

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6286 OF 2012

- 1] Smt. Sheela W/o. Namdeo Bondekar,
Age : 71 Years, Occu. Household,
Resident of 37, Shreya Nagar,
Aurangabad, Dist. Aurangabad.
- 2] Smt. Mandakini W/o Shankarrao Hanumante,
Age : 58 Years, Occu. Household,
Resident of Sai Nagar, N-6, CIDCO,
Aurangabad, Dist. Aurangabad.
- 3] Smt. Suhasini W/o Vithalrao Pohankar
Age : 65 Years, Occu. Household,
Resident of Shambhu Mahadev Nagar,
Aurangabad, Dist. Aurangabad.

... Petitioners.

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Cooperation Department,
Mantralay, Mumbai - 32.
- 2] The Joint Registrar, Cooperative
Societies, Aurangabad.
- 3] The Taluka Dy. Registrar Cooperative
Societies, Adalat Road, Aurangabad.
- 4] Ahilyabai Magasavargiya Gruhnirman
Sahakari Sanstha Ltd. Satara,
Tq. & Dist. Aurangabad.
- 5] Smt. Vatsalabai W/o Maruti Nikalje,
Age : 68 Years, Occu. Household,
Resident of Bansilal Nagar,
Near Shrimaya Hotel, Aurangabad.

- 6] Smt. Vijaya W/o. Prabhakar Shirole,
Age : 63 Years, Occu. Household,
Resident of Devanagari,
Behind Shahnoormiya Dargah,
Osmanpura, Aurangabad.

... Respondents.

. . .
Mr. D. V. Soman, Advocate for Petitioners.
Mr. V. M. Kagne, Asst. Govt. Pleader for Respondent No.1/State
Mr. A. D. Kasliwal, Advocate for Respondent No.5.
Respondent Nos.2 to 4 & 6 are served

. . .

CORAM : V. L. ACHLIYA, J.

RESERVED ON : 15th APRIL, 2016.

PRONOUNCED ON : 06th MAY, 2016.

JUDGMENT :

. Rule. Rule is made returnable forthwith. With consent of parties, Petition is heard finally at the stage of admission.

2] By the present petition filed under Article 226 & 227 of the Constitution of India the petitioners have claimed reliefs as under :-

“A. This Writ Petition may kindly be allowed.

B. The impugned order dated 17.4.2012 passed by the Joint Registrar, Co-operative Societies, Aurangabad in Revision Application No.21/2011 (Exhibit “B”) may kindly be quashed and set aside.

C. The so called Sale Deed executed on 22.1.2007 by the respondents No.5 and 6 in favour of Ravindra Babulal Jain and Ashish Tejmal Mugdiya in respect of land Gat No.74, admeasuring 1 Acre 20 Guntha, situated at village Satara, Taluka & District Aurangabad, pursuant to the impugned order of permission dated 15.12.2006 may kindly be cancelled declaring it null and void.”

3] Brief facts of the case of the petitioners are as under :-

A] Petitioners herein claims to be members of respondent No.4 - Housing Cooperative Society, i.e. Ahilyabai Magasavargiya Gruhnirman Sahakari Sanstha Ltd. Satara, Aurangabad (hereinafter referred to as 'the said Society' for the sake of brevity). The object of society is to make available land to the people of backward class at affordable price so that they can build their houses on said land. The respondent No.4 society was registered on 20.11.1981 as co-operative housing society for backward class society under the provisions of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'said Act' for the sake of brevity). When the society was formed there were twelve members. Later on three members are added and thereby the total strength of the members of the society become fifteen.

B] In furtherance of object of said society the land admeasuring 1 Acre 20 Gunthas bearing Gut No.74 situated at village Satara, Dist. Aurangabad was purchased with the contribution of the members of the society. The respondent No.5 and 6 were appointed as Chairman and Secretary respectively of said Society. Although the land was purchased to allot the plots to members of the society by taking steps to get sanction the layout plan and permission for non agriculture use, no steps in that behalf were taken by the officials of said society. On the contrary the respondent Nos.5 & 6 acting in collusion with two builders namely Ravindra Babulal Jain and Ashish Tejpal Mugdiya who have already purchased land adjacent to the land in question and sold said land of society to said builders without the consent of members of the society and more particularly the petitioners. According to petitioner for the purpose of selling said land to said builders, the respondents No.5 & 6 prepared false and forged documents showing that, the members have resigned. Such documents were prepared on back dated stamps. After preparing the false record of resignation they submitted application before Taluka Deputy Registrar, Co-operative Societies, Aurangabad i.e. respondent No.3, seeking permission to sale the said land. The application in that respect was presented on 07.12.2006. The respondent No.3 without giving notice to members of society passed order thereby granted permission to respondents No.5 & 6 to sale the said land

