

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7314 OF 2006  
WITH  
CIVIL APPLICATION NO.3625 OF 2007  
WITH  
CIVIL APPLICATION NO. 3627 OF 2007  
WITH  
CIVIL APPLICATION NO. 3628 OF 2007

Shri. Bhaskar Dagadu Satankar,  
Age: 61 years, R/o. Now at  
Shri Vitthal Bunglow, Pumping  
Station Road Corner,  
Gangapur Road, Nasik City.

**....Petitioner.**  
(Original Disputant)

**Versus**

1. Amrut Sahakari Bhadekaru Malaki  
Gruhanirman Sanstha Maryadit,  
Sangamner (Summonse to be  
served on the Chairman  
Madhav Kashinath Thorat)
2. Dhondiram Nanasahebn Kakade.
3. Vishwanath Bhimashankar Varpe.
4. Sampat Amarchand Dhadiwal.
5. Prabhakar Vishnupant Dhayagude.
6. Sampat Vithobda Shelake.
7. Marutrao Gangadhar Lanke.
8. Dattatraya Namdeo Khule.
9. Sampat Shreerang Godage.
10. Bhagvat Laxmat Vaidya.
11. Madhav Kashinath Thorat.

12. Arjunrao Karbhari Varpe.
13. Chandrakant Thakujee Ghodgar.
14. Vitthal Dhondiba Dhumal  
DECEASED, Through His LRs
- 14-a) Sundrabai Vithal Dhumal.
- 14-b) Sunil Vithal Dhumal.
- 14-c) Anil Vithal Dhumal.
- 14-d) Prakash Vithal Dhumal.
15. Vitthal Tatyaji Rahane.
16. Ramchandra Nana Kapare (Deceased)  
His legal heirs:-
- 16-a) Smt. Ashalata Ramchandra Kapare.
- 16-b) Kum. Rashmi Ramchandra Kapare.
- 16-c) Ankush Ramchandra Kapare.
- (for b & c as guardian their  
mother opp. No. 16 (a) Smt.  
Ashalata Ramchandra Kapare)
17. Deoram Dhondiba Mhaske.
18. Yashwant Bhagvan Jorvekar.
19. Sorabaji Govind Thorat.
20. Raghunath Maruti Bhor.
21. Smt. Kamalabai Nawnath Aher.
22. Shri Vishwanath Govind Thorat.

Respondent Nos. 2 o 21 all  
Major, r/o Sangamner,  
Tal. Sangamner, Dist. Ahmednagar. ....**Respondents.**

WITH  
WRIT PETITION NO. 7039 OF 2006  
WITH  
CIVIL APPLICATION NO 3621 OF 2007  
WITH  
CIVIL APPLICATION NO 3623 OF 2007  
WITH  
CIVIL APPLICATION NO 3624 OF 2007  
WITH  
CIVIL APPLICATION NO 8129 OF 2016

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Respondent Nos. 2 to 21 all

Major, r/o Sangamner,  
Tal. Sangamner, Dist. Ahmednagar.....**Respondents.**

Mr. S.S. Wagh, Advocate for petitioner.

Mr. A.B. Nehe with Mrs. Suvarna M. Zaware, Advocate for respondents.

**CORAM : T.V. NALAWADE, J.**

**DATED : 18th August, 2016.**

**JUDGMENT :**

1) The two petitions are filed to challenge the common judgment delivered by Maharashtra State Co-operative Appellate Court, Mumbai, Bench Aurangabad in Appeal Nos. 1/23/93 and 162/1993. These appeals were filed against the decision of ABN Case No. 167/1988, which was pending before the Co-operative Court No. 2, Kopargaon, District Ahmednagar. The said suit was filed by present petitioner - Bhaskar against respondent Amrut Sahakari Bhadekaru Malaki Gruhanirman Sanstha Maryadit, Sangamner, Housing Society and its office bears for relief of injunction to protect the possession over the plot allotted to petitioner by the Society.

2) The Co-operative Court, trial Court had given relief of injunction. As the Co-operative Court had held that there is possibility that some consideration was not paid by the plaintiff, this finding was challenged by the original plaintiff by filing Appeal No. 162/1993. The other appeal was filed by the Society

as the relief of injunction was given in favour of present petitioner. The appeal of the Society is allowed by the Appellate Court, appeal of the original plaintiff is dismissed, the decision of the Co-operative Court is set aside and the suit filed by the present petitioner is dismissed by the Appellate Court.

3) It is the case of petitioner, plaintiff that he is a member of the Housing Society and to him, by resolution dated 13.2.1980 membership was granted and then plot No. 1 of the lay-out plan prepared by the Society was allotted by resolution dated 29.2.1980. It is the case of plaintiff that area of the plot allotted to him is 5.3 R. and the price was fixed as Rs. 16,000/-. He has given dimensions of the plot in the plaint. It is the case of plaintiff that on 29.2.1980 itself he paid the total amount of Rs. 16,071/- to the Society and this amount includes membership fee, amount for initial expenses and the price of the plot and so, on 29.2.1980 itself the allotted plot was given in his possession. It is contended that since 29.2.1980 plaintiff has been in possession of the plot.

