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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.6584 OF 2013

1. Ramchandra Sitaram Mulik)
Age 52 years, Occ. Agriculture)

2. Muktabai Ramchandra Mulik)
Age 45 years, residing at Mahavir Nagar,)
Both at Post Hupari, Tal.Hatkanangale,)
District Kolhapur) ...Petitioners

V/s.

1. Janata Nagari Sahakari Patsanstha Ltd.,)
Hupari, Tal.Hatkanangale, District Kolhapur)

2. Special Recovery Officer and Sale Officer,)
Janata Nagari Sahakari Patsanstha Ltd.,)
Hupari, Tal.Hatkanangale, District Kolhapur)

3. Shri Kuntinath Mahadev Khot)

4. Dilip Kuntinath Khot)

5. Sou. Sanmati Dilip Khot)
Nos. 3 to 5 residing at Shivajinagar Hupari,)
Tal.Hatkanangale, Dist.Kolhapur)

6. Deputy Registrar for Co-operative)
Societies, Hatkanangale, Dist.Kolhapur)

7. Divisional Joint Registrar for Co-operative)
Societies, Kolhapur Region, Kolhapur)

8. The State of Maharashtra) ...Respondents

Mr.P.D. Dalvi for the Petitioners.

Mr.S.S. Patwardhan for the Respondent Nos.1 and 2.

Mr.Chetan G. Patil for the Respondent Nos.3 to 5.

Ms.Kavita N. Solunke, A.G.P. for the State – Respondent Nos.6 to 8.

CORAM : R.D. DHANUKA, J.
DATE : 15TH JANUARY, 2018.

JUDGMENT :-

1. Rule. Learned counsel for the respondent waives service. By consent of parties, the petition is heard finally forthwith.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 3rd May, 2013, passed by the learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, dismissing the revision application filed by the petitioner under section 154 of the Maharashtra Co-operative Societies, Act, 1960 (for short “MCS Act”). Some of the relevant facts for the purpose of deciding this petition are as under :

3. The petitioners had obtained a loan for Rs.4,36,000/- on 31st Mach, 2015 from the respondent no.1, a Co-operative Credit Society. The petitioners committed default in making repayment of the said loan to the respondent no.1. The respondent no.1 filed an application for issuance of recovery certificate under section 101 of the MCS Act before the respondent no.7. The recovery certificates were issued in favour of the respondent no.1 bearing Nos.480 of 2009 and also 481 of 2009 for the sum of Rs.4,36,000/- with interest at the rate of 15% p.a. from 1st August, 2009 and Rs.5,00,000/- with interest at the rate of 18% p.a. from 1st August, 2009 respectively. It is not in dispute that neither of the petitioners challenged those two

recovery certificates issued by the respondent no.7. The Special Recovery Officer thus passed an order and attached the property of the petitioners bearing CTS No.3077, situated at village Hupari, Taluka Hatkanangale, District Kolhapur on 27th October, 2009. The mutation entries were made after passing of the said order by the Circle Officer on 23rd November, 2009.

4. The Special Recovery Officer issued a notice under rule 107(3) read with 107(11) of the Maharashtra Co-operative Societies Rules, 1961 (for short MCS Rules) demanding an amount of Rs.7,81,850/- and Rs.14,25,833/- as on 30th September, 2009 and directed the petitioners to pay the said amounts making it clear that in case of default, the properties of the petitioners would be sold by auction.

5. The Special Recovery Officer thereafter issued a notice for auctioning the property of the petitioners by publication on 1st April, 2010. The properties proposed to be auctioned by the said Special Recovery Officer was bearing CTS No.3077 comprising of 18 rooms and the open space. It is the case of the petitioners that the said property was purchased by the respondent nos.3 to 5 in auction on 4th May, 2010 for an amount of Rs.26,51,000/-. On 4th May, 2010, the respondent no.1 issued a notice stating that the respondent nos.3 to 5 had purchased the suit property in auction for an amount of Rs.26,51,000/- and they were directed to pay the said amount within 30 days i.e. on or before 3rd August, 2010 making it clear that in case of any default, the entire process will be completed.

