
(2016) 07 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 2569 of 2002

Alhad R. Vaidya

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 827

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Mr. G.S. Godbole i/b Mr. A.B. Tajne, Advocate, for the Appellant; Mr. S.D. Rayrikar, AGP, Mr. Vijay Patil a/w. Mr. Kalpesh, Advocate, Nidhi Singh a/w. Mr. Pradip Patil i/b India Law Alliance, for the Respondent

Final Decision : Allowed

Judgement

M.S. Sonak, J.—The primary challenge in this petition is to the judgment and order dated 28 January 2002 made by the Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, Government of Maharashtra.

2. The petitioner No.1 along with some others, proposed the formation of "Samudra Manthan Cooperative Housing Society Ltd.", in order to apply for and obtain the allotment of a Government plot of land and eventual construction of buildings/apartments thereon. The petitioner No.1 was styled as Chief Promoter of such proposed society. The record does indicate that the petitioner No.1 along with others took steps to obtain allotment of plot and thereafter, even submitted a list of the proposed members of the society, who could ultimately be beneficiaries of the apartments and matters connected therewith. Even before, all formalities with regard to allotment could be complete, there arose disputes and differences between the proposed members of the society. The petitioners, led by the petitioner No.1 constituted one group and fourteen other members constituted another group. There were allegations and counter-allegations in the matter of timely depositing of the amounts in order to secure the allotment of the plot. The extra ordinary general body meeting was held amongst such

proposed members. Correspondence was also exchanged with the authorities, including in particular, the District Collector, who is authorised to approve the names of the members, who would be eventually allottees of the apartments in the building to be constructed upon the plot, to be obtained from the Government.

3. The District Collector, by communication dated 20 September 1991 approved names of eighteen members from out of the list forwarded. By supplementary order dated 18 October 1991, names of two more members were also approved. There is correspondence which establishes that the District Collector required such twenty members to deposit the occupancy price, so that the allotment could be made. The disputes between the members really arose at this stage, because fourteen members alleged that the petitioner No.1 was avoiding deposit of occupancy price. Finally, the extra ordinary meeting was convened, in which, fourteen members supported the replacement of petitioner No.1 by one Mr. A.S. Bhandarkar. On such basis, the demand draft towards occupancy price was forwarded to the Government authorities. The petitioner No.1 also forwarded the demand draft towards occupancy price. However, the record indicates that the authorities relied upon majority opinion as expressed in the extra ordinary meeting and retained the demand draft towards occupancy price submitted by Mr. A.S. Bhandarkar as Chief Promoter of the proposed society.

4. Ultimately, the Samudra Manthan Cooperative Housing Society Ltd. came to be registered as a Cooperative Society under the provisions of the Maharashtra Cooperative Societies Act, 1960 (said Act), by order dated 2 April 1992 made by the Deputy Registrar of the Cooperative Societies. At the time of registration, Shri. Bhandarkar. was indicated as Chief Promoter. The petitioners were also indicated as persons proposing the incorporation of the society, but, the application for registration does not bear the signatures of the petitioners. The society was nevertheless registered and the Government plot was allotted and handed over to the society some time 20 May 1992. The allotment letter at Annexure-I contains the list of approved members.

5. There is no record that the petitioners were actually enrolled as the members of the Society. Although, the contention was raised that the petitioners had applied for enrolment of membership and the said application was pending consideration, the record bears out that the petitioners were neither actually enrolled as members of the society nor have the petitioners have taken any steps to pursue their application for their enrolment as members. The said Act provides for remedies where application for enrolment is either not accepted or rejected without sufficient cause. There is nothing on record to indicate that the petitioners ever availed any such remedies under the said Act.

6. The District Collector, by Corrigendum dated 4 April 1994 corrected the original list of approved members and ordered the deletion of the names of the petitioners from the said list. It is pertinent to note that the petitioners had not been enrolled as the members of the society. However, the names of the

petitioners appear in the list of persons approved to be members of the society by the District Collector. Since, such Corrigendum/order was made by the District Collector without afford of opportunity to the petitioners, the petitioners appealed against the same to the Additional Commissioner, Konknan Division.

7. The Additional Commissioner vide order dated 3 June 1997 allowed the appeal and remanded the matter to the District Collector for fresh decision, in accordance with law and after due compliance with principles of natural justice. The District Collector, in compliance with the remand order and afford of opportunity of hearing to the petitioners, once again ordered deletion of the names of the petitioners from the list of persons approved to be members of the Cooperative Society.

