



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

**CIVIL APPLICATION NO. 2303 OF 2025
IN WP/128/2022**

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**WITH
WRIT PETITION NO. 128 OF 2022**

Kashinath s/o Trimbakappa Jirge,
Age: 81 years, Occu: Pensioner &
Ex-Chairman Ketki Sahakari
Graha Nirman Sanstha Maryadit
Nideban, Tq. Udgir, Dist. Latur.
R/o Presently residing at Gorakshan
Sanstha, near D.C.C. Bank Head Office,
Latur, Tq. & Dist. Latur.

.....PETITIONER
(Ori.Respondent No.2)

VERSUS

1. Gangadhar s/o Manmathappa Swami
Age: 55 years, Occu: Tax Consultant.
2. Bhagwat s/o Ganpatrao Sontakke,
Age: 55 years, Occu: Agril.
3. Laxmibai Nagnath Acharya,
Age: 60 years, Occu: Household.
4. Rajiv Somnathappa Malbhage,
Age: 50 years, Occu: Service.
5. Laxmikant Dnyanoba Devshetwar,
Age: 49 years, Occu: Business.
6. Sow. Varsha Balaji Jagalpure,
Age: 45 years, Occu: Business.
7. Pradeep Manikrao Pattewar,
Age: 58 years, Occu: Service

8. Vivek Manikrao Pattewar,
Age: 55 years, Occu: Service
9. Ushabai Baburao Bolegave,
Age: 48 years, Occu: Service.
10. Mahaling Sangambassappa Devarshe,
Age: 45 years, Occu: Business
11. Chamapawati Sangambassaya Devarshe,
Age: 65 years, Occu: Household.
12. Anita Dhananjay Hale,
Age: 47 years, Occu: Service
13. Subhash Govindrao Jadhav,
Age: 55 years, Occu: Agril.
14. Sanjay Vishwanath Chapole,
Age: 50 years, Occu: Service.
15. Veerbhadra Mallikarjun Todkar,
Age: 55 years, Occu: Service.
16. Shivkannya Ramakant Malbhaage,
Age: 53 years, Occu: Service
17. Vijayanand Purushottam Patil,
Age: 35 years, Occu: Business
18. Vishwanath Sambhaji Thonte,
Age: 55 years, Occu: Agril.
19. Tippa Vishwanath Aradwad,
Age: 53 years, Occu: Business.

All R/o Ketki Sangmeshwar Sahakari
Grah Nirman Sanstha Maryadit,
Nideban, Tq. Udgir, Dist. Latur.

20. Sayyad Samad Sayyad Umar Hashmi,
Age: 45 years, Occu: Business,
R/o Jai Jawan Hotel, near City
Police Station, Udgir, Tq. Udgir,
Police Station, Udgir, Tq. Udgir,
Dist. Latur.
21. Sayyad Rasul Sayyad Rahim,
Age: 47 years, Occu: Business,
R/o jai Jawan Hotel, Near City
Police Station, Udgir, Tq. Udgir,
Dist. Latur.
22. Ketki Sangmeshwar Sahakari
Grah Nirman Sanstha maryadit,
Nideban, Tq. Udgir, Dist. Latur.
Through its Liquidator,
C/o Assistant Registrar, Co-operative
Societies, Udgir, Tq. Udgir,
Dist. Latur.
23. Jaidavi Virnath Kudmule,
Age: 55 years, Occu: Household.
24. Suchitra Kashinath Jirge,
Age: 45 years, Occu: Household.
25. Sangmeshwar Kashinath Jirge,
Age: 51 years, Occu: Business
26. Umadavi Chandrakant Almale,
Age: 53 years, Occu: Household.
27. Ashadevi Anil Gondhale
Age: 49 years, Occu: Household,
Resp. No. 22 to 26 R/o Jirge Niwas,
Shivaji Chowk, Udgir, Tq. Udgir,
Dist. Latur.

