



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

**WRIT PETITION NO. 5769 OF 2024**

Marathwada Dpressed Class League Hostel Nanded Through Its Secretary  
**VERSUS**  
Nanded Waghala Citiy Municipal Corporation Through Its Municipal  
Commissioner

Mr. A. S. Bajaj, Advocate for Petitioner

Mr. S. A. Mulla h/f Mr. R. K. Ingole, Advocate for Respondent

**CORAM : R. M. JOSHI, J.**

**DATE : 16<sup>th</sup> April, 2025**

**PER COURT :-**

1. This petition takes exception to the order dated 26.03.2024 passed below Exhibit 96 in Regular Civil Suit No. 478/2007 whereby Trial Court has refused to delete Issue No. 1.

2. Learned counsel for petitioner-plaintiff submit that the plaintiff has not claimed title in respect of the suit property nor the possession has been claimed. It is his submission that the suit is filed taking exception to the Resolution No. 107 dated 16.08.2007 passed by Municipal Corporation. It is his submission that in the previous litigation between the parties, a finding has been recorded that the plaintiff is not owner of the suit property. Thus, the issue of ownership/title would not occur for determination between Trial Court and

as such the said issue need not be framed.

3. Learned counsel for respondent-corporation supported the impugned order.

4. Perusal of the plaint itself indicates that there was previous litigation between the parties and same had reached to this Court.

5. In First Appeal No. 278/1992 and 452/1992, this Court by order dated 04.05.2007 has made following observation.

*“The plaintiff came out with a case that the two acres land was demarcated by the Municipal Committee and allotted for the educational purpose. The clinching question is as to whether the suit land was allotted to the plaintiff, which claims to be an organisation registered under the Cooperative Societies Act, and not under the Bombay Public Trusts Act, 1950. Unless the allotment of the suit land is proved to have been made in favour of the plaintiff, the ownership rights cannot be claimed by it. The plaintiff has not explained source of the title. It is not the case of the plaintiff that the hostel premises were constructed by utilising its own funds. Admittedly, the construction of said hostel was carried out by utilising funds of the Social Welfare Department.”*

Though it is sought to be argued on behalf of the petitioner-plaintiff that a review has been filed, admittedly, there is no stay to the order passed by this Court dated 04.05.2007. As such the findings rendered by this

Court in the said order binds the parties so also the Trial Court. The observations of this Court in no uncertain terms indicate that plaintiff has not title/ownership in respect of the suit property. It is further observed that the plaintiff has not explained the source of the title. In the light of these facts, it was not open for the Trial Court to frame issues in respect of the title of the plaintiff over the suit property. Trial Court, therefore committed error in framing said issue of title/ownership of plaintiff in respect of suit property.

6. As a result of this, Issue No. 1 is deserves to be modified. Issue No. 1 is modified in the following manner :-

Plaintiff proves its lawful possession over the suit property.

7. Hence petition stands disposed of in above terms.

**(R. M. JOSHI, J.)**

bsj