

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.: 4094 OF 2014

1. **Shobha Asaram Chitral,**
Age: Major, Occu. Household,
R/o. Bharad Galli, Topkhana,
Ahmednagar.
2. **Sau. Meerabai Karbhai Repale,**
Age: Major, Occu: Household,
R/o. Shivajinagar, Nepti Road,
Kalyan Road, Ahmednagar.
3. **Dattatray Dnyanoba Chaukate,**
Age: Major, Occu. Business,
R/o Shivajinagar, Nepti Road,
Kalyan Road, Ahmednagar. ... **PETITIONERS/
ORIG.RESPDT.NOS.13 TO 15].**

VERSUS

1. **Sau. Aruna Vishwanath Kanade,**
Age: 55 years, Occu. Household,
2. **Nitin Vishwanath Kanade,**
Age: 34 years, Occu.: Service,
3. **Yogesh Vishwanath Kanade,**
Age: 32 years, Occu.: Service.
4. **Shivprasad Vishwanath Kanade,**
Age: 29 years, Occu.: Service.

All R/o. 4, Sukhada Apartment,
Professor Colony, Savedi Road,
Ahmednagar.

5. **Bhrung Maharushi Housing Society Ltd.,**

At Nalegaon, Ahmednagar,
Registration No. ANR/ANR/HSG/1812

dated 24.5.2007.

Through its President.

... **RESPONDENTS/**
[RES. NOS.1 TO 4 ORIG.
APPELLANT, RES. NO.5 ORIG.
RES.NO.1]

WITH

WRIT PETITION NO.: 4621 OF 2014

Bhrung Maharushi Housing Society Ltd.

At Nalegaon, Ahmednagar.

Registration No. ANR/ABNR/HSG/1812

dated 24.5.2007

Through its Chairman,

Ganesh Dagadu Shinde.

... **PETITIONER.**
[ORIG. RESPONDENT NO.1]

VERSUS

1. **Sau. Aruna Vishwanath Kanade,**

Age: 55 years, Occu. Household

2. **Nitin Vishwanath Kanade,**

Age: 34 years, Occu.: Service,

3. **Yogesh Vishwanath Kanade,**

Age: 32 years, Occu.: Service.

4. **Shivprasad Vishwanath Kanade,**

Age: 29 years, Occu.: Service.

All R/o. 4, Sukhada Apartment,
Professor Colony, Savedi Road,
Ahmednagar.

5. **Shobha Asaram Chitalar,**
Age: Major, Occu.; Household,
R/o. Bharad Galli, Topkhana, a
Ahmedmagar.

6. **Sau. Meerabai Karbhari Repale,**
Age: Major, Occu.: Household,
R/o. Shivajinagar, Nepti Road,
Kalyan Road, Ahmednagar.

7. **Dattatray Dnyanoba Chaukate,**
Age: Major, Occu.: Business,
R/o Shivajinagar, Nepti Road,
Kalyan Road, Ahmednagar. ...

RESPONDENTS
[NOS.1 TO 4 ORI. APPELLANTS,
NOS.5 TO 7 ORIG.
RESPDT.NOS.13 TO 15].

Advocate for the Petitioners: Mr. Amol K. Gawali [W.P.No.4094 of 2014]/ Mr. Balaji S. Shinde [W.P. No.4621/ 2014].

Advocate for the Respondent [Nos.1 to 4 in WP 4621/2014] : Mr. K. J. Suryawanshi.

Advocate for Respondent [Nos.5 to 7 in WP 4621/2014]: Mr. Amol K. Gawali.

CORAM:- N. W. SAMBRE, J.
DATED:- 20th APRIL, 2015.

ORAL ORDER:

1. The first petition is by the members of the petitioner cooperative society in second petition, questioning the legality and validity of the order passed by the Cooperative Appellate Court on 1st March, 2014 whereby the cooperative Appellate Court has set aside the judgment

passed by the Cooperative Court dismissing the dispute on the ground of want of jurisdiction.

2. The society in question is not in dispute to have been registered on 24th May, 2007.

3. When the said society was proposed it is claimed by the disputants that on 20th March, 1988 they have paid a contribution of Rs.2,500/- towards plots to be allotted and Rs.11/- towards the share. The receipts and the share certificates with that of allotment letter are part of the record.

4. It is not in dispute that after the above referred amount was contributed the few members of the society by playing fraud sought to transfer the land. In civil suit the transfers were set aside and the society, after its registration in 2007 re-allotted the plots to its members.

