

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

WRIT PETITION NO. 3267 OF 2024

Shree Balaji Associates of Suresh
Mohanlal Sharma

... Petitioner

Versus
Padma Coop Hosg Soc Ltd.

... Respondent

....

Mr. S.S. Panchpor, for the Petitioner.

Mr. R.S. Pawar, A.G.P. for the Respondent – State.

....

CORAM : AVINASH G. GHAROTE, J.
DATE : 18th JULY, 2024

P.C.:

1. Heard, learned counsel, Mr. S.S. Panchpor for the petitioner and Mr. R. S. Pawar, learned AGP, for the Respondent-State.

2. The petition questions the Judgment dated 07.06.2022 passed by the learned Cooperative Appellate Court in Revision Application No. 20 of 2021 by which the order of the learned Judge of Cooperative Court No. 2, Pune, dated 30.09.2020 in Dispute No. 56 of 2019 which rejects the Application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 (“CPC” for

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short hereinafter) for rejection of the dispute has been set aside and the Application was allowed thereby rejecting the Dispute under Order 7 Rule 11(d).

3. Mr Panchpor, learned counsel for the petitioner submits that the dispute filed by the petitioner who is the original disputant would be covered under Section 91(1)(a) and specifically the expression 'past or present agent' and therefore would be a dispute governed by Section 91 of the Maharashtra Cooperative Societies Act 1960 ("MCS Act" for short hereinafter), thereby conferring jurisdiction upon the Cooperative Court to decide the same.

4. The facts in nutshell giving rise to the present petition are as under:

(i). The respondent-society on 18.08.92, had appointed one Shri Shrirang Madhav Sathe, as its agent, for the development work of the land owned by the society by way of obtaining permissions/sanctions etc.

(ii). On 09.03.2001, an Agreement of Development

came to be executed between the respondent-society and the said Shri Sathe, which was an unregistered Agreement which is claimed to have been registered by a Deed of Confirmation on 11.06.2003 which was registered with the office of the Sub-Registrar, Haveli No.9, Pune, at Serial No. 2737 of 2003. This Agreement of Development and Deed of Confirmation is further claimed to have been executed in pursuance to a Resolution passed in the Annual General Meeting ("AGM") of the respondent-society on 26.12.1999, as a result of which another Power of Attorney, is claimed to have been executed and registered in favour of the petitioner in the year 2003. It is further contended that the said Shri Sathe and the petitioner thereafter formed a Joint Venture, which is the disputant.

(iii). Since on account of passage of time, nothing was forthcoming, by a Resolution dated 01.06.2014 passed in the AGM of the respondent-society, the Agreement of Development was threatened to be

cancelled, in case the development was not undertaken and completed. It is contended that the delay of development was occasioned on account of Writ Petition No. 5455 of 2002 filed by the respondent through the disputant, before this Court claiming sanction of the plans, which ultimately came to be decided on 18.06.2018, by which the Pune Municipal Corporation was directed to forward the proposal for modification of Development Plan to the State Government.

(iv). Ultimately by Resolution dated 17.03.2019, the respondent-society cancelled the Agreement of Development. The dispute by the present petitioner challenges before the learned Cooperative Court, these two Resolution, the first dated 01.06.2014 and the second dated 17.03.2019 and also claims the declaration, that the disputant was having right and interest in the property of the respondent-society to develop the same under an Agreement of Development and Power of Attorney ("POA") (page

169).

The contention is therefore that this is a dispute which falls within the scope and ambit of Section 91 (1)(a) of the MCS Act, has to be viewed in the contractual background of what has been narrated above.

5. Learned counsel for the petitioner relies upon the Full Bench Judgment of the Calcutta High Court in *Ashok Kumar Jaiswal & Ors vs Ashim Kumar Kar & Ors, 2014 SCC OnLine Cal 3497*, Paragraph 59 to contend that the status of the party to a Development Agreement is that of an agent of the other party in light of which, it is submitted that the Cooperative Court would have jurisdiction to entertain the dispute.

6. I am afraid, I am unable to subscribe to this view for the reason that a dispute under Section 91 of the MCS Act, has to be in respect of something touching the constitution, election of the committee or its officers, conduct of general meeting, management or business of a society. In this context, it would be necessary to note, that one of the parties to such a dispute, in view of Clause (a), has to be, a past or present agent of the

society.

7. Under an Agreement of Development, the person in whose favour such an Agreement has been entered into does not *ipso facto* become an agent of the society for the reason, that an Agreement of Development contemplates sharing of development rights, in view of either monetary consideration or developed area/units to be provided by the developer to the society. Merely because certain rights are conferred upon the Developer, that by itself, does not make it an agent of the society in the sense of the term, as is used in Section 91(1)(a) of the MCS Act. No doubt a POA is claimed to have been executed by the respondent-society in favour of the petitioner/disputant, that by itself, would not satisfy the requirement of Section 91(1)(a). By a challenge, to the Resolutions dated 01.06.2014 and 19.03.2019, the petitioner, is claiming a declaration, that the right of development conferred upon him under Agreement of Development dated 09.03.2001, are alive and in force, thereby entitling the petitioner, to go ahead with the development.

8. In my considered opinion such a relief cannot be granted by the Cooperative Court but would lie within the domain of the

Civil Court, as by the Agreement of Development, enforceable civil rights, may have been created in favour of the developer, which are being asserted to and claimed by the petitioner. Admittedly as of now, the Agreement of Development as well as the POA in favour of the petitioner/disputant on account of Resolution dated 07.03.2019, stand revoked and therefore, the claim is for revival of the rights under the Agreement of Development which would indicate that in sum and substance, what is being claimed is a specific performance of the rights, claimed to have been accrued in favour of the petitioner, in terms of the aforesaid Agreement of Development. The petitioner is neither a member, past member nor it does fall in any of the categories mentioned in Section 91 (1)(a) to (e) of the MCS Act in view of which the dispute cannot be said to be covered by Section 91 of the MCS Act and therefore would be barred, as contemplated by the language of Order 7 Rule 11(d) of the CPC.

9. The opinion of the learned Full Bench in *Ashok Kumar Jaiswal & Ors vs Ashim Kumar Kar & Ors (Supra)*, which contemplates of an Agreement of Development, creating an agency, in favour of the developer, has construed the same in light

of the language of Section 202 of the Contract Act, so as to hold, accordingly as it hold that since right has been created in the agent, vis-a-vis the immovable property, which is the subject matter of the Agreement, the agency has become irrevocable. That is the limited extent, in which the claim of agency under the terms of the Agreement of Development has been construed and dialated upon. The same cannot be applied by the principle of analogy to hold that the petitioner becomes an agent of the society for all purposes, and so also, within the meaning of the expression as occurring in Section 91(1)(a) of the MCS Act.

10. A perusal of the impugned judgment dated 09.06.2022, would indicate, that the position has been considered in light of the requirement of Section 91 of the MCS Act and therefore, I do not see any reason to deffer with the same. The petition is therefore dismissed with no order as to costs.

(AVINASH G. GHAROTE, J.)