

(2009) 06 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 4834 of 2008

Ramchandra Krushnarao Pitale

APPELLANT

Vs

The Scientific Cooperative Housing Society Ltd. and Shri
Neelmani Dhurve

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Limitation Act, 1963 — Article 54

Maharashtra Co-operative Societies Act, 1960 — Section 23, 92

Maharashtra Co-operative Societies Rules, 1961 — Rule 19

Citation : (2009) 5 BomCR 189 : (2010) 1 MhLj 232

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; A.M. Ghare and S.P. Kshirsagar, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. This writ petition has been filed by the original disputant before the Cooperative Court.

3. The facts giving rise to this petition are as follows The petitioner is a citizen of India and resident of Nagpur. The respondent No. 1 is a Cooperative Society. The principal activity of the said Society is to allot plots and houses to the persons desirous to obtain plots of the said society. There are bye-laws of the Society for providing such plots. On 13/2/1961, the petitioner applied to the said Society for allotment of the plots. The petitioner was informed that he was allotted plot No. 1 in block J at the rate of 0.37 N.P. per square feet. The area of the said plot was 8000 sq. ft. Accordingly, the petitioner/plaintiff submits that he paid a sum of Rs. 3105/-to the said Society towards the costs of the plot, share money and admission fee. In spite of such amount having been paid and allotment of the

plot, the sale-deed was not executed in favour of the petitioner. Respondent No. 1 was avoiding to execute the sale-deed in favour of the plaintiff on the ground that one T.B.Deo had challenged the resolution passed by the said Society to allot the plot to the petitioner and others. Since the dispute between the said society and T.B.Deo was pending for quite some time, no sale-deed was executed in favour of the petitioner. The society, however, has been assuring the petitioner that as soon as the dispute would come to an end, the sale-deed would be executed. The society had even passed a resolution on 15/8/1961 to issue share Certificate to the petitioner and others. Even though the dispute between T.B.Deo and Society came to an end still no sale-deed was executed on the other hand allotment of plot is cancelled hence the petitioner has instituted proceedings before the Cooperative Court for allotment of the plot and for execution of the sale-deed.

4. The said proceedings were contested by the said Society before the Cooperative Court. The society does not dispute that the petitioner had applied for allotment of the plot. The Society, however, disputes that the plaintiff was accepted as a member of the Society. The Society even denies that the Resolution allotting the plot was passed by the Society. The Society further disputes the payment made by the petitioner. The society contends that merely because the amount is paid, the petitioner is not entitled to a sale-deed in his favour. The Society submits that there is no cause of action for filing the petition. The claim is barred by limitation and since the petitioner is not a member, is not entitled to purchase any plot from the Society.

5. The learned judge of the Cooperative court found that the petitioner was not a member of the society. He also found that the allotment in favour of the petitioner of the plot was not illegally cancelled. It is proved that the petitioner has a plot in another society and the petitioner was not entitled to execution of the sale-deed in respect of plot No. 1 in block J. Holding so, he dismissed the dispute before him. An appeal was preferred before the Cooperative appellate court. The appellate court concurred with the findings of the trial court and dismissed the appeal. The petitioner feels aggrieved and has preferred this writ petition.

6. The petitioner comes before this Court against the concurrent findings recorded by the two courts. The three important concurrent findings are on the three following issues.

- (i) The petitioner was never admitted as member of the Society.
- (ii) The cancellation of plot in favour of the petitioner was not improper, and;
- (iii) The dispute was barred by limitation.

7. In fact, the findings on the first two issues are purely the findings of fact. The scope of this writ petition has, therefore, become extremely limited. It must be shown that these two findings are absolutely perverse. If the petitioner fails to

prove that, the petition is certainly liable to be dismissed.

8. Before advertng to those questions, a few admitted facts may be noted -

(i) The petitioner had paid to the Society a sum of Rs. 3,105/-in cash and receipt thereof is passed,

(ii) A resolution allotting the plot to the petitioner was passed.

(iii) One Shri T.D. Deo had filed proceedings before various authorities challenging the cancellation of plot to his relatives and allotment of plots to the petitioner and others.