6. On 30th August, 2010, the Deputy Registrar, Hatkanangale

confirmed the sale by recording that at the time of sale, the sale price of the property was received on 18th May, 2010 and further confirmed that the said sale was made absolute in terms of rule 107(14) of the MCS Rules. On 22nd June, 2011, the respondent nos.1 and 2 executed a registered sale deed in favour of the respondent nos.3 to 5 in respect of the suit property which was adjudicated on 4th January, 2011 for the purpose of payment of stamp duty.

7. Sometime in the year 2012, the petitioners filed a Revision Application bearing No.529 of 2012 and challenged the order dated 30th August, 2010 passed by the respondent no.1 thereby confirming the sale deed dated 20th August, 2010 and prayed for setting aside the said certificate on various grounds. The said revision application was opposed by the respondent nos.1 and 2 by filing an affidavit in reply denying the contentions of the petitioners that any illegality was committed by the Sale Officer and contenting that the sale was rightly confirmed by the respondent no.1.

8. It is the case of the petitioner that during the pendency of the revision application filed by the petitioners before the respondent no.8, the Special Recovery Officer took actual possession of the house property and handed over the same to the respondent nos.3 to 5. On 3rd May, 2010, the revision application filed by the petitioners was heard by the respondent no.8 and came to be rejected. The Revisional Authority held that the auction was kept on 4th May, 2010 and the auction purchaser had paid 15% amount as well as balance 85% within time as prescribed and thus there was no reason to interfere with the auction sale. The petitioners have impugned both these orders dated 3rd May, 2013 passed by the respondent no.8 in

this writ petition.

9. Mr.Dalvi, learned counsel for the petitioner invited my attention to the annexures to the writ petition including the impugned orders passed by the authorities. It is submitted by the learned counsel that the respondent nos.3 to 5 had not deposited 15% amount of the sale price of Rs.26,51,000/- at the time of sale nor had deposited the balance 85% amount within 15 days from the date of sale under rule 107(11)(g) and (h) respectively of the MCS Rules nor paid the cost of stamp to the respondent no.1 as per sub-rule (h) of rule 107(11) of the MCS Rules which amount was required to be paid within 30 days from the date of sale. He submits that the stamp amount was paid on 20th June, 2011 though the auction was complete on 4th May, 2010. He submits that though the amount of Rs.3,97,650/- was payable being 15% of the sale amount, the respondent nos.3 to 5 only deposited an amount of Rs.3,89,200/- and thus there was shortfall in making payment of the said 15%. He submits that the balance amount was paid by the respondent nos.3 to 5 only on 10th May, 2010. The stamp was allegedly purchased by the respondent nos.3 to 5 on 10th June, 2011.

10. In support of this submission, learned counsel for the petitioner invited my attention to some of the provisions of the sale-deed executed by the respondent nos.1 and 2 in favour of the respondent nos.3 to 5 annexed at Exhibit “G” to the petition. It is submitted that the said provisions of rule 107 of the MCS Rules are mandatory and are required to be implemented strictly. Since the respondent nos.3 to 5 did not pay the amount as contemplated under rule 107(11)(g) and (h) of the MCS Rules, the authority could not

have confirmed the said sale in favour of the respondent nos.3 to 5 and ought to have cancelled the sale.

