

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

25 SECOND APPEAL NO. 700 OF 2015
WITH CA/15873/2015 IN SA/700/2015

MOHANSING SHANKARSING PARDESHI
VERSUS
STATE OF MAHARASHTRA AND OTHERS

Shri. A.S. Abhyankar, Advocate, holding for Shri. Sharad V. Natu, Advocate, for appellant.

Shri. S.D. Kaldade, Assistant Government Pleader, for respondent Nos.1 to 4.

Shri. D.S. Bagul, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 29 MARCH 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.22/2013 which was pending in the Court of the District Judge-1 Nandurbar. The appeal was filed by the present respondent, Nandurbar Municipal Council against the judgment and decree of Regular Civil Suit No.114/2012 which was pending in the Court of the Civil Judge, Senior Division Nandurbar. The suit filed by the present appellant for

relief of declaration and injunction was decreed by the trial Court and this decision is set aside by the first appellate Court and the suit is dismissed. Both the sides are heard.

2) The suit was filed in respect of 2 hectares 17 R portion from Survey No.254/A/1 and 2 hectares 14 R portion from Survey No.255 situated at Nandurbar. The suit was filed by Shri. Shriram Kisan Khalwad Housing Society Nandurbar and two persons had claimed that they were the Chairman and Secretary of this housing society. It is their case that the suit lands were fallow lands and they were allotted to the society by the State Government as the property was belonging to the State Government. It is contended that the allotment was made in the year 1964 and the members of the society were using the said land as 'khalwad'. It is the case of the plaintiffs that as per the order made by defendant Nos.1 and 2, the State Government and the Collector, occupancy price of Rs.3.03 lakh was deposited and even the Non-Agricultural Assessment tax of Rs.48,000/- was paid though on 1-9-1998. The occupancy price was allegedly deposited in the

year 1987.

3) It is the case of the plaintiffs that due to political pressure and influence, defendant No.5, Nagar Parishad Nandurbar had passed resolution to reserve the suit land for weekly bazaar, fire brigade and for administrative building. It is contended that objection was raised by the plaintiffs to the said reservation but no decision was taken on the objections and attempts were made to dispossess the plaintiffs from the suit property. It is contended that other space was available with the defendants for the aforesaid public purpose but only due to political pressure they were trying to take back the suit property from the plaintiffs. Relief was claimed of declaration that the action of the municipal council of reservation and removal of wire fencing for taking possession was null and void and relief of injunction was claimed to see that the proper procedure was followed by the defendants for taking back the possession.

4) The State Government and the Municipal Council contested the matter by filing written statement.

It was contended that no agreement was made with the society and possession was never given to the society. It was contended that in the year 1980 itself the allotment was cancelled and so the subsequent instances like making payment of occupancy price and depositing the amount towards NA assessment tax cannot confer any right on the said society.

5) The issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The trial Court held that there was the allotment order in favour of the society in the year 1964 though the process was not completed and actual allotment was not done. The trial Court further held that possession was with the society though possession was not actually handed over by the Government. The trial Court held that possession can be taken but only after following due procedure of law. It was submitted for the State Government that action was taken under the provisions of the Maharashtra Land Revenue Code as some members of the society had made encroachment over the Government land and they had put up wire fencing. This record was not produced and so

aforesaid order was made.

6) The first appellate Court has held that the society was unregistered and there was no convincing record to prove possession of any of the members over particular portion of the suit property. The first appellate Court held that no permission was sought to file the suit under Order I Rule 8 of the Code of Civil Procedure and so the suit in the present form was not tenable. The first appellate Court referred to the provision of section 91 of the CPC and held that the procedure laid down in that section was not followed and so the suit was not tenable.

7) The learned counsel for the original plaintiff, appellant submitted that non registration of the society cannot make much difference in such a case and the suit could have been decided on merits as two persons, who have signed on the plaint are at least the members of the said proposed society. Learned counsel further submitted that the trial Court had held that possession was with the society and the trial Court had not committed any error in holding that due process of law needs to be followed for

taking back the possession.

