Sneh Sadan Co-op. Hsg. Soc. Ltd. Vs State of Maharashtra and Others

Court: Bombay High Court

Date of Decision: April 7, 2004

Citation: AIR 2004 Bom 315

Hon'ble Judges: F.I. Rebello, J

Bench: Single Bench

Advocate: A. Bookwala, for the Appellant; Y.D. Mulani, A.G.P. for Respondents Nos. 1 to 3, A.R. Pande, for Respondent Nos. 4 and 5 and R.R. Bhosale, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

F.I. Rebello, J.
By the present petition, the petitioner impugns the order of the Revisional Authority dated 26-5-2003 passed in Revision

Application No. 244 of 2003. By the said order, the Revisional Authority reversed the order of the Appellate Authority dated 20-3-2002 which

had rejected the appeal preferred by Respondent Nos. 4 and 5. The relevant law is the provisions of the Maharashtra Co-operative Societies Act

as also the certified by-laws of the Petitioner Society.

2. An appeal was preferred by Respondent Nos. 4 and 5 as petitioner herein by letter dated 20-9-2001 addressed to the Advocate for the said

Respondents had rejected their application for membership. It was the case of the said Respondents that they had applied for membership by letter

dated 22-3-2001. Along with letter they had submitted the necessary documents. The letter contains several grounds as to why membership of the

said respondents has been rejected. Aggrieved by the same. Respondent Nos. 4 and 5 preferred the appeal. The Appellate authority dismissed the

appeal, against which the Respondent preferred a revision application.

3. The revisional authority while reversing the order of the appellate authority held that the Respondent No. 6 vide letters dated 25-9-1999 and

12-1-2001 had informed the society of her intention to sell the flat in dispute including the car parking space and that the Respondents society did

not send its reply to the same. The Revisional Authority held that the Respondent No. 2 was in possession and enjoyment of Flat No. 41 and open parking space allotted to the said flat, which she sold to Respondent Nos. 4 and 5 before this Court and that the inclusion of the parking space in

the agreement does not necessarily become a justifying ground for rejection of the membership of applicant. The Revisional Authority also noted

that because of filing of criminal complaint against Mr. K.G. Agarwal who is Hon. Secretary of the Society was bent upon to reject the

membership of applicant. The Revisional Authority also held that the Petitioner Society herein had failed to produce any supporting documentary

evidence that the applicants are engaged in illegal business/profession and further that the said respondents (Respondent Nos. 4 and 5) were ready

and willing to comply with the deficiencies. It was also noted that the society had also requested the Social Services Branch, Crime Branch

Crawford Market & Colaba Police Station to enquire about Respondent Nos. 4 and 5 but had failed to produce any negative remarks from the

authority. In these, circumstances, the Revisional Authority held that the petitioner society and its managing committee has wrongly with a view to

harass the applicants rejected their membership and accordingly set aside the order of the Appellate Authority and directed the Petitioner society

to admit Respondent Nos. 4 and 5 as its members in terms set out in the order. That order is dated 26-5-2003. The order of this Court dated 18-

8-2003 shows that the status quo was ordered till further orders.

4. At the hearing of this petition, on behalf of the petitioner society, their learned counsel has formulated the grounds of challenge as under :

(a) that no N.O.C. was taken from the Petitioner Society before the sale of the fiat.

(b) the documents filed for membership were incomplete;

(c) The car parking space could not have been transferred as it does not belong to the erstwhile member; and

(d) Respondent Nos. 4 and 5 were undesirable persons.

(e) It was also pointed out that the Revisional Authority had misread the evidence, it is pointed out that the complaint filed to the Respondent Nos.

4 and 5 against Agarwal, the Secretary of the society was much after the membership was rejected.

In spite of that the Revisional Authority has held that the membership was rejected because of the complaint.