.....RESPONDENTS

(Resp. nos.1 to 19 – Orig. disputants,
20 to 27 – Orig. respondents)

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Mr. B. N. Patil, Advocate for petitioner

Mr. M. S. Deshmukh h/f Mr. U. L. Momale, Advocate for respondent nos.1 to 19

Mr. K. P. Rodge, Advocate for respondent nos.23 to 27.

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CORAM : ROHIT W. JOSHI, J.

DATED : 11TH JUNE, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of the parties.

3. Learned Counsel for the respondent no.26 informs that the respondent no.26 expired around the year 2014. The petitioner, who is her father, steps have not been taken for bringing her legal representatives on record. It is obvious that the petitioner being father of respondent no.26 is aware about the demise of respondent no.26 as well as particulars of her legal representatives.

4. In that view of the matter, the petition is dismissed against respondent no.26 as abated.

5. The present petition is preferred by the original opponent no.2 challenging the judgment and award passed by the learned Co-operative Court, Latur in dispute no.321 of 2015 dated 08.09.2017 and the judgment and award dated

17.07.2019 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, bench at Aurangabad in Appeal No.162 of 2017.

6. The present petitioner is opponent no.2 in the dispute before the learned Co-operative Court, the respondent nos.1 to 19 are the original disputants. The disputants had filed dispute no.321 of 2015, claiming to be members of respondent no.22, which is a registered Co-operative Housing Society. The respondent no.22 is opponent no.1 and 5, in the original dispute as opponent no.1, it is sued through its Chairman and as opponent no.5, it is sued through its Authorised Officer. At the relevant time, the present petitioner/opponent no.2 was Chairman of the opponent no.2/Society. The opponent nos.6 to 10 are children of opponent no.2, to whom plots in the society came to be allotted by the opponent no.1 acting through the opponent no.2 as its Chairman. The opponent no.3 and 4 had entered into an agreement of sale with respect to plot nos.15 and 16 in the layout of the opponent no.1/Society.

7. According to the disputants, plot nos.15 to 16 are reserved for open space in the sanctioned layout of the

opponent no.1/Society. The said agreement was entered into between the opponent nos.3 and 4 as purchasers of opponent no.1/Society as seller. The agreement is signed and executed by the opponent no.2 in his capacity of Chairman of the opponent no.1/Society.

8. The prayers in the dispute are that the opponent nos.1 and 2 should maintain and upkeep the reserved plots reserved for open space specified in the dispute as plot-A i.e. plot nos.15 and 16 for the same purpose. The other prayer is that four plots described as plot-B in the dispute i.e. plot nos.9, 10, 13 and 14 should not be transferred to the opponent no.3 and 4 or any third person.

9. The opponent nos.1 and 2 filed a common written statement opposing the dispute. The opponent nos.1 and 2 specifically contended that the disputants were not members of the opponent no.1/Society and that they had merely purchased some plots in the layout of the Society from members of the Society. In the alternate, it was also contended that although, the disputants claim to be nominal members, they had not deposited the prescribed fee and therefore, could not be considered to be legal or valid

members of the Society. In view of the same, it was contended that the dispute was not maintainable and was liable to be dismissed for want of jurisdiction.

10. The opponent nos.1 and 2 had filed an application seeking framing of preliminary issue on the point of jurisdiction on the ground that the disputants were not members of the opponent no.1/Society. The said application was initially rejected by the learned Co-Operative Court. The said order rejecting the application for framing preliminary issue was challenged by the opponent nos.1 and 2 by filing Revision Application No.54 of 2015. Vide judgment dated 05.01.2016 passed by the learned Co-operative Appellate Court, the learned Appellate Court framed two issues as preliminary issues on the point of jurisdiction and directed the learned Co-operative Court to adjudicate the same accordingly by granting opportunity to the parties to lead evidence on the preliminary issues, if they so desire.

