

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

WRIT PETITION NO. 9833 OF 2019

Umesh Bhiksharm Sharma

... Petitioner.

V/s.

Army Co-operative Housing Society
Dara Enclave & Ors.

... Respondents.

Ms. Pooja Khandeparkar, Advocate, a/w. Ruturaj P. Pawar, Advocate, for the Petitioner.

Mr. Vishal Kanade, Advocate a/w. Ranjit S. Hutkari
Sharad Suryawanshi for Respondent Nos. 1 & 2.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 16, 2019.

PC :

1 Heard Ms. Pooja Khandeparkar assisted by Mr. Ruturaj Pawar, learned counsel for the Petitioner and Mr. Vishal Kanade, learned counsel for Respondent Nos. 1 and 2.

2 Having regard to the limited nature of controversy involved in the present writ petition, court is of the view that issuance of formal notice is not required as the case can be disposed of at this stage itself.

3 By filing this petition under Articles 226/227 of the Constitution of India, Petitioner has challenged legality and validity of order dated 03.08.2019 passed by the Maharashtra State Co-operative Appellate Court, Mumbai (Appellate Court), setting aside the injunction order passed by the Co-operative Court, Thane (Co-operative Court) in a dispute raised by the Petitioner.

4 Case of the Petitioner, as projected in the writ petition, is that he is a shareholder-member of the Army Co-operative Housing Society, which is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960. The Co-operative Society has 11 buildings and 38 row houses; total number of members are 518.

5 It is alleged that certain resolutions were adopted by the Co-operative Society to put galvanized sheets over the terraces of the 11 buildings. Thereafter, related constructions were carried out by Co-operative Society. Contending that such constructions were without permission of the municipal authorities, Petitioner raised a dispute before the Co-operative Court against the Co-operative Society, which was registered as Dispute No. CCT-21 of 2019. During pendency of the said dispute, an application was filed

by the Petitioner, seeking temporary injunction which was registered as Exh.5. After hearing the matter, the Co-operative Court passed the following order on 07.03.2019, which reads thus :

“ORDER

1. Application at Exh. 5 is partly allowed.
2. Pending the hearing and final disposal of the dispute the opponents, their agents, representatives or any person claiming through them be restrained by order of interim injunction from awarding any contract / tender for the construction of the roofing / sheds over the terrace of the society building.
3. Pending the hearing and final disposal of the dispute the opponents, their agents, representatives, agents and the officers is hereby restrained from implementing the resolution which is passed in the meeting dated 25.09.2016, 02.04.2017, 30.09.2018.”

6 Aggrieved by the aforesaid order of injunction, Respondent No.1 preferred an appeal before the Appellate Court, which was registered as A.O. No. 23 of 2019. By judgment and order dated 03.08.2019, the injunction order passed by the Co-operative Court was set aside by the Appellate Court and the injunction application was rejected.

7 Aggrieved thereby, present writ petition has been filed.

8 This court, by order dated 04.09.2019 took note of the fact that the Appellate Court itself had granted an interim stay and directed that the stay granted by the Appellate Court should continue till 17.09.2019. For one reason or the other, the matter could not be heard thereafter though on 17.09.2019 it was clarified that such interim order would continue till the next date, which was fixed on 18.11.2019.

9 Today, the matter has been listed on being mentioned by learned counsel for Respondent Nos.1 and 2.

10 Submissions made by the learned counsel for the parties have been considered.

11 From the above, what is noticeable is that Dispute No.CCT-21 of 2019 is still pending before the Co-operative Court at Thane. An injunction was granted by the Co-operative Court, not to implement the decision taken in the meeting of the Co-operative Society for awarding of contract/tender for construction

of roofings/sheds over the terraces of the society's building. However, the Appellate Court set aside such injunction order and rejected the interim application.

12 When the dispute is pending for final adjudication, if construction is allowed to be carried out, then the dispute itself will be rendered infructuous. To ensure that the dispute remains alive till its final adjudication, it is necessary to maintain the *status-quo* as on today. This court had, therefore, rightly passed the *status-quo* order on 04.09.2019.

13 Having heard learned counsel for the parties and on due consideration, the Co-operative Court at Thane is directed to finally decide Dispute CCT-21 of 2019 within a period of three months from the date of appearance of both the parties, which is fixed on 06.11.2019 at 10.30 a.m. During this period of three months, *status-quo* order passed by this court on 04.09.2019 shall continue.

14 Writ Petition is disposed of in the above terms.

(UJJAL BHUYAN, J.)

.....