

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5004 OF 1995

Nandkumar S/o Narayanrao Sakhrekar,
Age-Major, Occu-Agriculturist,
R/o Nanded, Dist. Nanded

PETITIONER

VERSUS

1. Tirupati Sahakari Graha Nirman Sanstha
Limited, Dhanegaon,
Tal. and Dist. Nanded,

2. Jagdish Laxman Botalwar,
Age-Major, R/o Cidco,
New Nanded, ND-41, House No.12-A,
CIDCO, New Nanded

RESPONDENTS

Mr.A.S.Deshmukh, Advocate for the petitioner.

Mr.A.R.Tapse h/f Mr.D.N.Suryawanshi, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/08/2016

ORAL JUDGMENT :

1. I have heard the learned Advocates for the petitioner and respondent No.2. Respondent No.1 has chosen to remain absent.

2. Respondent No.1 is a Registered Co-operative Housing Society. A dispute was raised by the petitioner before the Co-operative Court, Nanded alleging that Plot No.278 in S.No.112, situated at Dhanegaon, Tal. and Dist. Nanded was allotted to him. Respondent No.2 has

encroached upon the said plot and has illegally erected a construction of his house on the said plot.

3. He alleged that he had paid Rs.51/- on 28/10/1980 and was therefore made a member of the Society. He had paid Rs.1,200/- on 21/01/1981 and by virtue of the receipt issued by the Chairman of the Society on 07/02/1981, he was allotted the disputed Plot No.278. It is based on these contentions that the petitioner prayed for possession of Plot No.278.

4. By the impugned judgment dated 29/06/1991 delivered by the Co-operative Court, Nanded, the dispute raised by the petitioner was dismissed as against respondent No.2. However, a direction has been issued to respondent No.1 / Society to allot a plot of the same size as like 278 and if the plot is not available, the Society shall repay an amount of Rs.1,251/- with 15% interest from 28/10/1980.

5. The petitioner preferred Appeal No.112 of 1991 before the State Co-operative Appellate Court. Respondent No.2 filed a cross Appeal No.3/1993. By the impugned judgment dated 09/08/1995, both the appeals were disallowed. However, interest granted by the Co-operative Court was raised to 19% p.a. by the Appellate Court.

6. I have gone through the impugned judgments of the Courts below. It is apparent that Rs.51/- was paid by the petitioner to the Chief Promoter of the Society. Pursuant to such payment, his name was not entered in the list of members of the Society. After he deposited Rs.1,200/- towards the price of the plot to the Chairman of the Society on 07/02/1981, the Society issued an ownership certificate on 29/04/1981 to the petitioner. It was based on these facts that both the Courts below concluded that the Chief Promoter failed to register the petitioner as a Member of the Society. However, as the ownership certificate was issued, he was presumed to be a member of the Society.

7. It was also concluded on the basis of evidence that only one person from the members of one family could be inducted as a member of the Society and hence the petitioner's name was removed since there were more than one members of his family inducted in the Society. Both the Courts concluded that the Society is guilty of playing mischief and hence the said Society should either allot a plot to the petitioner or repay the amount of Rs.1,251/- alongwith 19% interest.

8. It has been proved through oral and documentary evidence

that respondent No.2 was inducted as a Member of the Society on payment of Rs.51/-, he paid the price of the plot and by a Resolution passed by the Society, he was allotted Plot No.278. He obtained permission from the Gram Panchayat, Dhanegaon after paying taxes and was granted permission to erect a construction of his house. He also was allotted an electricity connection by the Gram Panchayat and thereafter he has erected a house on the said plot. It was also proved that the possession of Plot No.278 was handed over to respondent No.2 herein. He is presently in possession of the plot as well as his constructed portion.

9. Considering the fact situation as above, I do not deem it proper to consider the case of the petitioner only on the basis of the deposition of Rs.1,200/- with the Chair Person of the Society, moreso, in the light of the fact that the dispute is 36 years old and respondent No.2 is already occupying the said construction on the concerned plot. Merely because a second view could be possible, would not mean that this Court could exercise its supervisory jurisdiction and upset the concurrent findings of the Courts below.

10. This petition, being devoid of merit, is therefore dismissed.

11. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)