8. The petitioners instituted Writ Petition No. 1028 of 1999 before this Court, which was disposed of on 13 July 1999. By the said order, this Court granted leave to the petitioners to withdraw the petition with liberty to impugn the fresh order dated 19 January 1999 made by the District Collector, by institution of an appeal before the Additional Commissioner, Konknan Division.

9. The Additional Commissioner, Konknan Division by order dated 22 October 1999, allowed the petitioners' appeal and quashed and set aside the decision of the District Collector, approving the deletion of their names. The Additional Commissioner, reasoned that the District Collector had no legal authority or jurisdiction to decide on the issue of inclusion or deletion of members in a Cooperative Society and that such jurisdiction vested exclusively in the authorities constituted under the said Act.

10. The respondents herein, instituted revision application before the Secretary and Officer on Special Duty, which has, since been allowed by the impugned judgment and order dated 28 January 2002. Hence, the present petition.

11. Mr. Godbole, learned counsel for the petitioners, has submitted that the District Collector had no power, authority or jurisdiction to deal with the issues of membership of the Cooperative Housing Society and it is only the authorities under the said Act, which have been vested with exclusive jurisdiction in this regard. Relying upon the decision of this Court in case of Professor (Dr.) D.R. Bhardwaj v. State of Maharashtra AIR 1993 Bom 366, Mr. Godbole submitted that the District Collector had no jurisdiction to terminate the membership and direct the society to recover possession from such member. In any case, Mr. Godbole submitted that it was not possible for the petitioners to pursue the issue of their membership with the authorities under the said Act, because in terms of the order by which the plot in question was allotted by the Government to the society, the approval of District Collector was necessary for enrolment of any person as member of the Society. In this case, the District Collector, has acted without jurisdiction and in any case, illegally in directing the deletion of the names of the petitioners from such list of approved persons and in their place substituting the names of some of the respondents. For these reasons, Mr.

Godbole submitted that the impugned order dated 28 January 2002 deserves to be set aside and the earlier order dated 22 October 1999 made by the Additional Commissioner, Konkan Division, deserves to be restored.

12. The learned counsel appearing for the contesting respondents submitted that at no stage, the petitioners were actually enrolled as members of the Society. Therefore, there was no question of authorities under the said Act having any jurisdiction over the issues raised by the petitioners in this matter. The real issue in this case was with regard to inclusion or exclusion of persons approved to be enrolled to the membership of the society. The District Collector, upon due consideration of all materials on record, including in particular the wishes of the majority, the defaults committed by the petitioners in the matter of deposit of occupancy price, failure on the part of the petitioners to avail membership of the society despite afford of adequate opportunities, has ordered the deletion of the names of the petitioners and substituted the names of some of the respondents. The learned counsel for the respondents pointed out that the petitioners were themselves not cooperating in the matter of deposit of occupancy price or contributing towards the construction of the building and matters connected therewith and at the same time, on account of noncooperation of the petitioners, it was not possible for the remaining persons to proceed with the project. Upon due consideration of all these circumstances, the District Collector rightly ordered the substitution of some of the respondents in place of the petitioners. Such an order was both legal as well as intra vires. The learned counsel for the respondents, also pointed out that the petitioners have taken no steps whatsoever to secure membership of the society, in case, they had really applied for the membership of the society and that they were aggrieved by their non-enrolment as members of the society. Learned counsel for the respondents, therefore, submitted that this is not a fit case for grant of any reliefs in this petition, particularly, because the reliefs as prayed for, will never be complete in themselves. The learned counsel for the respondents further submitted that by now, there are no vacant apartments. The allottees were never impleaded as parties to the proceedings. Any order, is bound to affect the interest of such allottee members. For all these reasons, it was urged that the present petition be dismissed with costs.

13. The rival contentions now fall for my determination.

14. From the record, the petitioners were unable to make out any case that at any stage, they were in fact enrolled as the members of the society. In fact, it is the case of the petitioners that they had applied for enrolment as members, but such application was either not accepted or in any case, no action was taken on the basis of same. There is nothing on record to indicate that the petitioners have taken any steps to pursue the issue of their non-enrolment as members of the society. The submission that such steps were not taken simply because the District Collector deleted the names of the petitioners from the list of persons approved to be members of the society, cannot be appreciated at this stage. In

any case, if this be the position, the petitioners cannot at the same time, maintain that the District Collector had no jurisdiction in the matter as the jurisdiction was vested exclusively in the authorities constituted under the said Act.

15. In terms of Section 22 of the said Act, subject to the provisions of Section 24, no person shall be admitted as a member of a society except those which have been prescribed under subsection (1). Section 22 (2) provides that where a person is refused admission as a member of a Society, the decision with reasons therefor, shall be communicated to that person within fifteen days from the date of decision, or within three months from the date of receipt of application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of application, the application shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving reasonable opportunity of being heard to all the concerned parties.

