

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 780 OF 2014

MANGALA W/O VIJAY MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.4315 OF 2014

SANJAY S/O WAMAN CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 4326 OF 2014

BHAGIRATHIBAI CHAGAN BEHERE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 4349 OF 2014

VIJAY PANDHARINATH MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for the petitioners : Mr. V. B. Patil h/f Mr. M. S. Patil
AGP for respondent Nos. 1 and 2 : Mr. N. B. Patil
Advocate for respondent Nos. 3 and 4 : Mr. D. B. Thoke
.....

CORAM : V. K. JADHAV, J.
RESERVED FOR ORDER ON : 01.02.2016
ORDER PRONOUNCED ON : 16.03.2016

ORDER :-

1. By consent of learned counsel for the parties, matters are

heard finally at admission stage.

2. By these writ petitions, the petitioners are challenging the recovery certificates issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (for short "the Act of 1960"), by respondent no.2/Assistant Registrar, Cooperative Societies, Erandol. In these writ petitions, the petitioners have raised contention that Respondent No.2/Assistant Registrar, Cooperative Societies has not followed the provisions of Rules 86A to 86F of the Maharashtra Cooperative Societies Rules, 1961 (for short "the Rules of 1961"). It is their main contention that Respondent No.2/Assistant Registrar, without supplying any documents and without granting opportunity of being heard, issued the recovery certificates.

3. Learned counsel for the petitioners submits that respondent No.2/Assistant Registrar, is bound to follow the mandatory provisions of Rules 86A to 86F of the Rules of 1961. learned counsel submits that in terms of the provisions of Rule 86D, the documents were not supplied to the petitioners and further, without granting any opportunity of being heard, as provided under Rule 86E, respondent No.2/Assistant Registrar, directly issued recovery certificates. Learned counsel submits that the recovery certificates have been issued behind the back of the petitioners. Learned counsel submits

that the authority has issued recovery certificates without any application of mind. Learned counsel for the petitioners submits that the petitioners cases are fit enough to be entertained directly by this Court under writ or supervisory jurisdiction, without directing the petitioners to avail the remedy as provided under Section 154 r/w 154(2A) of the Act of 1960. Learned counsel for the petitioners, in order to substantiate his contentions, places reliance on the decisions in following cases:

1. ***Sundeeep Polymers Pvt. Ltd. and others vs. State of Maharashtra and others***, reported in **2010 (6) ALL MR 550**,
2. ***Ganeshkumar Makhanlal Chandak and another vs. Nagpur Urban Co-operative Bank Ltd. and another***, reported in **2005 (3) Bom.C.R. 925**,
3. Decision of this Court dated 15.09.2011 in the case of ***Sopan s/o Ninu Bade vs. The State of Maharashtra and others (Writ Petition No. 9938 of 2010)***,
4. ***Top Ten and another vs. State of Maharashtra and others***, reported in **2012 (2) Bom.C.R. 647**.

4. Learned AGP appearing for respondent Nos. 1 and 2 submits that the petitioners have avoided to take recourse to the statutory

remedy, as provided under Sections 154 and 154(2A) of the Act of 1960. Learned AGP submits that though the petitioners have alternate efficacious remedy available, they have preferred these writ petitions, and therefore, the writ petitions are not maintainable and deserve to be rejected on this ground alone. Learned AGP further submits that the petitioners have filed these writ petitions belatedly and therefore, these writ petitions suffer from delay and laches.

5. Learned counsel appearing for respondent Nos. 3 and 4 submits that there is inordinate delay on the part of the petitioners to approach this Court and the delay is not satisfactorily explained by the petitioners. Learned counsel submits that this Court may not intervene in the matter and grant relief in exercise of its writ jurisdiction. Learned counsel submits that the alternate statutory remedy is available to the petitioners and filing of writ petitions is unwarranted. Learned counsel, in order to substantiate his contention, places reliance on the decisions in following cases:

1. ***Maharashtra Nagri Sahakari Bank Limited and another vs. Ravindra Prabhakar Kulkarni and others***, reported in **2011 (3) Bom.C.R. 846**,
2. Judgment in the case of ***Ramesh S/o Chudaman Badgujar vs. The State of Maharashtra and others*** in Writ Petition No. 2752 of 2013 with connected Writ Petition

No. 2760 of 2013, delivered by the learned Single Judge of this Court on 28.08.2014, and

3. ***Karnataka Power Corporation Ltd. and another vs. K. Thangappan and another***, reported in **2006 (4) SCC 322**.

6. The petitioners herein had borrowed loan from the respondent-Bank. In writ petition No. 780 of 2014, the petitioners had borrowed certain amount on 16.03.2007 and the last date for repayment of the entire loan amount was 28.10.2011. In writ petition No. 4315 of 2014, the petitioner had borrowed loan from the bank on 28.03.2006 and the last date for repayment was 29.10.2010. In writ petition No. 4349 of 2014, the petitioner had borrowed loan from the respondent-Bank on 16.03.2007 and the last date for repayment of the loan was 28.10.2011. In writ petition No. 4326 of 2014, the petitioners borrowed loan and the last date of repayment was almost in the same year.

7. The proceedings for recovery of loan were initiated by the Respondent-Bank under the provisions of the Act of 1960 before Respondent No.2-Assistant Registrar and the said authority allowed the proceedings and issued recovery certificate under Section 101 of the Act of 1960.

8. At the outset, crux of the matter is that although the alternate statutory remedy of preferring revision was available for the petitioners herein, as provided under Section 154 of the Act of 1960, it was not opted by the petitioners. The same might be with an ulterior motive to avoid deposit of 50% of the amount due under recovery certificate obtained by the respondent-Bank, in the light of the provisions of Section 154 (2A) of the Act of 1960.

9. Furthermore, though the recovery certificates are issued prior to the year 2010 and in one petition, almost in the year 2006, the petitioners have approached this Court. Some of the petitioners had approached to the revisional authority, however, their revisions were not considered for want of deposit of 50% of the amount as provided under Section 154(2A) of the Act of 1960. Thus, there is inordinate delay on the part of petitioners and the delay is also not satisfactorily explained by them.

10. The legality of the certificates is challenged on the ground that the learned Assistant Registrar did not follow the procedure as prescribed under Rule 86-A to F of the Maharashtra Cooperative Societies Rules and has not passed a reasoned judgment. So far as the inquiry under Section 101 of the Act of 1960 is concerned, only limited question about the arrears due is required to be considered

by the Registrar while undertaking inquiry. It appears that the inquiry undertaken is only aimed at ascertaining whether the amount disclosed in the statement of account as arrears is correct and due. However, the writ petitions are suffering from delay and laches and the legality of those recovery certificates is challenged by way of these writ petitions belatedly.

11. In view of this, I do not find any merit in the writ petitions. Hence the following order :

O R D E R

All the writ petitions are hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

...

vre/-