

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

WRIT PETITION No. 2609 of 2023

BETWEEN:-

**NAYAGAON COOPERATIVE HOUSING SOCIETY
JABALPUR THORUGH ITS PRESIDENT RAJAT
BHARGAV S/O LATE SHRI SUNIL BHARGAV AGE
ABOUT 49 YEARS HAVING OFFICE AT GATE NO.2,
NAYAGAON CO OPERATIVE HOUSING SOCIETY,
JABALPUR (MADHYA PRADESH),**

.....PETITIONER

***(SHRI KISHORE SHRIVASTAVA – SENIOR ADVOCATE WITH SHRI KUNAL
THAKRE – ADVOCATE FOR PETITIONER)***

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
ITS PRINCIPAL SECRETARY DEPARTMENT OF
COOPERATION MANTRALAYA VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH).**
- 2. REGISTRAR, MADHYA PRADESH
COOPERATIVE SOCIETIES C-WING, GROUND
FLOOR, VINDHYACHAL BHAWAN, BHOPAL
462004 (MADHYA PRADESH).**
- 3. DEPUTY REGISTRAR, MADHYA PRADESH
COOPERATIVE SOCIETIES APEX BANK
BUILDING, CIVIC CENTRE, JABALPUR
(MADHYA PRADESH).**
- 4. BALBIR SINGH S/O LATE BAGHEL SINGH, C/O
GURCHARAN SINGH, R/O HOUSE NO 32 C,
NAYAGAON COOPERATIVE HOUSING SOCIETY
NAYAGAON, JABALPUR (MADHYA PRADESH).**

..... RESPONDENTS

(SHRI GIRISH SHRIVASTAVA – ADVOCATE FOR CAVEATOR – RESPONDENT NO.4).

Reserved on : 21.02.2023

Pronounced on : 17.03.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Petitioner has filed this petition under Article 226 of Constitution of India challenging order dated 29.12.2022 contained in Annexure-P/1 passed by Deputy Registrar Cooperative Society, Jabalpur.

2. By impugned order, direction was given to petitioner-society to execute registered sale-deed in favour of Respondent No.4 at a particular rate in respect of a non-existing plot. Order of Dy. Registrar Cooperative Society is challenged on the grounds that Dy. Registrar does not have any jurisdiction to pass order of allotment of plot and execution of sale-deed. Direction of High Court to decide representation of respondent does not give any jurisdiction to Dy. Registrar. Petitioner raised preliminary objection that representation preferred by Respondent No.4 is not 'dispute' within the meaning of Section 64(2) of Madhya Pradesh Cooperative Societies Act, 1960. Dy. Registrar failed to answer said objection. Learned Dy. Registrar failed to consider the entitlement of Respondent No.4 for allotment of plot. Allotment of plot and execution of sale deed is to be done by society and Registrar cannot order same. Plot No.147 was not available with society as same was never approved by TNCP. There is non-compliance of Section 72(1)(B). It is submitted that Court cannot sit over commercial wisdom of cooperative society and dictate rates at which plot

is to be sold. In view of aforesaid submission, learned Senior Counsel appearing for petitioner prayed for allowing the writ petition and quashing of order of Dy. Registrar.

3. Respondents opposed writ petition on the ground that cooperative societies are not covered under Article 12, therefore, writ petition is not maintainable. Reliance is placed on *1993(1) MPLJ 767*. It is submitted that plot No.147 was allotted to respondent in 2009 at rate of Rs.150/- per square feet and necessary payment was also made by Respondent No.4 but petitioner deferred allotment of plot on flimsy grounds. If there is any dispute regarding interpretation of any matter then Registrar is final authority, therefore, order does not suffer from defect of jurisdiction. It is submitted that complicated question of facts is involved between petitioner and private respondent No.4, which cannot be adjudicated in writ petition. Petitioner is having an alternate remedy to prefer an appeal. On the basis of said submissions, prayer is made for dismissal of writ petition.

4. Deputy Registrar Co-operative Societies directed that member be allotted Plot No. 147 as per current rate i.e. Rs. 150 per Sq. Ft. and registered sale deed be executed and possession be given to respondent No.4.

5. Heard the counsel for the parties.

6. Petitioner had contended that Plot No. 147 is not available with society as same has not been approved by Department of Town and Country Planning. Lay out of 102 acres of first phase of society as on 06.04.1984 is filed as Annexure P/5. On going through said lay out plan, last plot which is available in Phase 1 is Plot No. 146. Society intended to carve out fresh plots for its member but same could not be done as they were exceeding 54.148 acres and therefore, TNCP did not approve the

same. Remaining lands reserved in Phase 2 and Phase 3 have been taken back by the State Government. In view of aforesaid, respondent had not denied availability of Plot No. 147 as averred by petitioner, therefore, it will be presumed that Plot No. 147 is not available at present with petitioner.

7. Disputes in M.P. Co-operative Societies Act, 1960 is defined in Section 64. As per said definition, any dispute touching constitution, management or business or liquidation of society shall be referred to Registrar by any of the parties to dispute. Society in question is co-operative housing society which allots plots for residential purposes. Allotment of plot touches upon the business of society. Society's only work is to develop the area and to make available plots to its members on payment of cost. In view of same, there is existence of dispute between petitioner and respondent cooperative society under Section 64. Reference to Registrar can be made by any of the parties, member, past member, person claiming through a member can make reference. Petitioner himself is a member and he has filed writ petition and matter has been referred to Registrar Co-operative Society for decision therefore, it cannot be said that Deputy Registrar Co-operative Societies does not have any jurisdiction to deal with the issue. Petitioner is having alternate remedy available to him to file an appeal against the award passed by the Deputy Registrar. There is no error of jurisdiction or violation of fundamental rights therefore, petitioner ought to have filed appeal against award of Deputy Registrar.

8. Petitioner has raised issue that Plot No. 147 is not available for allotment and has also challenged fixing of rates for allotment of plot by Deputy Registrar. Said issue can be taken care of by the appellate authority. In view of same, writ petition filed by petitioner is disposed off

directing petitioner to approach appellate authority in accordance with law. It is further ordered that award dated 29.12.2022 shall remain stayed for a period of 30 days to enable petitioner to approach appellate authority and file application for stay of award. After lapse of 30 days, stay of award granted by this Court will automatically come to an end unless same is extended by appellate authority. No opinion is expressed on merits of the case.

9. With aforesaid direction, writ petition is **disposed off**.

(VISHAL DHAGAT)
JUDGE