

MHCO120000692024



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE AT. PUNE

Dispute No.66/2024

Mrs. Shilpa Gulab Baleghate & Other 10 -----Applicants / Intervenor

In the case of

Smt. Anjali Ajay Katake

----- Disputant

V/s.

Sopan Nagari Co-operative Housing

Society Ltd., & Others

----- Opponents

ORDER BELOW EXH.38

(Dictated and pronounced on 06/09/2024)

1] This is an application filed by the intervener to intervene as party opponent to this dispute, on the ground that, the disputant had challenged validity of several resolutions which were passed during the course of the redevelopment process, alleged that society has not followed due process of law. Applicants / intervenor are the members of the opponent society and waiting for the managing committee to take the further steps in the process of redevelopment.

2] Recently disputant has published written message on WhatsApp group of the society and daughter of another member has also published several messages with respect to court proceeding and finally on 10/07/2024 secretary of opponent society had published a message and inform the members about what happen in the court.

3] It is apparently clear that, if any order is passed in this dispute then it has direct impact on the redevelopment process initiated by the opponent society and the members of opponent society including present

applicants / intervenor as they are direct beneficiary of the redevelopment. Therefore, any order passed in this dispute in respect of redevelopment shall have direct impact over the Civil Rights of the applicant / intervenor and the presence of these applicants / intervenor is necessary before this court as party to this dispute to help the court to adjudicate this dispute.

4] Disputant has filed reply to this application at Exh-44 and objected this application on the ground that, this dispute is filed by the disputant against the opponent society and the society is representing all members including present applicant / intervenor. Disputant had claim relief against the society and not against any of the applicant / intervenor. Presence of these applicant / intervenor is not necessary before this court. Applicant / intervenor are not necessary or proper party to this dispute.

5] Heard Ld. Adv. Shri. A. B. Pise for applicants / intervenors.

6] Heard Ld. Adv. Smt. L. D. Kaulgekar for disputant at length.

7] Considering the contents of application and reply filed by the opponents following point arose for my determination, I give my findings thereon, for the reasons recorded below.

Sr. No.	Point	Findings
1	Is this applicant / intervenor is necessary or proper party to this dispute?	In the negative
2	What order?	As per final order

REASONS

As to point No.1:-

8] From the pleadings of the dispute application it is seen that, the opponent is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Disputant is member of opponent society. Disputant prays in the dispute application following reliefs;

A] *Declare GBM held on 6/6/2020 along with all its resolutions as illegal, null & void.*

B] *Declare GBM held on 10/3/2021 along with all its resolutions as illegal, null & void.*

C] *Declare GBM held on 10/11/2022 along with all its resolutions as illegal, null & void.*

D] *Declare GBM held on 21/4/2023 along with all its resolutions as illegal, null & void.*

E] *Declare GBM held on 10/5/2023 along with all its resolutions as illegal, null & void.*

F] *Declare GBM held on 26/8/2023 along with all its resolutions as illegal, null & void.*

G] *Restrain the opponents, their agents, servants, assignees, legal representatives etc. by way of temporary injunction from acting upon any of the resolutions passed in the meetings held on 6/6/2020, 10/3/2021, 10/11/2022, 21/4/2023, 10/5/2023, & 26/8/2023.*

H] *Restrain the opponents, their agents, servants, assignees; legal representatives etc. by way of add interim injunction from acting upon any of the resolutions passed in the meetings held on 6/6/2020, 10/3/2021, 10/11/2022, 21/4/2023, 10/5/2023, & 26/8/2023.*

I] *Pass any other just & equitable order as deem fit in the interest of justice & equity.*

9] As per Section 36 of the M.C.S. Act, 1960 the co-operative societies registered under the provisions of the M.C.S. Act, 1960 are body corporate by the name under which it is registered and has power to institute and defend suits and other legal proceedings on its own. As such it is held that, opponent society is competent to defend this dispute. In the present dispute there is no any relief is claimed against the applicant / intervenor also there is no any relief is claimed against the individual property of applicant / intervenor. The disputant had claim the relief

against the society. Hence, as per section 36 of the M.C.S. Act, 1960 the opponent society is competent to defend the suit and for deciding the dispute finally on merit, applicants / intervenors are not necessary or proper parties.

10] In the case of State Of U.P. & Another V/s. C. O. D. Chheoki Employees Co-operative Society Ltd., & Others reported in (1997) 3 Supreme Court Cases 681. Hon'ble Apex Court held that, ---- *A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and bye-laws and is subject to its operation. The stream cannot rise higher than the source.*

11] In the case of Daman Singh & Others V/s. State of Punjab & Others reported in (1985) 2 Supreme Court Cases 670. Hon'ble Apex Court held that, ----*Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.*-----

12] If the member of the co-operative housing society is permitted to join the dispute filed against the co-operative housing society, then every member of the society will be came before court and submit the application for intervention on the ground that, only he is competent to protect the interest of the society and its member and decision in the dispute affects his civil right then, in such situation every member shall be added as party to the dispute and it will became impossible to conclude the trial. Hence, the grounds of the intervention are not

accepted and opponent No.1 society is competent to contest this dispute on behalf of all members including these intervenors

13] In view of the ratios laid down by their lordship in the case of State of U. P & Anr. (cited supra) and in the case of Daman singh & Ors (cited supra) the applicant is not necessary or proper party to this dispute and applicant cannot become party to this dispute on the basis of his membership of the opponent society. Accordingly, I proceed to pass following order.

ORDER

- 1] Application Exh-38 is rejected.
- 2] No order as to cost.

Date:06/09/2024

Place: Pune .

(A.S.Wanve)

Judge,

Co-operative Court No.2,Pune