

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5508 OF 2014

Shri. Jitendra Jaysing Patil,
Age:-33 years, Occu:-Agri,
R/o:-Kumathe, Tal :-Tasgaon,
Dist :-Sangli

.. Petitioner

Versus

1. Shri. Anil Sadashiv Swami,
Age:-46 years, Occu:-Nil,
2. Shri. Mohan Sadashiv Swami,
Age:-42 years, Occu:-Nil,
3. Smt. Chaburba Sadashiv Swami,
Age:-67 years, Occu:-Nil,
4. Sou. Malan Annaso Swami,
Age:-44 years, Occu:-Nil,

Respondent Nos.1 to 3 R/o:-Kumathe,
Tal:-Tasgaon, Dist:-Sangli,
Respondent No.4 R/o:-Hingangaon,
Tal:-Kavathemahankal, Dist:-Sangli.

5. Shri. Gajanan Gramin Bigar Sheti
Sahakari Patsanstha Mydt.,
Kumathe, Tal:-Tasgaon, Dist:-Sangli.

6. The Special Recovery Officer,
Shri. Gajanan Gramin Bigar Sheti
Sahakari Patsanstha Mydt.,
Kumathe, Tal:-Tasgaon, Dist:-Sangli.

7. The Divisional Joint Registrar,
Co-operative Societies,
Kolhapur Division, Kolhapur,
Udyog Bhavan, Assembly Road,
Kolhapur-416 003.

.. Respondents

Shri. Vijay Killedar, for the Petitioner.

Shri. V. D. Ghatage, for the Respondent Nos.1 to 4.

Shri. Siddharth S. Gadve, for the Respondent Nos.5 & 6.

Shri. S. D. Rayrikar, AGP for the Respondent No.7.

CORAM : R.M. SAVANT, J.

DATE : 17th APRIL, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 10.04.2014 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, by which order the Revision Application filed by the Respondent Nos.1 to 4 herein came to be allowed and resultantly, the auction sale dated 26.04.2011 came to be set

aside.

3. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the auction sale in question was in respect of a plot of land bearing Gat No.126 admeasuring 73 Ares which auction sale was held on 26.04.2011. The Petitioner herein being the highest bidder, the sale in his favour was confirmed on 02.05.2011 and sale certificate came to be issued in his favour on 24.06.2011 and the possession was handed over to the Petitioner thereafter. The sale of the said property was carried out for recovery of an amount due under a certificate issued under Section 101 of the Maharashtra Co-operative Societies Act against the original borrower, for the amount covered by the certificate. The upset price for the said property was fixed at Rs.4,00,000/-. It is required to be noted that the original borrower had filed an application under Section 107 of the Maharashtra Co-operative Societies Rules, 1961 on 03.12.2011 and it was alleged that after auction of the tempo of the borrower was undertaken, by committing a fraud on the said borrower the present auction sale was undertaken. It seems that the original borrower expired on 02.08.2012. Thereafter the instant Revision Application was filed on 21.12.2012 by his heirs. In the said Revision Application allegations were made against their advocate one Shri. Amol Patil and it was alleged against him that he was in collusion

with the Petitioner on account of which he did not file the Revision Application. It was also alleged though documents were sought from the Patsanstha i.e. Respondent No.5 herein, no documents were furnished to the Revision Applicants. It was further alleged, it is only on account of conduct of the advocate Shri. Amol Patil that the delay in filing Revision Application has occurred. As indicated above, the original borrower had already filed an application under Rule 107 questioning the auction sale of the property in question. The said Revision Application came to be replied to on behalf of the Petitioner. The Divisional Joint Registrar considered the said Revision Application and by the impugned order dated 10.04.2014 has set aside the said auction sale which took place on 26.04.2011. The principal ground on which the auction sale has been set aside is the ground that in the notice published, the boundaries are not mentioned as also the description of the property is not proper and the notice is not in accordance with Rule 107 of the Rules. The Revisionary Authority has also mentioned that the encumbrance for which the property is being auctioned has not been mentioned as also for the recovery of which amount the property is being auctioned. As indicated above, it is the said order dated 10.04.2014 which is taken exception to by way of the above Petition.

