



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

WRIT PETITION NO. 4465 OF 2024

Ramesh s/o Venkagoud kesare,
Age: 51 years, Occu: Business,
R/o. Kabra Nagar, Nanded,
Tq. & Dist. Nanded.

.....PETITIONER
(orig. Disputant/Appellant)

VERSUS

1. Manthan Park Sahakari Graha
Nirman Sanstha Ltd., Nanded.
Through its Chairman Jyotiba s/o Jayram Kharate
Age: Major, Occu.: Business,
R/o. Anjankhed Mahur, Tq. & Dist. Nanded.
At present: Manthan Park
Sahakari Graha Nirman Sanstha Ltd., Nanded,
Tq. & Dist Nanded.
2. Govind s/o Babagoud Kondalwar,
Age: Major, Occu. Business,
C/o. Manthan Park Sahakari
Graha Nirman Sanstha Ltd., Nanded
3. Vithal s/o Bhimrao Padalwar,
Age: 62 years, Occu. Business,
R/o. C/o Patil dairy and Bakery,
Parasi Anjuman Lane, Vajirabad
Nanded, Tq. And District Nanded.
4. Ashok s/o Shivam Padalwar,
Age: 63 years, Occu.: Pensioner,
R/o. House in front naik College,
Cidco, Nanded, Tq. & District Nanded.
5. United Buildcon Partnership Firm,
Through its Partners.

- i) Dnyaneshwar s/o Rambhau Kadam
Age: 62 years, Occu Building Contractor
R/o. Karanja (G), Tushar Colony,
Darva Road, Plot No.6, Karanja(G)
Washim, Dist. Washim.
- ii) Kishor s/o Madhusudanji Lohati,
Age 45 years, Occu: Business/Agri,
R/o Malegaon, Tq. & Dist. Nanded.

.....**RESPONDENTS**
(Ori. Opponents)

Mr Ramesh V. Kesare, Party-in-person
Mr. S. B. Ghatol Patil, Advocate for respondent no.1

CORAM : ROHIT W. JOSHI, J.

DATED : 29TH JULY, 2025

JUDGMENT :-

. The present petition takes exception to order dated 19.05.2023, passed by the learned Judge, Co-operative Court, Nanded, rejecting application at Exhibit 5, filed by the petitioner/disputant in Co-operative Case No.27 of 2022 and the judgment and order dated 21.02.2024, passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, bench at Aurangabad, dismissing Appeal against Order No.15 of 2023, arising out of the said order passed by the learned Co-operative Court.

2. At the outset, it needs to be mentioned that the respondent nos.1 to 4 have filed affidavit-in-reply today during the course of hearing. The copy of reply was served on the petitioner today at around 02:30 PM. However, the petitioner expressed readiness to proceed with hearing of the petition. This Court had asked the petitioner if he intended to go through reply and then advance his submissions on merits on some other day, however, the petitioner who appeared in person, stated that since he comes from outstation and that he want to work out the matter today. In view of the above, the petition was taken up for hearing although, the copy of reply was served on the petitioner today at 02:30 PM.

3. Petitioner is a Member of Manthan Park Sahakari Gruha Nirman Sanstha Limited, Nanded/respondent no.1 in the present petition. He is founder member and Secretary of the said society. The said society owned a piece of land over which a layout comprising of 36 plots was carved out. There are 36 members in the respondent no.1/society and one plot was allotted to each member. The petitioner was allotted plot no.1 on 05.04.1999.

4. It is the case of petitioner that initially the members of the society decided to carry out the work of development of the plots and started looking for a suitable Developer for the said purpose. The petitioner states that the development rights were initially assigned in favour of a partnership firm named; M/s. Blue Star Buildcon, vide agreement dated 04.10.2017. The petitioner states that the said firm expressed inability to continue with the development work and therefore, the members decided to execute the work themselves. He, however, alleges that the respondent nos.3 and 4, who are the Chairman and Vice-Chairman of the society, clandestinely awarded the development work to the respondent no.5 vide agreement dated 14.03.2018. According to this agreement, the said Developer was to allot one residential flat to each member in the buildings to be constructed over the land of the society.

5. In this backdrop of facts, the petitioner filed dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as MCS Act) being Co-operative Case No.27 of 2022, *inter alia* praying for

declaration that petitioner/disputant was allottee and possessor of plot no.1 in the layout of society and for injunction against carrying out any construction work on the said plot no.1 and for a declaration that the development agreement and registered power of attorney dated 07.12.2019 executed in favour of the opponent no.5 were illegal, null and void and also not binding on the petitioner/disputant. This dispute was filed on 23.02.2022.

6. The petitioner also filed an application for grant of temporary injunction in the said dispute *inter alia* praying that the opponents/respondents should be restrained from making any construction over his plot during pendency of the dispute.

