

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8733 OF 2023

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Panvel Industrial Fasteners Pvt. Ltd. ... Petitioner
V/s.
Gohil Steels Pvt. Ltd.
Through Its Director ... Respondent

Mr. Pradeep Thorat with Ms. Aditi Naikare, for the petitioner.

Mr. Rohit D. Joshi, for respondent No.1.

Mr. Rajesh Datar, i/b Ms. Druti Datar, for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2025

P.C.:

1. By this petition, the petitioner, who was the original disputant, challenges the judgment and order dated 29 April 2023 passed by the Cooperative Appellate Court in Appeal No. 52 of 2019. The Appellate Court dismissed the dispute filed by the petitioner.

2. The facts are as follows. The petitioner filed Dispute No. 93 of 2012. He sought a declaration that he is entitled to a fresh sub-lease in respect of plot No. 30 from opponent No. 1 society. He also sought a mandatory order directing the society to execute a lease deed for 60 years in respect of plot No. 30. He relied on similar arrangements granted to other plot holders. He further sought a

declaration that opponent No. 2 has no right, title, or interest in plot No. 30 and the society should not execute any sub-lease in favour of opponent No. 2. He also sought an injunction restraining the opponents from disturbing his possession of plot No. 30.

3. According to the petitioner, he acquired leasehold rights in respect of plot Nos. 30, 31, 32, and 33. The plots are surrounded by one common wall. When the sub-lease period for plot Nos. 30 and 31 was about to expire, he requested respondent No. 2 society to renew the sub-lease. The petitioner relies on an agreement dated 16 December 1996, relating to plot Nos. 29 and 37, in which the society mentioned transfer of plot No. 30. He claims that the society mentioned plot No. 30 even though it was already sub-leased to him. The petitioner states that when he came to know of this transfer in favour of respondent No. 1, the society informed him that the sub-lease granted to him for plot No. 30 had been cancelled. The cancellation was under a deed dated 29 September 1979. After the State executed a fresh lease in favour of the society, respondent No. 2 issued a letter on 17 September 2011 offering execution of a fresh sub-lease only for plot Nos. 31, 32, and 33. As plot No. 30 was excluded, the petitioner filed the dispute.

4. Respondent No. 1 filed a written statement and denied the petitioner's claim.

5. Respondent No. 2 also filed a written statement. Respondent No. 2 stated that the petitioner's sub-lease of plot No. 30 stood cancelled by a registered cancellation deed dated 29 September

1979. On the same day, a fresh sub-lease was executed in favour of the petitioner for plot Nos. 31, 32, and 33. Plot No. 30 was sub-leased in favour of the predecessor of respondent No. 2. On 12 December 1996, the predecessor of respondent No. 2 submitted a proposal to transfer plot Nos. 29, 30, and 37 in favour of respondent No. 1.

6. The Cooperative Court, by judgment dated 30 September 2013, decreed Dispute No. 93 of 2012. Respondent No. 1 challenged the decree by filing Appeal No. 52 of 2019. The Appellate Court, by judgment dated 29 April 2023, allowed the appeal and dismissed the dispute. Hence, the petitioner has filed the present petition.

7. Learned counsel for the petitioner, Mr. Thorat, submitted that the Appellate Court committed an error in dismissing the revision on the ground of limitation. He submitted that respondent No. 2 had filed a counter-claim seeking possession, and later withdrew it. He submitted that the Cooperative Court had considered all evidence on record and recorded clear findings. He contended that the Appellate Court set aside those findings without giving proper reasons. He prayed that the impugned judgment be quashed.

8. Learned counsel for respondent No. 1, Mr. Joshi, and learned counsel for respondent No. 2, Mr. Datar, supported the impugned judgment. They submitted that the cancellation deed dated 29 September 1979 clearly cancelled the petitioner's sub-lease of plot No. 30. On the same day, a sub-lease of plot Nos. 31, 32, and 33

was executed in favour of the petitioner. They submitted that once the sub-lease of plot No. 30 stood cancelled in 1979, the petitioner has no subsisting right to seek a mandatory order to execute a new sub-lease. They submitted that the cancellation deed is a registered document and is not disputed. The only ground raised by the petitioner is that one director did not have authority to execute the cancellation deed. They submitted that unless the petitioner establishes a valid right, no direction for execution of sub-lease can be granted. They prayed for dismissal of the petition.

9. I have considered the pleadings, documents, and submissions. The material on record makes the position clear.

10. The petitioner seeks a declaration of right over plot No. 30. He also seeks a mandatory order directing execution of a fresh sub-lease. For granting such relief, the Court must find that the petitioner has an existing and enforceable legal right. Unless such right exists, no order of mandatory injunction can be granted.

11. The record shows that the petitioner earlier held a sub-lease of plot No. 30. The Society has produced the registered deed of cancellation dated 29 September 1979. The petitioner has not disputed that the document is registered. He has not challenged the execution of this document before the competent authority. His only contention is that the director who signed it had no authority. A registered deed carries presumption of validity. The petitioner has not produced any material to rebut this presumption. A bare allegation without proof cannot displace a registered and longstanding document.

12. On the same date, a fresh sub-lease was executed in favour of the petitioner for plots No. 31, 32 and 33. The petitioner accepted this benefit. He continued in possession on the strength of that document. He did not raise any objection nor initiate any proceedings for more than three decades. This conduct shows that he accepted the cancellation relating to plot No. 30.

13. The agreement dated 16 December 1996 relied upon by the petitioner does not create any right in his favour regarding plot No. 30. At best, it makes a passing reference to the plot. Reference to a plot does not create title. Rights over immovable property arise only from a registered instrument executed by a competent party. The petitioner has not produced any such document after the cancellation of 1979.

14. The Cooperative Court decreed the dispute by overlooking this fundamental fact. It treated the petitioner's earlier possession as a continuing right. The Appellate Court corrected this error. The Appellate Court held that once the cancellation deed is on record and remains unchallenged, the petitioner cannot seek a declaration or mandatory order.

15. The core issue is simple. The petitioner must first establish legal right. Only then the Court can grant relief. Here, the cancellation deed extinguished the petitioner's interest in plot No. 30. Once his right stood cancelled, nothing survives for enforcement. Courts cannot rewrite contracts. Courts cannot compel a party to create rights where none exist.

16. The petitioner has failed to show any enforceable right over plot No. 30 after 29 September 1979. The petition is therefore without merit.

17. The petition stands dismissed. No order as to costs.

(AMIT BORKAR, J.)