

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 12468 OF 2022

Karan Vishnu Khandelwal }
Flat No. 5, Omdham Cooperative Housing }
Society Ltd., Lallubhai Park, }
Andheri (West), Mumbai - 400 058 }....Petitioner

Versus

1. Honourable Chairman / Secretary }
Vaikunth (Andheri) Cooperative Housing }
Society Ltd., 42, Lallubhai Park, }
Andheri (West), Mumbai - 400 058 }
2. Rajendra M. Khandelwal }
Age 69 years, Occ. Business }
having address at 201, Windermere, }
North Avenue, Santacruz (West), }
Mumbai - 400 054 }
3. The Deputy Registrar }
Cooperative Societies, K/West Division, }

Mumbai Housing Building, Ground Floor}

Room No. 69A, Bandra (East), }

Mumbai - 400 051 }...Respondents

Mr. Simil Purohit a/w. Mr. Vishal Pattabiraman a/w. Mr. Jayesh Mestry for Petitioner

Ms. Kausar Banatwala a/w. Ms. Neuty N. Thakkar i/b. Mr. Tushar Goradia for Respondent No.2

Mr. Sanjay D. Rayrikar, AGP for Respondent/State

CORAM: SANDEEP K. SHINDE,J.

RESERVED: 20TH OCTOBER, 2022

PRONOUNCED ON: 09TH NOVEMBER, 2022.

J U D G M E N T:

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing forthwith.

2. This petition under Article 227 of the constitution of India takes exception to order passed in revision by the Revisional Joint Registrar Co-operative Societies, Mumbai Division Mumbai, by which the revision application filed by the Petitioner was dismissed

by confirming the order dated 8th February, 2021 passed by the Deputy Registrar Cooperative Societies under Section 23 (2) of the Maharashtra Cooperative Societies Act, 1960.

In brief facts of the case are as under:

2. Mr. Mannalal Surajmal Khandelwal (deceased) was owner of a flat no.1 and by virtue thereof, was entitled to share certificate No. 7 bearing share distinctive numbers 37-35 issued by the Vaikuntha (Andheri) Co-operative Housing Society Ltd. ('Society' for short). The deceased during his lifetime registered a nomination in the name of Petitioner- his grandson. The nomination was acknowledged by the managing committee of the society in its' meeting held on 14th March, 2004 and made an entry in the nomination register. Mr. Mannalal Khandelwal died intestate on 20th January, 2011, leaving behind, Rajendra Mannalal Khandelwal (Son- Respondent No.2); Krishnakumar Mannalal Khandelwal (Son); and Petitioner- son of Vishnu Mannalal Khandelwal (predeceased son of deceased).

3. That upon demise of Mannalal Surajmal Khandelwal,

Respondent No.2 - Rajendra M. Khandelwal, made an application to the society, inter alia, seeking transfer of membership and the share certificate in his name. Along with the application, he submitted a 'No Objection cum Declaration' and indemnity bond made and executed by Krishnakumar Mannalal Khandelwal. This way, the Respondent No.2 claimed 2/3rd share and interest in the flat and sought transfer of proportionate interest in flat and claimed membership. The application was rejected by the society on 8th August, 2018. Whereafter, the Respondent No.2 preferred an appeal under section 23 (2) of the Maharashtra Societies Act ('MCS Act' for short), being Appeal No. 09 of 2019 before the Deputy Registrar. The Petitioner sought intervention in the said appeal. The Intervention was allowed. The Deputy Registrar vide order dated 8th February, 2021 allowed the appeal and held that since the Respondent No.2 has acquired 2/3rd right in flat No.1, to that extent, his interest be noted in the society record. In consequence, the Deputy Registrar acknowledged 2/3rd undivided right of the Respondent No.2 and 1/3rd undivided right of the Petitioner in the flat No.1 and directed

to make entry in the society records. In revision, the Divisional Joint Registrar, upheld the order of Deputy Registrar and dismissed the revision application of the Petitioner. Feeling aggrieved by that order, the Petitioner has filed this petition.