11. The next submission of the learned counsel is that the sale certificate in this case was issued by the Deputy Registrar, Co-operative Societies under rule 107(14) (v) of the said MCS Rules and not by the Sale Officer, who alone could have issued such sale certificate and also the certificate of confirmation of sale under rule 107(14) of the MCS Rules and thus the entire auction proceedings were illegal and the amounts thus paid by the auction purchaser, if any, was liable to be refunded to them. He submits that the duty was cast upon the Sale Officer to return the amount received from the auction purchasers. It is submitted that the Deputy Registrar was not the Sale Officer and thus no such certificate could have been issued. He submits that only the Special Recovery Officer and the Sale Officer appointed under section156 of the MCS Act, the respondent no.2 herein could have issued such certificate of confirmation of sale and also the sale certificate. He submits that the said certificate thus issued by the Deputy Registrar is not an order in the eyes of law and had no legal sanctity.

12. Learned counsel placed reliance on the judgment of this Court in case of (i) ***The Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr. vs. The State of Maharashtra & Ors. 2012(2) ALL MR 566,*** (ii) an unreported judgment delivered by a learned single Judge of this Court on 28th April, 2014 in case of ***Janata Sahakari Bank Ltd. & Anr. vs. Puran Maharashtra Automobiles Shahganj & Ors.*** with other connected Writ Petition No.1461 of 2013 and in particular paragraphs 46 to 48 and (iii) an unreported

judgment of this Court delivered on 18th July, 2012 in case of ***M/s.Puran Automobiles, Shahagunj vs. The State of Maharashtra & Ors.*** Writ Petition No.9393 of 2011 and in particular paragraphs 8, 10, 11, 13, 14 and 15 in support of the submission that the District Deputy Registrar was not competent to confirm the sale.

13. Mr.Patwardhan, learned counsel appearing for the respondent nos.1 and 2, on the other hand, invited my attention to some of the exhibits and pleadings annexed to the writ petition and also to the impugned order passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur dated 3rd May 2013. It is submitted that though his client had raised an issue of maintainability of the revision application itself filed by the petitioners before the Divisional Joint Registrar and though the said submission was narrated in the impugned order, the Divisional Joint Registrar did not decide the issue of maintainability. In his alternate submission, he submits that the said authority has rightly dismissed the revision application filed by the petitioners on merits.

14. It is submitted that the said order was passed by the Divisional Joint Registrar under Section 154 of the said MCS Act which powers can be exercised by the State Government and also the Registrar provided any decision or order has been passed by any sub- ordinate officer and no appeal lies against such decision or order. He submits that in the said revision application filed by the petitioners, the petitioners had challenged the sale and confirmation certificate issued by Deputy Registrar which was not an order. In support of his submission that revision application itself was not maintainable, learned counsel placed reliance on the

judgment of this Court in the case of ***The Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr. (supra)*** and in particular paragraphs 6, 8, 9 and 10 thereof. The said judgment was also relied upon by the learned counsel for the petitioners.

15. It is submitted by the learned counsel that the petitioners had filed the said revision application after almost two years after the date of auction of the property of the petitioners held by the respondent no.2. It is submitted that though the petitioners could have applied to the authority under Rule 107 (14) (i) of the MCS Rules for setting aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting the auction of immovable property of the petitioners within 30 days from the date of such auction, admittedly the petitioners did not apply for setting aside the sale under that provision or otherwise. The revision application thus filed by the petitioners was not maintainable also on that ground.

16. It is submitted that the petitioners were admittedly defaulters in making repayment of loan obtained by the petitioners and two recovery certificates were thus issued by the Assistant Registrar against the petitioners under Section 107 of the said MCS Act. The petitioners had neither made any payment to the respondent no.1 nor challenged the said two recovery certificates issued by the Assistant Registrar against the petitioners. The said recovery certificates had thus attained finality. The property of the petitioners was thus rightly auctioned by the respondent no.2 under Rule 107 (11) of the MCS Rules after following the proper procedure.

