

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

Writ Petition No.4289/2016

Vasant Kadwe and Others Vs. Pralhad Gawande and Others

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

Court's or Judge's orders

Mr. K.B. Ambilwade, Advocate for petitioners
Mr. V.N. Gaoli, Advocate for respondents No.1 to 3.
Mrs. Mrunal Naik, AGP for respondent No.4

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 27, 2019

The petitioners herein have challenged order dated 05/4/2016, passed by the Maharashtra State Co-operative Appellate Court, Nagpur, in Misc. Application No.3/2011, whereby the request made on behalf of the petitioners for appointment of Commissioner was rejected.

2. The petitioners have filed dispute before the Co-operative Court, Nagpur, under Section 91 of the Maharashtra Co-operative Societies Act, 1960, claiming that the society in question has illegally sought to alienate certain property belonging to respondent No.3. In the aforesaid dispute, the petitioners had moved an application for grant of injunction to restrain the opponent from entering into the agreement of sale and development of the disputed property. The said

application was dismissed by the Co-operative Court by order dated 10/12/2008.

3. Aggrieved by the same, the petitioners filed appeal before the Co-operative Appellate Court, in which an order was passed on 17/11/2009, directing the parties to maintain status quo, as was existing on the said date.

4. Thereafter, the petitioners filed contempt petition No.3/2011, before the Co-operative Appellate Court under Section 148-A of the aforesaid Act, claiming that the respondents had violated the aforesaid order of status quo dated 17/11/2009, passed by the Co-operative Court. In support of the said petition, certain documents were also placed on record.

5. It is in this proceeding that the application was moved on behalf of the petitioners for appointment of Commissioner. The said application was opposed by the respondents.

6. By the impugned order dated 05/4/2016, the Co-operative Appellate Court, rejected the said application, observing that the petitioners had already placed on record material in support of their contentions that order of status quo was violated by the respondents and in such a situation, appointment

of Commissioner would amount to granting an opportunity to the petitioners to collect evidence. The Appellate Court was of the opinion that such collection of evidence could not be permitted in the contempt petition, which was filed way back in the year 2011. On this basis, the impugned order dated 05/4/2016, was rejected.

7. Upon notice being issued, the respondents entered appearance and it is brought to the notice of this Court that the appeal filed by the petitioners challenging the rejection of interim order, itself stood dismissed on 28/6/2016. Thus, the interim order, which was insisted upon by the petitioners stood rejected not only by the Co-operative Court but also by the Co-operative Appellate Court by dismissal of the appeal as per order dated 28/6/2016. In fact, the Co-operative Appellate Court, while dismissing the appeal noted the fact that the aforesaid contempt petition had been filed making certain allegations against the respondents, which was pending.

8. In this situation, it would be in the interest of justice that original dispute filed by the petitioners before the Co-operative Court itself is decided at the earliest to put an end to the controversy between the parties.

9. Accordingly, this writ petition is disposed of

with a direction to the Co-operative Court, Nagpur to decide the Dispute case No.1139/2007, expeditiously and in any case within a period of six months from today.

JUDGE

MP Deshpande