



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.....OF 2025
(ARISING OUT OF SLP(C) NOS.22904-22905 OF 2019)

**THE SOUTHERN NAGPUR
CO-OPERATIVE SOCIETY
LIMITED**

...APPELLANT

VERSUS

**GANPATI YADAVRAO KUMBHARE
AND ANR.**

...RESPONDENTS

WITH
CIVIL APPEAL NOS.....OF 2025
(ARISING OUT OF SLP(C) NOS.22902-22903 OF 2019)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. The Appellant, Southern Nagpur Co-operative Society Limited, has preferred these appeals assailing the correctness of judgment and order dated 01.09.2017 passed by the High Court of Judicature at Bombay, Nagpur Bench in Civil Revision Application No.14 of 2016 whereby the said revision preferred by the appellant was

dismissed with costs of Rs.25000/-. The Review Petition filed by the Appellant was also dismissed by the High Court vide order dated 20.02.2019.

3. The relevant facts necessary for proper adjudication of these appeals are as follows:

3.1. The Respondent, Ganpati Yadavrao Kumbhare (hereinafter referred to as 'Respondent'), was a member of the Appellant Society. A dispute arose between the Respondent and the Appellant with respect to the allotment of plots. The said dispute was raised by the Respondent before the Cooperative Court, Nagpur which was registered as Case No.924 of 1991 with respect to allotment of Plot Nos. 3 and 4 of the Society's layout. Later on, by way of amendment in 1996, the Respondent was permitted to lay his claim for allotment of Plot No.5A instead of Plot Nos.3 and 4.

3.2. Before the Cooperative Court, the Appellant contested the claim of the respondent. However, after considering the material on record, the Cooperative Court allowed the dispute and passed an award dated 31.03.2000 directing the Appellant to allot Plot No.5A to the Respondent. The decree of the Cooperative Court was assailed before Cooperative Appellate Court which appeal was dismissed vide order dated 20.04.2002.

3.3. The Appellant thereafter preferred writ petition before the High Court registered as W.P. No. 4441 of

2002. The said petition was disposed of by the High Court vide order dated 07.10.2006. Before the High Court, objection was taken by the Appellant that the decree was not executable. The High Court granted liberty to the Appellant to raise the objection before the Executing Court which would examine the same.

3.4. The execution proceedings initiated by the Respondent were registered as S.D. No. 200 of 2000. An objection was raised by the Appellant that the decree was inexecutable as Plot No.5A of the society's layout had lost its identity having been merged with Plot Nos.4 and 4A. Thereafter, building plans over the consolidated plot have been approved by the local authorities, hence no allotment could be made in favour of the Respondent nor could possession of such plot be given. The Executing Court sustained the objections of the Appellant vide order dated 27.04.2011 and closed the execution proceedings.

3.5. The Respondent challenged the order of the Executive Court before the District Judge, Nagpur by way of appeal. The same was transferred to the Court of District Judge-9, Nagpur, and was registered as Appeal No.120 of 2013. The Appellate Court vide judgment dated 16.10.2015 came to the conclusion that the objection raised by the

Appellant could not be sustained for multiple reasons namely:

- i) The objections that Plot No.5A had lost its identity having been merged with Plot Nos.4 and 4A were not raised before the Cooperative Court or the Cooperative Appellate Court.
- ii) The merger of these three plots was never approved by the competent authority.
- iii) The alleged constructions were illegal and without any sanction of the building plans.
- iv) Even if some constructions had been raised, they being clearly illegal were liable to be demolished and clear and vacant possession of Plot No.5A with its due area was liable to be allotted and handed over to the respondent.

3.6. Aggrieved by the aforesaid Appellate order, the Appellants approached the High Court by way of Civil Revision. The said revision has been dismissed by the impugned judgment and order dated 27.04.2011 with costs of Rs.25,000/- as the High Court found the conduct and the claim of the Appellant to be frivolous and malicious. Aggrieved by the same, the present appeals have been preferred by the society.

3.7. The High Court has concurred with the findings of the Appellate Court, the details of which we have already noted in the previous paragraphs.

3.8. There are other petitions filed by third parties challenging the order of the High Court details of which are as follows:

- i) SLP Nos. 22902-22903 of 2019 have been preferred by Prakash Namdeorao Dhage, a member of the Appellant-Society and owner of a shop allegedly constructed on Plot No. 5A.
- ii) I.A. No. 214110 of 2025 was filed for intervention in SLP (C) Nos. 22902-22903 of 2019 by Shop Owners who are running their shops allegedly constructed on Plot No. 5A and were not made parties to the main proceedings. These Applicant Nos. 1-7 are: Preeti Rashmi Vasudeo Dhanwai, Owner of Shop No. 1 FF; Raveesh Vasudeo Dhanwani, Owner of Shop No.2 FF; Pravin Dinkarrao Mehar, Owner of Shop Nos. 3, 5 and 6 FF; Neena Vinay Nagdeo, Owner of Shop No. 7 FF; Anirudha Vasant Nagdeo, Owner of Shop No.8 FF; Sunil Sadashivrao Raut, Owner of Shop No.2 GF and Anant Keshavrao Borkar, Owner of Shop No.9 GF.
- iii) I.A. No. 213605 of 2025 in SLP (C) Nos. 22904-22905 of 2019 was filed by active members of the Appellant-Society who have shares in the

