In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. S. K. Tonpe, Judge)

Dispute No. CCT 22/2023
CNR No. MHCO04-000022-2023

Mr. Ankit Ashok More and others Disputants

V/S

Ragho Aaba CHS Ltd.
Through its chairman/secretary Opponent

Order
(Below application Exh. 5)

1. The disputants have filed present application for the interim relief as prayed in the present application. The disputants stated that they have filed present dispute against opponent society for seeking relief prayed in the dispute. Disputants are the member of the opponent society. The opponent society consist of 3 wing building i.e. A wing, B wing and C wing. A wing building consist of 1RK admeasuring area 370 sq. ft., 1BHK admeasuring area 449 sq. ft. and 2BHK admeasuring area 565 sq. ft., 3BHK amdeasuring area 1080 sq. ft. and 835 sq. ft., B wing building consists of 1RK admeasuring area 365 and 1BHK admeasuring area 505 and C wing consist of 1RK admeasuring area 370 sq. ft., 1BHK admeasuring area 500 sq. ft. All 3 building are G+4 and A wing and C wing building have 5 flat on each floor and B wing have 4 flat on each floor. Hence property tax of B wing is less from A wing and C wing. Property tax charge by authority as per the area of the flats. Opponent is the registered society under MCS Act 1960 and the said society is registered in the year 2013. The occupation certificate of B wing was received prior to 2013 and occupation certificate for A wing and C wing was received in the year 2019. Therefore the flat was sold in the

A wing and C wing was cheaper than market rate of that particular time. As per the bye-laws of the housing societies and MCS Act 1960 the opponent must administer society as per the provisions of law, rules and bye-laws of Co-operative Housing Society. As per the bye-laws opponent society must collect property tax as per the area of flat from their members.

2. The disputant further stated that he had purchased the flat number B/203 from one Mr. Tukaram Patil (Landlord and Developers) in the year 2018 who was also bonafide member of opponent society. The opponent prior to purchase the said flat had issued “no dues certificate” in favour of my predecessor as well as issued “no objection certificate” dated 30/08/2018 for purchase of his flat. On the basis of “no dues certificate” and “no objection certificate” dated 30/08/2018 the disputant had executed agreement for sale dated 21/08/2018 which was duly registered with Joint Sub-Registrar, Kalyan-3. Since the purchase of the said flat till date I had paid all his maintenance charges time to time regularly and punctually and opponent society never issued any demand notice or notice for recovery of any amount from disputants. The Kalyan Dombivli Municipal Corporation had issued attachment warrant dated 22/02/2021 against A and C wing building for non payment of property tax to authority.

3. The disputant further stated that the said outstanding is only of A wing and C wing building not for B wing building where disputants flat exist. Due to not obtaining occupation certificate by developer for A wing and C wing, property tax bills were not raised by authority and therefore flat cost is cheaper in the A wing and C wing building compare to market rate at that time and B wing flat was costly compare to A and C wing flat. After receiving attachment notice for A wing and C wing building, opponent society had suddenly imposed arrears of property tax of A and C wing on B wing members which is unjustified, illegal and contrary to the provisions of the law as well as bye-laws of the society. Hence members of B wing had submitted letter dated 07/11/2021 and refuse to accept opponent's decisions and deny to pay any contribution towards Shashti and penalty charges of A and C wing as the purchasers of said wing were well known the flats in the building were have without OC and purchase the said flat on very meagre cost as compared to market cost of B wing flats at that time. Opponent had called special general meeting dated 20/02/2022 wherein it was decided by majority the outstanding and penalty of property tax of A and C wing building distributed on all members of 3 wing society and said amount included in monthly maintenance amount and if members were not paid then interest on the said amount will be charged. The member of A and C wing building are majority and B wing building are in minor and less area occupying than A wing and C wing members and further note that the managing committee of opponent society also represented majority members of A wing and C wing society.

4. The disputant further stated that in special general body meeting dated 20/02/2022 also decided the recovery proceeding should be cancel against builder and developer and decision was reversed taken in the meeting dated 25/07/2021 to initiate recovery proceeding of the said property tax against builder and landowner for not paying. As per the said resolution opponent had issued notice dated 20/02/2022 in favour of the disputant and directed the disputant to pay Rs. 61,663/- towards property tax, shashti and penalty amount to KDMC due for his flat. The disputant objected the notice dated 20/02/2022 vide letter dated 23/03/2022 and also informed opponent that property tax arrears imposed by KDMC is prior to 2018 and also the said arrears for A and C wing building. Hence disputant is not liable to pay said property tax. The opponent had replied to the letter dated 23/03/2022 vide their letter dated 28/03/2022 wherein they had admitted the property tax was pending since registration of the society and the said property tax pending for A and C wing building. The opponent further agreed the said amount was not paid by developer/builder as they had not obtained occupation certificate for A and C wings buildings and also informed that he is liable to pay vicarious liability of flat purchasers. The disputant has also submitted letter dated 31/03/2022 to Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane for enquiry about property tax and penalty amount imposed on the disputant and requested them to look into the matter. The Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane had directed opponent society vide their letter 20/04/2022 to submit their written explanation within 8 days to the office regarding the complaint of disputants. The disputant had also informed to opponent society to correct maintenance bill of May 2022 vide letter dated 11/05/2022 and also requested them to not charge any interest on arrears of property tax as matter was subjudice with Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane.

