



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4435 OF 1995

Mahadeo Haribhau Shete
Since deceased
1(Aa) Smt. Ranjana Suhas Shete
Age about 48 years,

1(Ab) Mangesh Suhas Shete
Age 25 years

1(Ac) Mrunal Suhas Shete
Age 22 years
residing at 4/22/2, Priyadarshani
Colony, Opp. Market Yard,
Kolhapur, 416 005

.....Petitioners

Vs.

1. Kodoli Cooperative Housing
Society Ltd. At Kodoli Tal. Panhala
Dist. Kolhapur.

2. Chandar Shivram Kumbhar
(Since deceased Through Lrs)
2a. Shri. Subash Chandar Kumbhar
residing at Kumbhar Galli at Post
Kodoli, Tal. Panhala, Dist: Kolhapur.

3. Datta Ananda Bhosale

4. Vijay Shivaji Nikam

5. Popat Shivaji Nikam

6. Balaso Shivaji Nikam
All residents of Kodoli,
Tal. Panhala, Dist. Kolhapur.

....Respondents

Mr. P. D. Dalvi with Rushikesh Patil i/b Mr. S. J. Ghogare for the petitioner

Mr. Satyajeet Shirke for respondent no. 1

Mr. Umesh R. Mankapure for respondent nos. 4 to 6

Mr. Drupad Patil for respondent nos. 2a and 3

CORAM : GAURI GODSE, J.

DATE : 9th JANUARY 2024.

ORAL JUDGMENT:

1. Heard learned counsel for the parties. This petition challenges the Judgment and Order dated 31st October 1994 passed by the Cooperative Appellate Court at Kolhapur in Appeal No. 225 of 1992. The petitioner prays for restoring the original Judgment and order dated 13th July 1992 passed by the Cooperative Court in Dispute Case No. 366 of 1982 filed by the petitioner.

2. By order dated 13th July 1992, the Cooperative Court had allowed the Dispute of the petitioner with respect to his claim on plot

no. 67 and declared the actions and resolutions of the respondents with respect to the transfer of plot no. 67 inter-se between respondent nos. 2 to 6 as illegal and void. By the said order, respondent no. 1-Society was directed to transfer plot no. 67 in its present form in the name of the petitioner and also arrange for handing over the possession of the plot to the petitioner. The said order was challenged by the respondent no. 1-Society before the Cooperative Appellate Court. The appeal preferred by respondent no.1-Society was allowed and the order passed by the Cooperative Court in favour of the petitioner was quashed and set aside. Hence, the present petition.

3. Learned counsel for the petitioner submitted that by resolution no. 51 dated 5th March 1973, the Society had resolved to admit the petitioner as a member of the society and also resolved to transfer plot no. 67 in his favour on payment of $\frac{1}{4}$ th of the estimated cost of the construction. He submitted that so far as the first part of the resolution with respect to payment of 25% of the original auction price and membership fee and admission fee was concerned, the same was paid by the petitioner on 10th January 1975. However, far as $\frac{1}{4}$ th of the

estimated cost of the construction was concerned, according to the petitioner, said condition was illegal and that none of the members including the Secretary of the Society had paid $\frac{1}{4}^{\text{th}}$ estimated cost of the construction. He therefore submitted that non-payment of the said amount towards the estimated cost of construction would not disentitle the petitioner from claiming the membership as well as his right on plot no. 67 in view of the resolution no. 51.

4. He submitted that since the resolution was not acted upon and the plot was not transferred in his name, the petitioner filed a Dispute on 2nd February 1982. Learned counsel for the petitioner further submitted that the petitioner had made repeated requests to the society, however, no action was taken. Hence the petitioner filed the Dispute. It is further submitted that it is not the case of the respondent society in the written statement that the allotment in favour of the petitioner was at any time cancelled. However, learned counsel agrees that though there was a resolution passed, there was no allotment made in favour of the petitioner with respect to plot no. 67.