4) It is the case of plaintiff that he was out of station for some time and the new Body misused the circumstance and then they tried to obstruct the possession of plaintiff over the

suit plot. He contended that the defendants now want to make construction of shopping complex on the plot allotted to plaintiff. It is contended that due to the obstruction, he could not make construction of even compound wall and he was prevented when he attempted to make construction on 1.10.1988. The suit was filed under section 91 of the Maharashtra Co-operative Societies Act (hereinafter referred to as 'the Act' for short). Relief of injunction was claimed and alternate relief of possession was also claimed.

5) Defendants filed written statement and contested the matter. They denied that resolution was made to make plaintiff member of the Society and then on 29.2.1980 resolution was made to allot that plot to plaintiff and plaintiff deposited the consideration on the same day and got possession. They denied that there is cause of action for the suit.

6) It is the case of defendants that the Society was formed for the benefit of persons resident of Sangamner and also the persons, who were employees of Sangamner Sugar Factory. They contended that Survey No. 372 (to the extent of 64 R.) was purchased by the defendant - Society and in this land, by preparing lay-out plan, 21 plots were prepared. It is contended

that eastern side open space was reserved as per the development plan and so, there was no question of allotting open space to any member or to the plaintiff.

7) Defendants contended that plaintiff is a building contractor and he is resident of Nashik. They contended that plaintiff was never resident of Sangamner. It is contended that plaintiff was allotted the work of construction of 20 bungalows in aforesaid 20 plots.

8) It is the case of defendants that plaintiff had expressed to the Society, its office bearers that he wanted to become member and he wanted to have one plot in the Society. It is contended that the Society had then appointed committee of three members and defendant Nos. 3, 16 and 19 were made the members of the Committee. The defendants contended that this Committee had recommended to give 5.3 Gunta land to plaintiff at the rate of Rs. 16,000/- per Gunta. The defendants contended that accordingly resolution was passed on 13.2.1980 in the Managing Committee and he was directed to deposit Rs. 85,000/-. It is contended that only after completion of formalities and depositing the amount, plot No. 1 was to be allotted to the plaintiff and the open space adjacent to the plot No. 1 was to be

alloted to plaintiff.

9) After making aforesaid contentions in written statement, the defendants again contended that it was not possible to allot the open space which was reserved in lay-out plan to plaintiff and only plot No. 1 could have been allotted to plaintiff. The defendants admitted that on 29.2.1980 plaintiff deposited Rs. 4,571/-. The defendants contended that as this amount was not as per the resolution made, no membership was given to him. The defendants contended that the record of membership and allotment produced by the plaintiff with the plaint is forged and defendant No. 2 had no such authority to issue such letter.

10) They contended that resolution dated 13.2.1980 was only suggesting as to what can be done and no allotment was actually made. They also contended that no ownership rights were given due to this allotment, resolution.

11) The defendants then made allegation against plaintiff that he had not made the construction of 20 bungalows as per the agreement and he had left the construction of many bungalows incomplete and that was required to be completed

through other agency. They contended that plaintiff owes amount of Rs. 2,20,702/- to the Society as such amount was required to be spent by the Society. It is the case of defendants that as per the agreement, which was made after settlement of dispute, the Society was to give Rs. 51,000/- in three installments and in return the plaintiff was to give up his right in respect of suit plot. It is contended that the necessary correspondence was made by the Society though the agreement was not written on any paper. It is contended that the plaintiff then refused to act as per the agreement and he has filed the present suit.

12) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. In view of the nature of pleadings already quoted and the record which is with the plaintiff and original record which was taken over by the Co-operative Court, the Court held that the disputed space including plot No. 1 was allotted to plaintiff under resolution of the Society. However, the Co-operative Court, Trial Court held that the some consideration was not paid and so, made the order to see that as per the Rules, the consideration is paid.

13) The appellate Court has held that plaintiff was not

put in possession on 29.2.1980 and so, no relief of injunction could have been given in his favour.

14) The submissions made in this proceeding and the record show that till today no construction as such is made on the disputed space. The learned counsel for Society placed reliance on the development plan showing that as per the approved plan, open space is left and after that there is plot No. 1 and each plot is having size of 185.8 Sq. Mtrs. The learned counsel for Society argued much in respect of circumstance that there is some overwriting in the resolution dated 13.2.1980. The Society itself had issued true copy of resolution to the plaintiff and it is produced at Exh. 15. This document shows that for total consideration of Rs. 16,000/- the disputed space admeasuring 5.3 Gunta was allotted to plaintiff. In the resolution, it was mentioned that he was to pay the fees in respect of application, admission fee, price of share etc. The record is with the Society and in the record, there is proceeding with regard to such resolution and of the meeting dated 13.2.1980. If there is some overwriting in the original proceeding, it was up to the Society to explain the things and it ought to have taken steps against the previous Chairman, if the Chairman had done something to do favour to the present petitioner, plaintiff. This copy was issued to

