

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 766 OF 2017**

Mahsul Karmachari Grah Nirman Sahkari
 Sahabhagidari Sanstha Ltd. Parbhani
 Through its President & Secretary.

- 1] Anantrao Dhondopant Kulkarni,
 Age : Adult Occupation Retired Naib
 Tahsildar and president of Society
 R/o. Vidya Nagar Parbhani.
- 2] Gopalrao Ambadasrao Borikar,
 Age : 80 Years, Occu. Retired
 Dy. Collector and Secretary of the Society
 R/o. Shivaji Nagar, Parbhani.

...PETITIONERS.

VERSUS

- 1] Manohar Narayan Bhagat,
 Age : Adult Ex. Collector, Parbhani,
 R/o. Pusad Taluka Pusad, Dist. Yavatmal,
 Now member of Maharashtra Revenue
 Tribunal, Aurangabad.
- 2] R.P. Survase,
 Age : Adult, Ex. Dist Deputy Registrar,
 Co-operative Societies, Parbhani.
 Present Dist. Dy. Registrar, Jalna.
- 3] S. B. Bade,
 Age : Adult Ex. Assistant Registrar Co. Op.
 Societies Parbhani, Present Dy. Registrar
 Co. Op. Societies, Parbhani.
- 4] Prashant Pandharinath Bilolikar,
 Age : Adult, Tq. Inspector,
 Land Record, Parbhani, Administrative
 Building, Parbhani.
- 5] Gangadhar Dashrath Jadhav,
 Age : Adult Occ. Service,
 C/o.T.I.L.R. Office, Parbhani,

Administrative Building, Parbhani

- 6] Chandrakant Shravan Fedrum,
Age : Adult, Occ. Surveyer,
C/o. Taluka Inspector Land Records
Basmath, Dist. Hingoli.
- 7] Ambadas Satuji Kadam,
Age : Major, Occ. Retired
R/o. Plot No. 34, Mahasul Karmachari
Co/op. Society, Opp. Shri Shivaji
Law College, Parbhani
- 8] State of Maharashtra Through Govt.
Pelader, High Court, Aurangabad. ..RESPONDENTS.

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Petitioner No.2 in Person : Mr. Gopalrao Ambadasrao Borikar
A.P.P. for Respondent-State: Mr. V. M. Kagane
Advocate for respondent no.1 Mr. V.D. Salunke
Advocate for respondent no.3 Mr. A. N. Irpatgire
Advocate for respondent no.4 Mr. S.S. Jadhav
Advocate for Respondent no.7 : Mr. M. P. Kale
Advocate for Respondent no.8 : Mr. A.P. Basarkar
Advocate for respondent no.5 : Mr. V. M. Maney

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CORAM : MANGESH S. PATIL, J.

Reserved on : 27.06.2018

Pronounced on : 24.07.2018

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of all the parties, the matter has been heard finally.

2] A private complaint filed by the petitioner society was dismissed under Section 203 of the Code of Criminal Procedure. The order was

challenged before the Sessions Judge Parbhani and by the impugned Judgment and order dated 24.11.2014 the revision was dismissed. Hence this writ petition under Articles 226 and 227 of the Constitution of India.

3] The sum and substance of the allegations as can be found from the complaint are to the effect that the land admeasuring 3 Acres and 6 gunthas out of survey no. 297/1 of Parbhani was allotted by the State Government through respondent no.2 who was then the Collector Parbhani to the petitioner society in the year 1970 for preparing a lay-out and allotment of plots to its members. It is a society formed by the revenue officers of the State. Accordingly, the society got the lay-out sanctioned and allotted the plots to its members. One of the plot bearing No. 34 was kept vacant for the purpose of construction of building of the society.

