
(2000) 04 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 4464 of 1986

Maji Sainik Sahakari Grah Nirman Sanstha Maryadit	APPELLANT
Vs	
Panditrao Krishna Tanksale and another	RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Citation : (2000) 4 BomCR 33

Hon'ble Judges : Vijay Daga, J

Bench : Single Bench

Advocate : A.R. Shaikh, for the Appellant; A.G. Pawar, for the Respondent

Judgement

Vijay Daga, J.—The present petition is directed against the judgment and order dated 17th July 1986 passed by the Maharashtra State Co-operative Appellate Court, Bombay in Appeal No. 140 of 1984 filed by respondent No. 1 herein; whereby the Appellate Court allowed the said appeal and directed the respondents therein to hand over the possession of block in dispute to respondent No. 1 herein with further direction to respondent No. 2 to pay compensation to respondent No. 1 herein at the rate of Rs. 400/- per month from the date of dispossession till the delivery of possession and to pay Rs. 5,200/- to respondent No. 1 herein towards compensation subject to the adjustment of the amount recoverable by respondent No. 1 herein.

2. The facts giving rise to this petition may be noted at the outset.

The petitioner is the registered co-operative housing society having its office at Nehru Nagar, Vijapur Naka, Solapur. The respondent No. 1 Shri Panditrao Krishnaji Tanksale was the member and also secretary of the petitioner society looking after the affairs of the society.

3. Being an allottee he came in possession of the residential block in a building constructed by the Society. He committed defaults in payment of the dues of the Society amounting to Rs. 14,492.41. The defaults committed were on various counts including defaults in payment of installments and interest thereon. The

petitioner society, therefore, filed a co-operative dispute being Dispute No. 190 of 1980 for the recovery of Rs. 14,592.41 and claimed possession of Block No. 2 from respondent No. 2 and also prayed for declaration that his membership be declared as cancelled.

4. The respondent No. 1 was proceeded ex parte in the co-operative dispute, with the result, an ex parte award came to be passed against him on 29th March 1981. The award directed delivery of possession of the suit Block being block No. 2 and rejected the declaration sought by the society that his membership was cancelled.

5. Being aggrieved by the aforesaid award, respondent No. 1 invoked the jurisdiction of the Co-operative Appellate Court. The Appellate Court entertained the appeal being Appeal No. 378 of 1981 filed on 8th July 1981, allowed the same and set aside the ex parte award and remanded the case to a Co-operative Court for retrial on merits which was subsequently withdrawn by the society.

6. The petitioner society during the pendency of the appeal before the Cooperative Appellate Court initiated execution proceedings being Darkhast No. 155 of 1981 and obtained possession of Block No. 2 from respondent No. 1 and on 27th June 1981, in execution of a decree passed in the Co-operative Case No. 190 of 1981. The respondent No. 1 was thus dispossessed of the Block No. 2 in execution of a decree which was ultimately set aside by the Appellate Court as mentioned in paragraph 5 supra.

7. In the aforesaid backdrop, the respondent No. 1 was forced to file a dispute being Co-operative Dispute No. 310 of 1982 to seek re-possession of block No. 2 on the ground that the decree under which he was dispossessed was set aside by the Appellate Court. As such he claimed that he was entitled for restoration and possession of Block No. 2 and also prayed for declaration that he is a member of the society.

8. On being noticed, opponent No. 1 (present petitioner society) filed its written statement and resisted the claim of respondent No. 1. It was further pleaded by the society that after taking possession of Block No. 2 in execution of a decree, the same has been allotted to opponent No. 2 (present respondent No. 2) and prayed for dismissal of the dispute.

9. The respondent No. 2 herein who was opponent No. 2 in dispute filed his separate written statement pleading therein that he did not know the history of the litigation between the society and the respondent No. 1. As such he was completely unaware of the dispute regarding the Block No. 2. He also pleaded that he was not a party to the litigation. He was allowed the suit block on 29th June 1981 against the payment of Rs. 33,000/- and was admitted as a member of the society by resolution dated 8th November 1981 adopted in the annual general meeting of the society. He, therefore, contended that he was a bona fide purchaser for value, as such no award should be passed against him directing delivery of possession of the suit Block No. 2.

10. The aforesaid dispute was decided by the Judge, Co-operative Court, Solapur by award dated 24th November 1983. The suit was dismissed so far as the relief pertaining to the restoration of the suit Block No. 2 was concerned. However, he had granted a decree of declaration declaring therein that the plaintiff (present respondent No. 1) continued to be member of the petitioner society. Net result of the said award was that the restitution of the suit block was denied to the plaintiff (present respondent No. 1) whereas the declaration was granted that he continued to be the member of the society.

11. Being aggrieved by the aforesaid award of the Co-operative Court, the respondent No. 1 filed an appeal and the said appeal was allowed. The Appellate Court directed restoration of the Block No. 2 and held that respondent No. 2 was not a bona fide purchaser for value. The Appellate Court held that respondent No. 2 was well aware of the litigation and prior interest of the present respondent No. 1 in the suit Block No. 2. The Appellate Court recorded findings in the following words:

"Herein the society filed the dispute for recovery of arrears and possession also, and this party was asked to pay first arrears of judgement debtor before he was adjusted as a member for the property and he pays first, so the payment makes it clear that he cannot be a person having no idea of prior interest."

