



Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7125 OF 2019

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Vinayak Ashish Cooperative Housing
Society Ltd.

... Petitioner

V/s.

Poonam Nitesh Raikundaliya & Ors.

... Respondents

WITH
WRIT PETITION NO.7202 OF 2019

Vinayak Ashish Cooperative Housing
Society Ltd.

... Petitioner

V/s.

Laxmikant Hirji Raikundaliya & Ors.

... Respondents

Mr. Hemant Ghadigaonkar i/b Mr. Sampatrao Pawar,
for the Petitioner.

Ms. Triveni Jani i/b Mr. Vikas S. Thakkar, for the
Respondent Nos. 1 & 2.

Mr. P. V. Nelson Rajan, AGP, for the State – Respondent
Nos. 3 & 4 in WP/7125/2019.

Dr. Dhruti Kapadia, AGP, for the State – Respondent
Nos. 3 & 4 in WP/7202/2019.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 4, 2026

JUDGMENT:

1. Both the present petitions arise from proceedings initiated under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as “the MCS Act”. Since the

controversy in both matters emanates from a common questions concerning refusal of membership by the society, they are being considered together for the purpose of adjudication.

2. The material facts are largely undisputed. Respondent No.1 purchased Flat Nos. 701 and 702 on 31 December 2009. Thereafter, on 4 August 2016, respondent Nos.1 and 2 submitted an application to the petitioner-society seeking admission as members. The application was accompanied by the requisite documents and prescribed charges. The society, by its communication dated 10 October 2016, rejected the said application. Respondent Nos.1 and 2 thereafter submitted a fresh application on 7 January 2017. This second application also came to be rejected by order dated 11 March 2017. Aggrieved by the rejection dated 11 March 2017, respondent Nos.1 and 2 preferred an appeal on 1 July 2017 before the competent authority under the MCS Act. By the impugned orders passed in the said proceedings, the authorities directed the petitioner-society to admit respondent Nos.1 and 2 to membership. The society, being dissatisfied with the said direction, has invoked the writ jurisdiction of this Court.

3. Learned Advocate appearing for the petitioner-society submits that the developer has undertaken construction in respect of a portion of the flats in deviation of the sanctioned plan, which according to the society amounts to illegal construction. In that context, the society had instituted Suit No. 2763 of 2008 against the developer. It is pointed out that by judgment and order dated 31 July 2018, the Civil Court recorded a finding that the

construction in question was illegal. An appeal preferred by the developer against the said judgment is stated to be pending. On this basis, it is urged that the question of membership cannot be examined in isolation from the alleged illegality attached to the construction.

4. It is further contended that respondent Nos.1 and 2 did not challenge the initial order dated 10 October 2016 rejecting their first application for membership. Instead, they sought to assail the subsequent rejection and moved an application for condonation of delay. According to the petitioner, the application for condonation of delay was tendered at the stage when the appeal under Section 23(2) was heard finally. It is urged that both the appeal and the application for condonation of delay were decided simultaneously by the impugned order. This course of action, according to the society, has resulted in procedural prejudice, as the society did not have adequate opportunity to contest the aspect of limitation independently.

5. It is also submitted on behalf of the petitioner that, prior to the submission of the application for membership, certain dues payable to the society remained outstanding. The contention is that unless all arrears are cleared, no applicant can claim admission as a matter of right. On this premise, it is urged that respondent Nos.1 and 2 were disentitled to seek membership in view of the alleged non-payment of society dues.

6. In reply, learned Advocate appearing for respondent Nos.1 and 2 submits that it is not the case of the petitioner that any

illegal construction was carried out by respondent Nos.1 and 2 themselves. According to the respondents, as well as the developer, the construction was undertaken strictly in accordance with the sanctioned building plan. It is further contended that proceedings relating to admission of membership stand on a different footing and the strict principles ordinarily governing condonation of delay in adversarial civil proceedings cannot be applied with rigidity in such matters. It is submitted that the appeal and the application for condonation of delay were decided together and that no prejudice has in fact been caused to the society. Learned Advocate has also placed on record receipts issued by the petitioner-society to demonstrate that maintenance charges have been paid up to date. On these grounds, dismissal of the writ petition is sought.