17. In so far as the submission of the learned counsel for the petitioners that the respondent nos.3 to 5 who were the auction purchasers and not deposited 15% of the sale price or also the balance 85% within the time contemplated under Rule 107(14) (g) and 107(14)(h) respectively and thus the sale was required to be declared void and immovable property was required to be resold is concerned, learned counsel for the respondent no.1 invited my attention to the sale deed executed between the sale officer and the respondent nos.3 to 5 including the annexures to the sale deed which was duly registered. He submits that auction purchasers had paid Rs.5,000/- and Rs.3,52,650/- on 4th May 2010 itself and had also paid the balance amount on 18th May 2010. The auction sale had taken place on 4th May 2010 wherein the respondent nos.3 to 5 were the highest bidders and their bid was Rs.26,51,000/-. He submits that 15% of the sale price paid by the auction purchasers was deposited by the auction purchasers with the respondent no.2 at the time of purchase and thus the said provision was duly complied with. In so far as the balance amount of the purchase money is concerned, the said amount was also paid within time as contemplated under Rule 107 (11)(h) of the MCS Rules.

18. In so far as the stamp duty payable on the said sale deed is concerned, it is submitted that even the said stamp duty was duly paid by the auction purchasers within time as contemplated under Rule 107(11)(h) of the MCS Rules. He submits that the said receipts of payment were duly annexed to the sale deed itself at the time of registration of the said sale deed. It is submitted that in any event, the revisional authority while dismissing the revision

application filed by the petitioners had considered the record and had rendered a finding in the impugned order that auction purchasers had paid 15% amount and 85% amount in time as per record and thereafter execution of the sale deed of the impugned property was done with the auction purchasers. He submits that this Court cannot interfere with the finding of facts based on actual record produced by the parties before the revisional authority.

19. In so far as the submission of the learned counsel for the petitioners that the sale certificate dated 30th August 2010 which also confirms the sale of the property in favour of the auction purchasers under Rule 107 (14) of the MCS Rules as absolute which indicates that the entire amount was already received by the authority on 18th May 2010, he submits that even if the said sale certificate was issued by the Deputy Registrar, it would not amount to any material irregularity. The auction of property was conducted by the respondent no.2 who was appointed as Special Officer or Sale Officer under Section 156 of the MCS Act and was authorized to take various steps for recovery of dues against the petitioners and to effect the sale of the property of the petitioners under Rule 107 of the MCS Rules.

20. It is submitted by the learned counsel that unless it is found that the sale was affected by any irregularity or fraud or mistake and as a result thereof, borrowers had sustained any substantial injury, sale of such property effected under Rule 107 of the MCS Rules cannot be set aside. The petitioners had failed to demonstrate that by virtue of sale certificate issued by the Deputy Registrar, the said certificate amounted to a material irregularity or

that because of such certificate having been issued by the Deputy Registrar, the petitioners had sustained any substantial injury of any nature whatsoever.

21. It is submitted by the learned counsel that in this case, the petitioners did not apply for setting aside the sale within the time contemplated under Rule 107 (14)(i) of the MCS Rules. After confirmation of the sale by the Deputy Registrar and after issuing the sale certificate in favour of the respondent nos.3 to 5, authority had taken possession of the property from the petitioners and after execution of the sale deed in favour of the auction purchasers has handed over possession thereof to the auction purchasers. The auction purchasers thereafter had demolished the entire then existing structure and redeveloped the plot. There was no stay in favour of the auction purchasers obtained by the petitioners at any stage. The petitioners thus cannot be granted any relief on that ground.

22. Learned counsel for the respondent nos.1 and 2 submits that there was an amendment to Rule 107(14)(v) with effect from 30th August 2014 and the words “Recovery Officer” was substituted by the words “District Deputy Registrar” empowered to grant a certificate of sale bearing his seal and signature to the purchaser and such certificate shall state the property sold and the name of the purchaser. He submits that even if this Court accepts the submission of the petitioners and if the sale is set aside on this flimsy ground, no purpose would be served by setting aside the sale after several years and to direct the District Deputy Registrar for issuance of sale certificate and to confirm the sale under Rule 107

(14) of the MCS Rules.