12. The lower Appellate Court not only recorded aforesaid finding of fact that the respondent No. 2 was not a bona fide purchaser for value but also held that the said respondent No. 2 was one of the active players in the game played by the petitioner society against respondent No. 1. The lower Appellate Court further held that after remand, in order to avoid the order of restoration during the pendency of the suit, the society withdrew the said dispute so as to retain the fruits of the ex parte decree, which was set aside, though the said move on the part of the society proved to be suicidal. The lower Appellate Court, in the above premises, allowed the appeal and directed the respondents to hand over the possession of the suit block No. 2 and also directed to pay compensation at the rate of Rs. 400/- per month from the date of dispossession till the date of realisation subject to the adjustment of the amount already paid or payable by respondent No. 2.

13. The aforesaid judgement of the lower Appellate Court was a subject matter of challenge in the present petition. The respondent No. 2 (subsequent allottee) had also filed independent writ petition being Writ Petition No. 3559 of 1986. When the present petition was called out for hearing the Counsel appearing for respondent No. 2 fairly brought to the notice of this Court that the said petition was dismissed by this Court on 20th January 1994. The said order of dismissal has become final; whereas the present petition remained to be heard and decided.

14. Heard the learned Counsel appearing for the petitioner society and respondent No. 2. The respondent No. 1 was not represented by any Counsel. He

was not present when the matter was called out, may be for want of notice from this Court. However, after hearing the Counsel for the petitioner and respondent No. 2, I found that the petition was without any merit and liable to be dismissed. I, therefore, decided to proceed with the hearing of the petition even in the absence of respondent No. 1 because no order prejudicial to his interest was being passed. After hearing the petitioner and respondent No. 2, I dismissed the petition by passing the following order:

"The petition stands dismissed for the reasons to be recorded later."

15. In support of the above order following are the reasons:

(a) The writ petition filed by respondent No. 2 being Writ Petition No. 3559 of 1986 having been dismissed on 20th January 1994, the judgement of the lower Appellate Court in Appeal No. 140 of 1984 so far as relief relating to the restoration of the suit block No. 2 in favour of respondent No. 1 is concerned, has attained finality against respondent No. 2. Once the judgement delivered in Appeal No. 140 of 1984 has become final and conclusive against respondent No. 2 then in that event the present petition cannot succeed in view of the settled law that when the decree is single and indivisible there cannot be inconsistent or contradictory decrees or orders in one proceeding as has been held by the Apex Court in *Dwarka Prasad Singh and Others Vs. Harikant Prasad Singh and Others*, . This Court in the matter of *Smt. Sheela Choudhary and Others Vs. Central Bank of India and Others*, has also reiterated the same principle of law based on the judgement of the Supreme Court in case of *Bakshish Singh (Dead) by Lrs. Vs. Arjan Singh and Others*, . Thus there cannot be any inconsistent decree on as against respondent No. 2 against whom order dismissing writ had become final and other contesting petitioner society whose rights are to be adjudicated in the writ petition.

(b) Even otherwise, finding of fact has been recorded by the lower Appellate Court that respondent No. 2 was not a bona fide purchaser for consideration and that he was in know of the facts leading to the litigation and was party to take advantage of the decree which has ultimately been set aside by the Appellate Court, then in that event the said findings of fact based on appreciation of evidence cannot be disturbed in the writ jurisdiction of this Court unless it was shown that the said finding was not based on evidence or the said finding was perverse. The Appellate Court while setting aside the findings of the trial Court has properly appreciated the evidence brought on record including the facts and circumstances and assigned good and cogent reasons for disagreement with the findings recorded by the trial Court. Thus considering the law laid down by the Apex Court in *State of West Bengal Vs. Atul Krishna Shaw and Another*, wherein the Apex Court observed:

"If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own

findings of fact."

I do not find any interference at the hands of this Court is called for. The learned Counsel for the petitioner and respondent No. 2 could not point out any perversity in the findings recorded by the lower Appellate Court. Under these circumstances, the findings of fact mentioned hereinabove cannot be disturbed in the limited writ jurisdiction of this Court.

(c) Apart from above, the declaration granted by the trial Court i.e. Co-operative Court that the plaintiff/respondent No. 1 continued to be the member of the society has also attained finality as no appeal had been preferred by the petitioner society to challenge the said declaratory part of the award passed by the Judge, Co-operative Court. The fact stands proved on record that respondent No. 1 was deprived of the possession of the suit block in execution of the decree which was ultimately set aside by the Appellate Court, therefore, at any rate respondent No. 1 was entitled for restoration of possession of the suit block No. 2 on the established principles of law that act of the Court does no injury to any body. The law laid down by the Apex Court in Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, may be noticed as under :

"In such a case there can be no doubt that the litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in the discharge of their duties."

16. Thus taking overall view of the matter and considering all the facts and circumstances of the case, the petition is without any substance and the same is, therefore, liable to be dismissed. At this stage it would not be out of place to mention that the petitioner society desired to file additional affidavit to bring the subsequent events on record. However, no copy of the same has been served on respondent No. 1 nor any attempt was made to serve the copy of same on him though the said affidavit was sworn six months before i.e. on 7th October 1999. The same was sought to be tendered when the petition was called out for hearing. The said affidavit could not be taken on record in absence of any request for amendment of pleadings apart from the fact that the same was sought to be tendered at belated stage without assigning any reason. Consequently, the said affidavit was not taken on record. Even otherwise, the subsequent events will had no bearing on the facts of the present case in view of the fact that the Writ Petition No. 3559 of 1986 filed by respondent No. 2 having been dismissed on 20th January 1994 resulting in making the impugned order conclusive and final against respondent No. 2 which also binds the present petitioner society it being joint and indivisible as already indicated hereinabove.

17. The petition is thus dismissed for the aforesaid reason holding it to be without any substance. No order as to costs.

18. Petition dismissed.