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

WRIT PETITION NO.1078 OF 2014

1. Kai. Fakira Hari Patil,
Deceased, thr. L.Rs.
- 1.B. Rajaram Fakira Patil (Deceased)
 - 1.B-1. Smt. Sushilabai Rajaram Patil,
Age: 70 years, Occu: Household,
R/o At post Paldhi, Tq. Jamner,
Dist. Jalgaon
 - 1.c. Dattu Fakira Patil,
Deceased, thr. L.Rs.
 - 1.C.-1. Smt. Kamalbai Dattu Patil,
(Deceased)
 - 1.C-2. Shri Pandharinath Dattu Patil,
Age: 40 years, Occu: Agri.,
 - 1.C-3 Ghanshyam Dattu Patil,
Age: 34 years, Occu: Agri.
 - 1.C-4. Shobha Dattu Patil,
Age: 34 years, occu: Household
 - 1.C-5. Sangeeta Dattu Patil,
Age: 46 years, Occu: Household
 - 1.C-6. Rekha Dattu Patil,
Age: 28 years, Occu: Household

All R/o post Paldhi, Tq. Jamner,
Dist. Jalgaon
- 1.D. Smt. Dwarkabai Fakira Patil,
Age: 80 years, Occu: Household

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1-E. Smt. Shantabai Sitaram Patil,
Age:70 years, Occu: Household

1-G. Smt. Sundarbai Suklal Patil,
Age: 75 years, Occu: Household ..PETITIONERS

VERSUS

1. The State of Maharashtra,
(Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32)
2. The Divisional Joint Registrar,
Co-operative Societies,
Nashik Division Nashik
3. The Assistant Registrar,
Co-operative Societies,
Jalgaon, Dist. Jalgaon
4. Purnawad Nagari Sahakari
Pat Sanstha, Shirsoli, Jalgaon,
Dist. Jalgaon
Through its Manager
5. Shivaji s/o Fakira Patil,
Age: 53 years, Occu:Agri.,
R/o Pahur Paldhi, Tq. Jamner,
Dist. Jalgaon
6. Shri Narendra Walmik Sonawane,
Age: 55 years, Occu: Agri.,
R/o At post Kandari,
Tq. & Dist. Jalgaon
7. Deoram s/o Jotiram Patil,
Age: 63 years, Occu: Agri.,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon
8. Vilas Summersingh Pardeshi,
Age: 48 years, Occu: Agri.,
R/o Paldhi, Tq. Jamner,

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Dist. Jalgaon

9. Arun Ramkrishna Patil,
Age: 65 years, Occu: Agri.,
R/o Sonala, Tq. Jamner,
Dist. Jalgaon
10. Vinayak s/o Tulshiram Patil,
Age: 55 years, Occu: Service,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon
11. Sau. Punam w/o Milind Shinde,
Age: 29 years, Occu: Business,
R/o Sonala, Tq. Jamner,
Dist. Jalgaon
12. Sau. Ratna w/o Vinayak Patil,
Age: 45 years, Occu: Household,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon
13. Sau. Sunanda Chandrakant Patil,
Age: 43 years, Occu: Household,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon,
14. Sau. Mangala Kishor Patil,
Age: 47 years, Occu: Household,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon

..RESPONDENTS

Mr A. G. Talhar, Advocate for petitioners;
Mrs V. N. Patil Jadhav, A.G.P. for respondent Nos.
1 to 3;
Mr M. S. Deshmukh, Advocate for respondent No.4;
Mr P. S. Gaikwad, Advocate for respondent No.5;
Mr U. A. Bhadgaonkar, Advocate for respondent Nos.
7 to 14

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WITH
WRIT PETITION NO.601 OF 2014
WITH
CIVIL APPLICATION NO.11290 OF 2017

Shivaji s/o Fakira Patil,
Age: 55 years, Occu:Agri.,
R/o Pahur Paldhi, Tq. Jamner,
Dist. Jalgaon

..PETITIONER

VERSUS

1. The State of Maharashtra,
(Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32)
2. The Divisional Joint Registrar,
Co-operative Societies,
Nashik Division Nashik
3. The Assistant Registrar,
Co-operative Societies,
Jalgaon, Dist. Jalgaon
4. Purnawad Nagari Sahakari
Pat Sanstha, Shirsoli, Jalgaon,
Dist. Jalgaon
Through its Manager
5. Kai. Fakira Hari Patil,
Deceased, thr. L.Rs.
- 5.B. Rajaram Fakira Patil (Deceased)
- 5.B-1. Smt. Sushilabai Rajaram Patil,
Age: 75 years, Occu: Household,
R/o At post Paldhi, Tq. Jamner,
Dist. Jalgaon
- 5.C. Dattu Fakira Patil,
Deceased, thr. L.Rs.

