

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

LPA NO.72 & 73 OF 2015

**961 LETTERS PATENT APPEAL NO. 72 OF 2015
IN
WP NO.5958/2010
WITH
CA/7022/2011 IN LPA/72/2015
WITH
LETTERS PATENT APPEAL NO.73/2015 IN WP/5958/2010
WITH CA/7024/2011 IN LPA/73/2015**

NANASAHEB NABAJI GUNJAL
VERSUS
DEEPALAXMI NAGARI SAHAKARI PAT SANSTHA MARAYADIT
THROUGH ITS CHAIRMAN AND ORS

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Advocate for Appellant : Mr.Sangeet L.V.
AGP for Respondent State: Mr.U.S.Mote
Mr.Pardeshi Dipak M., Adv., for R-4
Shri Darshan Pokharkar, Adv., for Respondent no.1.

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CORAM : R. M. BORDE & P.R. BORA, JJ.
Dated: September 11, 2015

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PER COURT :-

1. The parties to the appeal (No.72/2015) have arrived at amicable settlement and the terms of the settlement are placed on record and marked "X" for identification.
2. The appellant is the purchaser of the property at the auction sale conducted by respondent no.4 Pandit Dindayal Nagari Sahakari Pat Sanstha Maryadit, Sangamner, for release of the amount advanced to respondent nos. 5 and 6. It is not a matter of dispute that respondent no.4 society, on account of failure of

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respondent nos. 5 and 6 to repay the loan, had secured certificate under Section 101 of the Maharashtra Cooperative Societies Act. After securing the certificate for recovery, the property belonging to respondent nos. 5 and 6 was put to auction which has been purchased by the appellant Nanasaheb Nabhaji Gunjal. The recovery certificate as well as the sale was objected to by respondent no.1 Deep Laxmi Nagari Sahakari Pat Sanstha Maryadit, Sangamner, by presenting dispute to the Cooperative Court and ultimately, the matter has reached the High Court in the shape of Writ Petition No.5958/2010, which came to be disposed of by the learned Single Judge on 29th April, 2011. The learned Single Judge of this Court, while considering the writ petition presented by respondent no.1 Deep Laxmi Nagari Sahakari Pat Sanstha, directed quashment of the recovery certificate issued in favour of respondent no.4 and, consequently, the sale of the property in favour of the appellant Nanasaheb s/o Nabaji Gunjal has also been declared as void.

3. The respondent no.1 society has agreed to issue a no objection certificate, approving the sale conducted by respondent no.4 in favour of the appellant on receipt of amount of Rs.2,95,284/- from the appellant. A cheque for the aforesaid amount has been tendered, issued in favour of respondent no.1 Deep Laxmi Nagari Sahakari Pat Sanstha by the appellant. Since respondent no.1 society is ready to issue no objection certificate to the sale conducted by respondent no.4 in favour of the appellant,

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there shall be no impediment for revoking the order passed by the learned Single Judge, thereby directing cancellation and quashment of the certificate of recovery issued in favour of respondent no.4 on 16th May, 2008, and consequently, the sale in favour of the appellant dated 30th December, 2008, also gets confirmed and the declaration in that regard by the learned Single Judge directing the sale deed to be ab initio void, is also recalled. The further directions issued by the learned Single Judge directing respondent no.4 to refund the consideration of Rs.6,00,000/- (Rs. six lacs) also stands set aside.

4. Thus, in view of the terms which are placed on record, the order passed by the learned Single Judge stands quashed and set aside and the sale of the property in favour of the appellant on 30th December, 2008, at the instance of respondent no.4, shall be deemed to be valid for all purposes. The charge kept by respondent no.1 over the property purchased by the appellant also shall be deemed to have been cancelled.

5. The Letters Patent Appeal No.72/2015 stands disposed of in view of the terms placed on record and the settlement arrived at between the parties.

In view of disposal of the Letters Patent Appeal No.72/2015, the Letters Patent Appeal No.73/2015 does not deserve consideration and stands disposed of.

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It would be open for respondent no.1 Deep Laxmi Nagari Sahakari Pat Sanstha Maryadit, Sangamner, to enforce recovery of balance of amount from respondent nos. 4, 5 and 6.

Pending Civil Applications are disposed of.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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