4. Heard the Learned Counsel for the parties.

5. The principal contention of the Learned Counsel for the Petitioner is that the grounds on which the Revision Application was allowed are not the grounds on the basis of which the Revision Application was filed. The Learned Counsel would contend that the Revision Application was filed only on the basis that the auction sale of the property is carried out after the sale of the tempo was carried out by the Patsanstha in question. The Learned Counsel would contend that the Revisionary Authority has reached an erroneous conclusion that the boundaries of the property have not been mentioned or the description of the property is not correct, as no such grievance was made by the Respondents in the Revision Application. In fact, the Respondent Nos.2 to 4 had issued a public notice cautioning the public from participating in the auction, wherein no such objection regarding the description of the property was taken. The Learned Counsel would lastly contend that after the possession was handed over to the Petitioner, the Petitioner constructed upon the property a bungalow, the photograph of which is annexed to the affidavit in rejoinder.

6. Per contra, Learned Counsel appearing for the Respondent Nos.1 to 4 Shri. V. D. Ghatage would support the impugned order. The Learned Counsel would contend that the notice as contemplated by the rules has not been issued though the auction of the tempo. The Learned

Counsel would contend that the entire exercise was malafide and that the Petitioner after being handed over possession as excavated murum (mud) to the extent of about Rs.65,00,000/- illegally.

7. Having heard the Learned Counsel for the parties, I have considered the rival contentions. At the outset, it is required to be noted that the Respondent Nos.1 to 4 who are the Revision Applicants have made allegations against the Petitioner in their affidavit in reply to the Petition that the Petitioner has excavated murum whose value is to the extent of Rs.65,00,000/-. The allegations made in the said affidavit in reply have been dealt with in the rejoinder filed by the Petitioner. The Petitioner has questioned the said allegations of the Respondent Nos.1 to 4 on the ground that originally their case was that excavation was to the extent of Rs.25,00,000/- which has been now increased to Rs.65,00,000/- and therefore no credence may be given to the said case of the Respondent Nos.1 to 4. Be that as it may, as indicated above the Revision Application has been allowed for the reasons which have been adverted to herein above. A reading of the Revision Application does not disclose that any such grounds were made out by the Respondent Nos.1 to 4 in their Revision Application. In so far as the ground which has been held to be against the auction sale namely the boundaries of the property and the description of the proper, it is pertinent to note that after the auction

notice came to be issued by the Patsanstha i.e. Respondent No.5 herein, the Respondent Nos.1 to 4 had issued a public notice in answer to the auction notice and cautioned the public from participating in the said auction sale. In the said notice published by the Respondent Nos.1 to 4 no such objection regarding boundaries of the property has been taken or as regards the description of the property. The Respondent Nos.1 to 4 were therefore very well aware of the property which was being auctioned. In so far as the other grounds are concerned, apart from the fact that such grounds were not urged on behalf of the Respondent Nos.1 to 4 being not part of the Revision Application. How the Revisionary Authority could have allowed the Revision Application on the said grounds therefore begs an answer. In the context of the affidavits now filed by the parties i.e. affidavit in reply and the affidavit in rejoinder, the facts contained therein also assume significance especially the fact that after the possession was handed over the Petitioner has built upon the property and constructed a bungalow. In my view, the Revisionary Authority has not dealt with the Revision Application in a satisfactory manner and has by a cryptic order allowed the same. In a matter where the sale has been confirmed and possession has been handed over to the auction purchaser, the Revisionary Authority has dealt with the matter without considering the said aspects. The Revisionary Authority has also not addressed the issue as to whether

there is a compliance of Section 154(2A) by the Respondent Nos.1 to 4 in the matter of making the pre-deposit. Hence, for the afore-stated reasons the impugned order dated 10.04.2014 passed by the Revisionary Authority i.e. Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is required to be quashed and set aside and is accordingly quashed and set aside and the matter is remanded back to the Revisionary Authority for a de-novo consideration of the Revision Application in terms of the observations made in the instant order. The Revisionary Authority may give proper opportunity to the parties and whilst adjudicating upon the Review Application deal with the contentions that are raised by the parties. Needless to state that the Revision Application would be tried on its own merits and in accordance with law. Till a decision is rendered in the Revision Application, the parties are directed to maintain status-quo of the property in question. On remand the parties to appear before the Revisionary Authority on 27.04.2015. The Revisionary Authority to decide the Revision Application latest by 22.06.2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms.

[R.M. SAVANT, J]