(iv) Those proceedings filed by Shri T.B. Deo are now terminated.

9. Shri Khapre, learned Counsel for the petitioner submits that the findings of the courts below that the petitioner was not admitted as member is perverse. He submits that this finding is contrary to the documents on record and enough evidence, according to him, is available and that has been totally ignored. The two important circumstances, according to him, are; The resolution dated 13/8/1961 and 22/10/1961. He submits that by the resolution dated 13/8/1961 the petitioner was admitted as member and the same was confirmed in the meeting dated 22/10/1961. The petitioner has not placed on record any copy of the Resolution dated 13/8/1961 or 22/10/1961. In the absence of such specific resolution admitting the petitioner as member, it was rightly found by the courts below that the petitioner had failed to prove his admission as a member. Shri Khapre submits that the Society accepted the price and share money from the petitioner and then allotted the plot and passed a resolution to issue Share Certificate itself suggests that the petitioner was duly admitted. He submits that a plot could not be allotted to a non-member and the fact that resolution allotting plot was passed would show that he is the member. The proposition cannot be accepted. Allotment of plot and becoming a member are two different things. If one wants to raise a dispute with the Society, it must be shown that he is the member of the Society. There is no specific resolution to that effect. In fact one of the Resolutions passed by the Society on 15/8/1968 (Annexure 11) would go to show that the plot and membership are two different things. The said resolution reads as follows.

RESOLUTION No. 4 15/8/1968.

The cases of following persons were gone through for consideration of issue of share certificate. 1) Shri R.K. Pitale 2) Dr. B.R. Kate, 3) Shri M.J. Godase 4) Mr. H.P. Thatte.

These persons have paid their share money and admission fee in 1961. Their applications so far they relate to membership were in order according to law and bye-laws of the Society.

They did not then passes any site for house or a house in Nagpur.

Each individual case was considered.

Each member agreed that admission to membership and allotment of plot are two different subject. Under the law there is no provision that a member must have a plot in the layout several other applicants who were not sold plots have been admitted as members and issued share certificate in the past. There is no reason why these persons be deprived of this right. The committee therefore resolved that they shall be issued necessary share certificate.

10. A few things appear to be obvious from the Resolution of 1968 that applications of those persons referred to in the resolution for membership were in accordance with the bye-laws. Until 1968 till this resolution was passed, obviously these applications for admitting the petitioner to membership were not considered. Even in this resolution the question of admission as member was not considered. On the other hand it was resolved that admission to membership and allotment of plot are two different things. What was ultimately resolved was that a share certificate be issued. The fact is that Resolution of 1968 even does not go to show that the petitioner was admitted to the membership. It was resolved to issue share certificate only. Rule 19 of the Maharashtra Co-operative Societies Rules, 1961 reads as follows

19. Conditions to be complied with for admission for membership, etc.

No person shall be admitted as a member of a society unless,

(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership ;

(ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of nominal, associate or sympathiser member, by an officer of the society authorised in that behalf by the committee.

(iii) he has fulfilled all other conditions laid down in the Act, the rules and the bye-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorizing it to apply for such membership.

11. What is, therefore, necessary under this Rule is that the application must be approved and the General Body must pass specific resolution to that effect. As pointed out earlier, there is absolutely no specific resolution admitting the petitioner as a member. Shri Khapre, learned counsel for the petitioner, submits that there are several letters of Society showing that the notice of meeting of

society was given to the petitioner. My attention was drawn to the letter of the Society dated 3/9/1972 (Annexure XIII). In this letter, the society does not say that the notices of meeting were sent. Neither party has produced a single notice of the meeting. Assuming that the notice of the meeting was sent that does not go to show that the petitioner was admitted as a member. To my mind that can be shown by a resolution passed by the General Body of the Society alone. Further petitioner admits in cross-examination itself that he never formally became a member of the society; with this admission in fact no other evidence needs to be looked into.

