

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO.457/2015 IN LETTERS PATENT
APPEAL NO.150/2012 (D) IN WRIT PETITION NO.718/2012 (D)

Parasram S/o Gangaramji Nikose

..Vs..

The Collector, Civil Lines, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M. Balpande, A.G.P. for respondent Nos.1 and 6.
Shri R.O. Chabra, Advocate for respondent No.2.
Ms. S.S. Jachak, Advocate for respondent No.5.

CORAM : P.B. VARALE AND Z.A. HAQ, JJ.

DATED : 18.1.2017.

P.C.

None for the appellant. Heard Shri A.M. Balpande, A.G.P. for respondent Nos.1 and 6, Shri R.O. Chabra, Advocate for respondent No.2 and Ms. S.S. Jachak, Advocate for respondent No.5.

The appellant has filed this application seeking review of the order passed on 18th April, 2013 by which the letters patent appeal is dismissed and judgment and order passed by learned Single Judge dismissing the writ petition and upholding the orders passed by the subordinate Courts is maintained.

The grievance of the appellant is that the Court has failed to consider that the dispute filed by the appellant before the Co-operative Court could not have been dismissed only because the Collector, Chairman of Nagpur Improvement Trust, Chairman of Nagpur Municipal Corporation and District Deputy Registrar were impleaded. The contention of the appellant is that the appellant had also challenged the resolution passed by the Executive Committee of the Co-operative Society on 22nd November, 1998 and the appellant sought declaration that the construction undertaken by opponent No.4 in the dispute on plot

Nos.46, 47 and 48 was illegal and unauthorized and was required to be demolished. It is submitted that the point raised by the appellant is not considered and, therefore, there is an error apparent on the face of record which necessitates the exercise of review jurisdiction.

After examining the record placed alongwith memorandum of appeal, we find substance in the contention of the appellant. There is an omission on the part of the Court to consider the challenge raised by the appellant.

Hence, the following order:

- (i) The review application is **allowed**.
- (ii) The order passed on 18th April, 2013 is recalled and letters patent appeal is restored.

LETTERS PATENT APPEAL NO.150/2012 (D) IN WRIT PETITION NO.718/2012 (D)

The respondent Nos.3 and 4 are served with notice of the civil application and are aware about the pendency of this proceedings and have chosen not to put in appearance.

The learned Advocates for the respondent Nos.2 and 5 submit that the respondent Nos.2 and 5 are neither necessary party nor proper party and the disputant should not have impleaded them.

With the assistance of the learned Advocates appearing for the respondent Nos.2 and 5, we have examined the documents placed on record of this appeal.

In the dispute filed by the appellant under Section 91 of the Maharashtra Co-operative Societies Act, 1960, the appellant sought reliefs in terms of the following prayers:

- “a) To declare the Resolution dated 22/11/1998 passed by the Executive Committee of opponent No.3 Trisharan Co-op. Hsg. Socy. illegally allotting plot Nos.46, 47, 48 to opponent No.4 Shri Nana S. Shyamkule in

conveyance and violation of covenants of agreement of the society opponent No.3 in respect of allotting the plots as illegal null and void and not binding upon this disputant in respect of allotment thereof to him.

b) To declare that whatever construction has been made by opponent No.4 or (sic on) plot Nos.46, 47, 48 as illegal and unauthorized and liable to be demolished.

c) To direct that the Nagpur Improvement Trust i.e. opponent No.5 is entitled to take back the possession of the plot No.46, 47, 48 from the society and opponent No.4 with construction thereon and demolished the whole construction at the cost of the society and opponent No.4.

d) To direct the N.M.C. to make fresh enquiry and withdraw the building map of plot No.46, 47, 48 sanctioned illegally to opponent No.4 which is in violation of lease agreement in between opponent, society and N.I.T. Nagpur.

e) To cancelled (sic cancel) the Resolution No.3 "A" dated 22/11/1998 being illegal. In violation of agreement of lease between N.I.T. and the society.

f) Pending dispute restrain the society opponent No.3 and opponent No.4 from otherwise transferring ownership of construction on the said plot No.46, 47, 48.

g) To direct the Dy. Dist. Reg. Co-op. Socy., Nagpur to conduct a through (sic thorough) enquiry into the illegality of the resolution No.3 "A" dated 22/11/1998 and other things and for suitable necessary action against the society, opponent No.3 & 4 in the interest of justice .

h) Any other relief including costs all the through with exemplary cost as may be deemed appropriate may kindly be granted."

The Co-operative Court dismissed the dispute on the ground that dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 is not maintainable against the Collector, Chairman of Nagpur Improvement Trust, Chairman of Nagpur Municipal Corporation and the Deputy District Registrar. This order came to be passed on preliminary issue. The order was challenged in appeal before the Co-operative Appellate Court and

the appeal came to be dismissed. The challenge was carried further before this Court and learned Single Judge, by the impugned order, dismissed the writ petition recording that the dispute filed by the disputant was not maintainable.

After examining the averments made in the dispute and the prayers sought by the disputant, we find that the appellant / disputant sought substantive reliefs against the Co-operative Society and Ex-President of the Co-operative Society. The learned Single Judge has not considered the point raised by the appellant that even if some of the prayers of the disputant could not have been granted under Section 91 of the Maharashtra Co-operative Societies Act, 1960, the Co-operative Court could not have dismissed the entire dispute as untenable and whether the Co-operative Court and Co-operative Appellate Court have committed error of jurisdiction by dismissing the dispute overlooking prayer clause (a) and (b) of the dispute.

In the circumstances, we find that the impugned judgment and order is not sustainable.

Hence, the following order:

- (i) The impugned judgment and order is set aside.
- (ii) The matter is remitted to learned Single Judge for considering the writ petition afresh.
- (iii) The contention raised on behalf of the respondent Nos.2 and 5 that they are wrongly impleaded is kept open and they are at liberty to raise it before appropriate forum.
- (iv) The letter patents appeal is **allowed** in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE