

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.4430 of 2012

* Vasant Ramchandra Sonar,
Age 75 years,
Occupation : Retired,
R/o Badri Plot, Jamner Road,
Bhusawal, Taluka Bhusawal,
District Jalgaon. **.. Petitioner.**

Versus

- 1) Special Recovery Officer,
Purnavad Nagari Sahakari
Patsanstha Limited,
Shirsoli, 72, Unit Chambers,
Ganesh Colony Rod,
Jalgaon, District Jalgaon.
- 2) Purnawad Nagari Sahakari
Patsanstha Limited,
Shirsoli, 72, Unit Chambers,
Ganesh Colony Rod,
Jalgaon, District Jalgaon.
- 3) Manjitsing Harisingh Theti,
Age major,
Occupation: Business,
R/o Kulkarni Plot,
352/1, Bhusawal,
Taluka Bhusawal,
District Jalgaon.
- 4) District Deputy Registrar for
Cooperative Societies,
Jalgaon,
Taluka & District Jalgaon.

- 5) Assistant Registrar, for
Cooperative Societies,
Jalgaon,
Taluka & District Jalgaon. .. **Respondents.**

Shri. Girish V. Wani, Advocate, for petitioner.

Shri. D.B. Shinde, Advocate, holding for Shri. M.S.
Deshmukh, Advocate, for respondent No.2.

Shri. R.S. Deshmukh, Advocate,s for respondent No.3.

Shri. R.B. Bagul, Assistant Government Pleader, for
respondent Nos.4 and 5.

CORAM: T.V. NALAWADE, J.

DATE : 22 DECEMBER 2016

ORAL JUDGMENT:

1) Rule, rule made returnable forthwith. Heard
both the sides by consent for final disposal.

2) The petition is filed to challenge the auction
sale made on the basis of sale certificate issued under
section 101 of the Maharashtra Cooperative Societies act,
1960. It appears that Milind, son of the present petitioner,
had mortgaged not only the land of CTS No.4435/39A but
also the building standing on it to respondent No.2 -
Credit Society for getting loan of around Rs.20 lakh. As he

was defaulter, proceeding was started and certificate under section 101 was obtained by the society. For recovery of the amount the property was attached but in the attachment order only the land was shown to be attached. However, public notice was issued for auction sale of not only the land but also the building standing on it. It appears that, present respondent purchased the property shown in the auction notice as it is which includes the area of 68.7 square meters with the building. He has paid consideration of more than Rs.22 lakh.

3) The petitioner, who is father of Milind has produced record to show that he has purchased the building under sale deed of 1977. Another sale deed executed in favour of Milind is also produced to shown that Milind had purchased only the land portion under sale deed of 1992.

4) It is the case of the petitioner that as the building was not mortgaged and it could not have been mortgaged by Milind, the building could not have been sold in auction sale and it was also not attached. He submitted that the sale certificate cannot be issued in

respect of the building in view of the aforesaid circumstances and the execution is not possible as against the building.

5) There is force in the submission made by the learned counsel for the petitioner. In view of the aforesaid circumstances this Court holds that it was not possible for Milind to mortgage the building as he had no right or interest in the building though he was owner of the land. The society could not have sold the building as the building was not owned by Milind and it could not have been mortgaged by Milind. Fact was within the knowledge of the society that only the land was owned by Milind and that can be seen from the attachment order. In view of these circumstances, the petition is allowed. The order made by learned Divisional Joint Registrar Cooperative Societies, Nasik in Revision No. R-Nil/2011 is set aside. The order of auction sale of the building is set aside. The prayer clause (D) made in the revision is allowed. In those terms, rule is made absolute.

Sd/-
(T.V. NALAWADE, J.)

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