

Nalawade A.S.

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

WRIT PETITION NO. 2002 OF 2014

Mr. Rajaram K. Shinde,

Age 86 years,

R/o. B 91-93, Paschim Apartment,

Kashnath Dhuru Road,

Off Cadel Road,Dadar,

Mumbai-400 028.

(since deceased through his legal heirs)

1a) Smt. Shailaja Rajaram Shinde(wife),

Age 75 years,Occ. Business.

1b) Mr. Mandar Rajaram Shinde (son),

Age 43 years, Occ. Business,

Both residing at 93/93 Pachim Apartment,

K.D.Road, Dadar (W), Mumbai-400 028.

1c) Mrs. Vedanti Vilas Sawant

(Married daughter),

Age 53 years, Occ. Service,

R/at 102, Cadel Plaza, V. S. Road,

Dadar(W), Mumbai-400 028.Petitioners.

Versus

1. Worli Sagar CHS Ltd.

“Vainganga” Pochkhanawalla Road,

Worli, Mumbai 400 018.

2. Mr. Bharat R. Bondre,
Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Respondents.

WITH
CIVIL APPLICATION NO. 448 OF 2017
IN
WRIT PETITION NO.2002 OF 2014

Shri. Bharat R. Bondre,
Age Adult, Occ. Agriculturist,
Residing at Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Applicant.

In the matter between

Mr. Rajaram K. Shinde,
Age 86 years,
R/o. B 91-93, Paschim Apartment,
Kashnath Dhuru Road,
Off Cadel Road,Dadar,
Mumbai-400 028.
(since deceased through his legal heirs)

- 1a) Smt. Shailaja Rajaram Shinde(wife),
Age 75 years,Occ. Business.
- 1b) Mr. Mandar Rajaram Shinde (son),
Age 43 years, Occ. Business,

Both residing at 91/93 Pachim Apartment,
K.D.Road, Dadar (W), Mumbai-400 028.

- 1c) Mrs. Vedanti Vilas Sawant
(Married daughter),
Age 53 years, Occ. Service,
R/at 102, Cadel Plaza, V. S. Road,
Dadar(W), Mumbai-400 028.
- 1d) Smt. Bageshri B. Shinde,
Age 60 years, Occ. Nil.
- 1e) Onkar B. Shinde,
Age 36 years.
- 1f) Mr. Amogh B. Shinde,
Age 32 years.
All residing at Bhima Building, Room No.201,
Sagar CHS. Sir Pochakhanawala road,
Worli Colony, Mumbai 400 030.

.....Applicants.

Versus

1. Worli Sagar CHS Ltd.
“Vainganga” Pochkhanawalla Road,
Worli, Mumbai 400 018.
2. Mr. Bharat R. Bondre,
Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Respondents.

WITH

CIVIL APPLICATION NO. 1517 OF 2017

IN

3/23

20th March,2020

WRIT PETITION NO.2002 OF 2014

Ms. Bhairavi Bhalchandra Shinde,
Daughter of late Bhalchandra Shinde,
Residing at 502,Aquaris Bldg., 5th floor,
Divya Park, Jankalyan Nagar, Malad(W),
Mumbai- 400 097.

.....Applicant.

In the matter between

Mr. Rajaram K. Shinde,
R/o. B 91-93, Paschim Apartment,
Kashnath Dhuru Road,
Off Cadel Road,Dadar,
Mumbai-400 028.

Versus

1. Worli Sagar CHS Ltd.
“Vainganga” Pochkhanawalla Road,
Worli, Mumbai 400 018.
2. Mr. Bharat R. Bondre,
Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Respondents.

WITH
CIVIL APPLICATION (L) NO. 5033 OF 2019
IN
WRIT PETITION NO.2002 OF 2014

Mr. Bharat R. Bondre,
Age Adult, Occ. Agriculturist,
Residing at Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Applicant.

