

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10050 OF 2016

Maharashtra State Cooperative
Patasanstha Federation Limited, Mumbai
through Its Treasurer
Shri Dadarao Bhaurao Tupkar

Petitioner

Versus

The State of Maharashtra

Respondents

Mr.K.J. Suryawanshi advocate for the petitioner

Mr.S.S. Dande, AGP for Respondent

CORAM : R.M. BORDE &
V.K. JADHAV, JJ

(Date : 4th October, 2016.)

PER COURT :-

1 Heard.

2 The petitioner is praying for issuance of writ of certiorari, orders or directions in the nature of writ of certiorari, to quash and set aside the Government Resolution dated 30.8.2014, seeking to amend Rules framed under the Maharashtra Cooperative Societies Act and more particularly amendment to Rule 107 incorporating clauses (11)(d-1) and (f), (13) and (14) of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961.

3 The petitioner contends that, the amended Rules are in excess of powers of delegation, in as much as, those are arbitrary and unreasonable. The petitioner also contends that, the amended rules, referred to above are contrary and inconsistent with the provisions of Section 100(2) of the Maharashtra Cooperative Societies Act, 1960.

4 Rule 107 (11)(d-1)(i) provides that, no sale of immovable property shall take place unless possession of the property is taken or caused to be taken. Clause (9) of sub-Rule 11 of Rule 107 provides :-

“(f) When any immovable property is sold under these rules, the sale shall be subject to the prior encumbrances of the property, if any. The applicant shall, when the amount for the realisation of which the sale is held excess Rs.100, furnish to the (Recovery Officer) within such time as may be fixed by him or by the Recovery Officer, an encumbrance certificate from the Registration Department for the period of not less than twelve years prior to the date of attachment of the property sought to be sold, or in cases falling under the proviso to sub-rule (10), prior to the date of the application for execution. The time for production of the encumbrance certificate may be extended at the discretion of the (Recovery Officer), as the case may be. The sale shall be by public

auction to the highest bidder. ”

So also sub-rule 13 and 14 of Rule 107 of the Maharashtra Cooperative Societies Rules provide thus:-

“ 13(i) Where immovable property has been sold by the (Recovery Officer), any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery officer -

(a) for payment to the purchaser a sum equal to 5 per cent of the purchase money; and

(b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was order together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

(ii) If such deposit and application are made within thirty days from the date of sale, the Recovery Officer shall pass an order setting aside the sale and shall repay the purchaser, the purchase money so far as it has been deposited, together with the 5 per cent deposited by the applicant :

Provided that if more persons than one have made deposit and application under this

sub-rule, the application of the first depositor to the officers authorised to set aside the sale, shall be accepted.

(iii) if a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

(Provided that, in case the Recovery Officer fails to handover, possession of the property for any reason within six months from the date of confirmation of the sale to the purchaser, amount deposited by the purchaser may be refunded to him on his demand).

(14) (i) At any time within thirty days from the date of the sale of immovable property, the applicant or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the (District Deputy Registrar) to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless the (District Deputy Registrar) is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application be allowed, the recovery shall set aside the sale and may direct a fresh one. (Expenses of the such set aside sale shall be borne

by the society).

(iii) On the expiration of thirty days from the date of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the (District Deputy Registrar) shall make an order confirming the sale.

(iv) Whenever the sale of any immovable property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(v) After the confirmation of any such sale, the (District Deputy Registrar) shall grant a certificate of sale bearing his seal and signature to the purchase, and such certificate shall state the property sold and the name of the purchaser. "

