
(2008) 02 BOM CK 0122
In the Bombay High Court
Case No : Writ Petition No. 7574 of 2007

S. Rangarajan

APPELLANT

Vs

Oyester Co-op. Hsg. Society Ltd. and Another

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 6 ALLMR 754 : (2008) 5 BomCR 431

Hon'ble Judges : Sayed A.A., J

Bench : Single Bench

Advocate : Vinod Sampat, for the Appellant; A.A. Khan, instructed by M. Tripathi and Co., for the Respondent

Final Decision : Dismissed

Judgement

Sayed A.A., J.—Rule. Rule made returnable forthwith by consent and heard finally.

2. This petition impugns the order dated 31st July, 2007 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, whereby the order dated 6th November, 2006 of the learned Judge of the Co-operative Court, Thane, was set aside and the resolution of the Managing Committee and the General Body Meeting held on 23.5.2004, was held to be applicable to the petitioner and the petitioner is directed to pay service charges as per the bye-law No. 69(a)(vi) for each of his two flats.

3. The petitioner is a member of the respondent Society and is the owner of two flats which are inter connected, being flat No. 405 and 406 on the 4th Floor of the building belonging to the society. The two flats were purchased under two separate agreements with the Builder. Subsequently the society was formed. According to the petitioner as the flats are inter connected and he had purchased the same on the understanding that the said two flats would be considered as single unit, he is not liable to pay services charges @ Rs. 424/- per month each of the two flats. The building of the society consists of about 42 flats out of which

four flats are interconnected flats. The issue regarding the services charges came up before the General Body of the Society in the Annual General Meeting held on 23.5.2004 and a resolution was passed by majority of the members that each flat purchaser would have to pay separate service charges for each of the flats owned by them as per the bye-laws of the Society. It is this resolution dated 23.5.2004 which is the subject matter of dispute in this petition.

4. The learned Counsel for the petitioner submitted that under the Maharashtra Ownership of Flats Act, 1963, the definition of flat has been provided as follows:

Flat means the separate the self-contained set of premises used or intended to be used for residence or office, show room or shop or godown or for carrying on any industry or business and (includes the garage) the premises forming part of the building and includes an apartment.

Relying upon the above definition, the learned Counsel for the petitioner submitted that the two inter connected flats are a single unit and cannot be treated as separate flats to levy separate service charges. The learned Counsel has contended that even the Thane Municipal Corporation (TMC) on 3.3.2005 approved amalgamation of these two flats. It is submitted that at the time when the petitioner purchased the flats, the Builder represented to him that the said two flats are to be treated as a single unit. The said flats have only one entrance and one kitchen and no extra facilities are provided to the petitioner. He further submitted that the petitioner and his wife alone are residing in the said flat and merely because the flats are inter connected does not mean that the flats should not be treated as single unit. The service charges, therefore, according to him, should be levied treating the said flat Nos. 405 and 406 as a single unit. He further pointed out that the Provisional Managing Committee had earlier passed a resolution dated 14.9.2003 to collect service charges of inter connected flats as one unit and the Deputy Registrar and Divisional Joint Registrar had confirmed this resolution.

5. The Learned Counsel for the respondent society on the other hand, supported the impugned order.

6. I have considered the rival contentions of the parties and have perused the material on record including the impugned Order. The Appellate Court has referred to Bye-law No. 69(a)(vi) of the Model bye-laws adopted by the Society which provides that the service charges are to be divided equally by "number of flats". The learned Trial Judge has further referred to Section 72 of the Maharashtra Co-Operative Societies Act, 1960, and observed that the final authority is the General Body of the society and the resolution dated 23.5.2004 was passed in the Annual General Body Meeting. It is not in dispute that the agreements in respect of the two flats were separate. It is further not in dispute that there are two electric meters in respect of the two flats. It is noted that when the earlier resolution dt. 14.9.2003 of the Provisional Managing Committee to levy service charges as single unit was passed, the petitioner herein, the then

Chairman and the then Secretary, were having inter connected flats themselves.

7. However, what is significant, is the fact that the modifications/alterations in the flats were made by the Builders at the instance of the petitioner himself. If this is indeed the case, as is evident from the copies of letters on record, addressed by the petitioner to the Builders, the petitioner cannot now be heard to say that the two flats should be treated as a single unit and service charges should be levied as a single unit. It is further noted that the applications to TMC for amalgamation of the two flats were made during the pendency of the dispute and the society has not consented to the same. The fact that the petitioner has managed to get approval of the TMC for amalgamation of two flats in 2005, is not reason enough to take a different view of the matter. Except for the submission by the learned Counsel for the petitioner that the impugned resolution amounts to oppression by the majority members on the minority members, which submission, I am unable to accept, the learned Counsel for the petitioner has not been able to point out any illegality in the said resolution.

8. For the reasons aforementioned, I am of the view that the Appellate Court has rightly set aside the order dated 6.11.2007 passed by the learned Judge of the Co-operative Court at Thane and the impugned Order of the Appellate Court cannot be faulted. There is no illegality or infirmity in the impugned order so as to justify any interference in exercise of the writ jurisdiction of this Court under Article 227 of the Constitution.

9. Consequently, the petition is dismissed. Rule discharged.