IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
REVIEW APPLICATION NO.173 OF 2019 IN
WRIT PETITION NO.7682 OF 2019

Bhanudas s/o Laxman Kartade — Applicant

Versus

The State of Maharashtra & others — Respondents

WITH
REVIEW APPLICATION NO.174 OF 2019 IN
WRIT PETITION NO.7683 OF 2019

Satish s/o Murlidhar Kale — Applicant

Versus

The State of Maharashtra & others — Respondents

Mr.P.R.Katneshwarkar, advocate holding for Mr.S.A.Nandure, advocate for the applicants.
Mr.S.W.Munde, AGP for Respondents No.1 to 4.
Mr.S.S.Thombre, advocate for Respondent No.5.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 26th August, 2019

PER COURT:

1 The applicants, who are the original petitioners in Writ Petitions No.7682 and 7683 of 2019, seek review of the order passed on 09.07.2019 disposing off Writ Petitions No.7682 and 7683 of 2019 on the ground that a statutory remedy under Section 154 of the Maharashtra Co-operative Societies Act, 1960, is

available and the petitioners shall avail of such a remedy.

2 I have heard the learned advocates for the respective sides.

3 There is no dispute that the petitioners are challenging an order passed by the District Magistrate dated 06.07.2018 under Rule 107 (11) (d-1) of the Maharashtra Co-operative Societies Rules, 1961.

4 I find from the order passed by me on 09.07.2019 that besides it being pointed out that there is a statutory remedy available under Section 154, clause (vi) (c) under rule 107 (11) (d-1) was not pointed out to this Court. The said provision indicates that no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this sub-rule shall be questioned in any Court or before any authority. Clauses (a) and (b) suggests that the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction such property is situated, can take possession thereof and on such request being made to him, the possession of the property would be taken and the same would be forwarded to the Recovery Officer.

5 Shri Katneshwarkar, learned advocate for the petitioners, contends that the words "no act" set out in clause (c) would include any steps taken by the District Magistrate, as he is not required to pass any specific order. He is only required to ensure that the possession of the property is taken by following the due procedure and the said property is merely handed over to the Recovery Officer. As such, clause (c) pertaining to, '*no act of the District Magistrate is called in question in any Court*', would mean and include all steps taken by him.

6 In view of the above, the order passed by this Court, dated 09.07.2019, is recalled. These Review Applications are allowed. The Writ Petitions are restored to the file of this Court.

7 Shri Thombare, learned advocate for Respondent-Bank, canvasses that Rule 107 (11) (d-1) of the Maharashtra Co-operative Societies Rules, 1961, would indicate that the District Magistrate has only taken an administrative decision. No hearing is contemplated. The said order of taking possession of the property and handing it over to the Recovery Officer is purely an administrative function.

8 The learned advocate for the petitioners submits that the District Magistrate is not required to cause any hearing and merely has to follow the procedure for taking possession of the property and handing it over to the Recovery Officer. This would amount to an administrative function.

9 As such, by the consent of the parties, these two petitions shall stand removed from the board with the liberty to the petitioners to approach the learned Division Bench of this Court.

RAVINDRA V. GHUGE
JUDGE

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