
(2018) 07 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 3512 Of 1999

Shiv Co-op. Housing Soc.Ltd.

APPELLANT

Vs

Haresh Desai

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Co-operative Societies Act, 1960 — Section 154

Citation : (2018) 07 BOM CK 0087

Hon'ble Judges : R.D. DHANUKA, J

Bench : Single Bench

Advocate : Javed Hussain, U.A. Madane, Pradip Patil

Final Decision : Dismissed

Judgement

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 20th May 1999 passed by the Secretary, Co-operation and Textiles Department, Government of Maharashtra, Mantralaya, Mumbai thereby allowing the revision application filed by the developer. The respondent no.1 developer had impugned the order dated 21st January 1999 passed in favour of the petitioner by the Deputy Registrar, Co-operative Societies, Mumbai.
2. Various agreements for sale were entered into between the various flat purchasers of the petitioner society and the respondent no.1. The building in question was constructed by the respondent no.1.
3. The Deputy Registrar, Co-operative Societies granted registration to the petitioner society on 21st January 1999. The respondent no.1 filed a revision application under Section 154 of the Maharashtra Co-operative Societies Act, 1960 impugning the order dated 10th November 1998 by which

the Divisional Joint Registrar, Co-operative Societies, (Appeals) Mumbai had concluded that there was nothing on record to show that there were two flats on the ground floor. There was a complaint made by the respondent no.1 that in some of the flats in the said building, occupiers had carried out various unauthorised construction and thus the petitioner society shall not be allowed to be registered. The Divisional Joint Registrar however rejected the said proceedings filed by the developers.

4. Being aggrieved by the said order, the respondent no.1 filed a revision application. By an order dated 20th May 1999, the learned Secretary, Co-operation and Textiles Department, Government of Maharashtra allowed the said Revision Application bearing No.RVA2798/C/C.R.266/15-C filed by the respondent no.1 and set aside the order dated 10th November 1998 passed by the Divisional Joint Registrar, Co-operative Societies (Appeals), Mumbai and further directed to take necessary action for de-registration of the society within one month. This order passed by the learned Secretary to the Government of Maharashtra is impugned by the petitioner-society in this petition.

5. By an order dated 2nd September 1999, this Court had admitted this writ petition and granted interim relief. This Court recorded a statement made by the Municipal Corporation that in some of the flats in the said building, there was certain unauthorised works carried out by the flat occupants, however, the same could be regularised. It was stated by the Municipal Corporation that if those unauthorised construction works were not regularised by the Municipal Corporation, the same shall be removed by the concerned parties or by the Municipal Corporation. Learned counsel for the Municipal Corporation is not able to make any statement as to whether those alleged unauthorised construction works were regularised or not.

6. The question that arises for consideration of this Court is whether the registration of the society under the provisions of the Maharashtra Co-operative Societies Act, 1960 could be set aside on the ground of the alleged unauthorised construction works carried out by the flat purchasers in the building or not.

7. Learned counsel for the petitioner invited my attention to the annexures to the writ petition and also placed reliance on the judgment of this Court in the case of Sukhsagar Co-operative Housing Society Ltd. & Anr. Vs. State of

Maharashtra & Ors., 2005 (2) Bom.C.R. 386 and in particular

paragraph 15 thereof in support of his submission that registration of the petitioner society could not have been set aside on the ground that there was alleged unauthorised construction works carried out by the members of the society in their respective flats in the building owned by the petitioner society.

8. Learned counsel for the Municipal Corporation states that various members of the petitioner have carried out unauthorised construction and supported the finding recorded in the impugned order. Learned AGP states that findings rendered by the learned revisional authority are proper and does not warrant any interference by this Court.

9. A perusal of the impugned order indicates that it was the case of the respondent no.1 that some of the members of the petitioner society had carried out unauthorised alternations and on that ground, the developer had objected to the registration of the society. The Divisional Joint Registrar in appeal filed by the society had rejected the contentions raised by the developer and registered the petitioner society.

10. A perusal of the impugned order dated 20th May 1999 indicates that the revisional authority allowed the revision application filed by the developer on the ground that some of the members of the petitioners had carried out unauthorised construction works and if the society is registered, it would amount to sanction of such unauthorised and illegal construction works. This Court in the case of Sukhsagar Cooperative Housing Society Ltd. & Anr.

Vs. State of Maharashtra & Ors. (supra) has dealt with similar issue and has held that registration of society does not impinge upon the statutory powers of the Municipal Corporation to determine whether an occupation certificate should be granted or not. It is held that the formation of the society cannot be thwarted on that ground. This Court has set aside the order passed by the revisional authority who has set aside the certificate of the registration on the ground that the Municipal Corporation had not granted occupation certificate. This Court has held that it would be open to the Competent Authority to take such steps as are necessary in accordance with law to deal with such an infraction. In my view, the principles of law laid down by this Court in the case of Sukhsagar Co-operative Housing Society Ltd. & Anr. Vs. State of Maharashtra & Ors. (supra) would squarely

apply to the facts of this case.

11. In my view, registration of society granted under the provisions of the Maharashtra Co-operative Societies Act, 1960 cannot be set aside on the ground that there were unauthorised construction works carried out by few members of the petitioner society in the flats constructed in the building owned by the society. The alleged unauthorised construction works carried out by few members of the society cannot be considered for the purpose of granting, refusing or for cancelling the registration of the society. If any unauthorised construction works are carried out by members of any society or by the society itself, the Municipal Corporation is empowered to take appropriate action against such unauthorised construction works under the provisions of the Mumbai Municipal Corporation Act, 1888. Such inaction on the part of the Municipal Corporation cannot be a ground for setting aside the order of registration of the society. In my view, the impugned order passed by the learned Secretary to the Government of Maharashtra on 20th May 1999 is not only perverse but also contrary to the provisions of the Maharashtra Co-operative Societies Act, 1960 and also to the provisions of the Mumbai Municipal Corporation Act, 1888.

12. I therefore pass the following order :-

(i) The impugned order dated 20th May 1999 passed by the learned Secretary, Co-operation and Textiles Department, Government of Maharashtra,

Mantralaya, Mumbai allowing the revision application filed by the respondent no.1 is quashed and set aside.

(ii) Revision Application bearing No.RVA-2798/C/C.R.266/15-C filed by the respondent no.1 developer is dismissed.

(iii) Rule is made absolute in aforesaid terms. There shall be no order as to costs.Â