

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

922 WRIT PETITION NO. 7877 OF 2015

SUBHASHCHANDRA RAMKUMAR CHOUDHARI
VERSUS
BHAWARILAL SURAJMAL JANGID AND ANOTHERS

...
Advocate for Petitioners : Agrawal Pavankumar S.
Advocate for Respondent 1 : S.C. Yeramwar
Advocate for Respondent 2 : T.G. Gaikwad
...

CORAM : T.V. NALAWADE, J.
DATED : 5th October, 2016.

ORDER :

1. The petition is filed to challenge the judgment and order of Appeal No. 72/2014 delivered by the Co-operative Appellate Tribunal, Aurangabad and also against the decision of the dispute filed under section 91 of the Maharashtra Co-operative Societies Act, 1960 which was filed for relief of injunction and bearing Dispute No. 75/2009 in the Co-operative Court, Nanded. Both the sides are heard.

2. The suit was filed in respect of plot Nos. A-7, B-7, from the property developed by respondent No. 2, Co-operative Housing Society. It is the case of plaintiff, present respondent - Bhawarilal that the Society had allotted him two plots on 7.12.2005 and since then he is in possession of two plots. It is

contended that defendant No. 1 - Subhashchandra, present petitioner has no right whatsoever in respect of those plots, but he is trying to interfere in the possession of plaintiff over the plots. The suit was contested by the present petitioner by contending that the plots were allotted to him in the year 1968 and since then he is in possession of the plots. It is his contention that he was running a petrol pump on these plots and he was in possession of in all eight plots as eight plots were allotted to him in the year 1983. It is his case that there was some dispute between him and defendant Society and he had surrendered four plots and now he is in possession of remaining plots including the two suit plots.

3. The Society contended that the allotment was cancelled in the year 1983 and possession of suit plots was taken and then the plots were allotted to plaintiff and plaintiff is in possession of the plots.

4. The suit was filed for relief of injunction simplicitor and evidence was given accordingly. The learned counsel for petitioner submitted that some admissions were given by Secretary of the Society which were to the effect that notice was given in the year 2006 by Society to the petitioner and he was

asked to remove the encroachment and so, it can be said that on the date of suit, the petitioner was not in possession of the two plots. He submitted that though there is record of cancellation of allotment created in the year 1983, there is no record to show that suit plots were surrendered by him. However, the petitioner admits that the other four plots were surrendered and in respect of that surrender also, there is no record. On the other hand, there is the record with the plaintiff to show that after allotment of plots to him, he was put in possession by the Society.

5. It was submitted for the petitioner that there is some construction on the suit property as petrol pump was run on the plot and for that, there was the construction. There is possibility that after cancellation of the plots, the construction remained there and some correspondence was made for removal of that construction and petitioner is trying to use that correspondence for showing his possession. The cancellation of allotment was never challenged by the petitioner. The evidence as a whole of the witnesses need to be considered and it can be said that there are stray admissions of the nature as contended by the petitioner. But evidence as a whole shows that there was no construction, it was open plot, it was not bounded by any fencing and in that condition, the possession was given to the

plaintiff by the Society. Both the Courts below have given findings against the petitioner and they are on questions of facts. This Court holds that in view of such concurrent findings and aforesaid circumstances, it is not possible to interfere in the decisions given by the Co-operative Court and Appellate Tribunal.

6. In the result, the petition stands dismissed. The learned counsel for petitioner requests for continuation of interim relief. It is refused.

[T.V. NALAWADE, J.]

SSC/