on the conditions mentioned in letter/order dated 15.12.2006. While granting such permission the respondent No.3 has relied upon the copies of forged and fabricated resignations of the members of the society, copies of the resolution etc. It is for the case of the petitioners that though the respondent No.3 granted permission to respondents to sale the land on following conditions, the respondents No. 5 & 6 have not complied those condition :-

- “(i) The land should be sold by giving an advertisement in a widely circulated newspaper;*
- ii) The land should not be sold at a price less than market price;*
- iii) The sale proceeds be deposited in the bank;*
- iv) The valuation of the land should be obtained from the office of the Sub-Registrar;*
- v) As per the Maharashtra Cooperative Societies Act and Rules made there-under, the payment of the price should be made by Account Payee cheque;*
- vi) No member should be paid in cash.”*

C] According to petitioners the respondents No.5 & 6 who acted in collusion with the builders sold the said land without complying a single condition imposed by the respondent no.3 while granting permission to sale said land. On 10.12.2008, the respondents No. 5 & 6 told them that the land in question has been sold to builders on 22.01.2007. After great efforts they could obtained the information under Right to Information Act from the office of respondent No.4. On 10.12.2008, they came to know that

the land in question was sold by respondents No.5 & 6 for a meager amount of Rs.34,50,000/- (Rupees Thirty Four Lakhs Fifty Thousand) when the market price of the land was running into Crores of Rupees. They also noticed that by preparing false and forged documents the respondents No.5 & 6 have got permission to sell the land and respondent No.3 has also acted in collusion with respondents No.5 & 6 in granting permission. For the purpose of such transactions the false affidavit of resignation of members were prepared. Keeping the members of the society in dark, the land belonging to society has been sold by respondents No.5 & 6 to builders namely Ravindra Babulal Jain and Ashish Tejmal Mugdiya in consolidation with one Sanjay Kasliwal. Being aggrieved by order of permission granted by respondent No.3 for sale of land the petitioner approached to respondent No.2 by way of revision against the order passed by respondent No.3. The respondent No.2 rejected the Revision Petition vide order dated 17.4.2012. The petitioners being aggrieved and dissatisfied by the order passed by respondent no.2 has preferred this petition on the grounds set out in the petition.

4] Learned counsel for the petitioners strenuously contended that the permission granted by the respondent No.3 itself without authority of law. He has contended there is no provision under the Maharashtra Co-operative Societies Act and

Rules framed thereunder to entertain such application and grant permission that too without notice to the members of the society. The permission has been granted relying upon false and fabricated documents prepared by respondents No. 5 & 6 and produced before the respondent No.3. Even the affidavits of the members shown to have been resigned from the membership of society, produced before the respondent No.3 were false and fabricated. The said transaction was done behind the back of the petitioners by the respondents No.5 & 6 who acted in collusion with two builders namely Ravindra Babulal Jain and Ashish Tejmal Mugdiya. The respondent No.2 though observed in the order that the Revision Petition is decided on merit, but failed to take into account the grounds raised in the revision memo. He has submitted that the order passed by the Revisional Authority is perverse and contrary to evidence on record. The respondent No.2 has not verified as to whether the documents produced on record are authentic. He has also failed to take into consideration that there is no provision under the Maharashtra Co-operative Societies Act which empowers the respondent no.3 to entertain such application and grant permission for sale of the land belonging to Co-operative society. Learned counsel submitted that the order passed by respondent No.3 being passed without jurisdiction and authority vested with respondent No.3 the order passed by the Revisional Authority deserves to be set aside.