In the matter between

Mr. Rajaram K. Shinde,
Age Adult, Occ. Agriculturist,
R/o. B 91-93, Paschim Apartment,
Kashnath Dhuru Road,
Off Cadel Road, Dadar,
Mumbai-400 028.

(Since deceased through his legal heirs)

1a) Smt. Shailaja Rajaram Shinde(wife),

Age 75 years, Occ. Business.

1b) Mr. Mandar Rajaram Shinde (son),

Age 43 years, Occ. Business,

Both residing at 91/93 Pachim Apartment,

K.D.Road, Dadar (W), Mumbai-400 028.

1c) Mrs. Vedanti Vilas Sawant

(Married daughter),

Age 53 years, Occ. Service,

R/at 102, Cadel Plaza, V. S. Road,

Dadar(W), Mumbai-400 028.

1d) Mrs. Bhagyashri B. Shinde,

Age 60 years, Occ. Nil.

1e) Onkar B. Shinde,

Age 36 years, Occ. Nil.

- 1f) Mr. Amogh B. Shinde,
Age 32 years, Occ. Nil.
All residing at Bhima Building, Room No.201,
Sagar CHS. Sir Pochakhanawala road,
Worli Colony, Mumbai 400 030.

.....Applicants.

Versus

1. Worli Sagar CHS Ltd.
“Vainganga” Pochkhanawalla Road,
Worli, Mumbai 400 018.
2. Mr. Bharat R. Bondre,
Swami Vivekanand Marg,
Tal. Chikhali, Dist. Buldhana.

.....Respondents.

Mr. Tejas Dande i/by Mr.V.C. Ghosalkar for the
Petitioners/Applicants.

Mr. A.V. Anturkar, Sr. Advocate i/by A.A.Desai for the Applicants
in CAW No.448 of 2017 and for Respondent No.2 in writ
petition.

Mr. Prathamesh Seth i/by J.B. Fernandes for Applicant in CAW
No.1517/2017.

CORAM : N. J. JAMADAR J.

DATE : 20th March, 2020

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution of India takes exception to the Judgment and order dated 5.2.2014 passed by the learned Member, Maharashtra State Co-operative Appellate Court at Mumbai in Appeal No.183 of 2013 whereby the appeal preferred by the original petitioner Mr. Rajaram K. Shinde (deceased petitioner) against the Judgment and Award dated 30.9.2013 passed by the Co-operative Court No.3, Mumbai, in Dispute No.1521 of 1990 came to be dismissed.

2. The background facts necessary for determination of this petition can be summarized as under:-

The Worli Sagar Co-operative Housing Society Ltd.- respondent No.1, is a society registered under the Maharashtra Co-op. Societies Act, 1960, (hereinafter referred to as “The Act, 1960”). The society was formed to provide dwelling units to the then sitting Members of Parliament, Members of Legislative

Assembly and the Members of Legislative Council. The deceased petitioner claimed to be one of the oldest members of respondent No.1 Society. The respondent No.1 had proposed to construct in all six buildings comprising of 242 flats. The allotment of the flats to the members of respondent No.1 society was to be made on the principle of first come first serve basis.

The members of the Managing Committee of respondent No.1, however, deviated from the said norm and changed the seniority list by relegating members who were higher in the seniority list to the lower position. The deceased petitioner stood at Sr. No.84 in the original list. The deceased petitioner was thus eligible to be allotted a flat in the buildings Bhima or Vaitarana. However, the respondent No.1 allotted flats to those members who belonged Scheduled Caste and Scheduled Tribe, though they were lower in the order of seniority.

The respondent No.1 also tinkered with the seniority by adopting a criterion which was not in accordance with the Government Tenancy Regulation. The respondent No.1 adopted the procedure of giving weightage to the members of the society who had paid instalments towards the cost of construction and, thus, disturbed the seniority list prepared on the basis of first come first serve. Hence, the chances of deceased petitioner to get an allotment of a flat in the buildings Bhima or Vaitarana, were unjustifiably affected.