5 The petitioner contends that, a precondition imposed under sub-rule (11) (d-)(i) of Rule 107, providing for taking over the possession of the property before sale, is unreasonable and in contravention of section 100 of the Maharashtra Cooperative Societies Act. Subsection (2) of section 100 of the Maharashtra Cooperative Societies Act provides that, where property is transferred to society under foregoing subsections or where the property is sold under sections 98, 101, 137, the Court, the Collector, or the Registrar, as the case may be, may, in accordance with the rules, place the society or the purchaser, as the case may

be, in possession of the property transferred or sold. Section 98 of the Act prescribes for recovery of money. It is provided that every order passed by the Official Assignee of a de-registered society under subsection (3) of section 21A or every order passed by the Registrar or an authorized officer, by him under section 88 or by the Registrar or the Cooperative Court, under section 95 or by the Cooperative Court, under section 96, every order passed, in appeal, under the last preceding section, every order passed by a Liquidator under section 105, every order passed by the State Government, in appeal against orders passed under section 105 and every order passed by the State Government or by the Registrar, in revision under section 154 or every order passed by the Registrar for recovery under this Act shall, if not carried out -

(a) On a certificate signed by (the official Assignee or) the Registrar (or the Cooperative Court) or a Liquidator, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court, or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made by the Collector, and shall be accompanied by a certificate assigned by the Registrar (or

Cooperative Court). Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

6 Section 101 of the Act relates to recovery of certain sums and arrears due to certain societies as arrears of land revenue, whereas section 137 of the Act provides for recovery of loan on issuance of certificate by Registrar. None of the sections, either section 100, 98, 101 or section 137 prescribes an embargo that possession of the property shall not be taken over before commencing of sale proceeding. Rule 107 provides for the procedure for attachment and sale of the property under section 156 of the Act. Section 156 provides for Registrar's powers to recover certain sums by attachment and sale of property. Section 156 reads thus:-

" 156. Registrar's powers to recover certain sums by attachment and sale of property.

(1) The Registrar or any officer subordinate to him and empowered by him in this behalf (or an officer of such society as may be notified by the State Government, who is empowered by the Registrar in this behalf) may, subject to such rules as may be made by the State Government, but without prejudice, to any other mode of recovery provided by or under this act, recovery -

(a) any amount due under a decree or order of a Civil Court obtained by a society;

(b) any amount due under a decision, award or order of the Registrar (Cooperative Court) or Liquidator or (Cooperative Appellate Court):

(c) any sum awarded by way of costs under this Act,

(d) any sum ordered to be paid under this Act as a contribution to the assets of the Society;

(e) any amount due under a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or under sub-section (1) of section 137:

together with interest, if any, due on such amount or sum and the costs of process (according to the scales of fees laid down by the Registrar, from time to time,) by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

(2) The Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section, or when passing any orders on any application made to him for such recovery, to the Civil Court for the purposes of (article 136 in the Schedule to the Limitation act, 1963). "

provides for taking over the possession of the immovable property by the Recovery Officer, with a view to facilitate delivery of possession of such property to the purchaser. The rule providing for taking over the possession of the property, by Recovery Officer in no way contravenes the provisions of either section 100, 98, 101, 137 or 156 of the Maharashtra Cooperative Societies Act. Subsection (2) of section 100 provides for transfer of property in favour of the society or the purchaser, as the case may be which is required to be effected after the property is sold either under section 98, 101 or 137 and responsibility is cast on the Court, Collector or the Registrar, as the case may be, to effect such transfer. Subsection 2 of section 100 does not contemplate nor prescribes the Recovery Officer to assume possession of the property, before sale. The procedure provided under rule 107 (11) (d-1)(i) neither can be said to be unreasonable, arbitrary, nor contravening any provision of the Act. Similarly, the procedural requirement provided under section 107(11)(f) or sub rule 13 and 14 of the Rule 107 cannot be said to be arbitrary or contravening any of the provisions of the Act. The Rules are framed with a view to facilitate the recovery of the amount, as well as to streamline the procedure for putting the purchaser in possession of the property. Rules framed can neither be termed to be in excess of

delegation or contravening any of the substantive provisions of the Act or arbitrary or unreasonable or inconsistent with any of the provisions of the Act. The legislative competence also cannot be disputed, since the Rules have been placed before the legislature and on consideration of the objections if any, Rules have been enforced. The Rules do not cause any prejudice to the cooperative societies or the cooperative credit societies in general. The challenge raised in the petition is devoid of substance. The writ petition, therefore, stands rejected.

(V.K. JADHAV, J)

(R.M.BORDE, J)