7. The opponent no.1/society filed reply opposing the dispute and the application for temporary injunction by contending that the earlier sanctioned layout plan was cancelled and revised layout plan was sanctioned with entire land constituting one single plot for the purpose of development. It is stated that the petitioner/disputant was active in completing the said formalities. It was further stated that the construction was at a very advanced stage and

therefore, application for grant of temporary injunction was liable to be rejected. As regards the agreement, it was stated that the same was executed by passing appropriate resolutions and following the prescribed procedure. The other opponents filed reply on similar lines.

8. After hearing the rival submissions on the application for grant of temporary injunction, the learned Co-operative Court was pleased to reject the application. The learned Co-operative Court has found that before entering into agreement with the Developer/respondent no.5, the respondent no.1/society had passed a resolution in a special general meeting for entering into agreement with respondent no.5. It is stated that permission for construction was sought vide application dated 19.04.2018 and for the purpose of completing formalities, an undertaking was also given to the Airport Authority. The learned Judge has observed that all these documents were signed by the petitioner/disputant and signatures on the documents were not disputed. It is observed that the petitioner merely contended that the signatures were obtained under coercion. This version is disbelieved by the

learned Co-operative Court on the ground that the various documents were executed from time to time from the year 2017 till the year 2021. It is also observed that coercion was not even pleaded by the disputant. It will be pertinent to mention that 31 members had filed affidavits in the proceeding supporting the development agreement. The learned Court also found that the earlier sanctioned layout plan under which one plot was allotted to each member was revised and under the revised sanctioned layout the entire plot was shown as one single plot for the purpose of development of the same. As regards equity, it was found that construction of two buildings was almost completed and therefore, it was observed that it would be inequitable to grant order of temporary injunction in favour of the petitioner.

9. The petitioner filed an appeal being appeal against order no.15 of 2023, challenging the said order. The learned Appellate Court has concurred with the findings recorded by the learned Appellate Court. Apart from this, maintainability of the dispute is also doubted by the learned Appellate Court on the ground that challenge to development agreement could

not be raised in a proceeding under Section 91 of the MCS Act. The learned Appellate Court has held that the Developer was not a member of the society and was also not claiming through any member of the society and therefore, dispute was *prima facie* not maintainable against the Developer. Apart from this, as stated above, *prima facie* merits of the matter were also seen and the learned Appellate Court by a reasoned judgment has concurred with the opinion expressed by the learned Trial Court on merits.

10. Heard the petitioner-in-person. He contends that the agreement of development and power of attorney are illegal documents. It is his contention that Administrator was appointed over the society at the relevant time and as such, the society did not have right to enter into any agreement with the Developer. He contends that bogus resolution is shown to be passed in order to illegally assign the work of development of property to the respondent no.5. He contends that the agreement of development is illegal and not binding on him.

11. Per contra, the learned Advocate for respondent nos.1

to 4 supports the order by contending that both the learned Courts have considered the controversy properly and have arrived at correct conclusion in rejecting the application for temporary injunction. The learned Advocate contends that the petitioner has played a proactive role in the matter and is clearly estopped from challenging development agreement. He contends that the development activity is being conducted with consent of all members and the petitioner alone cannot create any hurdle in the development activity.

12. A perusal of pleadings in the dispute will demonstrate that the contention regarding appointment of Administrator over the society, etc., are not raised in the pleadings. These submissions are made in the petition for the first time without any foundation with respect to the same in the pleadings. Perusal of orders passed by both the learned Courts also does not indicate that this ground was raised before them. The ground is sought to be raised first time before this Court in absence of any foundation in the pleadings. The said contention, cannot therefore be entertained and is liable to be rejected.

13. As regards the development agreement, it appears that earlier, also the society had assigned the work of development to another firm; since, the said firm could not execute the work, it appears that the work is assigned to the respondent no.5. The learned Co-operative Court has clearly observed that signature on resolution for entering into agreement with respondent no.5 is not disputed by the petitioner. It is also observed that the proposal for development is forwarded to the Planning Authority under the signature of petitioner. Likewise, application seeking no objection from Airport Authority is also issued under signature of the petitioner. The contention regarding coercion in obtaining these signatures is rightly rejected by the learned Co-operative Courts since, there is no pleading in that regard. It is seen that the petitioner was active in revision of the layout plan which initially comprised of 36 plots; one for each member, which was thereafter modified to constitute one single plot for the purpose of development. The development activity has commenced from the year 2019. The construction is at advanced stage. The learned Co-operative Court has observed that construction of two buildings was almost complete. It is also apparent from

the record that 31 members had filed separate affidavits supporting the development agreement.

14. Both the learned Courts have considered the matter in great detail. They have dealt with the rival pleadings and documents on record. The appreciation of material on record cannot be said to be perverse by any stage of imagination. The findings recorded rather are in consonance with the material on record. The principles governing grant of temporary injunction are also correctly applied to the facts of the case. Orders passed by the learned Courts are just and proper and do not warrant any interference. Petitioner has failed to make out any case for interference.

15. Writ Petition is therefore liable to be dismissed and is **dismissed** as such with no orders as to cost.

16. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)