

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5562 OF 2012

Vinayak Ratnakar Gawande & Ors. ... Petitioners
Vs.
District Deputy Registrar & Ors. ... Respondents

Mr. Vaibhav Sugdhare a/w. Mr. Rajesh Talekar i/b. M/s. K. Ashar & Co.,
Advocate for the Petitioners.

Mr. R.M. Patne, AGP for respondent nos. 1 and 2.

Mr. Sanjay Jain i/b. Ms. Manjiri Parasnis, Advocate for respondent no. 3.

CORAM : R. G. KETKAR, J.
DATE : 7th AUGUST, 2012

PC. :

Heard Mr. Sugdhare, learned counsel for the petitioners, Mr. R.M. Patne, learned AGP for respondent nos. 1 and 2 and Mr. Jain, learned counsel for respondent no. 3 at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 5th May, 2012 passed by the District Deputy Registrar, Cooperative Societies, Mumbai in Revision Application No. 66 of 2010 as also the demand notice dated 11th May, 2012 issued under Rule 107(3) and the demand notice dated 4th June, 2012 issued under Rule 107(5) of the Maharashtra Cooperative Societies Rules, 1961.

3. Mr. Sugdhare submitted that the petitioners have never received any bills and the Society did not produce any evidence before the authorities below. He submitted that the petitioners are owners of the

building and consequently, they are not liable to pay any amount to the Society. The respondent-Society has instituted the proceedings under section 101 of the Maharashtra Cooperative Societies Act, 1960 almost after 10 years.

4. On the other hand, Mr. Jain submitted that the property stands in the name of Society. The name of the Society also appears in the P.R. Card. All the building permissions are in the name of Society. He further submitted that the Society had paid administrative charges, service charges as also various taxes to the appropriate authorities and consequently they are entitled to recover the amount from the petitioners. The petitioners never made grievance about non-receipt of the bills.

5. After hearing the learned counsel appearing for the parties, in my opinion, the petition raises arguable questions. Hence, Rule. The learned counsel for the respective respondents waive service. Call for record and proceedings.

6. In so far as the interim order is concerned, Mr. Sugdhare, upon taking instructions from the power of attorney holder of the petitioners, makes a statement that the petitioners have no objection for the Special Recovery and Sales Officer paying the amount of Rs.11,08,816/- which is attached from the bank account of the petitioner with HDFC Bank to the respondent no. 3 subject to respondent no. 3 refunding the said amount together with interest which shall not be less than 21% in the event petitioners succeeding ultimately in the petition.

7. In view of this, the Special Recovery and Sales Officer, who is presented by learned AGP shall withdraw the amount of Rs.11,08,816/- from the account of the petitioners maintained with HDFC bank and after deducting the amount payable to the Special Recovery and Sales Officer shall transmit the balance amount to the account of respondent no. 3 under intimation to the advocates appearing for the parties within one week from today. Upon transmitting the amount, the Garnishee order dated 21st June, 2012 issued by Special Recovery and Sales Officer shall stand dissolved and no coercive action shall be taken against the petitioners on the basis of the impugned order dated 5th May, 2012 and demand notices dated 11th May, 2012 and 4th June, 2012.

8. In view of the above, respondent no.3-Society is permitted to appropriate the amount paid by the Special Recovery and Sales Officer subject to the outcome of the petition and that in case the petitioners ultimately succeed in the petition, respondent no. 3 shall refund that amount together with interest at such rate which shall not be less than 21%, that may be deemed appropriate at the time of disposing of the petition finally.

9. The Special Recovery & Sales Officer shall act upon the authenticated copy of the order.

(R. G. KETKAR, J.)