2025:BHC-AUG:12581

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3325 OF 2024

Gopal Keshavrao Ghuge Through Gpa Sriram Keshavrao Ghuge
VERSUS
The State Of Maharashtra Through Its Secretary And Others

Mr. S. R. Sapkal, Advocate for Petitioner
Mr. B. A. Shinde, AGP for Respondent Nos. 1 and 2
Mr. S. S. Shete, Advocate for Respondent No. 3
Mr. K. J. Suryawanshi, Advocate for Respondent No. 4

CORAM : R. M. JOSHI, J.
DATE : 24th April, 2025

PER COURT :-

1. This petition takes exception to the order passed by Additional Divisional Commissioner, Chatrapati Sambhaji Nagar dated 19.12.2023 whereby the revision filed under Section 318 of The Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act, 1965 (for short "the Act") came to be allowed and the order passed by Chief Executive Officer, Nagar Parishad, Kannad dated 30.04.2019 came to be set aside. By this order, Municipal council was directed to cancel the name of petitioner from the property register from Serial No. B-1/213.

2. The facts which led to the filing of this petition can be narrated in

brief as under :

It is a case of the petitioner that his father is member of Shriram Sahkari Gruhnirman Sansta Ltd, Kannad. This society was form in the year, 1986. By letter dated 13.05.1986, Plot No. 9 was allotted to the petitioner. He claims that petitioner paid property tax in respect of said plot from time to time. It is further case of the petitioner that he lost the original Share Certificate and hence, in the year, 2000, a public notice was issued to that effect. There is allegation against Respondent No. 4 that on the basis of Share Certificate, Respondent No. 4 is claiming to be the member of said society. Petitioner filed Regular Civil Suit No. 150/2002 against Respondent No. 4 for seeking declaration in respect of Plot No. 9. Suit came to be decreed by judgment and order dated 10.12.2010. This decree however is set aside by District First Appellate Court in Regular Civil Appeal No. 285/2010. The order passed by the Trial Court was interfered with for the reason that the Civil Court has no jurisdiction to entertain a dispute under the Co-operative Societies Act.

3. Respondent No. 4 thereafter filed an application before Chief Officer of Municipal Council for deleting the name of petitioner from the property tax assessment register. This application was opposed by petitioner. The Chief Officer of Municipal Council by order dated 30.04.2019, rejected

the application. Being aggrieved by the same, revision was preferred under Section 318 of the Act before the Additional Divisional Commissioner. Since, the said revision came to be allowed, this petition.

4. Learned counsel for petitioner, at the outset submits that the Additional Divisional Commissioner had no jurisdiction to entertain the revision application on the ground that revision under Section 318 would lie before the State Government and not before the Divisional Commissioner. In any case, according to him, it was not open for the Divisional Commissioner to delegate the said powers to Additional Commissioner and as it is done by order dated 30.07.2003. Thus, it is his contention that since the order impugned is passed without jurisdiction it deserves interference. On merit, it is submitted that name of petitioner appears on the register of the Co-operative Housing Society. It is his submission that Respondent No. 4 has taken disadvantage of the fact that the Share Certificate issued by the society in favour of petitioner is lost. In this regard, referred to the publication made in the newspaper in the year, 2000 to that effect. According to him, Civil Court has recorded finding about petitioner being in possession of Plot No. 9. It is his submission that only for want of jurisdiction, the said jurisdiction of the Civil Court, this order came to be set aside by the Appellate Court. It is his submission that in any case

since dispute bearing No. 121/2011 is pending before the Co-operative Court, it is not open for the Municipal Council to mutate the record.

5. Learned counsel for contesting respondents supported the impugned order. At the outset, he drew attention of the Court to the fact that claim of the petitioner of membership of Co-operative Society cannot be accepted for the reason that in the year 1986, petitioner was aged about 3 years. It is submitted that since the petitioner had not completed age of 18 years, he could not have been a valid member of Co-operative Society. It is his submission that there is absolutely no evidence that Share Certificate was issued to the petitioner. On the contrary, according to him, there is voluminous documentary evidence on record to show that the allotment letter was issued to Respondent No. 4 so also Share Certificate. He drew attention of the Court to the application made by Respondent No. 4 for construction of the house on Plot No. 9 and permission granted by Municipal Council to that effect. It is submitted that legally, it is not permissible to record name of different person in the appropriate register. Thus, it is his contention that having regard to the facts of the case, no fault can be found with the impugned order.

6. At the outset, it needs to be recorded that the entry in the revenue record does not determine the right of the parties in respect of the properties in

question. These entries are made for specific purpose. The question arises herein as to whether the name of the petitioner can be permitted to be continued in the assessment record when there is more than sufficient voluminous evidence raised by Respondent No. 4 to substantiate right in respect of the same, on the basis of letter of allotment, Share Certificate, tax record etc.

7. As far as Respondent No. 4 is concerned, the prima facie perusal of the documents on record indicates that Respondent No. 4 is issued with allotment letter in the year 1988 so also Share Certificates. Not only this, her name is mutated in the revenue record vide Mutation Entry No. 9126. She made an application on 24.01.2003 seeking permission for construction on the subject plot which came to be granted. There are documents on record to indicate payment of taxes by Respondent No. 4. It won't be out of place to mention that even proceedings were initiated before revenue authorities in respect of the claims made by rival parties and said proceedings are decided in favour of Respondent No. 4 at the first instance.

8. Apart from this, there is no denial of the fact that the petitioner was minor at the time of formation of the Co-operative Society. Though, it is sought to be argued on behalf of the petitioner that his father was guardian and

in that capacity the membership was obtained. The contention of the petitioner however is not supported by the documentary evidence on record. The membership list placed on record indicates that the father of petitioner was independent member and his name at Serial Number 8 whereas petitioner appears at Serial No. 9. In view of the provisions of Maharashtra Co-operative Societies Act, it was not open for the petitioner to become a member of the Co-operative Society. Since, he had not completed 18 years of age. Thus, there is is serious dispute about the membership of petitioner of Co-operative Society. On the other hand, prima facie there is more than enough material on record to accept the case of Respondent No. 4 in respect of subject plot.

9. In so far as the objection raised by petitioner in respect of jurisdiction of the Additional Commissioner is concerned, there is no exception taken by the petitioner before the Additional Commissioner about his jurisdiction. Apart from this, there is no challenge to the order dated 30.07.2003 whereby the Additional Commissioner has delegated powers of revision under Section 318 of the Act to the Additional Commissioner. In absence of any such challenge and in view of the fact that the Additional Commissioner has empowered to exercise all powers as exercised by Commissioner, there is no substance in the challenge to the jurisdiction of the

Authority.

10. Having regard to the above facts, this Court finds no perversity in the order impugned. Hence, petition stands dismissed.

11. It is however clarified that order passed by Additional Divisional Commissioner, would be subject to the decision of the dispute by Co-operative.

12. Observations made herein shall not bind to the Co-operative Court while deciding the issue on merit.

13. Learned counsel for petitioner seeks stay to this order. Having regard to the facts of the case and the observations made herein request stands refused.

(R. M. JOSHI, J.)

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