5. Learned counsel supports the decision of the Cooperative Court

and raises an objection with respect to the reasons recorded by the Appellate Court by submitting that the Appellate Court was completely misdirected so far as the facts are concerned. He submitted that the Appellate Court erred in recording its findings as the same were contrary to the evidence on record. Learned counsel pointed out a joint pursis that was filed by respondent nos. 2 and 3 stating that they were not concerned with plot no. 67. He thus submitted that since respondent nos. 2 and 3 had agreed that they were not concerned with plot no. 67, the Appellate Court ought to have taken into consideration the claim of the petitioner that was based on a resolution passed by the respondent no. 1-Society. Learned counsel relied upon various admissions given by respondents in their cross-examination and submitted that all the respondents agreed that $\frac{1}{4}^{\text{th}}$ of the estimated construction cost was not paid by any of the members. He therefore submitted that the resolution passed by the respondent no. 1-Society was binding on the society and the society was not authorised to transfer plot no. 67 in exchange to respondent nos. 4 to 6. He submitted that there was no proof produced on record by the Society

with respect to either cancellation of the resolution passed in favour of the petitioner and/or any procedure followed with respect to the alleged claim of the respondents with respect to exchange of plot no. 67 and allotting the same in favour of respondent nos. 4 to 6.

6. Learned counsel for the petitioner thus submitted that the reasons given by the Appellate Court are contrary to the evidence on record and hence, the Judgment and Order passed by the Cooperative Appellate Court deserve to be quashed and set aside and the order of Cooperative Court passed in favour of the petitioner in the Dispute filed by him deserves to be restored.

7. Learned counsel appearing for respondent nos. 2a and 3 submitted that respondent no. 3 is an occupant of plot no. 69. It was submitted that respondent no. 2 had transferred half portion of plot no. 69 to respondent no. 3 and half portion is retained by respondent no. 2. He submitted that in view of the resolution passed by the Society, plot no. 67 is allotted to respondent nos. 4 to 6. So far as plot no. 69 is concerned, originally same was proposed to be allotted to some other member. However, respondent no. 2 gave up his right in plot no. 67

and accepted the allotment of plot no. 69. He submitted that in view of the various resolutions passed by respondent no. 1- Society, plot no. 67 was allotted to respondent nos. 4 to 6 and they are occupying the same. He further submitted that respondent nos. 4 to 6 have constructed their houses on plot no. 67 and respondent nos. 2 and 3 have constructed their houses on plot no. 69. Learned counsel for respondent no. 3 submitted that all the entries with respect to plot nos. 67 and 69 are supported by passing appropriate resolutions. He submitted that none of the resolutions are challenged by the petitioner. He submitted that the petitioner is claiming through respondent no. 2, however, admittedly, there is no agreement executed in favour of the petitioner. He submitted that in view of the resolutions passed by the society and the exchange that took place between the members, respondent no. 2 is not eligible for claiming plot no. 67 and thus the petitioner who is claiming through respondent no. 2 is not entitled to any relief with respect to plot no. 67. He further submitted that the petitioner except for depositing the amount towards the admission fee and membership fee, did nothing thereafter to stake his claim based

on the said resolution. Learned counsel submitted that the petitioner accepted the conditions imposed in the resolution for transferring plot no. 67 in favour of the petitioner, however, the petitioner failed to comply with the conditions and hence, he is not entitled to claim any right in respect of plot no. 67 based on the said resolution. He submitted that the petitioner had changed his address, however, he had not intimated the same in the society. However, the record shows that respondent no. 2 had informed the society that he is not interested in assigning any right to the petitioner and that he intended to transfer his rights in plot no. 67 to respondent no. 3. Thus, learned counsel submitted that the petitioner has not taken any steps to stake any claim on plot no. 67 which is based only on resolution no. 51. He submitted that the petitioner failed to show as to whether he has invested any amount to claim any right in plot no. 67. He submitted that admittedly there is no claim raised by the petitioner seeking any relief from respondent no. 2 based on the alleged agreement to transfer the plot in his favour.