23. Learned counsel for the respondent nos.1 and 2 distinguished the other judgments relied upon by the learned counsel for the petitioners and would submit that the respondent no.2 was appointed as a special recovery officer and sale officer under section 156 of the MCS Act and was fully empowered to exercise powers under the said provisions including the provisions under Rule 107 of the MCS Rules. He submits that there is no perversity in the findings rendered by the Divisional Joint Registrar and thus this court cannot interfere with the impugned order dated 3rd May, 2013 passed by the learned Divisional Joint Registrar, Co-operative Society.

24. Mr.Dalvi, learned counsel for the petitioners in rejoinder submits that the recital in the sale deed dated 22nd June, 2010 clearly indicates that the entire payment required to be made by the sale purchaser was not made within the time contemplated under Rule 107 (11)(g) and (h).

<u>REASONS AND CONCLUSIONS :</u>

25. The question arises for the consideration of this Court is 'whether the revision application filed by the petitioners under section 154 of the MCS Act was at all maintainable' before the Divisional Joint Registrar. A perusal of the impugned order passed by the Divisional Joint Registrar clearly indicates that the issue of maintainability of the said revision was raised by the respondent no.1. Thought the argument was narrated in the impugned order passed by the Divisional Joint Registrar, the learned Divisional Joint Registrar did not deal with the said argument and decided the matter

on merits. Under section 154(2), a revision is maintainable before the State Government or before the Registrar as the case may be, if an order is passed by any other officer other than the Registrar, Additional Registrar or the Joint Registrar. In this case, the petitioners have filed Revision Application No.624 of 2012 against the sale certificate issued by the Deputy Registrar. The sale of the property could have been challenged by the petitioners before the Sale Officer before the time contemplated under rule 107. In my view, the learned counsel for the respondent no.1 is right in his submission that the revision itself was not maintainable before the Divisional Joint Registrar under section 154 of the MCS Act in view of the fact that sale and confirmation certificate issued by Deputy Registrar was not an order.

26. In my view, Mr.Patwardhan, learned counsel for the respondent no.1 has rightly placed reliance on the judgment of this Court in case of ***The Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr.*** (supra). This Court in the said judgment has held that the revision is possible either *suo-moto* or on the application in respect of only an order passed in an enquiry or proceeding by a Sub-ordinate Officer of the Revisional Authority. In the said judgment, it has been held that the order passed by the District Deputy Registrar confirming the sale is not an order in the eyes of law and has no sanctity of aw and thus there is no possibility of challenging it before the Revisional Authority under section 154 of the MCS Act. In the said judgment, this Court considered that the respondent though had an ample opportunity to challenge the legality of the sale on the grounds mentioned in rule 107(14)(i), the respondent had not challenged the legality of the same on the grounds mentioned in such

provision, which provision permits the applicant to prove his case on facts. After holding such enquiry, the Recovery Officer is required to pass a reasoned order and such order probably could be challenged in the revision under section 154. In this case also, admittedly the petitioners did not challenge the legality and validity of the same by making an application under rule 107(14)(i) of the MCS Rules but has challenged the sale and confirmation certificate without first invoking the provisions of rule 107(14)(i) of the MCS Rules. The judgment in case of ***The Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr.*** (supra) relied upon by the petitioners thus would assist the case of the respondent no.1 and not the petitioners.

27. Insofar as unreported judgment delivered by this Court on 18th July, 2012 in case of ***M/s.Puran Automobiles, Shahagunj*** (supra) relied upon by the learned counsel for the petitioners is concerned, the said judgment is clearly distinguishable in the facts of this case. Be that as it may, in my view, merely by issuing such certificate by the Deputy Registrar, no substantial prejudice is caused to the petitioners' case and on that ground the auction initiated long back cannot be set aside.

