

(1999) 02 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 529 of 1989

Shri Appaji Babaji Sonale, since deceased through his legal heirs APPELLANT

Vs

Subhashnagar Sahakari Housing Society Limited and others RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 227

Citation : (1999) 2 ALLMR 329 : (1999) 2 BomCR 470 : (1999) 2 MhLj 13

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : B.P. Abhale, for the Appellant; Prashan Naik and G.R. Rege, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner challenges in this writ petition, an order passed in review by the Co-operative Appellate Court, Bombay in Review Application No. 9 of 1988 in Appeal No. 21 of 1988, where the order passed by the Appellate Court has been set aside by the Reviewing Authority by its order dated 9th December, 1988 in exercise of its power for review.

2. The main dispute is that the allotment of plot in favour of the first respondent was illegally cancelled and the same was allotted to some other person. This cancellation was initially challenged before the original authority and the original authority has dismissed the suit filed by Appaji Babaji Sonale, whose legal representatives have filed this writ petition. Against that dismissal of the suit, the petitioner filed an appeal before the appellate authority the Co-operative Appellate Court. The appellate Court, as indicated earlier, allowed the appeal and set aside the original authority's order. Against that order the respondents Nos. 1 to 3 filed the review application, purported to be u/s 150 of the Maharashtra Co-operative Societies Act. The main reason for review, as taken before the reviewing authority, was that the evidence regarding the refund of certain shares were not produced either before the original authority or before the appellate

authority and the same could be produced only at the stage of review and thus, on the basis of new material, the reviewing authority has reversed the earlier finding and dismissed the suit filed by the petitioner. It is in this background that the petitioner challenges the order of review dated 9th December, 1988 in this writ petition. By order dated 22nd January, 1999 the records and proceedings of the dispute C.C.S. No. 148 of 1983 on the file of the Judge, Co-operative Court No. I, Kolhapur were called by this Court for perusal. The said records were perused by me.

3. The important question which is arising in this writ petition is that whether those documents were ever produced before the trial Court or the appellate authority. The learned Counsel for the petitioner disputes this proposition. However, he was not able to satisfy this Court that any material or that these documents were ever produced either before the original authority or the appellate authority. In these circumstances, I have no other option but to accept the contention of the respondent that for the first time these documents were produced before the reviewing authority. I have also perused the documents. Even though the documents are written in Marathi, with the help of the learned Counsel for the respondent, I could make out that there is entry that the shares have been returned and for that the amount has been paid to the petitioner. In view of this position, as I have observed in my earlier order dated 22-1-1999, there is no illegality committed by the reviewing authority in setting aside the Co-operative Appellate Court's order relying on these two new material which were produced before the reviewing authority.

4. The learned Counsel for the petitioner, however, raised a legal question that unless there is an error apparent on the face of the record, the reviewing authority cannot review its earlier order. He brought to my attention the relevant provisions of the Civil Procedure Code. I cannot accept this contention particularly when there is specific provision for review, as stated earlier, under the provisions of the Maharashtra Co-operative Societies Act. Provision in the C.P.C. has no application. It is relevant to refer to section 150 of the Maharashtra Co-operative Societies Act, which reads as follows.

Section 150 : Review of orders of (Co-operative Appellate Court.)

(1) The Co-operative Appellate Court may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks just;

Provided that, no such application made by the party interested shall be entertained, unless the (Co-operative appellate Court) is satisfied that there has been the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or for any other sufficient reason:

Provided further that, no such order shall be varied or revised, unless notice has

been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under the foregoing sub-section by any party, shall be made within ninety days from date of the communication of the order of the Co-operative appellate Court.

5. In view of the above clear provisions in the Act laying down the circumstances under which an order could be reviewed, it is unnecessary to bring in the principles of review laid down in C.P.C. I cannot accept the contention of the learned Counsel for the petitioner for the simple reason when specific provision is made for certain purpose, under the Rule of interpretation of law, it excludes the general provision. Therefore, the argument of the learned Counsel for the petitioner, regarding the provisions of CPC cannot be relied upon. He also relied upon certain decisions of the High Courts and Supreme Court, viz. Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, , Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others, , S.P. Awate v. C.P. Fernandes, 60 Bom LR 1354 , Bombay Business house v. S. Venkatesan, 60 Bombay Law Reporter 1058, Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, , Satyanarayan v. Mallikarjun, 62 Bom.L.R. 146, M.M.B. Catholicos v. M.P. Athanasms, AIR 1954 S.C. 526, 41 C.N. 125 , M/s. Avijit Tea Co. Pvt. Ltd. Vs. M/s. Terai Tea Co. and others, . All these decisions would clearly discuss the scope or power of review that could be exercised by the Supreme Court or the High Court or the Civil Court. The general proposition laid down in these decisions cannot be questioned. But none of these decisions lay any fetter on the reviewing authority to review its order, as and when new and fresh materials produced before the reviewing authority which after the exercise of due diligence, could not be brought to the notice of either to the original authority or the appellate authority. The reviewing authority can consider the said fresh material and change their earlier view, if circumstances warrant. In that circumstances it will not fall under the ambit of error apparent on the face of the record. In all the above decisions cited by the learned Counsel for the petitioner, only question arises was whether the material which was already placed before the reviewing authority and in considering those materials whether the reviewing authority had committed any error apparent on the face of the record. But in this case that contingency does not arise. In the case in hand, as I pointed out earlier, new and fresh material was produced before the reviewing authority which was the basis for the authority to decide it afresh. If these materials have ever been there before the original authority or the appellate Court, the decision would have been different. Therefore, I have no hesitation to hold that the reviewing authority has committed no illegality in reviewing its order impugned in this petition.

6. The learned Counsel for the petitioner also contended that new material was not discussed in the judgment by the reviewing authority. In exercise of jurisdiction of this Court under Article 227 of the Constitution of India, I am not expected to go into such details in this case. What is expected of this Court is

whether in view of the new material the reviewing authority is justified in passing the order impugned. At the time of passing impugned order, the new materials are before the reviewing authority. The learned Counsel for the petitioner has also pointed out that the reviewing authority had exercised its power mala fide. He contends that when the Division Bench of the Co-operative Court has passed the stay order in review, at the time of admission a Single Judge should not have heard the matter and pass the impugned order. This is entirely a matter relating to internal administration of the Co-operative Court. This Court cannot go into that question. It is highly reprehensible that when a litigant suffers an order at the hands of forum, he raises allegation against that authority, that too without any materials. For the foregoing reasons, I find no merit in the writ petition.

7. The writ petition is dismissed with no order as to costs.

8. Request made by the learned Counsel for the petitioner for staying the order for maintaining the status-quo, is rejected.

9. Petition dismissed.