4] It was then alleged that the respondent no.7 applied for the membership of the society, however, since he was not eligible, it was refused. Respondent no.1 who was then Collector of the district, passed an order and declared respondent No.7 to have become a deemed member of the society pursuant to the order passed by respondent no.2 & 3 who were the Registrars of Co-operative Societies in the District. It was alleged that pursuant to such order, the respondent nos. 4 to 6 who

were the officers in the Land Survey Office at Parbhani carried out the measurement by entering into the property and respondent No.7 took possession of the plot. Thus the respondent nos. 1 to 7 had committed criminal acts which were offences punishable under Sections 417, 420, 447, 465, 468, 471 read with Section 34 of the Indian Penal Code. The complaint was filed by the petitioner no.2 herein in his capacity as a Secretary of the petitioner society on 03.02.2009.

5] After recording the statement of petitioner no.2 under Section 200 of the Code of Criminal Procedure and after hearing him, by the impugned order the learned Chief Judicial Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure, on the ground that though the respondent nos. 1 to 6 had acted in excess of their jurisdiction, powers and authority that did not necessarily fall in the category of criminal offence. They had acted in exercise of their powers. There was no element of conspiracy. The dispute was of a civil nature and there was no sufficient ground for proceeding against the respondents.

6] The petitioner no.2 challenged the order passed by the learned Chief Judicial Magistrate by preferring revision before the Sessions Judge Parbhani, however, even the Sessions Judge confirmed the observations and conclusions of the learned Chief Judicial Magistrate

and dismissed the revision.

7] According to petitioner no.2 who has argued in person, respondent no.1 as a Collector had no power or jurisdiction to intervene in the affairs of petitioner society. The land was allotted to the society, pursuant to the provisions of the Maharashtra Land Revenue Code. Necessary consideration was paid by the society. The society became exclusive owner of the land. The membership was reserved only to the persons from the Revenue Department of the State. Respondent no.7 was not from that category. He had never applied to the society for acquiring membership. The respondent nos. 2 and 3 illegally held him to have become the deemed member and relying upon such decision, respondent no.1 Collector passed the order directing the respondent nos. 4 to 6 to enter into the property and to carry out the measurement and respondent no.7 has been illegally put in possession of plot no. 34. Thus all the respondents have committed criminal trespass by indulging in forgery. No reliance could have been placed in the Government resolution dated 12.05.1983. The land was allotted to the petitioner society, 13 years prior thereto. The lower Courts have not considered all these aspects and have dismissed the complaint at the threshold. The impugned orders be set-aside.

8] The learned Advocates for the respondents by referring to their

respective affidavits in reply vehemently submit that the petitioner society may have a grievance but the dispute is of purely civil nature. Even according to the allegations in the complaint, respondent nos. 1 to 6 were acting in purported exercise of the powers and the duties of their respective post. No sanction to prosecute them was obtained as is required by Section 197 of the Code of Criminal Procedure. The orders were duly passed by holding that respondent no.7 had become deemed member of the petitioner society and if the society was not satisfied with the order, it should have taken recourse to appropriate remedy. In fact it has already filed a civil suit which is pending. The petitioner society is not ready to wait for the outcome and even before the rights are determined has resorted to this shortcut. Even there has been enormous delay in filing the complaint and even filing this writ petition. The writ petition has been filed as an after thought to seek vengeance. A complaint was lodged by respondent no.7 against the petitioner no.2 invoking the provision of Sections 3(1)(v),3(1)(vii),3(ix), 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and soon after he was granted anticipatory bail by this Court that he has caused this writ petition to be filed.

9] The learned Advocates further submitted that applying the principles laid down in the *State of Haryana Versus Bhajan Lal ; 1990 DGLS (SC)709*, no fault can be found with the order passed by the

Courts below in dismissing the complaint.

10] Needless to state that there is concurrent findings of the two courts below and the scope to interfere by invoking the writ jurisdiction is very limited. There has to be some perversity or gross illegality in the impugned orders without which this Court is not expected to intervene.

