

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2661/2025

**Faisal Mujahidul Aziz s/o Abdul Aziz Vs. Gousiya Labour Co-operative
Housing Society Ltd., Nagpur and others**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.D. Khati, Advocate for Petitioner
Mr. S.W. Sambre, Advocate for Respondent No.1
Mr. S.S. Hulke, AGP for Respondent Nos. 3 and 4

CORAM: NIVEDITA P. MEHTA, J.

DATED : 17th NOVEMBER, 2025

1. Heard the learned counsel for the respective parties.

2. Regular Civil Suit No. 533/2013 was instituted by Gousiya Labour Co-operative Housing Society Ltd. against the present petitioners and respondent No. 2, who were arrayed as defendants therein, seeking declaration and permanent injunction in respect of the sale deed executed in favour of the petitioner on 30.10.1997 pertaining to Plot No. 19A, admeasuring 5500 sq. ft., bearing Khasra Nos. 52 and 54, P.H. No. 39, situated at Mouza Dighori, Revenue Circle Pardi, within the limits of the Nagpur Improvement Trust and Nagpur Municipal Corporation, Ward No. 21, Tahsil and District Nagpur. The said suit came to be dismissed on 04.01.2018 by the Civil Judge, Senior Division, Nagpur. Aggrieved thereby, respondent No. 1

– Society preferred Regular Civil Appeal No. 155/2018, which is presently pending adjudication.

3. During the pendency of the said appeal, the petitioners instituted Regular Civil Suit No. 215/2022 before the Civil Judge, Senior Division, Nagpur. Respondent No. 1 – Society also instituted Special Civil Suit No. 608/2022 in respect of the very same property which forms the subject matter of Regular Civil Suit No. 533/2013. All these proceedings pertain to disputes concerning title and possession of the said plot.

3. The learned counsel, Mr. Sambre, appearing for respondent No. 1 Society, submits that in Regular Civil Appeal No. 155/2018, the Society preferred an application for grant of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain petitioner Nos. 1 and 2 from carrying out construction activities on the suit plot or from creating any charge or third-party interest in respect thereof. It was alleged that the petitioners, without lawful title, were undertaking construction on the disputed property and were seeking to enlarge their alleged unauthorized activities.

4. Per contra, the learned counsel for the petitioners contends that the petitioners are the original owners of the suit property, and that the sale deed in respect thereof was executed in favour of

respondent No. 2 in the year 1977–78. It is submitted that the impugned order dated 09.05.2025 passed in Regular Civil Appeal No. 155/2018, restraining the petitioners from undertaking further construction, does not reflect any consideration of the three essential ingredients for grant of temporary injunction, namely: (i) existence of a prima facie case, (ii) balance of convenience, and (iii) irreparable injury. It is further submitted that respondent No. 1 Society had earlier filed an application under Order XLI Rule 27 CPC for adducing additional evidence, which was challenged in Writ Petition No. 1071/2022. By order dated 15.11.2022, the said order was quashed and the matter was remanded to the appellate court for fresh consideration.

5. Upon hearing the parties and perusing the impugned order, this Court finds that the appellate court has not recorded any findings on the three essential parameters governing grant of temporary injunction, namely, the existence of a prima facie case, balance of convenience, and irreparable loss. The order merely proceeds on the assertion that the property is disputed, without examining the petitioners' claim of long-standing title and possession, or the competing equities between the parties. The absence of such analysis renders the impugned order unsustainable. Hence, it is liable to be quashed and set aside.

6. The appellate court is directed to decide the appeal on its own merits and in accordance with law within a period of four months from the date of this order. In the meantime, both parties are directed to maintain *status quo* with respect to the disputed property.

The petition is partly allowed in the aforesaid terms.

(NIVEDITA P. MEHTA, J.)

MP Deshpande