

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10851 OF 2014

1. Sudhakar Dinkar Mohite
Age : 55 years,
Residing at Choundeshwarvadi,
Taluka Malshiras, District – Solapur

...Petitioner

Versus

1. The State of Maharashtra
Through its Department of Co-operation
Mantralaya, Mumbai
2. The Divisional Joint Registrar for Co-
operative Societies, Pune Region, Pune.
3. Assistant Registrar for Co-operative
Societies, Akluj, Taluka Malshiras,
District – Solapur
4. Sahakar Maharshi Shankarrao Mohite
Patil Gramin Bigar Sheti Patsanstha
Maryadeet, Sahakar Nagar, Akluj,
Taluka Malshiras, District – Solapur
5. Special Recovery Officer,
Sahakar Maharshi Shankarrao Mohite
Patil Gramin Bigar Sheti Patsanstha
Maryadeet, Sahakar Nagar, Akluj,
Taluka Malshiras, District – Solapur
6. Smt. Rajabai Sudhakar Mohite
residing at Choundeshwarvadi,
Taluka Malshiras, District – Solapur
7. Chandrakant Shripati More,
residing at Choundeshwarvadi,
Taluka Malshiras, District – Solapur

And

At post Velapur, Taluka Malshiras,
District – Solapur.

...Respondents

Mr. Pradeep D. Dalvi, for the Petitioner.
Mr. C. D. Mali, AGP, for the State/Respondent nos.1 to 3.
Mr. Abhijeet A. Desai, for Respondent no.4.

CORAM: N. J. JAMADAR, J.

DATED: 3rd April, 2019

ORAL JUDGMENT:-

- 1.** Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.
- 2.** The challenge in this petition is to an order passed by the Minister, Co-operation on 25th September, 2014, in Revision Application No.848 of 2013, in the purported exercise of jurisdiction under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act', for short).
- 3.** By the impugned order, the Minister had set aside the order passed by the Joint Registrar, Co-operative Societies, Pune Division, in Revision Application No.387 of 2010, whereby the order passed by the Special Recovery Officer granting recovery certificate under Section 101 of the Act on 16th September, 2010, was quashed and set aside and Respondent no.4 Society was directed to recover the outstanding amount from the Petitioner herein by applying simple interest, and in accordance with the by-laws.

4. The brief facts are as under:

(a) The Petitioner stood guarantor to the loan raised by Respondent no.6. As there was default in repayment, Respondent no.5 granted a recovery certificate under Section 101 of the Act. The Petitioner challenged the said order by filing revision before the learned Joint Registrar, Co-operative Societies, Pune Division. The learned Joint Registrar was persuaded to allow the revision holding, *inter alia*, that Respondent no.4 Society had applied compound interest in contravention of the by-laws and, thus, quashed and set aside the order of the Special Recovery Officer, dated 16th September, 2010, granting recovery certificate. It was further directed that Respondent no.4 Society shall afresh compute the outstanding dues on the basis of simple interest on the due amount and call upon the Petitioner to deposit the same within 15 days of such computation.

(b) Being aggrieved by the aforesaid order, Respondent no.4 Society preferred a petition before the Government. The Minister, in the purported exercise of revisional powers under Section 154 of the Act, entertained the said petition and quashed and set aside the aforesaid order passed by the learned Joint Registrar, by the impugned order. Being

aggrieved, the Petitioner has invoked the writ jurisdiction of this Court.

5. Mr. Dalvi, the learned Counsel for the Petitioner urged that the impugned order deserves to be quashed and set aside on the sole ground that the Minister has exercised jurisdiction not vested in him by Section 154 of the Act. It was urged that second revision against an order passed by the learned Joint Registrar, as a revisional authority, is not provided in law and, therefore, the impugned order suffers from the patent error of exercise of jurisdiction not vested in the said authority.

6. To bolster up the aforesaid submission, the learned Counsel for the Petitioner placed a strong reliance upon the Full Bench judgment of this Court in the case of ***Shireen Sami Gadiali & anr. vs. Spenta Co.op Hsg. Soc. Ltd. & ors.***¹, wherein this Court had considered the following questions:

“**1.** Whether sub-section (1) of section 154 of the Maharashtra Co-operative Societies Act, 1950 gives concurrent jurisdiction to the Registrar and the State Government to exercise power?

2. Whether the power of revision under sub-section (1) of section 154 of the said Act can only be exercised once and cannot be exercised twice over?”

The aforesaid questions were answered in the following words:

1 2011(3) Bom. C.R. 465 (Full Bench).

“In our opinion, therefore, in view of the clear scheme under Section 152 and 154 and the observations of the Supreme Court referred to above, the position is absolutely clear that an order passed in exercise of the revisional jurisdiction under Section 154 cannot be subjected to scrutiny in exercise of revisional jurisdiction again under the provision of Section 154 of the Act.”

(emphasis supplied)

7. The learned Counsel for the Respondents, however, made a faint attempt to urge that the aforesaid pronouncement may not be a impediment for entertaining the revision by the Minister as, in the case at hand, the first revision itself was not tenable since there was total non-compliance of the provisions contained in sub-section (2A) of Section 154 of the Act, which contains an interdict against entertaining a revision against the recovery certificate issued by the Registrar under Section 101 of the Act, unless the applicant deposits with the concerned Society, 50% of the total amount of recoverable dues, and the Petitioner herein had admittedly not made the said statutory deposit. Thus, the first revision entertained by the learned Joint Registrar cannot be said to be a properly constituted and validly instituted revision. Therefore, according to the learned Counsel for the Respondents, in the peculiar facts of this case, the Minister was not precluded from entertaining the revision.

8. I am afraid to accede to the aforesaid submission. Even if the submission of the learned Counsel for the Respondents is

taken at par, at best, the said error committed by the learned Joint Registrar, in entertaining the revision, can be said to be an error within the jurisdiction.

9. Mr. Desai, the learned Counsel for Respondent no.4 then urged that since the said revision was preferred by the Petitioner herein, and an order was passed therein adverse to the interest of Respondent no.4, the latter was justified in assailing the said order in revision. This submission is also required to be repelled. In the aforesaid judgment, the Full Bench had observed that it is well settled law that the purpose of conferring revisional jurisdiction on higher authority is to see that the lower authorities act within their jurisdiction. Therefore, there is no question of conferring successive revisional jurisdiction on different authorities against the orders which are passed in revision. The aforesaid observation is a complete answer to the submission ought to be advanced on behalf of Respondent no.4.

10. In the aforesaid view of the matter, it becomes abundantly clear that the impugned order passed by the Minister was in excess of the jurisdiction vested, by virtue of the provisions contained in Section 154 of the Act. Resultantly, the impugned order is liable to be quashed and set aside.

11. Thus, the petition stands allowed.

The impugned order dated 25th September, 2014, passed by the Minister, in Revision Application No. 848 of 2013, in purported exercise of the revisional jurisdiction under Section 154 of the Act, stands quashed and set aside.

12. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]