Analysis and reasons:

7. The society relies on the Civil Court's order that found part of the construction illegal. That finding relates to the developer and to the legality of construction as between private parties. This Court must examine whether that finding operates as a bar to admitting the owner of the flats as a member of the society. The record does not show that the respondents themselves carried out the illegal construction or that they caused or sanctioned it. Ownership of the flat, coupled with compliance with society rules for admission, is the fundamental basis for membership. Where an adverse finding relates to the developer and not to the purported member, the society must show a specific rule or by-law that forbids admission on that ground alone. The society produced no by-law or clear legal provision that automatically disqualifies the

purchaser because the developer's work is said to be illegal. A civil finding against a developer may be relevant to rights and remedies against that developer. It does not ipso facto strip a purchaser of the right to seek membership, unless the purchaser is shown to be personally at fault or the society's by-laws unambiguously impose such a bar. The society has not discharged that burden.

8. The society objects that the initial rejection dated 10 October 2016 was not directly challenged while the later order and an application for condonation were taken up. The society contends deciding the appeal together with the condonation application prejudiced it.

9. The right to appeal under Section 23(2) is a statutory right given to an aggrieved party. Courts and authorities routinely consider condonation where delay arises. The power to condone is not a power to ignore legal requirements; it is a power to prevent injustice where delay lacks satisfactory explanation and the other side suffers no real prejudice. Second, the society must show real and specific prejudice caused by the appellate authority's procedural choice. General complaints of procedural inconvenience are not enough. The society has not shown that it was denied a fair hearing on the merits. The society had opportunity to place material before the authority. The record does not disclose that material facts were withheld or that the society was prevented from making submissions on limitation or the merits. Where both the appeal and condonation are heard together, a court or authority must still consider each aspect separately. The impugned order records consideration of delay and

consideration of merits. No perversity or illegality appears in that reasoning. The society's contention that simultaneous decision produced procedural prejudice remains unsubstantiated.

10. The society contends that the respondents had unpaid dues prior to their application and therefore had no right to membership. The respondents produced receipts issued by the society purporting to show maintenance charges paid up to date. The burden lay on the society to show outstanding dues at the relevant time. The society did not place clear ledger entries or other probative material before this Court to demonstrate arrears at the time of application. Receipts from the society itself are prima facie reliable evidence that maintenance charges stood paid. In the absence of cogent material to the contrary, the society cannot rely on bare assertion of arrears to deny membership. If after admission the society proves that sums were outstanding, the society has remedies under the Act and under rules to recover them. Denial of membership on the basis of asserted but unproven arrears is not sustainable.

11. Admission to a co-operative society is right connected with ownership and with payment of requisite charges. An authority exercising powers under Section 23(2) must ensure fair play between the society and the applicant. The record before this Court discloses that the respondents applied with documents and charges. The society rejected the applications twice and then challenged the appellate direction now impugned. The society has not shown that the appellate authority acted without jurisdiction, or that the authority's findings were perverse, or that a grave

illegality infected the order. The Civil Court's finding against the developer does not substitute for a finding against the respondents. The society has avenues to pursue developer liability. It cannot, on that basis alone, indefinitely refuse membership to an owner who otherwise meets the admission requirements.

12. The petitioner-society bore the burden to show that the appellate order was illegal, arbitrary, or perverse. This Court's role in a writ petition is not to re-appraise evidence afresh where the decision of the authority rests on bona fide evaluation of facts and law. The appellate authority found that the respondents were entitled to membership. The society has not established any error of law or material illegality that would justify interference. There is no demonstration that the authority ignored material evidence or failed to apply relevant principles.

13. Accordingly, the petitions are dismissed.

14. No order as to costs.

(AMIT BORKAR, J.)