IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4834/2019
Smt. Kanchan w/o Chandmal Bundela Vs. Smt. Mangla w/o Keshav Gawale and others.

WRIT PETITION NO.4863/2019
Pramod S/O Kedarnath Gandhi Vs. Shri Keshav s/o S.Gawale and ors

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Office notes Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri H.I..Kothari, Advocate Advocate for petitioner in both petitions.
Shri N.B.Rathod, Advocate for respondent no.1 in both petitions.
Shri S.N.Shende, Advocate for respondent no.2 in both petitions.
Shri A.M.Kadukar, Assistant Government Pleader for respondent no3. In both petitions.

CORAM : A.S.CHANDURKAR, J.
DATED : October 03, 2019

Common Order

Since common issues arise in both these writ petitions, they are being decided by this common order.

Facts relevant for adjudication of these writ petitions are that the respondent No.1 in both the writ petitions had approached Co-operative Court, Nagpur challenging resolutions dated 03/10/1976 and 24/04/1977. By these resolutions the Vijayanand Co-operative Housing Society fixed the price of the shop blocks at Rs.100/- per square foot and thereafter cancelled the allotment in favour of the respondent No.1. By award dated 27/04/1981, the Co-operative Court set aside resolution dated 03/10/1976 being null and void. It also set aside resolution dated 24/04/1977 by which allotment in favour of the respondent No.1 had been set aside. The respondent No.2- was held entitled for refund of the amounts already paid. The award passed by the Co-operative Court was confirmed in appeal by the Co-operative Appellate Court and writ petitions filed challenging aforesaid adjudication were also dismissed. The respondent No.1 thereafter filed the execution proceedings in the civil Court seeking possession of the shop block. The petitioners in turn, filed separate civil suits challenging aforesaid adjudication on the ground that they were not parties to the dispute in the Co-operative Court. The suit was dismissed by the trial Court holding the same to be not maintainable. However, in various second appeals filed by the petitioner and other similarly situated persons, this Court by judgment dated 30/07/2004 held the suit to be maintainable and directed the trial Court to decide the same within period of six months. This judgment was maintained by the Supreme Court of India. Subsequently, the civil suit filed by the petitioners was dismissed and appeals under Section 96 of the Code of Civil Procedure (for short, the Code) are presently pending.

The respondent No.1 in both the writ petitions filed execution proceedings before the trial Court seeking execution of the award passed by the Co-operative Court. In those proceedings the petitioners as judgment-debtors sought rejection of the execution proceedings on the ground that same was not maintainable in law. By the impugned order dated13/11/2014 below Exhibit-16 in R.D.No.110/2014 and that below Exhibit-15 in R.D.No.109/2014, the objection raised by both the petitioners were disallowed and the execution proceedings were held to be maintainable. The said orders were challenged in Writ Petition Nos.7290/2014 and 7291/2014. The said writ petitions came to be dismissed on 08.10.2015. The aforesaid judgment was challenged by the petitioners before the Hon'ble Supreme Court but the Special Leave Petition came to be dismissed. Subsequently further orders passed in the execution proceedings were again challenged in Writ Petition No.6804/2015 and 6805/2015. Those writ petitions also came to be dismissed. Yet another set of objections came to be filed by the petitioners under Section 47 of the Code read with Order XXI Rules 23 and 105 of the Code. To substantiate those objections the petitioners also filed additional objections before the Executing Court. By the impugned order dated 27.06.2019 the Executing Court rejected the said applications. Being aggrieved, the said orders have been challenged in the present writ petitions.

Shri H.I.Kothari, learned counsel for the petitioners submitted that the Executing Court erred in refusing to adjudicate the objections on merits. According to him, considering the nature of the award passed by the Co-operative Appellate Court, there was no question of issuing any certificate under Section 98 of the Maharashtra Co-operatives Societies Act, 1960 (for short 'the said Act'). Under Section 98 of the said Act, the manner in which money has to be recovered has been specified therein. The amount which is due is liable to be recovered by way of arrears of land revenue. As there was no award of money in the present disputes, such certificate under Section 98 of the said Act could not have been issued. He further submitted that the certificate as issued went beyond the award as passed by the Co-operative Appellate Court. Such certificate was required to be in accordance with the award but it was not so. It was then submitted that in absence of any prayer for delivery of possession of the plots in question to the decree-holder, such relief could not have been granted by the Appellate Court. Said relief was granted without any prayer being made by the disputants. It was further submitted that under the provisions of Section 47 of the Code the objector was entitled to raise objections as to the maintainability and executability of the award in question. It was the duty of the Executing Court to have gone into the objections as raised but the same had not been done by the Executing Court. The Objectors ought to have been granted opportunity to lead evidence in that regard. He urged that in fact the disputants were guilty of practicing fraud while obtaining the certificate in question. Since fraud vitiates the validity of the proceedings, it was clear that the award in question could not have been executed. In fact, the award as passed was itself a nullity and the Executing Court erred in permitting the execution proceedings to progress further. He also referred to the grounds raised in Civil Application No. 1957/2019 by which amendment was sought by the petitioner so as to raise additional grounds of challenge. The learned counsel submitted that the objectors were not party to the original dispute. Similarly the Society was not impleaded as a party in the execution proceedings though its presence was necessary. It was thus submitted that the Executing Court failed to consider the objections as raised in the proper perspective. The objections were liable to be adjudicated by granting full opportunity to the objectors. Hence the impugned orders were liable to be set aside. In support of his submissions, the learned counsel referred to following decisions :