5. The disputant further stated that he also informed to Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane vide letter dated 11/05/2022 and requested to grant stay on imposing interest and the arrears amount of property tax in monthly bills. The Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane had once again directed opponent society vide their letter dated 25/05/2022 to submit their written explanation within 8 days to the office regarding the complaint of disputants dated 31/03/2022. The disputant had also submitted letter dated 16/06/2022 to Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane and requested them to look into the matter. Pursuant to the letter dated 20/04/2022 and 25/05/2022 the opponent society had submitted their reply vide letter dated 17/06/2022. However in the said reply the opponent society had not disclosed true facts to the Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane as well as they had failed to clarify how the disputant is liable for the amount imposed on him for that period when he was not either owner or occupant of the said flat. The predecessor of the disputant's flat still residing and owned flat in the said society. Pursuant to the letter submitted by opponent society dated 17/06/2022, the Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane had informed the disputant vide their letter dated 29/06/2022 that they had disposed the complaint. The disputant had also sought information vide letter dated 24/08/2022 regarding property tax and other documents which are as follows : (i) Letter/notice of KDMC regarding property tax (A, B and C wings), (ii) minutes /resolution of AGM wherein property tax distributed on every member, (iii) Summary of each members maintenance for the period which arrears of property tax, (iv) Summary of property tax imposed on each member, (v) Period of outstanding arrears of property tax, (vi) Receipt of (A, B and C wings) property tax paid.

6. The disputant further stated that as a member he has every right to take inspection and documents should be supplied by the society. Opponent society had denied to supply the said documents mention hereinabove and also denied to rectify maintenance bill vide their letter dated 11/09/2022. Upon the denial of opponent society the disputant had informed to Deputy Registrar of Co-operative Society Dombivali Taluka Kalyan District Thane vide letter dated 27/09/2022 and requested them to make available the papers from opponent society. The Deputy Registrar of Co-operative Society Dombivli Taluka Kalyan District Thane has directed to opponent society vide their letter dated 12/10/2022 to provide the documents demanded by the disputant in letter dated 27/09/2022 as per byelaw no. 171. The disputant had once again informed to opponent society to provide the documents mentioned in his letter dated 24/08/2022 vide his letter dated 28/10/2022. The disputant had also issued notice to opponent society through his advocate notice dated 12/10/2022 under section 164 of the MCS Act 1960. In reply to the said notice opponent through their advocate letter dated 14/10/2022 thereby deny to provide the documents demanded by the disputant and also denial for waving of arrears of property tax. The opponent society had issued maintenance bills with addition of property tax and interest thereon when the disputant had paid all his maintenance and property tax to the authority. Members and managing committee members are in majority from A and C wing hence they had taken such illegal decisions and thereby forced to implement such illegal decision on the resident of B wing.

7. The disputants further stated that the property tax is responsibility of individual member and it was charged by the authority based on area occupied by flat owners. The flats in A wing and C wing are consisting of 2BHK and 3BHK and flat in B wing are consisting of 1BHK. Hence all flats of A wing and C wing are larger than B wing. The disputant is ready to pay his property tax if any arrears of his flat since purchase of the said flat. It is not disputant's fault to pay dues which were not recovered by the opponent society from predecessor of his flat, when predecessor of his flat is also member and flat owner in the opponent society. Inspite of the various enquiry made by the said member orally as well as by its various letters mentioned above the opponent society had not satisfactory replied to any of the said letter till date. The opponent society cannot recover any amount from the disputant without any authority and unjustified and contrary to the provisions of law. Hence in the interest of justice it is necessary to restrain opponent society to recovery any amount from the disputant on account of arrears of property tax. Hence prayed that pending the hearing and final disposal of dispute this Court be please to order and direct by granting temporary injunction and restrain opponent society from implementing minutes of the special general meetings dated 25/07/2021 and 20/02/2022 and also restrain opponent society from recovering arrears of property tax, shashti and penalty and interest charge by society thereon from me, pending the hearing and final disposal of dispute this Court may be place to order and direct opponent society to submit the statement for head wise, flat area wise, maintenance collected from each member from 2013 to 2023 and property tax receipt paid to KDMC by society and audited balance sheet since the registration of society, pending the hearing and final disposal of dispute this Court may be please to order and direct opponent society to provide documents demanded by the disputant mentioned in para 25 of dispute hereinabove.