8. Learned counsel for the respondent no. 3 further submitted that

only after respondents constructed their houses on their respective plots, the petitioner after a lapse of more than 10 years raised his claim by filing the Dispute. He further submitted that respondent no. 1-Society is a registered Cooperative Housing Society. The prayers in the Dispute made by the petitioner is for seeking relief to admit him as a member of the Society claiming through respondent no. 2. He therefore submitted that even as per the prayers made by the petitioner, it is clear that the petitioner was never admitted as a member of respondent no. 1-Society. He thus submitted that, at the highest, the petitioner therefore would have been entitled to raise his claim as contemplated under section 23 of The Maharashtra Co-Operative Societies Act, 1960 for admitting him as a member. He further submitted that since the petitioner failed to take any steps based on his claim on plot no. 67 for more than 10 years, the petitioner was not entitled to seek any relief through respondent no. 2, in the absence of any agreement between the parties.

9. He submitted that even after the knowledge concerning the exchange of Plots as stated herein above, the petitioner failed to take

any steps for seeking any relief concerning the same. He submitted that the petitioner except for adding respondent nos. 4 to 6 as party respondents did not add any specific claim against them. He thus submitted that in the absence of any relief sought by the petitioner based on the alleged oral agreement between the petitioner and respondent no. 2, the petitioner is not entitled to claim any relief by filing the Dispute. He further submitted that the situation with respect to plots in question has changed over the time and hence at this stage, the situation concerning the plots cannot be disturbed. He therefore prayed for the dismissal of the petition.

10. Learned counsel for respondent nos. 4 to 6 supported the submissions made on behalf of respondent 3. He submitted that respondent nos. 4 to 6 are occupants of plot no. 67. He submitted that in exchange of plots, respondent no. 2 was granted plot no. 69 and plot no. 67 was allotted to respondent nos. 4 to 6. He therefore submitted that respondent nos. 4 to 6 are bona fide purchasers without notice. He submitted that there is no prayer made against respondent nos. 4 to 6. He further submitted that the resolution passed by the

Society with respect to the exchange of plots are never challenged by the petitioner. Hence, the petitioner is not entitled to claim the relief as sought by him.

11. Learned counsel for respondent nos. 4 to 6 also relied upon the admissions given by the petitioner and considered in the Judgment of the Appellate Court and submitted that the Appellate Court recorded the reasons after properly appreciating the evidence on record. Hence, no interference is called for in this petition. He further submitted that respondent nos. 4 to 6 were residing in the houses constructed by them on plot no. 67 for last more than 30 years and hence, same cannot be disturbed at this stage at the behest of the petitioner who failed to comply with the conditions in the resolutions based on which the petitioner has filed his claim before the Cooperative Court.

12. Learned counsel appearing for respondent no. 1 supported the submissions made by learned counsel for respondent nos. 3, 4 to 6. He submitted that the condition imposed by the Society in the resolution no. 51 was never complied by the petitioner. He submitted

that the petitioner never produced any independent agreement to stake his claim so far as plot no. 67 is concerned. He submitted that the change in the address by the petitioner was never intimated to the society and hence there was no occasion for the Society to intimate the subsequent resolutions passed by the society.

13. In response to the submissions made on behalf of the respondents, learned counsel for the petitioner submitted that the alleged resolutions relied upon by the respondents with respect to the exchange of plots were never produced on record. He submitted that the evidence of respondent nos. 4 to 6 would show that even they had not paid $\frac{1}{4}$ th estimated cost of construction. He therefore submitted that for non-payment of the said cost, the petitioner's right to claim plot no. 67 cannot be said to have been extinguished. He submitted that the objection raised on behalf of respondent no. 3, with respect to the Dispute being not maintainable under section 91 is not correct and that the Dispute was correctly filed. He further submitted that the plot is owned by the Society and that respondent no. 2 even otherwise submitted that there was no agreement executed by respondent no. 2

with the petitioner. Hence, the society being a tenant-ownership Society, was liable to comply with resolution no. 51 as the Society has accepted the admission fee and membership fee from the petitioner. He therefore submitted that only for non-payment of $\frac{1}{4}^{\text{th}}$ estimated cost of construction, the petitioner cannot be denied his claim.

