

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10321 OF 2015

Ramchandra Dinkar Shidore

..... Petitioner

VERSUS

**Varshanand Cooperative Housing
Society Ltd. & Anr.**

..... Respondents

Mr.Drupad S. Patil for the Petitioner.

Mr.Aashish Satpute for the Respondent no.1.

Mr.Uday P.Warunjikar for the Respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 24th SEPTEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 10th September,2015 passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench, Pune allowing the Appeal bearing no.101 of 2012 and Appeal No. 107 of 2012 and setting aside the judgment and order dated 9th April,2012 passed by the learned trial judge of Co-operative Court, Pune deciding the Dispute No.310 of 2002 filed by the petitioner in his favour.

2. It is the case of the petitioner that the petitioner was allotted a plot bearing no.7 on lease by the respondent no.1 society on 28th September,1975. It is further the case of the petitioner that the said plot was however illegally allotted to respondent no.2 in the year 1987.

The petitioner had made a complaint to the authority for conducting an enquiry. An enquiry was commenced pursuant to the said complaint. The petitioner was also pursuing the proceedings before the revenue authorities impugning the mutation entry in favour of the respondent no.2.

3. In the year 2002, the learned Collector of Pune directed the petitioner to file appropriate proceedings before the Co-operative Court. Accordingly, the petitioner filed a dispute in the year 2002 before the Co-operative Court under section 91 of the Maharashtra Co-operative Societies Act, 1960 *inter alia* praying for a declaration that the petitioner was having exclusive right, title and interest and full power of development and disposal of plot no. 7 and for a direction against the society to execute and to get registered the document of lease in respect of plot no.7, for perpetual injunction in favour of the petitioner and for other reliefs. The petitioner had also applied for a declaration that the alleged lease deed of the plot no.7 dated 10th September, 1987 in favour of the respondent no.2 was null and void.

4. The Co-operative court decided the dispute in favour of the petitioner. However few findings were rendered against the petitioner. The Co-operative Appellate Court had allowed the two appeals preferred by the respondent no.2 and 1 respectively and has set aside the findings rendered by the Co-operative Court. The Co-operative Appellate Court had decided the appeal in favour of the respondents on the issue of jurisdiction as well as on the issue of limitation without going into the issue as to whether the reliefs claimed by the petitioner

seeking declaration of the lease deed in favour of the respondent no.2 by the respondent no.1 was void or not.

5. It is the case of the petitioner that on 28th September, 1975, a resolution came to be passed by the respondent no.1 thereby allotting the plots to the members of the society. The petitioner was allegedly allotted plot no.7 by the respondent no.1 society. Admittedly, there was no execution of the lease deed in favour of the petitioner nor any certificate was issued in favour of the petitioner. In the year 1987, the respondent no.1 allotted the said plot no.7 in favour of the respondent no.2 and has enrolled the said trust as a member. The petitioner was pursuing the proceedings before the revenue authorities insofar as entering the name of the respondent no.2 in the mutation entry is concerned.

6. A perusal of the prayers in the dispute which is admittedly filed on 9th December, 2002 clearly indicates that a declaration was sought that the petitioner was exclusively having right, title and interest in the said plot no.7 and has applied for execution of the registered lease deed in favour of the petitioner. The petitioner has also applied for a declaration that the lease deed dated 10th September, 1987 in favour of the respondent no.2 was void and illegal. Though there was no execution of any lease deed in favour of the petitioner, pursuant to the resolution passed by the respondent no.1 society on 29th September, 1975 and though the respondent no.1 had already allotted the said plot to respondent no.2 in the year 1987, the petitioner filed a dispute for various declaratory reliefs only on 9th December, 2002. It is not in

dispute that the lease deed was executed by the respondent no.1 in favour of the respondent no.2 in the year 1987.

7. In my view, the Co-operative Appellate Court has rightly considered these admitted facts as well as the oral evidence in the impugned order and has rightly rendered a finding of fact that the dispute filed by the petitioner was *ex-facie* barred by law of limitation. In my view, the learned Co-operative Appellate Court has rightly held that the benefit of section 14 of the Limitation Act, 1963 could not have been availed of by the petitioner. The proceedings which were pending before the revenue authority had nothing to do with the issue of declaration of title of the petitioner before the Co-operative Court under section 91.

8. I do not find any infirmity with the impugned order passed by the Co-operative Appellate Court. The petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

[R.D. DHANUKA, J.]