5. The Cooperative Court while dealing with disputes which were brought before it, based on the pleadings of the parties, framed issue as regards the jurisdiction to try the same. The Cooperative Court while trying the said

dispute on merits was also on the aspect of jurisdiction has based on the judgment of this Court ruled in favour of objectors about the maintainability as the cause which was canvassed before cooperative court was not covered within the ambit of section 91 of the Act. The Appellate Court by its judgment dated 1st March, 2014 set aside the same and gave finding as regards the tenability of the dispute as according to the Cooperative Appellate Court the cause cited to be canvassed is covered within the scope of section 91 of the Act. As such present petitions.

6. The learned counsel for the petitioners in both the petitions have invited my attention to the cause of action under prayer in the plaint so as to canvass that the transaction with the proposed society was prior to its registration and as such according to them the dispute that is sought to be raised is required to be looked into by the Civil Court and not by the Cooperative Court. In support of their contentions they have placed reliance upon the judgment of this Court in the matter of ***“Kapurchand Jivraj Jain, since deceased by his heirs V/s Datta Cooperative Housing Society Ltd., Amalner and***

others”¹ and on the matter of “**Shankar Y. Gavli V/s Vishakha Sadan Cooperative Housing Society & another”**².

7. While countering the above referred submissions, learned counsel for the Respondent urged that even though it is an admitted fact on record that the share certificate and the contribution was paid to the society on 20th March, 1988, according to him, there are allotment letters and the resolutions passed prior to registration of the society and subsequent thereto. In support of his contentions he had invited my attention to the document to that effect placed on record page 106A, 112, 117. He would further urge that the dispute is filed after registration of the society and the cause that is cited has to be taken as a continuous cause from the date of payment made to the society till the filing of dispute.

8. Upon considering the rival contentions of the parties and having gone through the judgment delivered by the cooperative Appellate Court it is required to be noted that the part of the pleadings in the dispute relates to a cause

1 1995 (3) Bom. C. R. 365

2 2003 (2) Bom. C. R. 790

that has arisen prior to the registration of the society. However, this Court cannot not lose sight of the fact that even after registration of the society i.e. in 2007 there are documents showing the continuation of membership of the disputants on the petitioner society. It is also required to be noted that the payment of the contribution by the disputants and allotment of shares/ plots is not in dispute as is apparent from the certificate to that effect produced on record.

9. The Cooperative Appellate Court while dealing with the above referred issues has taken into account the evidence brought on record to that effect and proceeded to deal with the objection that was sought to be raised. The Cooperative Appellate Court was alive of the limitation prescribed qua the entertainment of a dispute under section 91 of the Maharashtra Cooperative Societies Act and while dealing with the ousting of the jurisdiction of authority provided under the statute and conferring of the same to the Civil Court has considered the very scope of section 91 of the Act.

10. The judgments which are relied upon by the learned

counsel for the petitioners in the matter of Kapurchand (cited supra) is concerned, this Court was dealing with the scope of section 91 of the Cooperative Societies Act and the jurisdiction of the civil Court. In the said case, an outside member of the society has filed a suit for rendition of account and in the said second appeal an objection to the tenability of the suit qua provision for raising dispute, under section 91, was raised, this Court in Second Appellate jurisdiction has decreed the same directing a decree in favour of the plaintiff thereto. While dealing with plaintiff that was brought before the Court in the said matter, the relevant facts which were noticed by the Court was that a person who was an outsider as his membership amount was returned/repaid has preferred dispute. In the present case there were no efforts on the part of the society to refund or cancel the membership rather continued with the status having accepted the members fees and contribution on 20th March, 1988. In the another matter i.e. Shankar V/s Vishakha (cited supra) there the proceedings were initiated not by a so called member but by an outsider who was having interest in the property of society.

11. Both these judgments in my opinion were in the proceeding preferred by non-members whereas in the case in hand the dispute was preferred by the members claiming to contributor whose status is not in dispute. This Court must also take judicial note of the fact that the admitted amount which was received by the society was never sought to be returned to its members who have chosen to file the dispute. In view thereof, in my view, no illegality or perversity would be noticed in that order delivered by the Cooperative Appellate Court. As such both the writ petitions stand dismissed.

[N. W. SAMBRE, J.]

Dt.20/04/2015
ans/4094