

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

WRIT PETITION NO. 7461 OF 2002

Shree Krishna Co-op Housing
Society Ltd, through its Vice
Chairman Shri Bhagwanrao
Nagoji Kawale

..Petitioner.

Vs

Akkatai Ganpati Farakate,since
deceased through L.Rs.
Smt.Indubai Chunilal Sharma
since deceased through LR's sou.
Sunita

.. Respondent

Mr. N.V.Bandiwadkar, Advocate for Petitioner.

Mr. P.M. Arjunwadkar, Advocate for Respondent No. 1 to 3, 5 to 9
and 12,1(a),1(b),2(a) to 2(c), 9(a) to 9(d), 10(a) and 11(a), 15(a)
to 15(c).

**CORAM : R.G.KETKAR,J.
DATE : 28/02/2017**

PC:

1. Heard Mr. N.V.Bandiwadkar, learned counsel for the petitioner and Mr.P.M.Arjunwadkar, learned counsel for Respondent No. 1 to 3, 5 to 9 and 12,1(a),1(b),2(a) to 2(c), 9(a) to 9(d), 10(a) and 11(a), 15(a) to 15(c) at length. Rule. Mr. Arjunwadkar waives service on behalf of these respondents. Having regard to the narrow controversy raised in this petition and at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of

India, the petitioner, hereinafter referred to as 'defendant no.5' has challenged the Judgment and order dated 11.4.2000 passed by the learned Jt. Civil Judge, Senior Division, Kolhapur below Exhibit 62 in Regular Civil Suit No. 451 of 1999. By that order, the learned trial Judge directed Circle Officer, defendant no.3, to put the plaintiffs in possession of City Survey No. 1182 (Revision Survey No. 322 Old) by taking it back from defendant no.5 before the next date.

3. Initially, State Government had instituted Civil Revision Application No. 1027 of 2000 in this Court. By order dated 20.09.2000, Civil Revision Application was admitted by issuing rule and interim order in terms of prayer clause (c) was granted. By order dated 5.12.2002, in view of the decisions of this Court in C.R.A. Nos 803/1996/859/2002 and 57/2002, the Civil Revision Application was held to be not maintainable and was accordingly dismissed keeping all the questions open.

4. Defendant no. 5, thereafter, instituted present petition challenging the impugned order. By order dated 12.12.2002 notice for final disposal was issued to the respondents, returnable on 20.1.2013 and in the meantime, ad-interim order in terms of prayer clause (c) was granted. By prayer clause (c), this Court stayed the execution, operation and implementation of the impugned order dated 11.4.2000.

5. Mr. Bandiwadekar submitted that during the pendency of

this petition, defendant no.5 which was earlier proposed society, is now registered under the provisions of the Maharashtra Cooperative Societies Act, 1960. Defendant no.5 has divided the suit property in plots and allotted the plots to its members and members, in turn, have carried out construction in their respective plots. He further submitted that the impugned order was stayed initially by this Court on 20.9.2000 and subsequently in the present petition by order dated 12.12.2002 impugned order was stayed and the order is in force till date. He, therefore, submitted that in view of passage of time, interim order may be continued pending the suit with direction to the trial Court to dispose of the suit in a time bound manner.

6. Having regard to the fact that the interim order is operating right from 20.9.2000, that is to say more than 16 years, I find request made by Mr. Bandiwadkar is reasonable. Hence, petition is disposed of in the following terms:

(i) Impugned order dated 11.4.2000 passed below Exhibit-62 is stayed during the pendency of the suit. Continuation of this order shall not be construed as an expression of merits either way.

(ii) Parties agree that they will appear before the trial Court on 15.3.2017 and for that purpose no fresh notice be issued to them. The learned trial Judge is requested to give suitable and convenient date. Having regard to the fact that the suit is of the

year 1999, the learned trial Judge is requested to decide the suit within one year from the date of appearance of the parties. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits and in accordance with law. All contentions of the parties on merits are expressly kept open.

(iii) Liberty is reserved to the plaintiffs to amend the plaint if so advised. Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)