12. The next aspect that needs consideration is whether the question as to the dispute about membership could have been decided by the Cooperative court. The Society has certainly disputed the status of the petitioner as a member. The question as to whether a disputant is or is not a member cannot be entertained by the cooperative court by virtue of the provisions contained in Section 23 of the Cooperative Societies Act. The jurisdiction exclusively lies with the Registrar. In the circumstances, the petitioner ought to have first got determined the status as a member.

13. Shri Khapre, learned Counsel for the petitioner, then submits that the share money and price is paid and that would prove that the petitioner was admitted as a member. The petitioner no doubt had paid sum of Rs. 3105/-. The petitioner has to positively prove as to what is the price of the plot and what amount is paid towards the share money and admission fee. The receipt does not show that any amount separately is paid in the share money and admission fee. The learned judges of the courts below have found that since there is no separate receipt, it cannot be concluded that any share money was paid and any admission fees was paid. Shri Khapre, learned Counsel for the petitioner, sought to put reliance on decision of this Court in Keshav Krishna Londhe (Dr.) Vs. Adarsh Gruha Nirman Sahakari Sanstha Limited and Others, to contend that if it is shown that payment is made, share certificate is issued, that is enough to conclude the membership. The decision has no bearing on the case at hand. In the instant case society does not admit the membership nor is share certificate issued as in the reported case. An admitted fact need not be proved, There is no admission in this case. On the other hand the petitioner admits that he was not admitted as member. Another decision in Shri O.P. Choudhry Vs. Rehabilitation Ministry Employees Cooperative House Building Society and Others, was also placed before me. Having read the decision the ratio appear to be two fold; one that a person already holding a plot is not entitled to another plot and second; mere deposit of money without membership form does not go to show membership. In the instant case, there is no resolution and there is no copy of any formal application on the record. The petitioner is already a member holding a plot in Tatya Tope Nagar Society. When a person already holds a plot in other society there is no reason to use discretion in his favour.

14. The other decision reported in Manohar Galghate Vs. Saraswati Co-operative

Housing Society Ltd. and Others, also has no bearing as in that case the petitioner was admittedly a member. Yet another decision reported in Kantilal Shah Vs. Shri Sahakari Graha Nirman Sanstha and Another, was placed before me, this too has no bearing, as in that case there was already an award to allot the plot and enroll the petitioner. The last decision is reported in Smt. Sarladevi Bandawar Vs. Shailesh Namdeo, . In the reported case the aggrieved person was treated as member and was put in possession. In this case, the petitioner was not treated as member nor he was put in possession. There is no reason for me to take a different view.

15. The dispute before the Cooperative court is held to be barred by limitation. Section 92 of the Maharashtra Cooperative Societies Act makes it clear that Article 54 of the Limitation Act would apply to this proceeding. There are two starting points of limitation under Article 54. First, the time begins to run from the date on or by which the contract is required to be preformed and secondly if no time is fixed, from the date of refusal. Shri Khapre submits that the dispute before the Cooperative Court is within limitation as there was never any refusal at all by the Society and on the other hand Society has been assuring to execute the sale deed all the while and the litigation was pending before the court. He submits that since there was no refusal and only postponement of the dispute, the dispute was not barred. He contends that the dispute between T.B.Deo and Society and petitioner came to an end in 1992 and thereafter there was cancellation of allotment and hence dispute was within time. He relied on decision of Andhra Pradesh High Court in AIR 2001 425 (Goparaju Venkata Bharata Rao and Anr. v. Nagula Ramakotayya and Ors.). The proposition that unless there is specific denial the time would not run cannot be disputed. The postponement does not and cannot amount to refusal at all. It at the most may amount to avoidance but not refusal. The dispute cannot therefore be said to be barred by limitation. However, In this case, there is concurrent finding that petitioner was not a member which I do not find to be perverse. The petition is, therefore, liable to be dismissed. It is so dismissed. No order as to costs.

16. Shri Khapre, learned Counsel for the petitioner submits that the court may stay the order passed for a period of one month in order to enable the petitioner to approach the court in a Letters Patent Appeal. The operation of the order of this Court is stayed for a period of one month.