

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
WRIT PETITION NO. 7113 OF 2012

Shri Arjun Fakira Bari,
Age : 45 years, occup. Agril.,
R/o Shirsoli, Tq. & Dist. Jalgaon .. Petitioner

versus

01. Divisional Joint Registrar,
Co-operative Societies, Nashik
02. Deputy Registrar,
Co-operative Societies, Jalgaon
03. Purnavad Nagari Sahakari
Patsanstha, Maryadit, Shirsoli,
Tq. & Dist. Jalgaon,
through its Manager
04. Special Recovery Officer,
Purnavad Nagari Sahakari
Patsanstha Maryadit,
Shirsoli, Tq. & Dist. Jalgaon,
05. Madhukar Fakira Bari,
Age : 50 years, occp. : Agril.,
R/o Shirsoli, Tq. & Dist. Jalgaon,
06. Kailas Kachru Patil,
Age : 45 years, occup: Agril.,
R/o Shirsoli, Tq. & Dist. Jalgaon
07. District Deputy Registrar,
(Co-operative Societies), Jalgaon
08. Mahendra Naryan Kedar
Age : 48 years, Occ : Business,
R/o Shrikrushan Colony, Jalgaon,
Tq. and Dist. Jalgaon.
09. Anil Totaram Shimpi,
Age : 45 years, Occup. Business,
R/o Soyegaon, Tq. & Dist. Aurangabad .. Respondents

Mr Subodh P. Shah, Advocate for petitioner
Mr S. P. Tiwari, Asstt. Govt. Pleader for respondents 1, 2 and 7
Mr M. S. Deshmukh, Advocate for respondents no. 3 and 4
Mr G. V. Wani, Advocate for respondent no. 5
Mr Vikram A. Pawar, Advocate for respondents no. 8 and 9

CORAM : SUNIL P. DESHMUKH, J.
DATE : 1st August, 2018

ORAL JUDGMENT:

1. Heard Mr Subodh Shah, learned counsel for petitioner, Mr S. P. Tiwari, learned Assistant Government Pleader, Mr M. S. Deshmukh, learned counsel for respondents no. 3 and 4, Mr G. V. Wani, learned counsel for respondent no. 5 - guarantor and Mr Vikram A. Pawar, learned advocate for respondents no. 8 and 9 - purchasers.

2. Succinctly referred to, the case of the petitioner is that no due procedure had been followed in recovery of the amount under the certificate issued pursuant to section 101 of the Maharashtra Co-operative Societies Act, 1960. (MCS Act).

3. Mr Shah submits, the procedure has been referred to under rule 107 of Maharashtra Cooperative Societies Rules, 1961 framed under the Act. Under the same, initially, for satisfaction of debt, movable properties would have to be considered. While attaching immovable property notice of attachment is required to be served on borrower. The procedure prescribed for execution of recovery of amount

is not complied with. According to him, rules further require that only so much of secured property is to be dealt with as would be sufficient for satisfaction of debt. Whereas in present case while the debt at the highest on the date of auction sale of the property would have been ₹ 2,00,000/-, three acre landed property of petitioner abutting Jalgaon has been sold for a paltry amount of ₹ 21,00,000/-. It would have fetched amount in crores in then prevailing market prices. He submits, over and above upset price of the sale has been fixed subsequent to the date of sale. He, therefore, submits that whole procedure followed in purported recovery is faulty, illegal and untenable. Revisional authority has not taken into account all these aspects and dealt with the matter cursorily and has dismissed the same under the impugned order.

4. On the other hand Mr Pawar appearing on behalf of respondents no. 8 and 9 - the purchasers, submits that all the submissions now being advanced by petitioner were not the grounds taken in revision. Even his clients - purchasers had not been made party to revision. The revision has been deficient on all counts and would not have been

maintainable yet, the same has been entertained and decided. He submits that while the grounds now being urged were not the grounds in revision, writ petition may not be entertained beyond what were the grounds in revision.

5. Learned Assistant Government Pleader on behalf of respondents no. 1, 2 and 7 submits that requisite procedure has been followed by respondent no. 7 while putting the property to auction sale and confirmation of the same. It is submitted that respondent no. 7 has taken into account report as well as documents submitted by the co-operative credit society. It is after consideration of the same that the sale is confirmed. Respondents no. 2 and 7 have followed principles of natural justice and law and procedure for issuance of recovery certificate as well as while deciding revision and confirming sale by auction under order dated 31st March, 2012.

6. Mr M. S. Deshmukh, learned counsel on behalf of respondents no. 3 and 4 submitted that petition is not tenable since prayers in writ petition were never the reliefs

sought in revision petition. He justifies auction held and sale confirmed, submitting that objection sought to be raised by petitioner to recovery certificate is without any basis. According to him, the society in its discretion can proceed against property either of defaulter or guarantor regardless of whether it is mortgaged or not. He submits that respondents no. 3 and 4 have rightly proceeded with taking over possession of agricultural property exclusively owned by petitioner for the purpose of recovery. He refutes that petitioner had not been granted opportunity because, according to learned counsel, due notice was given to petitioner under rule 107 (11)(e) of the rules as also through paper publication and thus petitioner has no right to question auction as well as its confirmation and resultant sale certificate.

7. Mr G. V. Wani, learned counsel appearing on behalf of respondent 5 – guarantor supports the submissions on behalf of petitioner by learned counsel Mr. Subodh Shah.

8. Having heard learned counsel for parties as aforesaid, it may have to be noted that factual position would indicate, the objections are in respect of manner in which

execution had proceeded with and allegations are that the procedure had been followed in breach. Whether proper procedure has been followed or not and whether there is material on record to depict the same will have to be examined while it is contended that non-adherence to procedure frustrates object and purpose underlying the same. Submissions advanced on behalf of respondents no. 1, 2, 3, 4 and 7 are not supported by placing material on record. In the circumstances, it appears that quite a few questions raised with regard to procedure being followed in recovery of amount need to be dealt with in some details, and as such, it would be worthwhile to refer the matter to revisional authority for consideration of matter afresh, letting proper and adequate opportunity including amendments, if any, and even opportunity to all persons concerned including purchasers.

9. As such, impugned order dated 16-05-2012 passed by respondent no.1 Divisional Joint Registrar, Nashik in revision application No. R-NIL/2011 is set aside. The matter is remitted to revisional authority for

reconsideration giving opportunity to all parties as referred to above. All points are kept open for parties.

10. Revisional authority to proceed with the matter as expeditiously as possible and dispose it of preferably within a period of six months from the date of receipt of writ of this order.

11. Interim relief, as operating in the meanwhile, to continue till disposal of revision.

12. Writ petition is disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-