14. I have considered the submissions made by respective parties. I have perused the record of the petition. To examine the claim of the petitioner, it is necessary to note the relevant dates with respect to the claim of the petition. It is not disputed that the petitioner's claim is based only on resolution no. 51 passed by the respond no. 1-Society on 5th March 1973. It is further not disputed by the petitioner that except for making payment of the admission fee and membership fee, the petitioner did not comply with the conditions of resolution no. 51. The submissions made on behalf of the petitioner that the conditions of payment of $\frac{1}{4}^{\text{th}}$ estimated cost of construction imposed in the resolution is illegal, is devoid of any merits. The petitioner accepted the resolution and paid the membership fee and admission fee for being admitted as a member of the Society. Once the petitioner has

accepted the resolution for claiming his right to plot no. 67, it is not open for the petitioner to subsequently argue that the condition imposed by the society for payment of $\frac{1}{4}^{\text{th}}$ of the estimated cost of construction was illegal. Admittedly, the petitioner never raised any objection or challenged the said condition by adopting any appropriate proceedings. There is nothing placed on record to show any steps taken by the petitioner after payment of the admission fee and membership fee on 10th January 1975. After making the said payment, the petitioner filed his Dispute in the year 1982, after there was an exchange of plots between respondents and after they carried out construction on the said plots.

15. Perusal of the prayers in the Dispute indicates that the petitioner had made a prayer for admitting him as a member of the society and further prayed for cancellation of all the documents pertaining to the suit property i.e. plot no. 67. The petitioner has though added respondent nos. 4 to 6 as parties, there is no prayer made against them, challenging their rights in respect of plot no. 67. There is a general prayer made that all the documents registered with respect to

plot no. 67 be declared as illegal and the petitioner be admitted as a member.

16. Perusal of the Dispute as well as his prayers clearly indicates that even according to the petitioner, he was not admitted as a member of the society. Only payment of admission fee and membership fee would not mean that the petitioner was admitted as a member of the society. Hence, in view of the provisions of Section 23 of the said Act, it was necessary for the petitioner to file appropriate proceedings for adding him as a member of the society.

17. So far as the claim of plot no. 67 is concerned, except for relying upon resolution no. 51, the petitioner has not placed on record any document to show his right in respect of the said plot. The petitioner is admittedly claiming right of plot no. 67 through respondent no. 2. However, he has not placed on record any particulars with respect to any oral agreement with respondent no. 2 and/or any written agreement for transferring the plot in his favour. Neither the petitioner has pleaded particulars of the amount of consideration of the said alleged agreement nor payment of any amount to respondent no. 2 for

raising his claim on plot no. 67. It is also pertinent to note that though the petitioner has claimed his right through respondent no. 2 i.e. is the original holder of plot no. 67, he has not challenged the transfer of plot 67 by respondent no. 2.

18. So far as respondent no. 3 is concerned, respondent no. 2 had transferred his half shares in plot no. 67 to respondent no. 3 and respondent no. 3 has also carried out his construction and has been occupying the same since last more than 30 years. Since the petitioner has not taken any steps to seek any relief against respondent nos. 3 to 6, the petitioner is not entitled to raise any claim against them through respondent no. 2. It is not disputed that the petitioner has never challenged the exchange of plots between respondent nos. 2 to 6.

19. The aforesaid facts make it clear that respondent no. 3 is claiming through respondent no. 2 and the petitioner is also claiming through respondent no. 2. However, in the absence of any documents, the petitioner is not entitled to any relief as prayed in the Dispute.

20. The delay and laches on the part of the petitioner of not taking any steps after making payment in the year 1975 is also required to be

taken into consideration for examining the prayers made by the petitioner. The documents and evidence on record show that only after respondent nos. 2 to 6 carried out construction on their respective plots, the petitioner after a period of more than 9 years filed his Dispute. As stated herein above, the petitioner did not taken any steps after the resolution of the year 1973 till the filing of the dispute in 1982.

21. On perusal of the reasons recorded in the impugned Judgment and Order and after minutely examining the documents and evidence on record, I do not find any infirmity or illegality in the reasons recorded by the Appellate Court.

22. In view of the aforesaid, I do not find any reason to interfere by exercising powers under Article 227 of the Constitution of India. For the reasons stated above, the petition is devoid of any merits. Hence, the petition is dismissed.

[GAURI GODSE, J.]