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5.C-1. Smt. Kamalbai Dattu Patil,
Age: 55 years, Occu: Household

5.C-2. Shri Pandharinath Dattu Patil,
Age: 40 years, Occu: Agri.

5.C-3 Ghanshyam Dattu Patil,
Age: 32 years, Occu: Agri.

5.C-4. Shobha Dattu Patil,
Age: 38 years, occu: Household

5.C-5. Sangeeta Dattu Patil,
Age: 36 years, Occu: Household

5.C-6. Rekha Dattu Patil,
Age: 34 years, Occu: Household

All R/o post Paldhi, Tq. Jamner,
Dist. Jalgaon

5.D. Smt. Dwarkabai Fakira Patil,
Age: 70 years, Occu: Household

5-E. Smt. Shantabai Sitaram Patil,
Age: 65 years, Occu: Household

5-G. Smt. Sundarbai Suklal Patil,
Age: 60 years, Occu: Household

(Resp. Nos. 5.B-1, 5.C-1, 5.C-5,
5.C-6 and 5-G are deleted vide
Court's order dtd.27/4/2015)

6. Shri Narendra Walmik Sonawane,
Age: 48 years, Occu: Agri.,
R/o At post Kandari,
Tq. & Dist. Jalgaon

7. Deoram s/o Jotiram Patil,
Age: 63 years, Occu: Agri.,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon

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8. Vilas Summersingh Pardeshi,
Age: 48 years, Occu: Agri.,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon
9. Arun Ramkrishna Patil,
Age: 65 years, Occu: Agri.,
R/o Sonala, Tq. Jamner,
Dist. Jalgaon
10. Vinayak s/o Tulshiram Patil,
Age: 55 years, Occu: Service,
R/o Paldhi, Tq. Jamner,
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11. Sau. Punam w/o Milind Shinde,
Age: 29 years, Occu: Business,
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Age: 45 years, Occu: Household,
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13. Sau. Sunanda Chandrakant Patil,
Age: 43 years, Occu: Household,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon,
14. Sau. Mangala Kishor Patil,
Age: 47 years, Occu: Household,
R/o Paldhi, Tq. Jamner,
Dist. Jalgaon

..RESPONDENTS

Mr P. S. Gaikwad, Advocate for petitioner;
Mrs V. N. Patil Jadhav, A.G.P. for respondent Nos.
1 to 3;
Mr M. S. Deshmukh, Advocate for respondent No.4;
Mr A. G. Talhar, Advocate for respondent Nos.5.B-
1 , 5.C-2, 5.C-3, 5.C-6, 5-D, 5-E & 5-G;
Mr U. A. Bhadgaonkar, Advocate for respondent Nos.
7 to 14

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CORAM : NITIN W. SAMBRE, J.**DATE : 6th NOVEMBER, 2017****ORAL ORDER :**

Under Section 101 of the Maharashtra Co-operative Societies Act, recovery certificate dated 12th May, 2008 came to be issued against Shivaji, borrower and Fakira through his legal heirs, which was further confirmed in Revision No.8 of 2011 on 25th April, 2012. Against the said order, borrower-Shivaji preferred Writ Petition No.4616 of 2012. In the said petition, both these orders were questioned and this Court restricted notice to respondent Nos. 1 to 4 and 16 i.e. State authorities viz., respondent Nos. 1 to 3, respondent No.4, Co-operative Society from whom loan was obtained and respondent No.16, Sub Divisional Officer, Jalgaon.

2. The said petition came to be allowed by judgment and order dated 10th September, 2013, wherein sale carried out pursuant to the execution

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of recovery certificate was also questioned. This Court, while partly allowing the petition on 10th September, 2013, set aside recovery certificate and also revisional order confirming certificate and maintained auction sale of the mortgaged property pursuant to the recovery certificate.

3. While ordering so, this Court observed that auction purchasers voluntarily made statement that they will not create third party right in the property purchased in auction, which order was directed to remain in force for period of three months. It is informed that auction purchasers have not created third party interest till date.

