

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3516 OF 1997

Sudhakar S/o Shriyal Rahate
Age: Major, Occ.: Service
R/o. : Kotla Colony,
Aurangabad.

..Petitioner
(Orig.Deft.No.5)

Versus

01. Ramdas S/o Keruji Chotmal
Age: Major, Occ.: Nil,
R/o. CADA Office, CADA,
Department, Nanded.

..Respondent No.1
(Orig. Disputant/Plaintiff)

02. Kirti Co-operative Housing
Society Ltd., Aurangabad
N-8, C-2, CIDCO,
New Aurangabad.

..Respondent No.2
(Orig. Defendant No.1)

03. Rangnath s/o Marutirao Nikalje
Chairman of Kirti Co-op.
Housing Society, R/o. Railway
Quarter, Railway Station
Aurangabad.

..Respondent No.3
(Orig. Defendant No.2)

04. Deorao s/o Tanaji Maske
Age: Major, Occu.: Service,
R/o. Samta Nagar,
Aurangabad.

..Respondent No.4
(Orig. Defendant No.3)

05. Vithalrao s/o Sandu Thombre
Age: Major, Occ.: Service,
Ex-Chairman of Kirti Co-op.
Housing Society, R/o. C/o.
Soil Conservation Office,
Aurangabad.

..Respondent No.5
(Orig. Defendant No.4)

(As per order dated 16.12.1998,
respondent Nos.4 and 5 are deleted).

06. Administrator, CIDCO, Aurangabad.

..Respondent

...
Mr. M.K.Deshpande advocate for the petitioner
Mr. P.P. Mandlik advocate for respondent No.1
Mr. C.V.Thombre advocate for respondent No.3
Mr. A.S. Bajaj advocate for respondent No.6
...

CORAM : **RAVINDRA V. GHUGE, J.**

Date: July 23, 2019
...

ORAL JUDGMENT :-

1 The petitioner is aggrieved by the concurrent findings of the Cooperative Court, as well as the Cooperative Appellate Court. By Judgment dated 31.1.1995, the Cooperative Court declared that the respondent No.1 - original disputant is the allottee and therefore the owner and possessor of plot No.56 in the said society. The petitioner preferred an appeal No.28/95, challenging the said verdict and the Appellate Cooperative Court dismissed the Appeal by Judgment dated 2.4.1997.

2 Learned advocate for the petitioner has strenuously criticized the impugned Judgments. He submits that a society, by name Kirti Cooperative Housing Society, N-8, Cidco, Aurangabad was formed. The petitioner claims to be the owner of plot No.56. The disputant had approached the Cooperative Court, seeking injunction against the petitioner from erecting any construction on plot No.56. He claimed that he had paid Rs.800 on 27.9.1981 to be a Member of the Society. He had also paid Rs.3490/- on 8.2.1989 to the Society. The Managing Committee of the Society

met on 4.10.1981 and decided to allot plot No.56 to the disputant. An allotment letter was issued to the disputant on 5.10.1981 granting him plot No.56. Respondent No.1 took the possession of plot No.56 and therefore, the petitioner approached the Cidco authorities.

3 Learned Advocate for the original disputant submits that, he was the Member of the society as per the record and after making the requisite payment, he was granted the said plot. On 27.9.1981, he had paid Rs.800/- vide receipt No.54 and on 8.2.1989, he had paid Rs.3490/- vide receipt No.82. As the petitioner started disturbing his possession, he had to approach the Cooperative Court. After recording the evidence, the Cooperative Court concluded that the disputant is the title-holder and possessor of the suit property. The payments made by the disputant to the society were noted by the Cooperative Court.

4 He submits that the Appellate Cooperative Court recorded a categorical finding on the basis of the record available that the petitioner could not produce any document to indicate that he had become the Member of the society. Without any evidence to establish his membership, it became obvious that the petitioner wanted to grab the plot of the said society.

5 It requires no debate that when it comes to a decision on such an issue by the Cooperative Court and the Appellate Cooperative Court, the person claiming his right over a plot has

to initially establish that he was validly inducted as a Member of the society. Thereafter, he would get the right to make payment and purchase a plot and then erect a construction. When the petitioner could not produce any document to indicate that he had acquired the Membership of the society, much less, purchased a plot from the said society, any Court would not have passed an order concluding that such a petitioner would be a deemed Member of such society.

6 In view of the above, this petition, being devoid of merit is dismissed.

7 Rule is discharged.

(RAVINDRA V. GHUGE, J)