

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 4444 OF 2017

Laxman Kanha Bhoir

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

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Mr.R.S.Apte, Senior Advocate a/w. Mr. Ketan Joshi i/b. Ergo Juris
for the Petitioner.

Mr. N.V. Walawalkar, Senior Advocate i/b. Mr. Swapnil S. Mohite
for Respondent No.6.

Mr.S.R.Nargolkar for Respondent No. 7.

Mr.S.D.Rayrikar for Respondent Nos. 1 to 5.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 20, 2017**

P.C. :

1. This petition filed under Article 227 of the Constitution of India is directed against the order dated 01.02.2017 passed by Minister of State (Revenue), Maharashtra, Mumbai. The petitioner is a member of respondent no.6 society. The Revenue Department of State of Maharashtra by order dated 30.04.1994 had allotted the suit land at Sahabad (Belapur), District- Thane to the society to construct the residential flats within a period of two years. The suit land was allotted under Fixed Income Criterion. There was some

delay due to certain financial constrain and therefore, the flats and the buildings were not completed within stipulated time. As on today, 84 flats are ready. In between, Shri Madanalal Pawar, one of the members of the society had lodged a complaint and raised certain objections in respect of construction of the building, allotment of the flats, sell of the flats in the open market and so also it was contended the conditions which were imposed by the Revenue Department at the time of granting the suit land for construction were not followed. After hearing of the matter, the Collector, Thane by order dated 06.06.2015 allowed the complaint and directed the Tahsildar and City Survey Officer to take the actual possession of the land and passed an order of resumption of the land. It is also directed that the complainant and other members may lodge a criminal complaint as they are cheated by the society and other directions also contained in the order. The said order was challenged before the Hon'ble Minister of the State Revenue Department. In the matter no. RTS-2715/175/J-4, the original complainant Madanalal Pawar was appearing and respondent society were heard by the Hon'ble Minister of the State Revenue Department. The Hon'ble Minister has given detailed reasoning regarding the objections raised by the original

complainant and also irregularities shown by him. The Hon'ble Minister has considered all aspects of the case of the complainant and also the explanation given by the respondent society about alleged non-compliance or breach of conditions. By order dated 01.02.2017, he has set aside the order dated 06.06.2015 passed by the Collector, Thane and therefore, this Petition is filed against the said order dated 01.02.2017

2. Heard the learned senior counsel Mr. Apte for the petitioner and also the learned senior counsel Mr. Walawalkar for respondent no. 6.

3. The learned senior counsel for the petitioner has supported the order passed by the Collector, Thane. He submits that the irregularities which are pointed out by the petitioner were taken into account by the Collector, Thane and therefore, the order of resumption was rightly passed.

4. The learned senior counsel for respondent no. 6 submits that today three buildings are standing on the suit land. It is a project of five buildings, out of which three buildings are constructed. 84 flats are occupied by 84 eligible members and the plan of two

buildings is submitted to the Planning Authority. He further submits that the order passed by the Collector, Thane was drastic hence he supported the order passed by the Hon'ble Minister of the State Revenue Department.

5. The learned AGP is also present. He supported the order passed by the Hon'ble Minister of the State Revenue Department.

6. Perused the orders passed by both the authorities. It appears that there was delay in starting the construction of the buildings, however, that cannot be considered a ground to pass the order of resumption. There are some irregularities, however, they cannot be considered as illegalities, hence the order of resumption is not justified. Considered objections raised by the respondents and answers given by the petitioners. The order passed by the Collector, Thane is against the doctrine of proportionality and therefore, it is rightly rectified by the Minister of the State Revenue Department. Hence, the order dated 01.02.2017 passed by the Minister of the State Revenue Department cannot be faulted with. I am informed that the petitioner is not the original complainant. He is a member of the society and therefore, in fact he has no locus to file this petition.

7. As per request made by the learned senior counsel for the respondent society, the period for preparation of the approval to change the membership or list of membership as directed by the Minister of the State Revenue Department, vide order dated 01.02.2017 is extended for a period one month from the date of this order. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)