16. Section 23(1) of the said Act provides that no society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the said Act or byelaws of the society. Section 23(2) of the said Act provides that any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar within a period of sixty days from the date of the decision of the society. Every such appeal as far as possible, shall be disposed of by the Registrar within a period of three months from the date of its receipt. Provided that, where such appeal is not so disposed of within three months, the Registrar shall record the reasons for the delay. Subsection (3) of Section 23 imparts statutory finality to the decision of the Registrar.

17. From the material on record, it is not quite clear as to whether the petitioners had applied for enrolment as members. However, even assuming that they had applied for such enrolment, there is nothing on record to indicate that the petitioners have taken any steps whatsoever as may be available to them under the provisions of the said Act in the matter of their enrolment as members of the Society. The issue of approval by the District Collector of the names of the persons, who can be enrolled as members of the society, is quite a distinct issue. In case of any dispute with regard to such issue, it is a District Collector who will have jurisdiction in the matter. The jurisdiction to decide any disputes upon such issue will not be vested with the authorities under the said Act. To such a dispute, the provisions contained in Section 23(2) of the said Act will not apply. In these circumstances, the Secretary and Officer on Special Duty cannot be said to have exceeded jurisdiction or committed any manifest illegality in interfering with the Additional Commissioner's order dated 22 October 1999, which had taken the view that the exclusive jurisdiction in such matters is vested only in the authorities under the said Act.

18. The decision in case of Prof (Dr.) D.R. Bharadwaj (supra) is completely distinguishable. In the said case, the District Collector had purported to virtually expel or in any case, approved the expulsion of a person, who had already been admitted to the membership of the society. It is in these circumstances that it was held that the Collector had no jurisdiction to terminate the membership of a person and to direct the society to recover possession from such member. This Court, considered the Scheme under Section 35 of the said Act and held that right to determine the expulsion is available only to the society and not to any other authority including the State Government. In the present case, as noted earlier, the petitioners were never enrolled as members of the society. The issue involved was not of either inclusion of the petitioners as members of the society or their expulsion from the membership of the society. Clearly, therefore, the decision in case of Prof. (Dr.) D.R. Bhardwaj (supra), is distinguishable and cannot be said to be applicable to the facts and circumstances of the present case.

19. On merits, it is really not for this Court to exercise any appellate powers and on such basis interfere with the impugned order. As long as, it is not demonstrated that the findings of fact recorded in the impugned order are vitiated by perversity in the sense that such findings are based upon no evidence or that some relevant material has been excluded from consideration or some irrelevant parameters has over influenced the decision making process, it is not for this Court, in the exercise of its powers of judicial review to interfere.

20. If the impugned judgment and order is perused, none of the aforesaid vices can be said to be attracted to either decision or the decision making process. The Secretary and Officer on Special Duty has recorded findings in the matter of noncooperation by the petitioners, with rest of the persons. The Secretary and Officer on Special Duty has also recorded a finding that several opportunities were afforded to the petitioners, but the same were not availed by the petitioners. It appears that the petitioner No.1 was keen upon continuing as Chief promoter of the society and unless, the other persons were agreeable to the petitioner No.1 retaining this position, the petitioner no.1 was not ready to cooperate. The Secretary and Officer on Special Duty has recorded findings that even the society or for that matter other members did afford opportunities to the petitioners. The impugned order also makes reference to allotments of apartments to other persons, whose allotment has neither been challenged nor have been such allottees have been implead as parties in the proceedings. There is really no perversity in the recording of finding of fact. Further, taking into consideration the material on record and the facts and circumstances as appear from them, it cannot be said that the view taken in the impugned order is either vitiated by any jurisdictional error, unreasonableness or perversity.

21. The impugned order directs that the amounts deposited by the petitioners be refunded to them. However, considering the lapse of time, it would be reasonable if the society is directed to refund such amount along with interest. Although,

this is not a case where the society or other members can be held to have unreasonably withheld the amounts deposited by the petitioners, nevertheless, the fact remains that such amounts have remained with the society for considerable period of time. The record also indicates that the petitioner No.1 , who was earlier Chief Promoter, has put in some efforts in the matter of allotment of plot. Ultimately, it is possible that differences broke out, which led to exclusion of the petitioners. However, it will be appropriate if the society is directed to refund such amounts to the petitioners within a period of three months from today and that too with interest at the rate of 8% per annum. Save and except, this modification, there is no case made out to interfere with the impugned order.

22. Rule is accordingly, disposed of in the aforesaid terms. The interim order, if any, stands vacated. There shall however, be no order as to costs.