5] On the other hand, Shri A. D. Kasliwal, learned counsel representing the respondents No.5 & 6 supported the order passed by respondent No.2. He has submitted that the petition filed by the petitioners is devoid of merit and substance therein. He has further submitted that, the petitioners are not the members of the society. He has also submitted that, they had given of their membership of respondent no.4 - society long back. He has further submitted that, the decision to sale the land was well within the knowledge of the petitioners. In fact, they had attended the meeting of the society in which the decision was taken. The allegations made against the respondents No. 5 & 6 are false and petition is file with ulterior motive. So far as authority of the Respondent No.3 to grant permission for sale of said land, the learned Counsel submitted that the permission was obtained by way of abundant precaution. He has submitted that for selling the land of the society the permission of Registrar of the Co-operative Society is not required and the society on its own can sale the land. Learned counsel submitted that the reliefs claimed in the petition can not be entertain by this Court in exercise of writ jurisdiction. According to learned Counsel, there is alternate and efficacious remedy available to petitioners under the provisions of Maharashtra Co-operative Societies Act.

6] I have carefully considered the submissions advanced in the light of the record and proceedings of the permission granted by the respondent No.3 and the Revisional Authority i.e. respondent No.4.

7] So far as the relief claimed by the petitioners by way of prayer clause 'B' there is no dispute that the petition is maintainable as there is no efficacious and alternate remedy available to petitioners to challenge the order passed by respondent No.2. In the light of submissions advanced the first and foremost question which falls for my consideration, whether the respondent No.3 vest with authority under the provisions of Maharashtra Co-operative Societies Act to entertain such request to grant permission to sale the land of co-operative society. Learned counsel appearing for respondents No.5 & 6 has fairly conceded that there is no such provision in the MCS Act, 1960, vesting authority under law to entertain such application. However, the learned counsel submitted that there is no requirement of law for the society to obtain such permission. Learned AGP also conceded that there is no such provision in MCS Act to entertain such request and grant permission by respondent No.3.

8] Having appreciating the submissions advanced in the light of the provisions of Maharashtra Co-operative Societies Act, I have no hesitation to hold that, the order dated 15.12.2006 passed by the respondent No.3 is without jurisdiction and authority vested with respondent No.3. The fact is not in dispute that the land in question was purchased in the name of the society for the benefit of members of the society and that too out contribution made by them. The fact is also not in dispute that the respondent No.4 is co-operative Society duly registered under the provisions of MCS Act, 1961. Once the society is registered under the provisions of Co-operative Societies Act it makes the Society a body corporate and the provisions of the MCS Act applicable to such society. The rights of the members and right against the society are regulated by said act. Thus, on registration of society the working of the society is regulated by the provisions of MCS Act and the Rules and Regulations framed thereunder. The society, its office bearers and the members of society are bound to act as per the provisions of the said act and rules and regulation framed thereunder. Any action contrary to the provisions of said Act is not sustainable in law. The authorities created and vested with power under the said Act are also bound to act within the scope of their powers, authority and jurisdiction conferred upon them under the provisions of MCS Act. Any act and action on the part of such authority beyond the purview of their powers and authority is not

sustainable in law and same is liable to set aside.

9] It appears from the record that the land in question was purchase as an agriculture land to use for residential use after converted for residential use, by adopting the procedure prescribed for sanction of layout. However, the permission to convert the said agriculture land for non agriculture use and sanction of layout couldn't be made as Municipal Corporation refused to grant such permission. Since it was not possible to get the land converted into plots, certain resolution came to be passed to sale the said land. The audit of the society was made for the period 01.04.2003 to 31.03.2006 by the certified auditor. In the report, the auditor has observed that though the society was registered about 25 years back, still the permission to convert the land for non-agriculture use couldn't be secured and therefore the land and the plots couldn't be distributed to the members of the society. He has further observed that the very object of formation of the society has been frustrated. He has further noted that the some of the members have died, some of them have left the City in connection with their Job or business and some of the members have demanded price of their share in land by accepting their resignation. While making such comment he has instructed the society to take appropriate decision after seeking prior permission from Deputy Registrar, Co-operative Society, Aurangabad. It

appears that, the observations noted by the auditor may be the reason to make such application.

