

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13264 OF 2023

Riddhi Siddhi Builders & Promoters
Through its Partners
Harish Tikamdas Harwani
Age : 56 years, Occu : Business,
R/o. Bhagwan Baba Chowk,
Nirmal Nagar, Savedi,
Ahmednagar – 414 003.

....Petitioner.

Versus

Shreyas State Bank of India
Employees Co-operative Societies Housing
Society Ltd. Veer Savarkar Marg,
Vasant Tekdi, Ahmednagar
Through Hrishikesh Nilkanth Modak
Age : 48 years, Occu : Business,
R/o. Shreyas Co-operative Housing
Society, Vasant Tekdi, Ahmednagar.

....Respondent.

Advocate for Petitioner : Mr. V.S. Bedre
Advocate for Respondent : Mr. C.S. Deshmukh

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 07TH NOVEMBER, 2023
PRONOUNCED ON : 10TH NOVEMBER, 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard learned counsel for both the sides finally at the admission stage.
2. The petitioner is challenging concurrent finding of facts decided by both the Courts below against it. An order of temporary

injunction, restraining the petitioner from carrying out the construction, passed by the Trial Court below exhibit 5 in RCS No. 212 of 2013, is confirmed by Appellate Court in Miscellaneous Civil Appeal No. 47 of 2023.

3. Petitioner is the original defendant no. 6 and the respondent is plaintiff of RCS No. 212 of 2023, which is filed for declaration and injunction. The defendant nos. 2 to 4 purchased the plot in question on 11.03.2020, from defendant no. 5 – Chandrakant Gujarathi. The defendant nos. 2 to 4 further sold the plot to the petitioner on 04.10.2020. The alienation vide two sale transactions are without permission of the respondent and against the bye-law. Hence, the suit is filed for declaration, possession and injunction. An application exhibit 5 is filed for temporary injunction to restrain the petitioner for carrying out construction.

4. The petitioner contested the suit and application exhibit 5 contending that the sale transactions were valid and there was no necessity to secure any permission. The Society was not in existence and it was under liquidation. The construction commenced after seeking permission from the Competent Authority. The complaint of illegal alienation of the plots of the Society has already been inquired into and no substance was found. The petitioner is stated to have invested huge amount and the construction is on the verge of completion. The

respondent is denied to have any right, title or interest in the plot purchased by the petitioner.

5. Learned counsel for the petitioner submits that the respondent Society was under liquidation vide order dated 31.12.2015. There is no violation of any bye-law for purchasing the plot and carrying out the construction. He submits that the respondent has suppressed material facts regarding status of the Society in the plaint. He further submits that the respondent deliberately took action against the petitioner when the construction was more than 50% completed. Both the Courts below erred in holding that there was *prima facie* case in favour of the respondent because no prior permission was secured by the petitioner.

6. He submits that both the Courts below have wrongly decided the issues of balance of convenience and irreparable loss. The construction is on the verge of completion and the petitioner has incurred huge loss. It is further submitted that the original defendant no. 5 was also not absolute owner and had not obtained permission for selling the plot to the defendant nos. 2 and 4. It is vehemently submitted that the impugned judgment and orders are perverse. The petitioner is facing huge hardship because the construction has been stalled. The petitioner also submits that an order of revival dated 14.09.2022, is arbitrary and bad in law.

7. Learned counsel for the respondent submits that the respondent Society was neither de-registered or liquidated conclusively. Both the Courts below by detailed reasons and discussion concurrently held against the petitioner. Learned counsel for the respondent would point out that from time to time the petitioner was apprised of the illegal activity of purchasing the plot and construction thereon. The petitioner has violated bye-law no. 19 and consequently the construction is illegal. She further submits that the orders passed by District Deputy Registrar, were not needed to be challenged.

8. I have considered rival submissions of the parties. The plot in question was first sold by defendant no. 5 on 11.03.2020 to defendant nos. 2 to 4. On 04.10.2020, it was further sold by defendant nos. 2 to 4 to the petitioner. As the application for the temporary injunction is not contested by defendant nos. 2 to 5, they are not arrayed as parties to this petition. The respondent – Society ran into liquidation on 31.12.2015. The plots were allotted to the members of the Society. The defendant no. 5 was allotted suit plot. Though, the Society was in liquidation, there was liquidator. There is no material on record to show that Society was ever de-registered. The Society was revived by the order passed by the Competent Authority on 14.02.2022. Thus, it can be inferred that the Society was all the while in existence.