11] Much has been argued by the petitioner no.2 who has taken me through the provisions of Maharashtra Land Revenue Code as well as Maharashtra Co-operative Society Act to satisfy me as to how respondent no.1 Collector had no authority to pass any order or direction, how the respondent nos. 2 and 3 could not have declared respondent no.7 as a deemed member and as to how respondent nos. 1 to 6 have put respondent no.7 in possession of plot no. 34 in a high handed manner and by giving thin air to the law. Even the learned Advocates for the respondent nos. 1 to 7 tried to demonstrate as to how no illegality can be traced in the action of respondent nos. 1 to 6 and as to how respondent no.7 has been legally allowed to occupy plot no.34. For that matter, even the learned Sessions Judge seems to have swayed by such submissions and has consumed some space in the impugned order to demonstrate by referring to various provisions of those acts to *prima facie* reach a conclusion that the plot was legally allotted to respondent no.7, he having become a deemed member by the order

passed by the respondent nos. 2 and 3.

12] In my considered view, no such enquiry or investigation should have been resorted to by the learned Sessions Judge. Whether the plot was legally allotted to respondent no.7 was indeed a mixed question of fact and law and it would have been apposite had the dispute been left for being considered and determined in an appropriate civil proceeding, more so when admittedly, Regular Civil Suit No.87/2009 has already been filed by the petitioner society raising all these contentions. Suffice for the purpose to observe that the dispute apparently falls in the realm of civil law and one should refrain from entering into such controversy when by present proceeding remedy under criminal law is being sought.

13] Be that as it may, principles laid down by the Supreme Court in the case of *State of Haryana Vs. Bhajan Lal* (supra), in my respectful view can certainly be relied upon and referred to even while considering the matter of this kind, wherein the learned Magistrate has dismissed the complaint under Section 203 of the Code of Criminal Procedure. Following this principles, the allegations in the complaint even if they are accepted at their face value *prima facie* do not constitute any offence. Respondent no.7 has laid claim to the membership of the petitioner society and for allotment of plot no.34. Respondent nos. 2 and 3 have held him to have become a deemed member, while they were exercising the powers under the Maharashtra Co-operative

Societies Act. Respondent no.1 in his capacity as a Collector had directed respondent nos. 4 to 6 to carry out measurement and accordingly respondent no.7 having been held to be a deemed member of the petitioner society has been put in possession of plot no. 34. Therefore, *prima facie* the allegations do not constitute any offence.

14] Besides, since the respondent nos. 1 to 6 were public servants and had clearly acted in purported exercise of the powers vested in them, by virtue of Section 197 of the Code of Criminal Procedure, they could not have been prosecuted in the absence of prior sanction and thus there was an express legal bar for proceeding against them.

15] Again, there is another angle. Though the respondent no.1 directed the plot to be allotted to respondent no.7 by the order dated 17.07.2007, the complaint was filed in the year 2009 and though the revision was decided on 24.11.2014, the Writ Petition was filed only on 28.04.2017 almost two and half years after the decision of the revision by the Sessions Judge. I am not on the point of limitation, but such delay in approaching this Court while invoking writ jurisdiction clearly smacks of the spite with which the petitioner society and particularly petitioner no.2 has been acting. There is material to show that apart from civil litigation between the parties, even the petitioner no.2 has been implicated on a complaint filed by respondent no.7 for allegedly

committing various offences under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and it is only after petitioner no.2 succeeded in getting anticipatory bail in Criminal Application No. 2505 of 2017 dated 7 June 2017, that the present writ petition has been filed on 13 June 2017. Therefore, even for this reason, the petitioner no.2 is clearly acting to wreck vengeance. The case is duly covered by the guidelines laid down in Bhajan Lal's case.

16] One can easily understand the concern of the petitioner society. However, it has already invoked the civil remedy by filing Regular Civil Suit No.87/ 2009 which is still pending before the Civil Court Parbhani. Needless to state that all the rights would be determined in that proceeding. However, it cannot be allowed to take a shortcut by attempting to prosecute the respondent nos. 1 to 7.

17] Considering all these aspects, in my considered view, the observations and the conclusions drawn by the learned Magistrate and the learned Sessions Judge cannot said to be either perverse, arbitrary or capricious so as to enable this Court to invoke the writ jurisdiction.

18] The petition is dismissed.

19] The Rule is discharged.

(MANGESH S. PATIL, J.)