

Registrar can't direct hsg society to issue NOC to its member: HC

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MUMBAI: The Bombay high court last week stayed an order passed by a deputy registrar of co-operative societies in the city, directing a co-operative housing society at Dindoshi to issue no-objection certificates to one of its members for improvement and change of user of his premises from residential to commercial.

“In my prima facie opinion, the deputy registrar of cooperative societies ex facie did not have any jurisdiction and authority to issue such a direction to the petitioner society to issue a NOC as contained in the order,” justice Girish Kulkarni said while staying order issued by the deputy registrar, P ward.

Acting on a complaint lodged

by a member of Shree Raghunandan Co-operative Housing Society, the deputy registrar had on July 9, 2019, directed the society to issue necessary NOCs to the member for joining four tenements and converting user of the premises from residential to commercial.

The housing society then moved HC, through advocate Mohit Jadhav, challenging the order on various grounds.

The order was purportedly passed under section 79(2)(a) of the Maharashtra Co-operative Societies (MCS) Act, 1960.

However, justice Kulkarni opined that the deputy registrar had no power to issue such a direction.

“In my prima facie opinion, it is a dispute between a member and the society, which would

require adjudication before some other forum,” said the judge. “It is difficult to conceive that the nature of the complaint as made by respondent no. 3 (member) before the deputy registrar invoking section 79(2)(a) for issuance of inter-alia fire NOC and a NOC for improvements can at all fall within the purview of this provision,” said justice Kulkarni.

The judge added that to read such wide powers to issue such directions as contained in the impugned order under Section 79(2)(a) would amount to reading something into the provision which the legislature has not provided for and in fact if it is to be construed, then it would amount to something contrary to the statutory scheme of the MCS Act 1960.

Vidta Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**LD/VC/INTERIM APPLICATION NO. OF 2020
IN
WRIT PETITION (L) NO. 2143 OF 2019**

Shree Raghunandan CHS Ltd. ... **Applicant/Petitioner**
Vs.
The State of Maharashtra & Ors. ... **Respondents**

Mr. Mohit Jadhav for the applicant/petitioner.
Mr. Manish Upadhyaye, AGP for the State.
Mr. A.Y. Sakhare, Senior Advocate for respondent no. 3.

**CORAM : G.S.KULKARNI, J.
DATE : 5 August 2020
(Through Video Conferencing)**

P.C.

Heard Mr. Jadhav, learned counsel for the applicant/petitioner, Mr. Sakhare, learned senior counsel for respondent no. 3 and Mr. Manish Upadhyaye, learned AGP for the State.

2. This Interim Application has been filed by the applicant/petitioner, inter alia, praying for restoration of the Writ Petition which came to be dismissed for non-prosecution on 10 December 2019. Mr. Sakhare, learned senior counsel for respondent no. 3 would fairly submit that his clients would not have any objection for restoration of the petition. Learned AGP would also have no objection. The delay in filing this application has also been sufficiently explained, hence the delay also deserves to be condoned. Considering the

reasons and the cause as set out in the memo of the application, the order dated 10 December 2019 is set aside. The Writ Petition is restored to the file of the Court.

3. In so far as the interim reliefs on the petition are concerned, Mr. Jadhav would submit that earlier this Court by an order dated 25 July 2019 (Coram : R.D. Dhanuka, J.) had granted ad-interim relief in terms of prayer clause (b). He submits that as the petition was dismissed for non-prosecution, respondent no.3 intended to take an advantage of the situation and a NOC is now sought to be issued by the Deputy Registrar, Cooperative Societies. Mr. Sakhare, learned senior counsel for respondent no. 3 states that his client has in fact received NOC from the Deputy Registrar, Co-operative Department in pursuance of the directions as contained in the impugned order dated 9 July 2019 passed by the Deputy Registrar of Co-operative Societies. Mr.Sakhare, learned senior counsel for respondent no.3 would justify the impugned order. He intends to make submissions on merits stating that a prejudice is being caused to his client on the petitioner-society not granting a NOC. However considering the impugned order the case of respondent No.3 on merits may not be relevant as the principal issue is 'as to whether the Deputy Registrar at all had any authority and jurisdiction under Section 79(2)(a) of the MCS Act 1960 to issue a direction to the petitioner-Co-operative Society to issue a Fire NOC or such similar NOC.' Mr. Sakhare, however, would submit that his client would

be required to be heard on the legal aspects which would arise in this petition.

4. Having perused the impugned order dated 9 July 2019 passed by the Deputy Registrar of Co-operative Societies, it is clear that the same is passed on a complaint which was made by respondent no. 3 inter alia in regard to the petitioner-society not issuing a NOC for improvement or the change of user of the premises. In making this complaint, respondent no.3 invoked the provisions of Section 79(2)(a) of MCS Act 1960 praying before the Deputy Registrar, that the petitioner-Society be directed to grant such a NOC which would be ultimately submitted to the planning authority/Municipal Corporation for the proposed changes in the premises, respondent no.3 wishes to carry out. Admittedly the premises belong to the petitioner society of which respondent No.3 is a beneficial member. By the impugned order, the Deputy Registrar has issued a direction to the petitioner to issue a NOC, which is challenged in the present petition.