Plot No. 5A. The Applicant Nos. 1-13 are: Ratnashekhar Hiralal Mitkary, Jayant Keshavrao Harde, Suhas Gulabrao Barai, Jayant Chandrashekhar Deo, Sunil Arvind Lanjewar, Pradeep Ganpatrao Ghode, Avinash Wamanrao Singam, Rajesh Vasantrya Puranik, Deepashri Deepak Munje, Prakash Narayan Shrikrishna Kashiv, Dilip Shankarrao Sambare, Rajendra Manohar Wadi, Durvesh Bhupesh Mehar.

4. We have heard Mr. Shyam Divan, Mr. S. R. Singh, Mr. Sanjay Hegde, Mr. Sanjay M. Nuli, Mr. Ravi Prakash Mehrotra and Mr. Rahul Kaushik, learned senior counsel for the Appellants and Intervenors opposing the order of the High Court. On behalf of the Respondents, we have heard Shri Balbir Singh, learned senior advocate.
5. The main thrust of arguments advanced on behalf of the Appellants are two-fold. Firstly, that Plot No.5A had lost its identity in 1985 much before the dispute was raised by the Respondent in 1991. In support of the said submissions, reliance has been placed upon resolution of the society and some documents of the local authorities with respect to some sanction plans. Secondly, huge construction has been raised over the Plot No.5A which stood merged with two other plots being Plot Nos.4 and 4A and thereafter, transfers have been effected in favour of third parties by the Society as such the decree is

completely inexecutable. In fact, it is an impossibility, as the constructions having been raised in accordance to law could not be removed or demolished in execution of a decree where such transferees were not even parties.

6. On the other hand, Mr. Balbir Singh, on behalf of the Respondent submitted that Plot No.5A is still available for allotment, sale and handing over of the possession.
7. Both the sides have relied upon the same photograph in support of their respective submissions. According to the said photograph, there is an open piece of land on the extreme left with slight construction having come up on the right end of the said open plot. Further to the right, there are double triple storied building comprising of shops, residences and a community hall.
8. According to Mr. Balbir Singh, the small portion covering the Plot No.5A is only the passage which is a covered passage going to the community hall which can be very easily removed, and the Appellant can always find a frontage or access to the community hall leaving Plot No.5A intact.
9. It is also submitted that at no point of time there has been a valid merger of the three Plots 4, 4A and 5A as alleged by the Appellant in the year 1985. It is also submitted that all the constructions raised are unauthorised and relevant documents have been referred to show that the local authority had rejected the plan for construction submitted by the Appellant. Lastly, it has been submitted that as the value of the land has substantially enhanced,

the Appellant is deliberately avoiding complying with the decree of the Cooperative Court and the Respondent has not been able to reap its benefits for the last 25 years despite the decree of the Cooperative Court.

10. We have heard learned counsel for the parties.
11. The photograph placed on record and relied upon by both parties clearly depicts that a substantial portion of the land in question remains open and unoccupied. It is observed that an open area exists towards the extreme left of the plot, while minor construction has been raised towards the right end of the said open space. The said construction appears to be in the nature of a covered passage providing access to the community hall. Upon perusal of the record, it is evident that the existence and nature of this structure are not in dispute between the parties.
12. In view of the admitted position reflected in the photograph, this Court finds no justification for the continued existence of the said covered passage on the disputed land. Accordingly, it is directed that the said construction, not being integral to the main building, shall be removed forthwith. Upon such removal, the Plot No.5A shall be allotted and clear and vacant possession to be handed over to the Respondent.
13. It is further clarified that the shop owners who have intervened in the present appeal shall not be affected by the present order. The said intervenors are occupants of

shops situated on Plot Nos. 4 and 4A, and not on Plot No. 5A, which is the subject matter of the present proceedings. The direction for removal of the structure standing on Plot No. 5A and the consequent allotment and handing over of possession thereof to the Respondent shall have no bearing on the rights, interests, or possession of the said shop owners. Their existing occupation and enjoyment of Plots Nos. 4 and 4A shall remain undisturbed.

14. We find no error or infirmity in the order passed by the High Court warranting interference. The Civil Appeals are, accordingly, disposed of with the directions as noted above. Application(s) for intervention is/are rejected. Pending applications, if any, are hereby disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
OCTOBER 09, 2025.**