

(1985) 11 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 4802 of 1984

Sardar Mohan Singh Ahluwalia since deceased through his heir

APPELLANT

Vs

Maitri Park Co-op. Housing Society Ltd. and Another

RESPONDENT

Date of Decision : 08-11-1985

Acts Referred:

Citation : (1986) 2 BomCR 163

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

Bench : Single Bench

Advocate : V.T. Walwalkar and D.S. Sawant, for the Appellant; Raja, for R. Peerbhoy, for the Respondent

Judgement

S.M. Daud, J.—The short point for determination in this petition is whether a non-member in occupation of an apartment belonging to a Co-operative Housing Society is amenable to the jurisdiction of the authorities constituted under sections 91A and 97 of the Maharashtra Co-operative Societies Act, 1960 hereinafter referred to as the "Act").

2. The question formulated above has to be considered in the following background:---

There was a society registered as a Co-operative Housing Society owning several buildings. The said society had two schemes known as scheme No. 1 at Chembur, Bombay-400 071 and Scheme No. 2 at Chembur, Bombay-400 074. By an order dated August 6, 1970, of the Assistant Registrar, Co-operative Societies, two different societies were created. The first was respondent No. 1 attending to Scheme No. 1, and, the second was a name sake of it with the slight variation of having a "Vijay" in between the first two words of the title. Hereinafter these two societies shall be known as respondent No. 1 and the Vijay society. Respondent No. 1 had constructed several flats and one of them respondent No. 2 was the occupant being a member-allottee from the society. She inducted the petitioner into the premises without the previous written consent of either respondent No.

1 or the parent society. In pursuance of a request made by respondent No. 2 to the first respondent, a dispute was lodged against the petitioner in the Co-operative Court. After the usual hearing, the Co-operative Court passed an order of eviction against the petitioner. The appeal preferred by the petitioner having been unsuccessful, he has now come under Article 227 of the Constitution to this Court.

3. Respondents are unrepresented and a request made by Counsel holding brief on behalf of respondent No. 1's Counsel for an adjournment, has been rejected. Having heard Counsel representing the petitioner, I allow this petition for the reasons given below.

REASONS

4. The petitioner was included without a written consent from respondent No. 1 or the parent society by respondent No. 2. The present proceedings were initiated by respondent No. 1 on a specific request made by respondent No. 2. In the absence of a written permission it cannot strictly be said that respondent No. 1 is bound to recognise the rights of petitioner. I say this because it was pointed out that petitioner is in possession since 1969, and, that respondent No. 1 has recovered not only the service, maintenance and car parking charges, but also what are known as enhanced charges payable by an occupant for having inducted a non-member resident in the apartment constructed by the housing society. The petitioner is not a member of respondent No. 1 or its predecessor. The dispute in the instant case is in reality a dispute between the petitioner and the licensor-respondent No. 2. Therefore, this was not a dispute of which cognisance could be taken u/s 91 of the Act. An authority to this effect is to be found in *Panjumal v. Harpal Singh*, 76 Bom.L.R. 729. More to the point is the decision of another Division Bench reported in the same volume at page 718. In the result, the authorities below were in error in entertaining and adjudicating upon the dispute. The decision given by them being without jurisdiction, has to be quashed. Hence the order.

ORDER

Rule made absolute in terms of petition prayer (a). Parties do bear their own costs.