8) The submissions made and the record which was shown to this Court during arguments show that some decision was taken in the year 1964 to make allotment of the suit property to the proposed society but the things did not materialize. The allotment order was then cancelled in the year 1980 as after making inquiry by the Collector it was held that members were not eligible to get the land. This decision was not challenged. Subsequently resolution came to be made in the local body of reservation and on the basis of the resolution the State Government made order of allotment of the lands to the local body.

9) Admittedly, there is no record with the plaintiffs, two persons who have signed for the society to show that possession of the suit property was ever handed over to the society or to these two persons by the Government. When possession is handed over, the possession receipt is prepared. Further only after making document like agreement, such possession is handed over.

When there is no such record, it was not possible for the plaintiffs to prove that the possession was handed over to the society in the year 1964 or after deposit of the occupancy price, in the year 1987. In any case, when order of allotment was cancelled in the year 1980, if the amount of occupancy was paid in the year 1987, this circumstance of making payment in Government treasury cannot make much difference and it cannot confer any right on the society in whose favour, in the past the allotment order was made. Same can be said in respect of the circumstance of deposit of the amount of NA assessment tax in the year 1998.

10) Submission was made by the learned counsel for the appellant that there are constructions like sheds of the members of the society on the suit land and the members are using the same as "khalwad". This contention cannot be acceptable as it is. Firstly no permission was sought to file the suit in representative capacity. Secondly, the society is not registered and there is no record to show that there was any right to these two persons to file such suit. Even if their individual interests

are considered, it is not specific contentions of these two persons that they are in possession of particular portion of the suit property. No record of development of the property and allotment of plots to the members was produced. In absence of such record it cannot be said that either the society or some persons were in actual possession of the suit property. In absence of record like possession receipt prepared by the revenue authorities, possession if any of few such persons cannot be treated as lawful. If possession was not lawful and there is no record to show as to since when the possession of particular persons was there as encroachers, it cannot be said that proper procedure needs to be followed like filing of the suit to recover possession. In the Maharashtra Land Revenue Code there are provisions enabling the authorities to remove the encroachment (Sections 50 to 53). Evidence given by the Tahsildar shows that such process was started and even notices were given in the past. It is clear that by filing suit in the year 2012 the things were protracted by these two persons. It can be said that due to such steps and the orders made by the Courts below like status quo order, the expected

development of the property did not take place. The contention of the appellant that some amount was deposited and so it was necessary to take decision in respect of that amount also cannot be accepted in the present matter. It is already observed that only after cancellation of allotment, steps like depositing amount were taken by some persons like the plaintiffs. The only inference possible is that possession was not given by Government but some persons trespassed on the Government land. The land is allotted to the local body for its use, for creating market, offices etc. The pleadings show that on the date of the suit the plaintiff or any other member of the society was not in actual settled possession of the suit property.

11) The learned counsel for the appellant placed reliance on following reported cases :-

- (1) **1998 (1) Mh.L.J. 134 (National Sports Club of India v. Nandlal Dwarkadas Chhabria);**
- (2) **AIR 2004 SC 4918 (Situ Sahu v. State of Jharkhand);**
- (3) **AIR 1989 SC 997 (State of U.P. v. Maharaja Dharmander Prasad Singh);**

(4) **1986 Mah. L.J. 333 (Nimba Koli v. Barku Bhil).**

(5) **A.I.R. (37) 1950 SC 1 (Maneklal v. Hormusji).**

12) Facts and circumstances of each and every case are always different. Some cases are on the rights of the persons in possession in view of provision of section 53-A of the Transfer of Property Act. Some cases are in respect of interpretation of provision of Order 1 Rule 8 of the CPC in which it is observed that when suit is filed by single individual to protect his right such suit is maintainable even though the plaintiff may be espousing a public cause and he is not bound to file suit in a representative capacity. There cannot be dispute over the propositions made in the cases cited supra. However, the facts of the present case are altogether different. Way back in the year 1980 the allotment was cancelled and subsequent to that the lands came to be allotted to the local body. Possession was never handed over to the unregistered society or its members. In view of these circumstances the observations made in the cases cited supra can be of no help to the appellant. No substantial question of law as

such in involved in the matter. In the result, the appeal stands dismissed. Civil application stands disposed of. Learned counsel for the appellant seeks relief of status-quo. The relief is refused.

Sd/-
(T.V. NALAWADE, J.)

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