The deceased petitioner thus lodged the dispute for declaration that the seniority list maintained by defendant No.1 for allotment of flats be declared null and void and respondent No.1 be directed to prepare the list of seniority of the members in accordance with the regulation No.2 of the Tenancy Regulation in Form-A, attached to the registered bye laws of the society and also allot one flat to the deceased petitioner in one of the buildings; Bhima or Vaitarana. A permanent injunction was also sought against respondent No.1

from acting upon the seniority list prepared by respondent no.1.

3. The opponent Nos. 2 to 17 came to be subsequently impleaded in the said dispute.

4. The respondent No.1 society resisted the claim of the deceased petitioner. It was contended that one of the terms of the grant of land by the State Government to respondent No.1 society was that 20 per cent of the flats were to be allotted to the members of the backward classes. Thus, the allotment of the flats to the members of the respondent No.1 society, who were from the backward classes, was stated to be in conformity with the terms of grant of land. It was denied that the allotment was to be based solely on first come first serve basis. Since the buildings were to be constructed, it was resolved that the seniority list would be prepared and updated on the basis of payment of cost of construction within the stipulated period. It was also resolved that non-payment of instalments of cost of construction would be construed as 'default'. The deceased petitioner had committed five defaults. Thus, the deceased

petitioner was placed in the 6th list i.e. 'F' list, of the members who had committed five defaults in making the payment of instalments. The deceased petitioner had never questioned the correctness of the criterion adopted for determining the seniority list nor challenged the resolutions and the consequent seniority list.

5. The opponent No.4 Mr. Bharat R. Bondre, who is the contesting respondent, resisted the dispute by filing written statement. The claim of the deceased petitioner that he was senior to the opponents before the Co-operative Court was contested. The opponent No.4 asserted that in the first seniority list he stood at Sr. No.78, whereas, in the seniority list which came to be prepared after taking into account the defaults in payment of instalments, he was placed at Sr. No.236. Thus, he was senior to the deceased petitioner in the initial as well as subsequently prepared seniority list. The opponent No.4 further contended that he had paid a sum of Rs.3,70,252.00 and yet he was not allotted a flat. Thus, he had instituted a

dispute being ABN/CC/III No.1051/1993. In the said dispute, the Court had passed Award to the effect that he was entitled to allotment of a flat from amongst the flats which were in the custody of the Court Receiver.

6. In view of the consideration and the findings of the Co-operative Court and the Appellate Court, it would not be necessary to delve into the defences raised by the rest of the opponents, who eventually came to be deleted from the array of the respondents before the Co-operative Appellate Court.

7. In the back-drop of the aforesaid facts, the learned Judge, Co-operative Court was persuaded to frame the issues and record the evidence of the parties. The learned Judge, after appraisal of the evidence led and documents tendered for his perusal, held that the original petitioner failed to prove that the seniority list prepared by the society for making allotment of flats was illegal. The learned Judge observed that the original petitioner admitted the correctness of the seniority list Exhibit-

D-2. In the said seniority list, the deceased petitioner was at Sr. No. 84, whereas, Opponent No.4 was at Sr. No. 78. The learned Judge was of the view that the deceased petitioner was assailing the correctness of the seniority list while placing reliance on the very list in support of his claim. It was further noted that the deceased petitioner was aware that the terms of the grant provided that 20 per cent of the flats were to be allotted to the members of the backward classes. Taking note of the Judgment and Award in ABN/CC/III No.1051 of 1993, the learned Judge moulded the relief.

8. During the pendency of the dispute, the Court Receiver came to be appointed and the deceased petitioner was put in possession of flat No.201 as an agent of the Court Receiver. The respondent No.1 was thus directed to allot and give possession of any other flat to the disputant-deceased petitioner instead of flat No.201, which was in possession of the petitioner as an agent of the Court Receiver. The disputant was thus directed to handover the flat No.201 to the Court Receiver, who, in turn, was directed to handover the possession of said

flat No.201 situated in building Bhima to opponent No.4 Mr. Bharat R. Bondre. The dispute was thus partly allowed.