9. Learned counsel for the petitioner tried to submit that the order of revival dated 14.09.2022, is arbitrary and illegal. On 14.09.2022, a public notice was issued inviting objections and without waiting further on the same day order of revival was passed. The order of revival has not been challenged before the Competent Authority. In a collateral proceeding, it cannot be contended that order dated 14.09.2022, is bad in law and not binding. Neither Civil Court nor this Court can consider the validity of the order dated 14.09.2022. Submission of learned counsel for the petitioner in that regard is merit less.

10. As per clause no. 19 of the bye-law the alienation of the plot are illegal. No prior permission is taken either by defendant no. 5 – Chandrakant Gujarathi or defendant nos. 2 to 4. Learned counsel for the respondent has rightly submitted that the alienation by the defendant nos. 2 to 4 is within one year which is also violative of bye-law. *Prima facie*, the alienation of the plot is illegal. Society was in existence and its permission ought to have been obtained. The purport of Clause No. (19) is rightly appreciated by both the Courts below.

11. Learned counsel for the petitioner has invited my attention to an enquiry conducted by District Deputy Registrar, the report of which is placed on record. By the report the complaint for illegal alienation of the plots including the suit plot has been disposed of holding that there is

no substance. Just because there is a report of a comprehensive enquiry covering the suit plot no benefit can be given to the petitioner. The Civil Court has every jurisdiction to consider the validity of the sale transactions. The enquiry and its report may not be a conclusive to decide right title and interest. Therefore, I am unable to accept the submission of the petitioner in this regard.

12. Learned counsel for the respondent has to the notice dated 17.10.2022, issued to the defendant nos. 2 to 4, restraining them from carrying out the constructions over the suit plot or creating third party interest. Public notices were issued on 17.06.2022 and 03.01.2023 by the respondent to alert the public not to enter in any transaction. The petitioner applied on 21.01.2023, seeking permission which is refused by the respondent by the respondent by reply dated 27.01.2023. Thus, the illegal activity of the petitioner has been resisted by the respondent from time to time. The petitioner is not even member of the Society and timely objections have been raised by the respondent.

13. Despite the objections of the respondents for purchasing of the plot by the petitioner and for carrying out the construction, the construction was raised. There is no permission from the respondent – Society. The petitioner continued with the construction at its own risk. Under these circumstances, the petitioner cannot be heard to say that huge amount is invested and construction is on the verge of completion.

14. Learned counsel for the petitioner has relied on judgment rendered in *Girdharilal Bhaulal Pardeshi Versus State of Maharashtra, 1991 (1) Mh.L.J. 630*, on paragraph no. 12 to contend that bye-laws of the Co-operative Society do not have force in law and in the present case bye-law no. 19 is not binding. Whether clause no. 19 is binding or not and what would be its effect would be decided by full fledged trial. Therefore, no benefit can be given to the petitioner relying upon the judgment cited.

15. Learned counsel for the respondent have relied on the judgment rendered in *Ramdas Trimbak Sanap Versus Bajirao Trimbak Sanap, (2018) 2 ALLMR 6 (BOM)* and *Wander Limited Versus Antox India Private Limited, AIR ONLINE 1990 SC 156*. My attention is drawn to paragraph no. 11 in the matter of *Ramdas Trimbak Sanap* (supra) and paragraph no. 14 of the matter and *Wander Limited* (supra). The exposition of law stated therein is applicable. The lower Appellate Court rightly exercise the jurisdiction as the findings of trial Court are based on record and plausible. The petitioner is unable to point out any arbitrariness or perversity in exercise of the jurisdiction.

16. The upshot of the above discussed is that there is concurrent finding of fact as follows :

- i) The alienation of the plot vide two sale deeds is illegal.

ii) There is no permission for the construction by the respondent – Society.

iii) The Society was in existence at the relevant time and the alienation are against bye-law no. 19.

iv) *Prima facie*, case is made out by the respondent. The balance of convenience tilts in its favour. Irreparable loss is likely to cause if construction is completed and flats are permitted to be sold.

v) The petitioner and other predecessor in title are not the members of Society. The petitioner Society has taken risk in purchasing the plot and continuing with the construction.

17. I, therefore, hold that there is no merit in the petition. The petition is dismissed.

[SHAILESH P. BRAHME, J.]

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