

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

PUBLIC INTEREST LITIGATION NO.243 OF 2013

Shri (Prop.) Janardan Nivrutti Nagane : Petitioner
Vs.
The State of Maharashtra and ors. : Respondents.

**WITH
INTERIM APPLICATION NO.19451 OF 2022
IN
PUBLIC INTEREST LITIGATION NO.243 OF 2013**

Mr. Machhindra A Patil for the Petitioner.
Mr. O. A. Chandurkar, Addl.GP a/w Mrs. R. A. Salunkhe, AGP for
Respondent-State.
Mr. S. S. Modak i/by Mr. Vijay Killedar for Respondent Nos.2 to 5.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 08th NOVEMBER, 2023**

P.C. :

1. By a separate order passed today in Interim Application No.3040 of 2020, the present Petition has been restored to file, and with the consent of the learned counsel for the parties the same is taken on board and heard finally.

2. Heard Mr.Patil, learned counsel representing the Petitioner, Mr.Chandurkar, learned Additional Government Pleader representing Respondent No.1-State and Mr.Modak, learned counsel representing Respondent Nos. 2 to 5.

3. By instituting these proceedings under Article 226 of the Constitution of India purportedly in the public interest, the Petitioner has prayed that a direction be issued to Respondent Nos. 4 and 5 to cancel the Agreement (lease) executed in favour of Respondent No.6 on 14th December 2007.

4. It is submitted by the learned counsel representing the Petitioner that by the said Agreement (lease) Plot No.43 and house standing thereon situated at Mahud Bk. Taluka Sangola , District Solapur was leased out to Respondent No.6 in an illegal manner inasmuch as though the area of the plot in question is 1365 sq.ft. (126.85 sq.mtr.), however, the lease has been granted in favour of Respondent No.6 only for a meagre annual rent of Rs.2736/- which comes to Rs.2/- per sq.ft. It is also the submission of the learned counsel for the Petitioner that the

lease rights have been conferred upon Respondent No.6 without putting the plot in question to auction whereby some loss is said to have caused to the Grampanchayat.

5. An Affidavit in Reply has been filed on behalf of Respondent No.6 as also by Respondent Nos. 2 to 5. In the Affidavit in Reply filed by Respondent Nos. 2 to 5 it has clearly been stated that the lease dated 14th December 2007 was granted after seeking requisite approvals etc as per the requirements of the provisions contained in Bombay village Panchayat Act, 1958. It has also been stated in the said Affidavit in Reply filed by Respondent Nos.2 to 5 that a proposal to lease out plot/house in question for a period of 99 years was submitted on 12th November 2007 to the Block Development Officer, Panchayat Samiti, Sangola and an approval was accordingly accorded by the Chief Executive Officer, Zilla Parishad, Solapur vide his letter dated 13th November 2007. It is also stated in the said Reply that the permission was granted on certain conditions viz., (1) that the lease shall be registered as

per Section 55 of the Bombay Village Panchayat Act, 1958; (2) that the building shall be used only for the dairying purposes and not for any other purposes; (3) that the building shall not be sublet on temporary or on permanent basis and (4) that the Deputy Engineer, Bandhkam Vibhag Sub Division Sangola shall fix the rent for the property. Accordingly, the submission made in the Affidavit in Reply filed by Respondent Nos. 2 to 5 is that in terms of the said permission accorded, the lease has been registered under Section 55 of the Bombay Village Panchayat Act, 1958 and further that while granting the lease the proper procedure as prescribed for grant of said lease was followed.

6. Learned counsel representing Respondent Nos. 2 to 5 has, thus, submitted that there is no illegality in the grant of lease dated 14th December 2007 and that the same does not warrant any interference by this Court in this Petition.

7. Having heard the learned counsel for the parties and having perused the record available before us in the present Petition what we prima facie notice is that though lease dated

14th December 2007, which is under challenge, has been granted in favour of a Cooperative Society viz. Shetkari Sahakari Dudh Utpadak Sanstha Maryadit, Dhalewadi Mahud, Bk. Taluka Sangola District Solapur, however, the said Cooperative Society has not been impleaded as a party Respondent in the present Petition. In so far as Respondent No.6 is concerned, it is submitted by the learned counsel representing the Petitioner, that he, at the relevant point of time, was the chairman of the Cooperative Society concerned in whose favour the lease was granted.

8. A Cooperative Society incorporated and registered under the provisions of the Maharashtra Cooperative Societies Act is a legal entity and juristic personality, and accordingly by impleading its chairman as Respondent No.6 in his individual capacity, it cannot be said that the Cooperative Society itself has been arrayed as a party Respondent.

9. Admittedly the lease in question was granted not in favour of Respondent No.6 in his personal capacity, but to the

Cooperative Society concerned. Thus, the Petition suffers from the vice of non-joinder of necessary party, hence the Petition ought to be dismissed on this ground alone.

10. As far as merits of the claim of the Petitioner is concerned, no Rejoinder Affidavit has been filed by the Petitioner though this Petition has been pending since 2013 and the Affidavit in Reply by Respondent Nos. 2 to 5 was filed way back on 4th June 2014. In the Affidavit in Reply Respondent Nos. 2 to 5 have clearly stated that the lease was granted in favour of the Cooperative Society concerned after following due procedure of law and also seeking requisite approvals etc.

11. Thus we do not find any good ground to entertain the Petition, which is hereby dismissed.

12. At this stage, it is submitted by learned counsel representing the Petitioner that the Cooperative Society concerned has flouted certain conditions of the lease and as such the lease needs to be cancelled. For the said grievance, we

make it open to the Petitioner to approach the appropriate authority/forum.

13. In view of disposal of the Petition, Interim Application No.19451 of 2022 does not survive and the same is accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)