(i) *Ramchandra and another Vs. Collector, Nagpur and others. 1970 Mh.L.J.116.*

(ii) *Malabar Hill Co-operative Housing Society Ltd. Vs. K.L.Gauba & ors. AIR 1964 Bombay 147.*

(iii) *W.P.No.6498/1998 (Narsinha N.Naik and anr. Vs. The Divisional Joint Registrar and others) (Principal Bench) decided on 12th 13 and 14th December, 2012)*

(iv) *Top Ten Partnerhsip Firm & anr. Vs. State of Mah. 2012 (1) Mh.L.J. 347.*

(v) *Sarup Singh and another Vs. Union of India and another. (2011) 11 SCC 198.*

(vi) *Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, (1993) 2 SCC 507.*

(vii) *Balvant T.Vishwamitra and others Vs. Yadav Sadashiv Mule (Dead) through Lrs and others, (2004) 8 SCC 706*

(viii) *Omprakash Verma and others Vs. State of Andhra Pradesh & Ors. (2010) 13 SCC 158.*

(ix) *A.V.Papayya Sastry and others Vs. Govt. of A.P. & ors. (2007) 4 SCC 221.*

(x) *Arun Lal and others Vs. Union of India and others. (2010) 14 SCC 384.*

(xi) *Sharad Gajanan Ambole & Ors. Vs. Gauramma Kumarappa Medar and others 2008 (1) BCR 111.*

(xii) *Lalit Malick & ors. Vs. Bajinder Singh and ors. 2011 (4) Mh.L.J. 451*

(xiii) *Maroti s/o Vishnu Borkar Vs. State of Maharashtra & ors.*
2009 (1) Mh.L.J. 248.

(xiv) *Alka Gupta Vs. Narender Kumar Gupta*
2011 (1) M.H.L.J. 711.

(xi) *Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar & ors.*
2009 (1) Mh.L.J.1

Shri N.B.Rathod, Advocate for the respondent no.1-original disputant opposed the aforesaid submissions. He submitted that the execution of the award was being delayed by the petitioners on one count or the other. Though the award was passed on 27.04.1981, it was partly modified by the appellate Court on 29.04.1983 by directing possession of the shops in question to be delivered to the original disputants. The certificate as issued under Section 98 of the said Act was in accordance with law. It was submitted that under the provisions of Section 98 of the said Act every order passed by the Court/Authority specified therein has to be executed by obtaining such certificate. Issuance of certificate is not restricted to money claims and even an award directing delivery of possession is required to be executed by obtaining such certificate. The award of the Co-operative Appellate Court having attained finality, it was not open for the objectors to go behind that award and contend otherwise. The civil suit filed by the objectors had been dismissed and the petitioners had been added as judgment-debtors in the execution proceedings. The objections in question ought to have been raised under the provisions of Order XXI Rules 22 and 23 of the Code. However at that stage the petitioners did not raise such objections despite having an opportunity to do so. Referring to the decision in *Barkat Ali and Another Vs. Badrinarain (dead) by LRs. (2008) 4 SCC 615*, it was submitted that having lost that opportunity of raising the objections it was not now open to object to the execution of the award. There was no question of leading any evidence in the present proceedings and further pleadings with regard to fraud on the part of the disputant were vague in nature. No details whatsoever were given as regards the manner in which any fraud was committed nor were the requirements of the provisions of Order VI Rule 4 of the Code satisfied. It was further submitted that the orders passed by the Executing Court on 30.04.2019 while adjudicating the earlier objections had not been challenged and the same had attained finality. Reference was made to the principles of estoppel as well as constructive res-judicata on the basis of which the petitioners were precluded from raising various challenges in a piecemeal manner. It was thus submitted that by raising frivolous objections, the objectors sought to deny the original disputants fruits of the award passed in their favour. The Executing Court having considered the objections as raised in the proper perspective, there was no reason to interfere with the said orders. The learned counsel also placed reliance on the following decisions :

