

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.7959 OF 2016

Bharat Bhushan .. Petitioner
Vs.
The Minister of Co-operation & Ors. .. Respondents

***ALONG WITH
WRIT PETITION NO.7025 OF 2016***

Narasinga Sahu .. Petitioner
Vs.
The Minister of Co-operation & Ors. .. Respondents

***ALONG WITH
WRIT PETITION NO.7956 OF 2016***

Rajni Agnihotri .. Petitioner
Vs.
The Minister of Co-operation & Ors. .. Respondents

***ALONG WITH
WRIT PETITION NO.7957 OF 2016***

Rita Singh .. Petitioner
Vs.
The Minister of Co-operation & Ors. .. Respondents

Dr.Abhinav Chandrachud i/by M/s.Consulta Juris for the petitioners.
Ms.Kavita Solunke, AGP for the respondent nos.1 & 2.
Mr.C.G. Gavnekar i/by Mr.Gautam Hiranandani for the respondent nos.3
& 4.
Mr.Rajendra Pawar, Joint Registrar, CIDCO present.

***CORAM : R.D. DHANUKA, J.
DATE : 20th March 2018***

P.C.:

. Learned counsel appearing for the parties invited my attention to the inadvertent errors crept in the order dated 13th March 2018.

2. The date of the impugned order mentioned in paragraph 1 of the said order dated 13th March 2018 as 24th March 2017, 24th March 2014 and in paragraph 2 as 24th March 2016 shall be read as **“24th March 2015.”** The order dated 13th March 2018 stands corrected accordingly.

3. Rule. Learned AGP appearing for the respondent nos.1 and 2 waives service. Mr.Gavnekar, learned counsel for the respondent nos.3 and 4 waives service. By consent of parties, the petition is heard finally forthwith.

4. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 19th May 2016 passed by the learned Minister of Co-operation rejecting the revision application filed by the petitioners. In the said revision application filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960, the petitioners had impugned the recovery certificate dated 24th March 2015 issued by the learned Joint Registrar, Co-operative Societies (CIDCO).

5. Dr.Chandrachud, learned counsel for the petitioners submits that Mr.Shahaji Patil who has signed and issued the impugned recovery certificate dated 24th March 2015 in the capacity of Joint Registrar, Co-operative Societies, CIDCO under Section 101 of the Maharashtra Co-

operative Societies Act, 1960 was not authorised to sign and issue the said certificate in view of the fact that the said officer was not holding the charge of office of Joint Registrar, Co-operative Societies, CIDCO on the date of signing such recovery certificate. Learned counsel for the petitioners relied upon the information received under the Right to Information Act, 2005 on 3rd January 2017 informing the petitioners that Mr.Shahaji Patil had already handed over the charge of the Joint Registrar to Mr.Sandip Deshmukh on 16th February 2015 and on 24th March 2015, the said Mr.Sandip Deshmukh was holding charge and not Mr.Shahaji Patil.

6. By an order dated 13th March 2018 after recording this submission made by the learned counsel for the petitioners, this Court directed the learned AGP to produce original file concerning the subject matter of the recovery certificate dated 24th March 2015 and to show whether Mr.Shahaji Patil, who had signed the said recovery certificate was authorised to sign the said certificate and was holding the charge on the date of signing the said recovery certificate or Mr.Sandip Deshmukh was holding the charge of the office of the Joint Registrar, Co-operative Societies, CIDCO on the date of signing the said recovery certificate.

7. Pursuant to the order dated 13th March 2018, learned AGP produces the original files and proceedings concerning the said recovery certificate issued on 24th March 2015.

8. A perusal of the file clearly indicates that the recovery certificate was signed and issued by Mr.Shahaji Patil on 24th March 2015 as the Joint Registrar of Co-operative Societies, CIDCO, Navi Mumbai.

9. It is not in dispute that on 24th March 2015, Mr.Shahaji Patil was not a Joint Registrar, Co-operative Societies, CIDCO. He had already handed over the charge of the office of the Joint Registrar to Mr.Sandip Deshmukh on 16th February 2015.

10. The said Mr.Sandip Deshmukh had not given any fresh hearing to the petitioners after taking the charge on 16th February 2015 from Mr.Shahaji Patil. Mr.Shahaji Patil thus in my view, could not have issued the recovery certificate on 24th March 2015 because he was not holding the charge of the office of the Joint Registrar, Co-operative Societies, CIDCO under Section 101 of the Maharashtra Co-operative Societies Act, 1960.

11. A perusal of the order passed by the learned Minister, Co-operation clearly indicates that though this issue was specifically raised by the petitioners in the revision application filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960, this issue has not been considered at all by the learned Minister. Both the orders are thus illegal. In my view, since the recovery certificate signed by Mr.Shahaji Patil itself is without jurisdiction, the learned Minister, Co-operation ought to have interfered with the impugned recovery certificate.

12. The petitioners has deposited 50% of the certificate amount with the society under Section 154 of the Maharashtra Co-operative Societies Act, 1960 during the pendency of the revision application filed by the petitioners.

13. Dr.Chandrachud, learned counsel for the petitioners vehemently submits that in view of the recovery certificate issued by the Joint Registrar itself being without jurisdiction, 50% of the certificate amount deposited under Section 154 of the Maharashtra Co-operative Societies Act, 1960 by the petitioners with the society shall be directed to be returned to the petitioners. This submission of the petitioners is vehemently opposed by Mr.Gavnekar, learned counsel for the respondent nos.3 and 4 on the ground that the respondent nos.3 and 4 have good chances of success in the recovery proceedings and the petitioners being liable to pay substantial amount of the recovery certificate with the Society and thus the question of refund of any amount does not arise. There is no merit in this submission of Mr.Gavnekar.

14. I therefore pass the following order :-

- (i) The impugned recovery certificates dated 24th March 2015 issued by the Joint Registrar, Co-operative Societies, CIDCO under Section 101 of the Maharashtra Co-operative Societies Act, 1960 are quashed and set aside.
- (ii) The impugned order dated 19th May 2016 passed by the learned Minister, Co-operation annexed at Exhibit 'O' to the petition is also quashed and set aside.
- (iii) Application for issuance of recovery certificate filed by the respondent nos.3 and 4 and revision application filed by the petitioners are restored to file before the learned Joint Registrar, Co-operative Societies, CIDCO, Navi Mumbai.
- (iv) The learned Joint Registrar, Co-operative Societies, CIDCO shall hear both the parties and shall pass a fresh order in accordance with law and without being influenced by the observations made

and conclusion drawn in the impugned recovery certificate dated 24th March 2015 and in the impugned order dated 19th May 2016 passed by the learned Minister, Co-operation in the revision application filed by the petitioners.

- (v) Sai Shakti Co-operative Housing Society Ltd. is directed to refund the amount paid by the petitioners under Section 154 of the Maharashtra Co-operative Societies Act, 1960 to the petitioners within four weeks from today without fail.
- (vi) The petitioners as well as the respondent nos.3 and 4 are directed to appear before the learned Joint Registrar, Co-operative Societies, CIDCO on 3rd April 2018 at 3.00 p.m.
- (vii) The learned Joint Registrar, Co-operative Societies, CIDCO shall pass a fresh order on the application of issuance of recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 within six weeks from the date of first meeting.

15. It is made clear that this Court has not expressed any views on merits of the matter whether the petitioners are in fact liable to pay any amount to the Society in the said application for issuance of recovery certificate. All contentions of both the parties on merits are kept open.

16. Rule is made absolute in aforesaid terms. No order as to costs. Parties as well as the authorities to act on the authenticated copy of this order.

R.D. DHANUKA, J.