10] The question remains, whether the respondent No.3 vest with authority in law to entertain such request. The answer to this question is in negative. As observed in the foregoing para, once the society is registered the functioning of the society is regulated by the provisions of Maharashtra Co-operative Societies Act. The land in question is an asset of the society. The existence of any society can be put to an end and in that eventuality the assets of the society can be sold and distributed amongst the members in the manner provided under the co-operative societies Act. One of such eventuality is the winding up proceeding and another is the cancellation of registration of the society. So far as the case in hand, no such proceedings of winding up was initiated any point of time. Therefore, the only remedy by which the assets of the society could have been sold and distributed amongst the members available for the society was to seek the cancellation de-registration of the society i.e. to get the society de-registered under Section 21-A of the Co-operative Societies Act for the reason the purposes for which the society was formed registered could not be served/achieved. In this context, it is useful to refer Section 21 and 21-A of MCS Act, 1961 which reads thus under:-

“21. Cancellation of Registration

The Registrar shall make an order cancelling the registration of a society if it transfers the whole of its assets and liabilities to another Society, or amalgamates with another society, or divides itself into two or more societies or if its affairs are wound up, [or it is de-registered under the provisions of sub-section (1) of Section 21A or winding up proceedings in respect of the society are closed or terminated under Section 109.

The society shall, from the date of such order of cancellation, be deemed to be dissolved, and shall cease to exist as a corporate body.

21-A. De-registration of societies.

(1) If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, or any primary agricultural co-operative credit society using the word “Bank”, “Banking”, “Banker” or any other derivative of the word “Bank” in its name, he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society;

Provided that, the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is

not served on any such members.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any officer below the rank of a Joint Registrar of Co-operative Societies.”

11] It appears from the record that the land which was purchased by respondent.4 society was an agricultural land and the permission to approve the layout couldn't be granted as the land was shown in Green Zone. In this view, the very purpose for which the society has been formed couldn't be served. The observation to this effect are also find place in the report of

auditor. In such circumstances, the recourse which was available for the respondent No.4 society was to approach for the registration of society and to obtain the cancellation of registration. Instead of adopting the recourse available under the law, the application was filed before the respondent no.3 for permission to sale the land. Without taking any pains as to whether such application can be entertain and whether any authority vest with him to grant such permission the respondent no.3 entertain the application and granted the permission vide order dated 15.12.2006. In this view of the matter the order passed by respondent No.3 granting permission to sale the land of society given to respondents No. 5 & 6 is *void ab initio* as same is passed without any authority and jurisdiction vested in him. In this view, the order passed by respondent No.2 to upheld the order passed by respondent No.3 deserves to be set aside.

12] In fact, the respondents No.2 & 3 should have examined the provisions of MCS Act while passing the order. They should have satisfied themselves that in the background of the facts stated in the application filed by the society whether such permission can be granted in law. They should have advised the respondent No.4 society to adopt the recourse available under the law.

13] In view of above, the petition deserves to be allowed to the extent of prayer clause 'B' as the respondent no.2 has failed to take into consideration that the order passed by the respondent No.2 which was impugned by way of revision, passed without any authority and jurisdiction vested with respondent No.3 under the provisions of MCS Act, 1960. In consequences of setting aside the order passed by the respondent No.2 the order dated 15.12.2006 passed by respondent No.3 also needs to be set aside on the ground that the respondent No.3 had no authority and jurisdiction to entertain such application and grant such permission to sale the land in question.

14] So far as prayer clause 'C' made in the petition, the petition can not be entertained in exercise of writ jurisdiction by this Court. The contentions made that, the resignation letters of the petitioners, and the resolutions passed are forged and fabricated documents can not be decided in exercise of writ jurisdiction by this Court. There are several question of facts involved in the matter which can not be dealt and decided by this Court in exercise of writ jurisdiction. The persons in whose favour the sale deed has been executed on 22.01.2007 are not party before this Court. There is efficacious and alternate remedy available to the petitioners to approach the appropriate forum

provided under the Maharashtra Co-operative Societies Act for seeking redressal of their grievance and filing appropriate proceedings for declaration and other consequential reliefs. In this view, the petitioners are granted liberty to adopt the appropriate remedy for seeking the relief in terms of prayer clause 'C' and any other consequential reliefs.

15] In the result, the petition is allowed in terms of prayer clause 'B'. The order dated 17.4.2012 passed by Joint Registrar, Co-operative Societies, Aurangabad in Revision Application No. 21/2011 is quashed and set aside. In consequences of setting aside the order passed by respondent No.2, the order dated 15.12.2006 passed by respondent No.3 is quashed and set aside. So far as the relief claimed by petitioners as per prayer clause 'C' the petitioner is granted liberty to adopt the appropriate remedy available under law for seeking such relief.

16] Rule made absolute in above terms. In the circumstances there shall be no order as to costs.

[V. L. ACHLIYA]
JUDGE