5. Prima facie perusal of Section 79(2)(a) provides for a co-operative society's obligation to file returns and statements and concerns the Registrar's power to enforce performance of obligations. It is in this context, sub-section (2)(a) provides for a compliance mechanism. A plain reading of this provision would show that when a Co-operative Society is required to take any action under the Act, the rules or the bye-laws or to comply an order made under the said provision and if such an action is not taken, in that event, an appropriate

direction can be issued by the Registrar by himself or through any person as appointed by him.

6. It is difficult to conceive that the nature of the complaint as made by respondent no. 3 before the Deputy Registrar invoking Section 79(2)(a) for issuance of interalia a Fire NOC and a NOC for improvements can at all fall within the purview of this provision. In my prima-facie opinion the Deputy Registrar of Cooperative Societies *ex facie* did not have any jurisdiction and authority to issue such a direction to the petitioner to issue a NOC as contained in the impugned order. In my prima facie opinion, respondent no.3's case was clearly a case of a dispute between the member and the Society, which would require adjudication as per the provisions of Section 91 of Maharashtra Co-operative Societies Act or before any other forum as may be permissible in law. To read such wide powers to issue such directions as contained in the impugned order under Section 79(2)(a) would amount to reading something into the provision which the legislature has not provided for and in fact if so construed would amount to something contrary to the statutory scheme of the MCS Act 1960, including Section 91.

7. The nature of the impugned order as noted above would clearly indicate that the parties would be required to be heard finally. Hence, **Admit**.

8. In so far as the interim reliefs are concerned, the petitioner has made out

a strong prima facie case for grant of interim reliefs as clear from the above discussion and hence the petitioner would be entitled for interim relief pending the hearing of the petition.

9. Thus the ad-interim order as granted by this Court on 25 July 2019 are required to be continued. Further pending the final disposal of the petition, the impugned order dated 9 July 2019 shall remain stayed. It is also clarified that in the intervening period if the Co-operative Department has sought to grant any benefit of the impugned order to respondent no. 3, the same shall also remain stayed. Ordered accordingly.

10. List the petition for final hearing after the pleadings on the petition are complete.

11. Liberty to apply for early hearing of the petition when the Court resumes regular functioning after the lockdown is over.

12. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on digitally signed copy of this order.

Digitally
signed by
Prashant
V. Rane
Date:
2020.08.08
18:55:19
+05:30

(G.S.KULKARNI, J.)

**Before : M. W. Chandwani
Prothonotary & Senior Master
Date : 10th December, 2019**

FOR REJECTION (ORIGINAL SIDE MATTERS) :

- 20 WPL/2134/2019)
)
)
) P.C. : Petitioners and/or their Advocate to remove
) office objections on the petition and get the
) same numbered and/or registered on or
) before 14.01.2020, failing petition to stand
) rejected for non-compliance of office
) objections under O.S.Rule 986.
- 21 WPL/2139/2019)
22 WPL/2140/2019)
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- 23 WPL/2143/2019)
)
)
) P.C. : Petitioners and/or their Advocate to remove
) office objections on the petition and get the
) same numbered and/or registered on or
) before 14.01.2020, failing petition to stand
) rejected for non-compliance of office
) objections under O.S.Rule 986.

Date : 10.12.2019

Prothonotary & Senior Master

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.2143 OF 2019

Shree Raghunandan CHS Ltd. .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. Shailesh Kumar Rai for the petitioner.
None for the respondents.

CORAM : R.D.DHANUKA, J.
DATE : 3rd September 2019

P.C.:

. Matter is mentioned not on board for speaking to the minutes of the order dated 16th August 2019.

2. In the cause title of the said order dated 16th August 2019, the name of the petitioner shall be read as “**Shree Raghunandan CHS Ltd.**” The order dated 16th August 2019 stands corrected accordingly. Praecipe stands disposed of.

R.D.DHANUKA, J.

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.2143 OF 2019

Shred Raghunandan CHS Ltd ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.D.R. Singh with Mr.Shailesh Kumar Rai for the Petitioner.

Mr.M.A. Sayed, A.G.P. for the State – Respondent Nos.1 and 2.

Mr.R.D. Soni with Mr.S.N.Gawade for the Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 8TH AUGUST, 2019.

P.C. :-

1. The matter is substantially heard. At this stage, Mr.Soni, learned counsel appearing for the respondent no.3 seeks time on the ground that the respondent no.3 is not present in Court today and will ask her to remain present on the next date of hearing. Only for this purpose, place the matter on supplementary board on 14th August, 2019.
2. *Ad-interim* relief granted by this Court on 25th July, 2019 to continue till next date.

(R.D. DHANUKA, J.)

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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WRIT PETITION (LODGING) NO.2143 OF 2019

Shree Raghunandan CHS Ltd. ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.D.R. Singh with Mr.Shailesh Kumar Rai for the Petitioner.

Mr.Manish Upadhye, A.G.P. with Mr.M.A. Sayed, A.G.P. for the State
– Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 25TH JULY, 2019.

P.C. :-

1. Issue notice before admission upon the respondent no.3, returnable on 8th August, 2019. In addition to the Court notice, the petitioner is permitted to serve the respondent no.3 by private notice i.e. by registered A.D. / courier / hand delivery and shall file affidavit of service before the next date.
2. Learned A.G.P. waives service for the respondent nos.1 and 2.
3. Till next date, there shall be ad-interim relief in terms of prayer clause (b).
4. The petitioner is directed to convey this order to the

respondent no.3.

5. All parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)