5. In support of the contentions, learned counsel has drawn my attention to the agreement entered into between Respondent Nos. 4 and 5 on the

one hand and Respondent No. 6 on the other, wherein in the recital it is mentioned that the transfer will be subject to the transferor obtaining

N.O.C. of the society for the transfer of the flat. My attention is then invited to the bye-laws of the society more specifically bye-laws 6(1), (8) and

(51). Reliance is also placed on the judgment of a Division Bench of this Court in the case of President, N.P.S.S.S. Co-op. Credit Society v. R.

D. Umalkar, AIR 1987 Bom 319 (sic) to point out that ultimately it is for the general body to declare with whom they will deal and who should be

associated with it if the principle of co-operation is to bear fruitful results to the advantage of the majority of the members and for this purpose It is

well within the jurisdiction of the General Body of the society to take into consideration the antecedents of the person applying for membership of

the society.

6. My attention is also invited to the provisions of the Maharashtra Co-op. Societies Act to point out that the decision of the General Body would

be binding on all members.

7. On the other hand, on behalf of the contesting respondent Nos. 4 and 5 their learned counsel contends that factually respondent No. 6 had

sought permission to sell the flat which can be evidenced by the reply filed by the petitioners herein before the Deputy Registrar, Co-operative

Societies at Paragraphs 2 and 3. In paragraph 2 it is mentioned that the respondent No. 6 vide letter dated 5-9-1999 had informed the society that

she wished to sell the flat and parking space as set out therein. Similarly in Paragraph 3 it is set out that the respondent No. 6 herein had informed

the petitioners her intention to sell the flat vide letter dated 25-3-2001. No reply was given to the said letters by the Petitioner Society. It is

therefore, contended that it is factually incorrect to contend that respondent No. 6 did not apply for N.O.C. In so far as documents are concerned,

it is set out that after the objection was raised that the documents were not complete before the Appellate Authority by the lawyers letter of 16-4-

2002 all the documents required were duly forwarded to the petitioners. Even otherwise, respondent Nos. 4 and 5 it is get out were always

agreeable and are agreeable to corn-ply with all requirements which are in conformity with the bye-laws of the society and the provisions of the

Maharashtra Co-operative Societies Act. In so far as car parking space is concerned, it is contended that like other members respondent No. 6

was also allotted car parking space which has been transferred to respondent Nos. 4 and 5 who had purchased the flat. In so far as respondent

Nos. 4 and 5 being undesirable persons it is submitted that no material has been placed on record and on the contrary it is contended that the

Secretary of the petitioner society has grievance against respondent Nos. 4 and 5. Counsel states that an affidavit has been filed dated 9-2-2004,

setting out the various incidents. As the same was not found on record, a copy of the affidavit has been made available to this Court and is taken

on record.

8. On behalf of the respondent Nos. 1, 2 and 3 the learned A.G.P. points out that new model bye-laws have been framed. Under bye-law 38(d)

there is no requirement that a no objection certificate is required from the society for transferring the share and interest of the transferor to the

transferee.

9. Having heard learned counsel, the question is whether the order of the Revisional Authority suffers from any error apparent on the face of

record or there has been failure to exercise jurisdiction or is a case of excess of Jurisdiction which would warrant interference by this Court in the

exercise of its extraordinary jurisdiction.

10. In so far as issue of N.O.C. is concerned, the learned counsel was asked to point out any provision in the certified bye-laws of the Society as

existing, which requires that a member before selling the flat should obtain N.O.C. or a purchaser from a member should do so. My attention was

Invited to bye-law No. 8 which reads as under :

Every application for admission must be made in writing and signed by the applicant and shall be considered by the Committee at its first meeting

after the application is received or so soon thereafter as is practicable.

11. A reading of the bye-law therefore, would show that there is no prior requirement of obtaining N.O.C. for sale. The only requirement is

applying for membership. All that bye-law 8 therefore states is that the application for admission must be in writing and signed by the applicant and

has to be considered by the committee. Even otherwise apart from a reading of this bye-law respondent No. 6, has intimated to the petitioner her

intention to dispose of the flat on two occasions by two letters which are referred to in the reply filed by the petitioner before the Appellate

Authority, The petitioner did not react to the same. The first contention therefore, is devoid of any merit and the same is accordingly rejected.