4. Parties to the petition were directed to appear before Deputy Registrar (Co-operative Societies), so as to enable him to decide the recovery proceedings under Section 101 of the Maharashtra Co-operative Societies Act afresh. As a consequence of above, it is only borrower, who appeared before Deputy Registrar (C.S.), who has

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passed fresh order issuing recovery certificate, which is questioned in the present petition. The petitioners claimed that the property which was mortgaged was owned by Fakira (died in 1983), who was blessed with three sons Shivaji-borrower, Rajaram and Dattu, whose legal heirs are before the Court as petitioners.

5. Mr. Talhar, learned Counsel for the petitioners would submit that in view of the order passed in Writ Petition No.4616 of 2012, no notices were issued to the respondents but for borrower and as such, the said order is passed at the back of the petitioners causing substantial prejudice. He would submit that the order is not sustainable, as same is contrary to the scheme of Section 101 of the Maharashtra Co-operative Societies Act. According to him, the order of adverse civil consequences like under Section 101 cannot be passed without notice and hearing to the petitioners, who are affected and stake holders in the property under auction.

6. Mr. Deshmukh, learned Counsel for the Co-operative Society and Mr. Bhadgaonkar, learned Counsel for auction-purchasers would oppose the claim on the ground that it has to be inferred from the record that the petitioners were within knowledge about the order passed in which parties were directed to appear before the Deputy Registrar (C.S.). They would then urge that once auction has attained finality, this Court need not to order reconsideration of the certificate issued under Section 101 of the Maharashtra Co-operative Societies Act. In addition, according to them, there lies alternate remedy with the petitioners of questioning the order impugned in appeal before Deputy Registrar (C.S.).

7. Considered rival submissions. Though Mr. Deshmukh, learned Counsel for respondent - Co-operative Society was right in bringing it to the notice of this Court that the petitioners should have deposited 50% of the amount or should have

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preferred the appeal as provided under Section 154 of the Act, such embargo or bar of alternate remedy on the right of the petitioners will not operate in the present case, particularly when it could be prima facie noticed that the order of issuance of recovery certificate was passed without notice or offering hearing to the petitioners. It is settled law that such order if adverse to the interest of a party, such party must be put to the notice and opportunity of hearing should be offered. In the present case, though there is recovery certificate against the petitioners, the fact remains that no notice was issued to the party nor he was heard. The blame cannot be passed on to the authority, for the reason, while passing the order in Writ Petition No. 4616 of 2012 on 10th September, 2013, it was duty of the petitioners to the said petition and Counsel for respondent Nos. 1 to 4 and 16 to bring to the notice of the Court that notices are required to be issued to the legal heirs of Fakira, who claimed to have interest in the property mortgaged as the certificate under Section 101 is

also sought to be executed against them.

8. To be more precise act of the Court, particularly as could be noticed from the order dated 10th September, 2013 cannot be read to the prejudice of party to the petition i.e. petitioners herein as it can be intended therefrom that the affected party should not be heard.

As the petitioners were not heard before the order of recovery certificate is passed, the bar of alternate remedy will not be attracted against the petitioners.

9. In view thereof, recovery certificate issued in Case No.27 of 2008 vide impugned order dated 24th December, 2013 is not sustainable and as such, accordingly quashed and set aside. The said case stood restored to the file of Deputy Registrar (C.S.), Jalgaon or any other competent authority under Section 101 of the Maharashtra Co-operative Societies Act.

10. The petitioners and respondents to the petition agree that they shall appear before the Deputy Registrar (C.S.), Jalgaon on 27th November, 2017. The said authority shall cause notice to respondent No.6 – guarantor Narendra Walmik Sonawane, who though was party to the proceedings is not offered hearing. The said authority shall hear all the parties to the application moved by Co-operative Society and shall pass fresh reasoned order within period of three months from the date of appearance of the parties.

11. So far as condition incorporated in Writ Petition No.4616 of 2012 that auction sale in favour of parties viz., respondent Nos. 17 to 24 to the said petition will not be disturbed, provided that they will not create any third party interest in relation to the auction property shall continue till decision of the authority on an application under Section 101 of the Maharashtra Co-operative Societies Act.

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12. With above observations, Writ Petition No.1078 of 2014 stands allowed.

13. Since recovery certificate is already set aside, Writ Petition No.601 of 2014 has rendered infructuous in view of the directions of fresh hearing on the issue of issuance of recovery certificate as ordered.

14. In the light of above, pending civil application stands disposed of.

(NITIN W. SAMBRE, J.)

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