9. The deceased petitioner carried the matter in appeal before the Appellate Court. By the impugned Judgment and order the Appellate Court was persuaded to confirm the Judgment and Award of the Co-operative Court, and dismiss the appeal. The Appellate Court analyzed the facts and came to the conclusion that the dispute essentially boiled down to the fact as to whether the deceased petitioner was entitled to retain flat No.201, (which was in his possession as an agent of the Court Receiver), or the Opponent No.4 - Respondent No.2 herein had a preferential right over the said flat No.201. The Appellate Court was of the view that the criterion adopted by the Trial Court of *inter se* seniority between the deceased petitioner and the respondent No.2 was just. Thus, the appeal came to be dismissed.

10. I have heard Mr. Dande, the learned counsel for the

petitioners No1a to 1f who came to be impleaded as legal representative of the deceased petitioner, and Mr. Anturkar, learned Senior Counsel for respondent No.2, at some length.

11. Mr. Dande urged that the Co-operative Court and the Appellate Court have committed manifest error in not at all considering the nature of the dispute raised by the deceased petitioner. The Courts below were unjustifiably influenced by the Judgment and Order passed by the Co-operative Court in the dispute instituted by Opponent No.4 and, thus, this factor vitiated the entire reasoning and adjudication, urged Mr. Dande. To draw home this point, Mr. Dande took the court through the pleadings and the impugned Judgment and Order. The fact that the respondent No.1 had not led any evidence in support of its claim that it had prepared the seniority list on the basis of the resolutions was strenuously urged to bolster up the submission that dispute was decided by the Co-operative Court de hors the essential controversy raised by the disputant. Thus, the impugned Judgment and the Award deserve to be interfered with, submitted Mr. Dande.

12. Per contra, Mr. Anturkar would urge that the case of the disputant, as set up in the dispute itself, disentitled the disputant any relief. Inviting the attention of the Court to the pleadings in the dispute, especially an averment to the effect that the disputant had a definite chance of being allotted flat in one of the two buildings, being at Sr. No.84 in the list vide Exhibit-A, it was submitted that the disputant in no case had a better case than that of respondent No.2. The fact that the disputant had candidly conceded the correctness of the list Exhibit-D-2, wherein, the respondent No.2 was shown at Sr. No.78 (senior to the deceased petitioner) was pressed into service to demonstrate that the claim of the petitioner is untenable and the Courts below have not committed any illegality in passing the impugned orders, which warrant interference in exercise of writ jurisdiction by this Court.

13. It is pertinent to note that the deceased petitioner had approached the Co-operative Court with a case that

seniority list prepared by adopting criterion other than that of first come first serve basis was not valid. However, the disputant admittedly placed reliance upon the seniority list Exhibit D-2, claiming the same to be the correct seniority list, in which the disputant was placed at Sr. No.84. The disputant alleged that the subsequent change in the position on the ground of the non-payment of the instalments, and the consequent relegation of the petitioner to F list, were illegal.

14. The Co-operative Court analyzed the pleadings as well as the evidence led before it. It was *inter alia* noted that the disputant admitted the correctness of the list Exhibit D-2. The disputant had not challenged the preparation of first and second seniority list Exhibit D-3, nor the disputant had challenged the resolutions on the basis of which the seniority list was prepared. The fact that the disputant was aware and admitted that under the terms of the grant, 20 per cent of the flats were required to be reserved for members of the backward classes, was also taken into account. In the background of aforesaid material, the learned Judge, Co-operative Court,

recorded a finding that the disputant failed to demonstrate that the seniority lists were wrongly prepared.

15. To this extent, the finding recorded by the learned Judge, Co-operative Court appears impeccable. In fact, the learned Member of the Co-operative Court observed that the challenge to the seniority list was given up as all the members, whose seniority would have been affected, were not made parties to the dispute. In the backdrop of the aforesaid material, the challenge to the seniority list prepared by respondent No.1, was justifiably repelled by the courts below.