11. The learned Co-operative Court decided the application for framing preliminary issues filed by the opponent nos.1 and 2 vide order dated 30.03.2016. It was held that the disputants were admitted as nominal members of the society

and therefore, dispute filed at their behest was maintainable. Apart from this, it is also held that the disputants were claiming right through persons who were admittedly members of the Society at some point of time and on this ground also it was held that dispute at their behest will be maintainable.

12. Having decided the preliminary issues in favour of the disputants, the learned Co-operative Court proceeded to decide the matter on merits and has allowed the dispute vide judgment and award dated 08.09.2017, *inter alia* restraining the opponent nos.1 and 2 from transferring the plots of the Society to any non member. A declaration was also granted that plot nos.15 and 16 were reserved plots of the Society.

13. This judgment and award dated 08.09.2017 came to be challenged by the opponent no.1/Society by filing an appeal under Section 97 of the Maharashtra Co-operative Societies Act, 1960. The said appeal came to be registered as Appeal No.162 of 2017. The appeal is filed by the opponent no.1/Society through the opponent no.2, acting as its Chairman.

14. It is necessary to state that the opponent no.2 did not file appeal challenging the judgment and award in his

individual capacity.

15. The learned Co-operative Appellate Court has dismissed the appeal vide judgment and award dated 17.07.2019. The opponent no.2 has challenged both the judgment and awards by filing the present petition. The opponent no.1/Society has accepted the award passed by the learned Co-operative Appellate Court in as much as it has not chosen to challenge the said award.

16. At the outset, the learned Counsel for the respondent nos.1 to 19/original disputants raises the preliminary objection that the opponent no.2 does not have right to challenge the award passed by the Co-operative Appellate Court on the ground that although, the learned Co-operative Court has passed an award restraining the Society and the opponent no.2 in his personal capacity from transferring the plots of the society to non members, the opponent no.2 did not challenge the said award in his personal capacity by filing appeal. It is argued that since, he has accepted the award passed by the first Court, i.e. the Co-operative Court, he does not have right to file a petition challenging the award passed by the learned Co-operative Appellate Court.

17. Admittedly, petitioner is not owner of the suit plots. By the impugned judgment and award passed by the learned Co-operative Court, the opponent no.1/Society and the petitioner have been restrained from transferring the suit plots to any non member. The plots could not be transferred by the petitioner in his individual capacity. The petitioner is no longer Chairman of the opponent no.1/Society, which is under liquidation and is now been managed and looked after by a liquidator. In view of the aforesaid, the petitioner does not have *locus standi* to challenge the impugned judgments and awards in his individual capacity.

18. The learned Counsel for the petitioner/opponent no.2 counters the submission stating that although, normally in view of alternate remedy, a petition challenging an award passed under Section 91 may not be entertained, since the objection raised by the petitioner/opponent no.2 pertains to jurisdiction of Co-operative Court, the judgment and award passed by the learned Co-operative Court is challenged directly in the present petition filed before this Court for the first time, although, alternate remedy to file appeal was not availed. He contends that alternate remedy does not oust

jurisdiction of this Court in exercise of its writ jurisdiction either under Article 226 of the Constitution of India or supervisory jurisdiction under Article 227. He elaborates the submission stating that alternate remedy does not bar the remedy of this Court either under Article 226 or 227, but it is only a self-imposed restriction and that, this self-imposed restriction should be done away with in the present case since the judgment and award passed by the learned Co-operative Court is without jurisdiction.

19. Although, the learned Counsel for the petitioner is correct in his submission that alternate remedy does not bar the jurisdiction of this Court to entertain petition either under Article 226 or 227 of the Constitution of India, it is well settled that jurisdiction under Article 226 and/or 227 should not normally be exercised if an equal efficacious alternate remedy is available. In the present case, the opponent no.1/Society had availed the remedy of appeal under Section 97 of the Co-operative Societies Act. This appeal was preferred by the opponent no.1/Society acting through the opponent no.2, who had acted in his capacity of Chairman while prosecuting the said appeal. Since, the opponent no.2

was representing the opponent no.1/Society in the said appeal, he could have filed the appeal in his individual capacity as well. There is no explanation in the petition for not filing the appeal in personal capacity.