(i) *Bhanu Kumar Jain Vs. Archana Kumar and Another, (2005) 1 SCC 787.*

(ii) *Asgar and ors. Vs. Mohan Varma and ors. (Civil Appeal No.1500 of 2019 arising out of SLP (C) No.1216 of 2016) decided on 05.02.2019.*

I have heard the learned counsel for the parties at length and with their assistance I have perused the material placed on record. The present proceedings indicate the manner in which the objectors have sought to prevent and protract execution of the award in question that was passed in the year 1981 which was affirmed by the Appellate Court in 1986. As per that award which was modified by the Co-operative Appellate Court, the original disputants were held entitled to possession of the respective shops allotted to them on compliance with various formalities with the Society in question. Pursuant to that award the Co-operative Appellate Court issued a certificate under Section 98 of the said Act in favour of the disputants on 23.04.1986. It was certified that the award as passed was executable as a decree of the Civil Court. Perusal of the provisions of Section 98 of the said Act along with Rules 83 and 84 of the Maharashtra Co-operative Societies

Rules, 1961 (for short, 'the said Rules'), it is clear that for executing every order passed by the Court/Authority referred to in Section 98 of the said Act has to be on the basis of a certificate issued in that regard. Merely because the title of Section 98 of the said Act reads "Money how recovered" the same would not indicate that such certificate is required to be issued only for executing an award by which money has been awarded to a party. On a complete reading of Section 98 with Rules 83 and 84 of the said Rules, the said position is clear that there is no merit in the contention raised by the petitioners that since the Co-operative Appellate Court had directed delivery of vacant possession of the shop blocks, such certificate under Section 98 of the said Court could not have been issued. The certificate as issued is in accordance with the award passed by the Co-operative Appellate Court and it cannot be said that such certificate has travelled beyond what has been awarded by the Co-operative Appellate Court. The ratio of the decision in *Ramchandra and anr* (supra) with regard to provisions of Section 137 of the said Act does not apply to the case in hand. Similar is the position with regard to the decisions in *Malabar Hill Co-operative Housing Society, Narsimha N. Naik and anr and Top Ten* (supra). The Co-operative Court while issuing the certificate under Section 98 of the said Act has not gone beyond the award and hence the ratio of the decision in *Sarup Singh* (supra) does not assist the case of the petitioners.

Insofar as the contention that the disputants were guilty of practicing fraud while obtaining the said certificate is concerned, that contention also does not have any merit. Except for making vague allegations in the objections raised by the objectors, said allegations are not supported by any material particulars. It has merely been stated that as the certificate issued under Section 98 of the said Act was in variance with the award as passed, it was an outcome of fraud and forgery being played by the disputants. There is hardly any basis to consider the aspect of fraud on these pleadings. As noted above, the certificate as issued is in accordance with the award as modified by the Co-operative Appellate Court and it has attained finality.

There is substance in the contention raised on behalf of the disputants that having failed to raise proper objections pursuant to the notice received by the objectors under the provisions of Order XXI Rule 22 of the Code, the objectors were now precluded from again raising objections. The observations in *Barkat Ali* (supra) to that extent support the said contention raised by the learned counsel for the disputant. It is seen that the objectors have been raising piecemeal challenges at various stages of the execution proceedings so as to delay inevitably. Merely because the present objections were filed after the writ petitions preferred by the objectors earlier were rejected, that would not permit the objectors to raise fresh objections especially when same could have been raised at an earlier point of time. Thus even after considering the grounds sought to be urged by amending writ petition as per Civil Application No.1957/2019, it is found that the Executing Court has rightly rejected the objections raised by the petitioners. It has dealt with each and every contention of the petitioners and has rightly observed that there was no merit whatsoever in the same. After considering the ratio of the other decisions relied upon by the learned counsel for the petitioner, I am convinced that the Executing Court did not commit any error when it passed the impugned order and rejected the objections raised by the petitioners.

In that view of the matter, no interference with the impugned orders is called for. The writ petitions are accordingly dismissed with costs. The Civil Application Nos. 1956/2019 and 1957/2019 are also disposed of. The Executing Court shall take all necessary steps to execute the award in question expeditiously.

At this stage the learned counsel for the petitioners seeks continuation of the interim order that is operating in the writ petitions. That request is opposed by the learned counsel for the respondent no.1. However as the interim order has been operating since 16.07.2019 it shall continue to operate for a period of six weeks from today and shall cease to operate automatically thereafter.

JUDGE

Andurkar.