8. The opponent society have filed reply at Exh. 9 and submitted that the disputant have filed present dispute under section 91 of MCS Act. There is no any cause of action occurred to file the present dispute to the disputant. The disputant has filed present false dispute to pressurize the opponent society. The opponent stated that property tax should be collected as per sq. ft. area is incorrect. Property tax should be charged as per resolution passed in the general body meeting. The land of the opponent society is purchased from Shri. Tukaram Patil. The developer has developed the said land as per construction permission in A, B, C wing. The developer has received occupation certificate in respect of B wing on 07/08/2007. In 2013 on non-co-operation basis flat holders registered the society under MCS Act. The Ragho Aba co-operative housing society is registered in the year 2013. Since 2013 there were dispute between the members and developer. The opponent society is charging property tax Rs. 1/- per sq. ft. from April 2019 in the maintenance bill. From initial period opponent society is recovering maintenance of A, B, C wing together. At that time the property tax of B wing has recovered from A and C wing. The disputant is aware of the said fact. The KDMC have made assessment in 2013 of A, B, C wing. The disputant has received completion certificate of B wing. Hence KDMC has not charged penalty and interest amount on B wing. The disputant has not received completion certificate for A and C wing and not paid outstanding amount to the KDMC. The complaint in respect of the same is pending before the Consumer Forum. On 20/10/2020 completion certificate has received for A and C wing. Since 2013 after assessment each wing has given separate computerized property number. Opponent society is charging amount of Rs. 1/- per sq. ft. property tax from members, but in fact actual property tax was greater than the amount recovered from the members. It is necessary to pay penalty and interest for the period 2013 to 2018. Even though since 2018 property tax is charged separate for each member, opponent society recovered the property tax together. It is binding on the flat purchaser to pay outstanding encumbrances of the purchased flats. The present issue is between the disputant and original owner. At the time of purchasing flats the opponent society has given no dues certificate to the disputant for maintenance. The complaint in respect of property tax is pending at that time. It is the responsibility of every member to pay the property tax on their flat. To pay the outstanding property tax is the beneficial decision on the part of the opponent society. The said decision is taken by majority in the meeting. Hence the opponent society is entitled to recover amount of Rs. 63,663/- from disputant. As per the said decision members have deposited amounts in the society. After 2022 each flat holder get separate property tax bill and it is necessary for them to pay their property tax personally. In this circumstances also, disputant illegally filed present dispute. Hence prayed to reject the application.

9. After hearing both the parties and perusing the documents on record following points arise for my consideration.

Sr. No.	Points	Findings
1	Whether there is prima facie case in favour of disputant?	In the negative
2	Does the balance of convenience lies in favour of the disputant ?	In the negative
3	If application is rejected whether irreparable loss would be caused to the disputant ?	In the negative
4	What order ?	As per final order

REASONS

AS TO POINT NO. 1 TO 4

10. Perused application, proceeding, say, documents on record and after hearing of the parties it appears that the disputant has filed present dispute for declaration that the minutes of the special general meeting dated 25/07/2021 and 20/02/2022 passed by the opponent society are illegal and disputant is not liable to pay amount of Rs. 61,663/- the payment of property tax, shashti and penalty amount as per letter dated 20/02/2022. The disputant in the present interim application prayed to restrain opponent society from implementing minutes of the SGBM dated 25/07/2021 and 20/02/2022 and also restrain opponent society from recovering arrears of property tax, shashti penalty, and interest charged by the society from the disputant. The disputant in the present application further prayed for direction to the opponent society to submit the head-wise statement, flat area-wise, maintenance collected from each member from 2013 to 2023 and property tax receipt paid to KDMC by society and audited balance sheet since the registration of the society and further direction to the opponent society to provide documents demanded by disputant in para 25.

11. The disputant in the present dispute challenged the SGBM dated 25/07/2021 and 20/02/2022 of the opponent society. Whether the SGBM dated 25/07/2021 and 20/02/2022 are legal or illegal and whether the disputant is or is not liable to pay property tax is a matter of evidence. It can be decided at the time of trial. It cannot be decided at this stage of Exh. 5 without taking evidence. The disputant in the present application further prayed to direction to the opponent society to provide documents mentioned in the application. The present dispute is now at the stage of Exh. 5 and not at the stage of evidence. Therefore the disputant failed to prove prima facie case, balance of convenience and irreparable loss. Thus I answer point no.1 to 3 in the negative and in answer to point no.4 I pass the following order.

Order

1. Application at Exh. 5 is rejected.

Sd/-

Place : Thane
Date : 08 / 04 / 2024

(Smt. S. K. Tonpe)
Judge
Co-operative Court, Thane