4. Heard learned counsel for the Petitioner, the Respondent No.2 and learned AGP for the State.

5. Mr. Simil Purohit, Learned Counsel for the Petitioner submitted that Revision application has been decided without affording opportunity of being heard to the Petitioner. To fortify this submission, Mr. Purohit has taken me to the Roznama of the proceedings of the Revision application maintained by the Divisional Joint Registrar. Wherefrom it appears, the Revision application was listed for hearing on 13th June, 2022; however, board was discharged, as the authority was on leave. Accordingly, hearing was adjourned to 27th September, 2022. On 14th June, 2022, Advocate on behalf of Respondent No.2 intimated the petitioner to remain present before the Divisional Joint Registrar on 21st June, 2022, as he would apply for the urgent relief in the said revision. Accordingly, the

Petitioner was present before the Divisional Joint Registrar on 21st June, 2022, but none had appeared on behalf of the Respondent No.2. Therefore, hearing was adjourned to 27th September, 2022. However, it appears from the Roznama that the Divisional Joint Registrar heard the matter on 4th of July, 2022, in absence of Petitioner and closed the case for final order with liberty to file written statement within two weeks. On the same day, i.e. 4th July, 2022, a letter was addressed by the Divisional Joint Registrar to the Petitioner intimating that the revision was heard on 4th of July, 2022 in his absence and further informed that he may file his reply or written arguments in support of the revision application. Whereafter, the Petitioner filed an application on 23rd July, 2022 and requested Divisional Joint Registrar to recall the order dated 4th July, 2022, by which the case was closed for passing final order and afford hearing to him. It appears, the Divisional Joint Registrar did not consider Petitioners' request and proceeded to pass order on 24th August, 2022, by which the order of the Deputy Registrar was confirmed and as a result, the revision was dismissed.

5. In consideration of the facts noted above, I have no hesitation to note that the Divisional Joint Registrar passed the impugned order in haste may be at the behest of the respondent No.2. Therefore, impugned order not only suffers from gross irregularity being passed in breach of principles of natural justice but also against the law, for the reasons, stated hereinafter and therefore, deserves to be quashed and set aside.

REASONS:

6. The Hon'ble Apex Court in the case of Indrani Wahi Vs. Registrar of Cooperative Societies (Civil Appeal 4930/2006), held that the cooperative society was bound by nomination made by the deceased and it was bound to transfer the shares to the nominee. However, clarified that, it is open to other members of the family to pursue their case of succession or inheritance, in consonance with law. As such, held though, the Cooperative Society is bound by a valid nomination; however, it does not mean that nominee becomes owner of the property, but that he holds the property in trust for the legal heirs. As such, legal heirs of the deceased can always approach

appropriate Court to stake their claim to their share of the deceased property including the flat. Once they obtain the relevant order from the Court, the society is bound to transfer the flat/ shares in their name.

7. The Maharashtra Cooperative Societies Act, 1960 earlier provided under Section 30, that society shall transfer the share or interest of the deceased member to a person nominated in accordance with the rules or if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member. However, provisions of this section shall not apply to the Housing Societies w.e.f. 9th March, 2019, in view of Section 154-B(2) of Maharashtra Cooperative Societies (Amendment) Act, 2019. In any event, by Maharashtra Cooperative Societies (Amendment)Act, 2019 Section 154-13 came to be inserted under Chapter XXIII-B with effect from 9th March, 2019. It reads under:

"154-13. On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a

person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with the rules:

Provided that, society shall admit nominee as a provisional Member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member:

Provided further that, if no person has been so nominated, society shall admit such person as provisional member as may appear to the committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed."

Thus as of now in terms of Section 154B-13, as inserted w.e.f. 9th March, 2019, society is empowered to transfer share, right, title and interest of the deceased member in the society to a person, on the basis of (i) testamentary documents or (ii) succession certificate or

(iii) legal heir-ship certificate or (iv) document of family arrangement executed by persons, who are entitled to inherit the property of deceased member or (v) to a person duly nominated in accordance with the Rules. However, the first proviso appended thereto, clarifies that a nominee shall be admitted, only as a provisional member, within the meaning of Section 154B -1 (18) (c) of the MCS Act till legal heir or heirs or a person entitled to the flat and shares in accordance with Succession Law or under Will or testamentary document or admitted as member in place of such deceased member.

8. In the case at hand, Petitioner is a person duly nominated in accordance with Rules. The nomination was duly acknowledged by the society and recorded in the register. In that view of the matter, the society shall admit the petitioner as a provisional member of the society in terms of Clause (c) of Section 154-B-1 (18) of the MCS Act, as amended and may call upon the Respondent No.2 to produce succession certificate or a legal heir-ship certificate or testamentary document as the case may, be for

claiming the right in the flat and membership of the deceased but till then the Petitioner shall be a provisional member of the Society.

7. In consideration of facts above, the impugned order dated 21st August, 2022 passed by the Divisional Joint Registrar Cooperative Societies, Mumbai Division, Mumbai in Revisional Application No. 09 of is quashed and set aside. Rule made absolute and petition is disposed of in the above terms.

(SANDEEP K. SHINDE, J.)