

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3678 OF 2000

Sadashiv Nagappa Kadam

.. Petitioner

Versus

Manik Moreshwar Jaokar and Ors.

.. Respondents

WRIT PETITION NO. 3966 OF 1999

Manik Moreshwar Jaokar and Anr.

.. Petitioners

Versus

Sadashiv Nagappa Kadam and Anr.

.. Respondents

-
- Dr. Uday P. Warunjikar, Advocate for Petitioner in WP No.3678 of 2000 and Respondent in WP No.3966 of 1999.
 - None for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 16, 2023.

P.C.:

1. Dr. Warunjikar, learned Advocate appears for the Petitioner in Writ Petition No.3678 of 2000. None appears for the Respondent Nos.1 and 2 in Writ Petition No.3678 of 2000 who are also Petitioners in Writ Petition No.3966 of 1999.

2. These Writ Petitions have been heard by this Court on 06.01.2023, 12.01.2023, 19.01.2023, 09.02.2023 and thereafter today. Except on 06.01.2023 on which date Advocate Mr. Jeet Ghandi appeared for the Respondents in Writ Petition No.3678 of 2000, who are the Petitioners in Writ Petition No.3966 of 1999, on all the remaining dates no appearance was entered.

3. On 09.02.2023, this Court passed the following order:-

“1. Mr. Kharkar, learned Advocate appears for Petitioner, but none appears for the Respondents in Writ Petition No.3678 of 2000.

2. None appears for the Petitioners in Writ Petition No.3966 of 1999.

3. It is clarified that if Respondents in Writ Petition No.3678 of 2000 do not appear on the adjourned date this Court shall hear the Petitioner and pass appropriate order. Both the Writ Petitions shall be taken up for hearing together on the next date.

4. As last chance, stand over to 16th February, 2023.”

4. Considering that the Writ Petitions are filed in the year 1999 / 2000, they cannot be protracted any longer. This Court by its notice dated 18.11.2022 had published that all admitted old Writ Petitions would be taken up for final hearing according to their turn on all Thursday since then.

5. In view of the above, both Petitions are taken up for final hearing and final disposal today.

6. Before I proceed with the hearing of Writ Petition No.3678 of 2000, it needs to be noted that Writ Petition No.3699 of 1999 has been filed for challenging order dated 10.03.1998 passed by the learned Cooperative Court, Mumbai which has been upheld by the learned Cooperative Appellate Court by its order dated 20.04.1999.

7. I have heard Dr. Warunjikar, learned Advocate appearing for Petitioner in Writ Petition No.3678 of 2000 and with his able assistance perused the record and pleadings of the case.

8. Briefly stated the facts are as under:-

8.1. Petitioner in Writ Petition No.3678 of 2000 is the original disputant. He claimed allotment and bonafide membership of the Society Flat No.C-23 (for short “**the said flat**”) by virtue of allotment letter dated 26.07.1986. At the relevant time, Respondents were also members of the Society. However, pursuant to order dated 16.09.1992 passed by the Bombay City Civil Court in SC Suit No.6695 of 1991 the keys of the subject flats were handed over by the disputant Petitioner to Respondents on 23.12.1992.

9. I am informed that SC Suit No.6695 of 1991 between the parties is still pending and in that view of the matter, the issue of entitlement the said flat i.e. Flat No.C-23 would ultimately be decided by the final decree and judgment that would be passed in the said suit.

10. Dr. Warunjikar would submit that there are two concurrent orders, *inter alia*, in respect of the said flat which were passed deciding various issues and questions of facts as well as law by the learned Cooperative Court as well as by the learned Cooperative Appellate Court in respect of entitlement of parties to the subject flat. He would fairly submit that all issues have been answered in favour of Petitioner in Writ Petition No.3678 of 2000, save and except the issue of genuineness of the allotment letter dated 26.07.1986 which has been issued to his client. Admittedly these are findings by *quasi*

judicial authorities under the MCS Act, 1960, but the same would ultimately be governed by the final decision in the pending suit for entitlement of the said flat in the City Civil Court.

11. Be that as it may, the right and entitlement of either of the parties to the subject flat shall be governed by the final decree and judgment that would be passed by the Bombay City Civil Court in the aforementioned pending suit No.6695 of 1991 subject to the trial.

12. In that view of the matter, at this stage no directions are required to be passed, save and except to state that the orders passed by the learned Cooperative Court and the learned Appellate Court shall remain as they are and shall be subject to the final decree in the suit that will be passed by the learned Bombay City Civil Court.

13. Needless to state that the interim relief passed in Writ Petition No.3966 of 1999 shall also be governed accordingly. All contentions of both parties in the pending suit proceedings are expressly kept open. The Civil Court shall not be influenced by any of the observations and findings returned in the orders passed by the authorities which are impugned in the present two Writ Petitions and shall determine the suit on its own merits and strictly in accordance with law.

14. With the above directions, both Writ Petitions are disposed.

[MILIND N. JADHAV, J.]