

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

WRIT PETITION NO. 9128 OF 2014

Dr. Namrata Akshay Bhansali
age 36 years, occ. Medical Practitioner
resident of 16, Hareshwar nagar
near Peoples Bank
ring road, Jalgaon, Dist. Jalgaon
presently r/o c/o Navkar Hospital,
Pankaj Bldg,
Plot No. 3, Lokmanya Hsg. Soci.
Ring road, Jalgaon

.. PETITIONER

VERSUS

1. The Divisional Joint Registrar
Co-operative Societies, Nasik
Gruha Nirman Bhavan
Gadkari Chowk, Nasik
Dist. Nasik
2. District Deputy Registrar
Co-operative Societies,
Jalgaon
Dist. Jalgaon
3. The Special Recovery Officer
Mrs. Kalpana S. Lanke
Purnawad Nagari Sahakari Patsanstha
Limited, Shirsoli, Jalgaon
Unity Chamber, Jalgaon
Dist. Jalgaon
4. Purnawad Nagari Sahakari Patsanstha
Limited, Shirsoli, Jalgaon
Unity Chamber, Jalgaon
Dist. Jalgaon
5. Jagannath Vaman Joshi
Deceased, through His LR's
 - 5-a) Laxmibai Jagannath Joshi
age major, occ. Household
r/o Khandesh Mill Colony,
Plot No. 29/B, Ring road
Jalgaon, Dist. Jalgaon
 - 5-b) Hemant (Hemkant) Jagannath Joshi

age 36 years, Labour
r/o as above.

5-c) Somnath Jagannath Joshi
age 35 years, occ. Labour
r/o as above.

5-d) Dharmendra Jagannath Joshi
age 34 years, occ. Labour
r/o as above.

5-e) Dhanraj Jagannath Joshi
age 32 years, occ. Labour
r/o as above.

6. Hemant Jagannath Joshi
age 37 years, occ. Service
r/o 29/B, Khandesh Mill Colony
Ring Road, Jalgaon
Dist. Jalgaon.

.. RESPONDENTS

Mr. K.C. Sant, advocate for petitioner.

Mr. S.R. Yadav Lonikar, AGP for the State.

Mr. V.A. Pawar and Mr. P.B. Salunke, advocates for respondent nos. 5 and 6.

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CORAM : S. B. SHUKRE, J.

DATE : 9th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel for the contesting parties.

None appears for respondent nos. 3 and 4 though duly served.

3. By this writ petition, legality and correctness of the judgment and order dated 19th July, 2014, passed by the Divisional Joint Registrar, Cooperative Societies, Nashik in Revision Application No. R-NIL/2011 has been questioned.

4. The main plank of challenge raised in this petition is that after remand of the revisional application for consideration afresh, the revisional authority ought not to have enlarged the scope of revision application by considering new grounds of challenge but it has done so and has illegally permitted to be brought on record new grounds by allowing amendment application. He submits that the impugned order is only based upon those new grounds.

5. On going through the impugned order with the help of learned counsel for the contesting parties, I do not find any substance in the said ground of challenge. There are various other grounds as well on which the order passed on 10th May, 2012, confirming the auction sale dated 27th April, 2011, has been found to be vitiated by the order impugned herein.

6. The learned Divisional Joint Registrar has found that the property that was subjected to auction sale was a two storied residential house and, prima facie, the upset price set by the authority was almost eight times more than the amount which was to be recovered. The learned Registrar, further found, relying upon the law laid down by the Honourable Apex Court in the case of Ram Kishan Vs. State of Uttar Pradesh **AIR 2012 SCW 3491**, that the authority selling the property must decide as to how much property would be necessary to be sold for satisfaction of the recoverable dues and, since the upset price determined by the authority was disproportionate to the recoverable dues, the learned Registrar concluded

that the sale of the entire property was contrary to Rule 107(5) of the Maharashtra Co-operative Societies Rules 1961 and thus illegal. I do not see any illegality having been committed in this regard by the Revisional Court.

7. Another ground which has been considered valid by the learned Registrar for setting aside the sale is that the upset price was found to be intentionally suppressed in the public notice and that the public notice also did not describe correctly the property that was required to be sold, thereby depriving the prospective purchasers from ascertaining the nature and probable value of the property and submit their bids accordingly. This violation has been found by the learned Registrar as going against the mandate of Rule 11(e) and (f) of the Maharashtra Co-operative Societies Rules, 1961 and rightly so.

8. One more ground which was considered by the learned Registrar for setting aside the impugned order is that it was found by the learned Registrar that revisional applicant no. 1 Jagannath was the owner of the property which was subjected to auction for recovery of total dues shown in the recovery certificates and, in one of the recovery certificates, revisional applicant no. 1 Jagannath was not shown as the debtor. If a person is not debtor and does not owe anything to the society, atleast apparently, his property could not be subjected to sale for recovery of that which he does not owe to the society.

9. Out of the above three grounds, first two grounds were already there in the original revision application and, therefore, the contention that Revisional Court exceeded its authority cannot be accepted. Then, no documentary proof regarding deposit of 15% and 85% of the purchase price mandatorily within the stipulated time, was produced by the petitioners, the auction purchasers, before the learned Registrar and, therefore, the learned Registrar found that petitioner committed breach of this mandatory condition and rightly so.

10. All these grounds, except the third one, by their very nature, had no connection whatever with the pleadings brought on record by way of amendment and, they were already there, as stated earlier, when the original application was filed. Even the third ground, goes to the root of the power of the authority to sell the property to recover money not owed by one of the parties and, therefore, could have been considered even on the strength of revisional powers of the authority and, has been rightly considered by it and has been rightly found to have been vitiated the sale.

11. At this juncture, learned counsel for petitioner has invited my attention to the law laid down by the Honourable Apex Court in the case of Guttikonda Venkataramaikah Vs. Godavarthy Venkateswarlu and another AIR 2015 SC (supp) 1682 wherein it has been held that duty is cast upon the judgment debtor also to deposit the entire amount of the dues. There can be no dispute about the principle laid down in this case. However, I find that even this requirement has been complied with by the debtor, as

seen from the observations made in the impugned order in paragraph nos. 38 and 39.

12. Learned counsel for petitioner, at this stage, places reliance upon the case of Jamshed Hormusji Wadia Vs. Board of Trustees Port of Mumbai and another **2004 AIR SCW 537**, to contend that after remand, the Court to which the case has been remanded cannot assume that filed of jurisdiction which is wider than the one set in the remand order. No doubt, by this principle the remand Court could never have exceeded its limit by going into the field not permitted in the order of remand. But, if one considers the order of remand, one would find that it only directed the revisional Court to decide the revision application afresh by considering the evidence available on record or such other additional evidence as may be permitted to be brought on record and also the rival submissions. The remand order also states that the revision application would stand restored to that position which was obtaining before the date of 25th April, 2012. Obviously, this would mean that whatever were the pleadings on that day, including the grounds of objection, were permitted to be considered by the revisional Court. Admittedly, the grounds relating to value of the property to be auctioned off being disproportionate to the recoverable dues, suppression of the upset price in the public notice, not specifying correctly the description of the property and non-payment of purchase price within stipulated period of time were the grounds that were already made in the original application and those grounds were found to be validly made by the learned Registrar. Therefore, I find that broadly speaking the learned Registrar has followed

the principle laid down in the case of Jamshed (supra).

13. In the circumstances, I find no substance in the petition and it deserves to be dismissed with costs. Writ petition stands dismissed with costs. Rule discharged.

(S. B. SHUKRE)
JUDGE

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