28. Insofar as unreported judgment dated 28th April, 2014 delivered by this Court in case of ***Janata Sahakari Bank Ltd. & Anr.*** (supra) in Writ Petition No.1455 of 2013 relied upon by the learned counsel for the petitioners is concerned, in view of the fact that the petitioners had not challenged the said sale by involving Rule 107(14) (I) of the MCS Rules, the said judgment of this Court is clearly distinguishable in the facts of this case and would not assist the case of the petitioners.

29. Insofar as unreported judgment of this Court dated 28th April, 2014 in case of ***Govind Shankarrao Gaikwad vs. The Ganesh Co-op. Bank & Ors.*** in Writ Petition No.4118 of 2014 is concerned, by the said order, the learned single Judge has referred the question as to "whether a litigant, who challenges an action consequential to the issuance of a certificate under section 101 of the MCS Act, 1960 in a revision under section 154 and not the recovery certificate itself, is required to deposit the amount equivalent to 50% of dues recoverable under the recovery certificate, or not" to the Larger Bench. The said judgment relied upon by the learned counsel for the petitioners is of no assistance to the petitioners.

30. Be that as it may, it is not in dispute that the respondent no.2 had been appointed as Special Recovery Officer and the Sale Officer of the respondent no.1 under section 156 of the MCS Act. Under section 156 of the MCS Act, the respondent no.2 was thus empowered to initiate the mode of recovery provided under the said Act. The Recovery Officer is defined under rule 2(h) of the MCS Rules. It is provided that the Recovery Officer means any person empowered to exercise in any District, the powers of Registrars under section 156. Under rule 107, the procedure for attachment and sale of the property under section 156 is prescribed. Under rule 107(11)(d), the Sale Officer is empowered to levy attachment on the property of the defaulter before the sale of such property is effected. There was amendment to the said rule 107(11)(d) and the words "Sale Officer" was substituted by the words "Recovery Officer" by Government Notification dated 30th August, 2014. The Sale Officer in this case had taken possession of the properties from the petitioners before the effect of the same thereof. The prescribed procedure

under the said rule 107 was initiated by the respondent no.2. The properties were auctioned on 4th May, 2010.

31. The respondent nos.3 to 5 participated in the said auction and submitted their bid of Rs.26,51,000/- which was the highest bid. A perusal of the sale deed read with the receipts annexed thereto clearly indicates that the respondent nos.3 to 5 had paid the amount of Rs.3,89,200/- and Rs.5,000/- on 4th May, 2010 itself and had paid the balance amount on 18th May, 2010 i.e. within 15 days from the date of auction of the properties in question. In the sale certificate dated 30th August, 2010 issued by the Deputy Registrar, Co-operative Societies, it is acknowledged that at the time of the sale of the property, the sale price of the property was received on 18th May, 2010. The sale was accordingly confirmed under rule 107(14)(v) and the same became absolute on 30th August, 2010. A perusal of the impugned order passed by the Divisional Registrar, Co-operative Societies also clearly indicates that after perusing the record produced by the parties, a specific finding is rendered in the impugned order that the auction purchasers had paid 15% amount and 85% amount on time as per record and thereafter the sale deed of the impugned property was executed between the Sale Officer and the auction purchasers. I am thus not inclined to accept the submission of the leaned counsel for the petitioners that the consideration amount was not paid by the auction purchasers within the time contemplated under rule 107(11)(g) and (h).

32. Insofar as the submission of the petitioners that the auction purchasers had not paid general stamp for sale certificate is concerned, it is not the case of the respondent no.2 that no such

amount was paid by the auction purchasers within the time contemplated under rule 107(11)(h). In the sale certificate issued by the Deputy Registrar, it was clearly provided that the responsibility of the necessary registration fees and stamp duty towards the competent authority was on the concerned parties. It is not in dispute that no such objection was raised by the petitioners before the Divisional Joint Registrar. The petitioners thus cannot be allowed to raise this issue for the first time in these proceedings across the bar. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the auction of the property was required to be held again and the properties in question were required to be resold.