20. In the considered opinion of this Court, it will not be prudent to entertain petition against the judgment and award passed by the Co-operative Court at his behest, since, he has not filed the appeal challenging the said judgment and award.

21. Although, the petition need not be entertained, in view of the above, it will be appropriate to deal with the submissions canvassed by the petitioner on the ground of jurisdiction. The contention of the petitioner with respect to jurisdiction of the learned Co-operative Court is that the disputants were not members of the opponent no.1/Society and therefore dispute at their behest was not maintainable. Referring to Section 91 of the Co-operative Societies Act, the learned Advocate contends that the Co-operative Court is a Court of limited jurisdiction, its jurisdiction is circumscribed by the subject matter provided under Section 91 as also the parties who must fall under any one of the different clauses under Section 91 of the Co-operative Societies Act.

22. In this context, it must be mentioned that the learned Counsel for the petitioner does not dispute that the subject matter of the dispute was touching the business of the Society. His objection is that disputants do not fall under any of the categories under Section 91-1(a) to 91-1(e) of the Co-operative Societies Act. In this regard, it will be appropriate to refer to the written statement of the opponent nos.1 and 2, wherein it is stated that the disputants are not members of the society/opponent no.1, but they are merely persons who have purchased plots in the layout of the Society from erstwhile members. The pleadings in the written statement will demonstrate that the petitioners fall within the parameters of Section 91-1(b) of the Act in as much as they are persons claiming through members or past members of the Society. The said statement, which appears in the pleadings of the opponent no.2/petitioner is fully binding on him. In view of the said admission in the written statement, the contention raised by the learned Counsel for the petitioner that dispute at the behest of the disputants was not maintainable is liable to be rejected.

23. As regards the opponent nos.3 and 4, undisputedly they are not members of the opponent no.1/Society, they are also covered by Section 91-1(b) as much as they were claiming through the society. It needs to be mentioned that although, agreement of sale by itself does not confer right over any immovable property, it creates an inchoate right to enforce the agreement. In the considered opinion of this Court, the opponent nos.3 and 4 also fall within the parameters prescribed under Section 91-1(b) of the Co-operative Societies Act.

24. Even if, it is assumed that the opponent nos.3 and 4 do not answer the description of Section 91-1(b), a prayer for injunction against the Society and its Chairman/opponent no.2 restraining them from transferring any plot in the layout of the Society to a non member will fall within the jurisdiction of the Co-operative Court under Section 91 of the Co-operative Societies Act.

25. The objection pertaining to jurisdiction of the Co-operative Court is therefore liable to be rejected.

26. Apart from the aforesaid aspect of the jurisdiction of the learned Co-operative Court, the petitioner has not canvassed

any other contention before this Court during the course of hearing.

27. In view of the aforesaid, the objection pertaining to jurisdiction is liable to be dismissed and is dismissed accordingly.

28. In the result, Writ Petition Stands dismissed with no orders as to costs. Rule stands discharged accordingly.

29. At this stage, learned Counsel for the petitioner contends that the interim order granted in the present petition vide order dated 22.03.2022 be continued for a period of eight weeks in order to enable him to assail the order before Hon'ble Apex Court. The prayer is strongly opposed by the learned Counsel for the respondent nos.1 to 19/original disputants.

30. Having regard to the fact that the Society has not challenged the award and has accepted the same, coupled with fact that the plots which are sought to be transferred are not owned by the petitioner but the Society, I am not inclined to entertain the request. The prayer for extension of interim order is therefore rejected.

31. Pending Civil Applications, if any, stands disposed of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025