

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 836 OF 2016

Ramchandra S/o Shankarrao Kotalwar,
Age : 60 years, Occu.: Retired Headmaster,
R/o : Plot No.2-A, Tilak Nagar,
Nanded, District – Nanded .. Applicant

Vs.

- 1] The State of Maharashtra
Through Police Inspector,
Nanded Police Station,
Nanded
- 2] The Superintendent of Police,
at Nanded
- 3] Sanjuddepsing S/o Ranjeetsingh Nirh,
Age : 60 years, Occu. : Business,
R/o : Chikalwadi, Nanded,
District – Nanded
- 4] Prakash S/o Seshrao Desai,
Age : 60 years, Occu. : Business,
R/o : Gurudwara Gate No.2,
Nanded, District – Nanded
- 5] Rekha W/o Ram Yohan,
Age : 65 years, Occu.: Retired,
R/o : Sahyog Nagar, Nanded,
District – Nanded
- 6] Rammohansingh S/o Durgasingh Thakur,
Age : 65 years, Occu.: Business,
R/o : Shivaji Nagar, Nanded,
District – Nanded
- 7] Harinathsingh @ Nagraj S/o Devsingh Thakur,
Age : 50 years, Occu.: Business,
R/o : Shivaji Nagar, Nanded,
District – Nanded .. Respondents

Mr. Amit A. Mukhedkar, Advocate for the applicant
Mr. S.M. Ganachari, APP for the respondent/State
Mr. P.R. Katneshwarkar, Advocate for respondent nos.3 to 7

CORAM : A.S. CHANDURKAR, J.**DATE : 30/11/2016****ORAL ORDER :**

Heard.

2. By the present application filed under Section 439(2) of the Code of Criminal Procedure, the applicant who is the original complainant, seeks cancellation of the interim protection granted to respondent nos.3 to 7, by the learned Additional Sessions Judge-4 vide order dated 09/12/2015.

3. According to the applicant, he was a founder member of Mayuresh Co-operative Housing Society and was allotted plot no.21, however, respondent nos. 3 to 7, in an illegal manner, changed the boundaries and numbers of various plots, including the plot belonging to the applicant, to show that it was numbered as plot no.22. He, therefore, filed complaint before the

learned Magistrate and pursuant to the directions issued under section 156(3) of the Code of Criminal Procedure, the offence was registered. By order dated 09/12/2015, the respondent nos.3 to 7 were granted interim protection, by accepting the stand of said respondents that there was no any change in the map or plots of the society and that certain plots had been acquired by the Government.

4. It is submitted by learned counsel for the applicant that the Sessions Court has granted interim protection without considering the entire record and merely by accepting the stand of the respondent nos.3 to 7. The learned counsel referred to the observations made in the communication dated 16/4/2014 by the District Deputy Registrar to the police authorities, to indicate that members of the housing society had been cheated in the matter of allotment of plots and change of plot numbers. He also referred to proceedings initiated under the provisions of the Maharashtra Co-operative Societies Act, 1960, to indicate that respondent nos.3 and 4 had been disqualified as president and secretary of the society.

He therefore submitted that the interim protection granted without considering the entire record deserves to be withdrawn. Aforesaid submissions are supported by learned Additional Public Prosecutor for the State.

5. However, learned counsel for respondent nos.3 to 7 submitted that the learned Additional Sessions Judge has rightly exercised the discretion while granting interim protection. He submitted that the entire case was based on documentary evidence, which was in the custody of the Investigating Officer. He referred to the various documents to indicate that some of the plots in the said society had been acquired and that there was nothing to indicate any malafide act on the part of the said respondents, so as to change the dimensions and number of the applicant's plot.

6. Perused the documents filed on record as well as the order dated 09/12/2015 passed by the learned Additional Sessions Judge. As the prayer is for cancellation of the interim protection on the ground that same is perverse, I have gone through the various documents filed on record. Communication dated

16/4/2014 is made by the District Deputy Registrar to the police authorities to investigate into the matter, as according to said authority, there was *prima facie* indication of misuse of office by the chairman and secretary of the society in the matter of preparing the lay-out and its dimensions. The order passed by the District Deputy Registrar, Co-operative Societies, is in relation to plot no.35 owned by some other member. There are further documents on record to indicate acquisition of portion of some other plots but not the plot belonging to the applicant.

7. Considering the nature of documents placed on record and in view of the fact that interim protection is granted on 09/12/2015, in absence of overwhelming/extraordinary circumstances or patent perversity in the order passed by the learned Additional Sessions Judge, I do not find that any case has been made out under Section 439(2) of the Code to cancel the interim protection granted to the respondent nos.3 to 7.

8. In view of aforesaid, the Application stands dismissed.

9. Respondent no.1 to take appropriate steps to ensure expeditious filing of the chargesheet, if any.

[A.S. CHANDURKAR]
JUDGE

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