33. It is not in dispute that no payment of dues together with interest, bhatta and other expenses incurred in bringing the property to sell, including the expenses of attachment were paid by the petitioners before the Sale Officer under rule 107(12) of MCS Rules and thus the said property was rightly not released after cancelling the sale by the Sale Officer. Similarly, the petitioners also did not exercise any rights under rule 107(13) by depositing any amount as contemplated therein and did not apply for setting aside the sale within the time contemplated under Rule 107(14)(i) of MCS Rules. The sale of the properties in question thus effected by the respondent no.2 not having been challenged by the petitioners attained finality. The respondent nos.3 to 5 having made the payment within time contemplated under rule 107(11)(g) and (h), the Sale Officer executed the sale deed in favour of those auction purchasers and handed over possession thereof to them. The petitioners thus in these circumstances even otherwise could not have challenged the

sale certificate/auction of the property in favour of the respondent nos.3 to 5 and that also after two years of the date of the auction.

34. The petitioners have not disputed that after obtaining physical possession of the properties in question from the Sale Officer, the auction purchasers have demolished the existing structures on the property in question and have carried out redevelopment on the said property quite some time ago. The Divisional Joint Registrar thus in these circumstances could not have even otherwise granted the reliefs in favour of the petitioners. The petitioners have not disputed that a default was committed by them in making repayment of the loan amount to the respondent no.1 society.

35. Insofar as the submission of the learned counsel for the petitioners that under the unamended rule 107(14)(v), the sale certificate as well as the certificate confirming the sale could have been issued only by the Sale Officer and not by the Deputy Registrar dated 30th August, 2010 and thus on that ground itself, the auction sale ought to have been declared as void is concerned, there is no dispute that prior to the amendment to the said provision, the said power was to be exercised by the Sale Officer. With effect from 30th August, 2014, the words “Sale Officer” were substituted by “Recovery Officer”. A perusal of the record clearly indicates that no such objection was raised by the petitioners when the sale certificate was issued by the Deputy Registrar. No such specific objection was raised by the petitioners even before the Divisional Joint Registrar. In my view, the petitioners having failed to specify that the auction was illegally held in any manner whatsoever, the petitioners cannot

succeed on the ground that the sale certificate could not have been issued by the Deputy Registrar. In my view, the issuance of such certificate of sale by the Deputy Registrar would atmost amount to an irregularity and not material irregularity. The interest of the petitioners is not materially affected and no substantial miscarriage of justice has taken place thereby vitiating the entire auction sale on such ground.

36. I am inclined to accept the submission of the learned counsel for the respondent no.1 that unless there would have material irregularity or injustice to the petitioners or the petitioners would have been substantially affected by virtue of the said certificate having been issued by the Deputy Registrar, the sale already having been effected long back, cannot be set aside on that ground. Even if the matter is remanded back only for a limited purpose for issuance of the sale certificate by the officer who is now empowered to issue such certificate under the amended provisions of rule 107(14)(5), he will issue such certificate. In my view, no purpose would be thus served by remanding the matter back only for the purpose of issuing such certificate by the correct officer after several years when the auction purchasers have already paid the entire consideration within the time as contemplated, the sale has already been confirmed by the concerned officer and the auction purchasers have already demolished the then existing structures and have carried out redevelopment on the said property.

37. After perusal of the entire record produced before this Court, I am of the view that there was no irregularity of any nature whatsoever in conducting the auction sale of the property in question

by the respondent no.2. The Divisional Joint Registrar has passed a reasoned order after considering all the submissions and the relevant provisions of law and has rendered various finding of facts which cannot be interfered with by this Court in the petition filed under Article 227 of the Constitution of India. The petition is thus devoid of merits.

38. I therefore, pass the following order :-

a). The Writ Petition No.6584 of 2013 is dismissed. Rule is discharged.

b). There shall be no order as to costs.

(R.D. DHANUKA, J.)