide must be judged from the objective view point and not merely by assertion or denial of the parties. In doing so court should take into cautious consideration all subsequent events. In the present case, prima facie it might be possible that the High Court was in error in interfering with the findings of the appellate Court as in second appeal the scope of interference by the High Court is limited, but in view of the subsequent event of the death of the landlords wife after decision of the High Court, it must be held that there was no more bona fide need of the landlord to evict the tenant of the premises in question.

22. In the case of Ramesh Kumar Vs. Kesho Ram, the Apex Court observed as under:

The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes of fact and law to mould the relief.

23. In the case of Pasupuleti Venkateswarlu Vs. The Motor and General Traders, the Apex Court observed, as under:

For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

24. In view of the aforesaid settled position of law, no different yard-stick can be applied to the appeal or revision arising out of the provisions of the M.C.S.Act. The appeal is nothing but a continuation of a original proceeding. The Apex Court also went on to observe even in the revisional proceeding, subsequent events can be taken into account. In the case of Govind Vs. Dr Jeetsingh, the Apex Court took into account subsequent events even when the matter was pending before it. Thus, the lower authorities have rightly taken into account the withdrawal of the consent by the Respondent No. 4. In the absence of his consent the Society could not admit the petitioner as associate member. In the result, no case is made out to entertain this petition.

25. At this juncture, I may make it clear that notwithstanding to dismissal of this petition, if the petitioner has any right in the subject property, it would be open for him to agitate the same in accordance with law since the question of his right, title or interest in the property, is not the subject matter of this petition. The considerations are restricted only to the question: whether or not, the petitioner could be admitted as Associated Member of the society in absence of consent of the existing member of the Society. No other issue or a question is considered in this petition.

26. In the result, the petition is dismissed in limini with no order as to costs.