16. In the peculiar facts of the case, even if the case of the deceased petitioner is taken at par, the best position the deceased petitioner had, in the first seniority list, was that of position No. 84. Indubitably the deceased petitioner banked upon the said seniority list Exhibit-D-2. In the very same seniority list the respondent No.2 was shown at Sr. No.78. In

this view of the matter and, especially, in view of the Judgment and Award passed by the Co-operative Court in Dispute No. ABN/CC/III/1051/1993 dated 14.7.1997, directing the respondent No.1 to allot a flat which becomes immediately available from the flats, which were in the custody of the Court Receiver, to respondent No.2-Mr. Bharat Bondre, the courts were within their rights in taking cognizance of the said development and in moulding the relief.

17. The fact that the petitioner has been in possession of flat No.201 since 1993 in the capacity of an agent of the Court Receiver is of no assistance to crystalize the rights of the deceased petitioner as an allottee. As the respondent No.2 stood in the higher position in the first seniority list (Exhibit-D-2), the deceased petitioner could not have claimed seniority for the purpose of allotment of flat, over respondent No.2. Thus, the Co-operative Court committed no error in partly allowing the dispute and directing the deceased disputant to hand over the possession of flat No.201 to Court Receiver, with further right to

work out the remedies against the respondent No.1 for allotment of flat. The learned Member of the Co-operative Court also committed no error in declining to interfere with the order passed by the Co-operative Court.

18. Resultantly, in exercise of writ jurisdiction, no interference is warranted with the impugned order. The petition, therefore, deserves to be dismissed. However, since the deceased petitioner had been in possession of the flat No. 201 since 1993, it would be in the interest of justice that the petitioners are provided sufficient time to vacate the said flat. In the circumstances of the case, the petitioners are granted four months time to vacate the said flat No.201, from the date of uploading of this Judgment.*

* The Judgment was dictated in open court on 20th March, 2020. However, due to lock-down and suspension of regular court functioning the Judgment could not be typed and uploaded. Hence, while signing the final Judgment the portion in italics is added to provide adequate time to the petitioners.

CIVIL APPLICATION NO.1517 OF 2017

19. Before parting, it would be necessary to note that the Civil Application bearing No.1517 of 2017 is preferred by Mrs. Bhairavi Bhalchandra Shinde for her impleadment as petitioner. Mrs. Bhairavi B. Shinde claimed that she is the daughter of Bhalchandra the pre-deceased son of the deceased petitioner. The original petitioner died on 10.12.2016. After his demise initially his wife Smt. Shailaja Shinde and son Mr. Mandar Shinde and Mrs. Vedanti Sawant, a married daughter, came to be impleaded as petitioner Nos.1a to 1c. Subsequently by an order dated 5.7.2017 in Civil Application (St.) No.18539 of 2017, the wife and two sons of another son Bhalchandra, who predeceased the petitioner (on 7.7.2015), came to be impleaded as petitioner No.1d to 1f.

20. The application for impleadment of Bhairavi Shinde was principally resisted by petitioner No.1d to 1f by filing

affidavit in reply. The status of the applicant as the daughter of the deceased Bhalchandra was sought to be disputed by petitioners No.1a to 1f. This court had passed an order that the said application be decided at the final adjudication of the writ petition.

21. In view of the fact that the estate of the deceased petitioner was represented by petitioner Nos.1a to 1c and even there was adequate and effective representation of the estate of the deceased Bhalchandra, the pre-deceased son of the deceased petitioner, no prejudice can be said to have been caused to the representatives of the deceased petitioner in prosecuting this petition. The petitioner Nos. 1a to 1f, the legal representatives of deceased petitioner, in fact, earnestly prosecuted the petition. Thus this application does not deserve to be countenanced and accordingly stands disposed of.

22. In view of the dismissal of the petition, all other pending applications do not survive and accordingly stand disposed of.

[N. J. JAMADAR, J.]