

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 355 OF 2018

Vitthal Dadarao Waghmare

.. Petitioner

Versus

Sudam Dadarao Waghmare and others

.. Respondents

Mr. Anand V. Indrale Patil, Advocate for the Petitioner.

Mr. B. G. Deshmukh, Advocate for Respondent No. 1.

Mr. S. C. Bhapkar, Advocate for Respondent Nos. 2 and 3.

CORAM : KISHORE C. SANT, J.

DATED : 12th JUNE, 2023.

P C. :-

. Heard the parties for some time.

2. The petitioner by way of this petition has challenged the judgment and order passed by the learned Member, Maharashtra State Co-operative Appellate Court Bombay, Bench at Aurangabad dated 23.10.2017 thereby dismissing his appeal bearing Appeal No. 38/2015 holding that the dispute under Section 91 of the Maharashtra Co-operative Societies Act was not maintainable as well as on merits. The case of the petitioner is that since he was in service of the State Government he became member of respondent No. 2 - society meant for the Government servants. He was duly taken as member of the

society and he was allotted House No. C-33 in the said society. Subsequently, because of his transfer he stayed in Mumbai. His brother – respondent No. 1 though was not a Government servant he was allowed to stay in the said house. It is further case that since respondent No. 1 was staying in the house, with connivance of respondent Nos. 2 and 3 he got forged documents prepared for transferring the said house in his name. The society also has passed resolution in his favour. The petitioner therefore filed a dispute challenging the action of transfer of the suit house in the name of respondent No. 1. The grounds were mainly that, the document namely no objection certificate was forged as the signature on the said document was not of the petitioner. Secondly, he challenged the said transfer on the ground that the society has not followed proper procedure. The said dispute was filed in the Co-operative Court at Nanded.

3. Learned Judge, Co-operative Court, Nanded dismissed the dispute on merits holding that it is the petitioner who had executed the documents like consent letter. The society has rightly passed resolution dated 13.06.1999 and has transferred the house in the name of respondent No. 1. The ground that there was no transfer by any deed was also negatived holding that the property belongs to the Co-operative

Housing Society and the title vests in the society. The property is only allotted to its member. Learned Judge also considered that the petitioner had filed a criminal case against respondent No. 1 for committing forgery. In the said trial, the Court came to conclusion that there is no forgery. As a matter of fact, the said finding attained finality till this Court. Thus, it is seen that, the learned Judge of the Co-operative Court has held that the transfer is duly effected by following procedure.

4. The petitioner challenged the judgment of the Co-operative Court by filing appeal in the Co-operative Appellate Court. The Appellate Court also considered as to whether a dispute was maintainable under Section 91 of the Maharashtra Co-operative Societies Act and held that dispute itself was not maintainable on merits also. The learned Appellate Court held against the petitioner.

5. Learned advocate for the petitioner on this premise submits that, the learned lower Appellate Court though had formed an opinion that the dispute was not maintainable, still has considered the case on merits and he challenged the judgment on both the counts.

6. Learned advocate for respondent No. 1, so also learned advocate for respondent Nos. 2 and 3 vehemently oppose the petition.

7. Learned advocate Mr. Deshmukh for respondent No. 1 submits that, both the Courts have rightly held that no case was made out by the petitioner.

8. Learned advocate for respondent Nos. 2 and 3 also submits that, in fact, the society had followed the procedure before transferring the house in the name of respondent No. 1.

9. Both the learned advocates for respondents submit that, the Court has rightly considered the point of maintainability of the dispute. The Court has to give finding on all the issues. They oppose the submission that since the Court had come to conclusion that dispute was not maintainable, the Court should not have considered the matter on merits.

10. This Court after considering the submissions finds that, on merits both the Courts have concurrently held that the petitioner had executed documents such as consent letter Exh. 107 and the rights were transferred. This Court finds that, the question of maintainability goes to the root of the matter and the Court was within its power to consider the question of jurisdiction and maintainability of the dispute.

11. On considering all these aspects this Court finds that, this Court need not go into the finding of the facts when there is concurrent finding by both the Court. Nothing is pointed out that the said finding is either perverse or based on no evidence. So far as maintainability is concerned, this Court finds that the learned lower Appellate Court has rightly considered that aspect and has arrived at the conclusion that the dispute was not maintainable considering the prayers in the dispute. This Court does not find any ground to call for interference in the impugned judgment and order while jurisdiction under Article 226 of the Constitution of India. The writ petition therefore stands dismissed.

(KISHORE C. SANT, J.)

PS.B.