Apart from that as pointed out by the learned A.G.P. The new model bye laws do not provide for requirement of any N.O.C. Till the date society

has not amended the bye-laws to bring them in conformity with the model bye laws. The membership was rejected after the model bye-laws had

been notified. At any rate no provision has been shown by the petitioner in the bye-laws as existing of obtaining any N.O.C. before transfer of a

flat.

12. In so far as the second contention is concerned, that the documents supplied were incomplete, Respondents have produced letter of 16-4-

2002 showing that subsequently they have forwarded all the requisite documents properly signed. The order of the Revisional Authority also record and notes that respondent Nos. 4 and 5 herein are ever ready and willing to comply with deficiencies pointed out by the petitioner society.

The membership could not have been rejected on that count. The respondent Nos. 4 and 5 could have been called upon to complete the

necessary formalities. That was not done. After the objection before the Appellate Authority, those deficiencies were also removed. Nothing has

been pointed out that any deficiency still subsists. Even if it subsists the respondents have agreed to comply with the necessary requirements.

13. The third contention is regarding transfer of the car parking space. Assuming that there is some dispute between the society on the one hand

and respondent No. 6 and respondent Nos. 4 and 5 on the other as to whether the garage can be transferred that by itself could not be a ground

for rejecting membership. The rights of any member will have to be similar to any other members who has been allotted a parking place and

whatever rights such other members are entitled to, the respondent Nos. 4 and 5 will also be entitled to in similar line. At any rate, if there be a

dispute it will be open to the parties to agitate the dispute before any appropriate forum which can decide the said issue. There is no dispute about

the flat. Membership is based on owning a flat in the society. By admitting respondent Nos. 4 and 5 to membership, does not mean that the society

acquiesces in the transfer of the garage. Membership would be based on having a flat in the society. Respondent Nos. 4 and 5 have a flat.

14. Coming to the other issue namely that respondent Nos. 4 and 5 are undesirable persons, it is no doubt true that it will be open to the Managing

Committee or General Body to consider as to whether the persons applying for membership are fit persons to be admitted as members considering

over all circumstances. But that must be based on material and not whims and fancies. It appears that there are disputes between the Secretary of

the Society and Respondent Nos. 4 and 5 as reflected in the affidavit filed by respondent No. 4 before this Court. It is however, not necessary for

this Court to go into that aspect or that affidavit. Suffice it to say that the Revisional Authority itself noted that no material was placed which will

support the contention as raised by the petitioner society. Once that be a finding and that finding is based on material before the Court, will not be

possible for this Court to exercise its extraordinary jurisdiction. Even at this stage, no material has been placed before this Court to show that in

fact respondent Nos. 4 and 5 are undesirable persons. This contention of the petitioner must also be rejected.

15. Lastly it was contended that considering the order of the appellate Court and the facts that many of the points urged had not been answered,

the matter ought to be remanded back to the appellate Court. I am not impressed. All points were open to the parties in revision. Parties have raised their contentions before the authority. The Revisional Authority has considered the said contentions and has dealt with them. It is true that

the Revisional Authority did hold that because of the complaint filed by respondent Nos. 4 and 5, against the society, the membership was

rejected. It is correct that the membership was rejected before the complaint was filed. There is therefore justification in the contention of the

petitioner on that count. That however, is not material. There is no material on record that respondent Nos. 4 and 5 are undesirable persons.

Considering above, no interference is called for.

16. In the light of the above, petition dismissed. No order as to costs.

17. The learned counsel for the petitioner prays that the Interim order passed by this Court be continued. In my opinion this is not a fit case to

continue interim relief considering the order of this Court. Hence, prayer rejected.