plaintiff on 6.10.1984. This Court has carefully gone through the record like account book and receipt book of the Society and that record is consistent with the case of plaintiff. It shows that membership fee, admission fee, amount for initial expenditure and the amount in respect of purchase of plot was deposited with the Society. This receipt is of Rs. 4,571/-. It is the case of plaintiff that he had paid more amount like amount of Rs. 8500/- on 29.2.1980 itself. In the daily book, Rozkird, the amount of Rs. 4500/- is shown to be paid towards the price of the plot and there is mention of making payment of additional amounts like Rs. 50/-, Rs. 20/-, Rs.1/-. There is one entry at the bottom of this page that amount of Rs. 8500/- was also deposited though this amount is shown as the donation amount. The total amount received on that day tallies with the amount shown on other side for 29.2.1980. There is no explanation to this circumstance from Society. This record is more than sufficient to prove that fees of membership was accepted and the amount in respect of allotment of plot was also accepted. There is no case of society that all members had paid donation for any purpose.

15) It is the case of Society that Rs. 16,000/- per Gunta was to be paid by plaintiff. To ascertain as to whether such amount was taken from other members, this Court has gone

through the record available. Even query was made to the learned counsel for Society and he was asked to show any record in respect of any other member showing that other members had also paid the rate of Rs. 16,000/- per Gunta, but he could not show such record. These circumstances are not at all considered by the appellate Court and to some extent even by the Trial Court.

16) The learned counsel for Society argued much on the basis of Rules that only person resident of Sangamner could have been made member. These things are required to be ascertained by the Society and they admit that at the relevant time, the plaintiff had undertaken construction of atleast 20 bungalows with Society and work was going on for many years. In view of these circumstances, it does not lie in the mouth of the defendants that plaintiff was not fulfilling conditions which were laid down in the Rules for becoming the member.

17) The contention of the learned counsel for Society that the open space could not have been allotted as a plot to plaintiff cannot be considered in a proceeding like present one. If in the approved plan, some open space is left and somebody including the plaintiff is trying to make encroachment, the

proper authority can take action against such person.

18) The learned counsel for respondents - Society placed reliance on one case reported as **2011 (2) B C J 309 (SC) [Dr. Shehla Burney and Ors. Vs. Syed Ali Mossa Raza (Dead) by Lrs.]** and submitted that relief which was not claimed by plaintiff was granted by the Trial Court and direction was given to make the payment of remaining amount in respect of the price of plot. This Court holds that such direction was not actually relief in favour of plaintiff and it was a condition for getting the relief. So, the observations made by the Apex Court are of no use to the respondents in the present matters.

19) The learned counsel for respondent - Society placed reliance on the case reported as **AIR 1977 SUPREME COURT 1900 [Raj Rani and Ors. Vs. Delhi Administration and Ors.]** and submitted that the rules framed under the Act and the rules of the Society cannot be ignored. There cannot be any dispute over the proposition. These observations cannot help the Society in the present matters in view of the peculiar facts and circumstances of the present matter.

20) The learned counsel for petitioner, plaintiff placed

reliance on some reported cases like **AIR 2013 SUPREME COURT 1241 [The Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond and Gem Development Corporation Ltd. and Anr.]**, **AIR 1993 SUPREME COURT 1632 [Major Geni B.M. Bhattacharjee (Retd.) and Anr. Vs. Russel Estate Corporation and Anr.]** and **2005 (3) Mh.L.J. 297 Bombay High Court [Manohar s/o. Rambhau Galghate Vs. Saraswati Co-operative Housing Society Ltd., Dindayal Nagar, Nagpur]**. In the first case, the Apex Court has discussed the principle of 'estoppel' and has interpreted the principle to lay down that a party cannot be permitted to 'blow hot-blow cold', 'fast and loose' or 'approbate and reprobate' at the same time. In the second case, the Apex Court has discussed the meaning of 'allot'. It is held that allotment includes giving of the plot and inference of possession can also be drawn. In the present matter, there is no record with the Society in respect of separate record of giving of possession to remaining members. In view of these circumstances, it cannot be said that the possession was not given. In the third case, this Court has laid down that when Society allots a plot to one member, unless and until the allotment is cancelled, Society cannot take further steps. It is not the case of Society that the allotment made in favour of plaintiff

was cancelled at any time.

21) In view of the aforesaid circumstances and position of law, this Court holds that the Tribunal has committed error in allowing the appeal of the Society and dismissing the appeal of the plaintiff, petitioner.

22) So, both the writ petitions are allowed. The common judgment of the appellate Court in two appeals is hereby set aside. Appeal of the plaintiff filed against some finding given by the Trial Court is allowed. The appeal of Society is dismissed. Relief given in respect of other part of the decision given by the Co-operative Court in favour of plaintiff is kept intact. Civil Applications are disposed of.

**[ T.V. NALAWADE, J. ]**

ssc/