

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 8124 OF 2019**

|                                     |                |
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| Harishkumar Gurdasmal Vaswani & Anr | ...Petitioners |
| <i>Versus</i>                       |                |
| Reserve Bank of India & Ors         | ...Respondents |

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**Mr Subhash Jha**, *with Hari Krishna Mishra, i/b Law Global, for the Petitioner.*  
**Mr HS Venegaonkar**, *for the Union of India.*  
**Mrs AA Purav**, *AGP for Respondents No. 5-State.*  
**Mrs Prabha Badadare**, *for Respondent No. 3.*  
**Mr BV Samant**, *for Respondent No. 2.*  
**Mr K Surya Krishnamurty**, *Deputy Collector & Competent Authority (NSEL), is present.*

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**CORAM: S. C. DHARMADHIKARI &  
G.S. PATEL, JJ**  
**DATED: 16th September 2019**

**PC:-**

1. The petitioner, a senior citizen had instituted this writ petition seeking a direction to the respondents, and particularly the Jankalyan Sahakari Bank Limited – 2nd respondent to this writ petition to ensure that he is handed over vacant and peaceful possession of 6.80 hectares of agricultural land purchased by him in an auction at Village Unch, Khadakwadi, Post Rajuri, Taluka Junnar, District Pune.

2. It is claimed that the said land is not being handed over despite the petitioner being successful at an auction held way back on 4th January 2008.
3. The petitioner says that after great efforts, the 2nd respondent executed a sale deed on 25th October 2018 and a further deed executed on 2nd January 2019.
4. There is a name mentioned in the said sale deeds of one Shivaji Kanse. Now, if this Shivaji Kanse continues to be in possession of the lands which are purchased by the petitioner at the auction and if physical possession is not being transferred to the petitioner, then, the petitioner is also seeking a consequential direction in that regard.
5. On instructions the respondent's Advocate Mr BV Samant says that within four weeks from today, the 2nd respondent will obtain physical possession of the land in question from the said Mr Shivaji Kanse, respondent No. 3 to this writ petition and thereafter hand it over to the petitioner. He states that the Bank will invoke the provisions of Section 100 of the Maharashtra Cooperative Societies Act, 1960 read with Rule 85 of the Maharashtra Cooperative Societies Rules, 1961, to ensure vacant possession. He also points out that the auction sale was on an as-is-where-is basis.
6. We have perused the writ petition and all its annexures.

7. The petitioner has impleaded respondent No. 3 in this petition not as a necessary party. The petitioner says that having acquired a right in the land and having complied with all the terms and conditions of the auction, it is entirely for the 2nd respondent to obtain possession of the land from the party in possession and hand it over to the petitioner.

8. The petitioner has no business much less any privity of contract with Mr Shivaji Nayaran Kanse.

9. Mr Samant appearing on behalf of the 2nd respondent states that the 3rd respondent is in physical possession but without any right in the property.

10. We do not think that having obtained all the benefits under the auction and retaining the sum, the 2nd respondent has exhibited that it is acting fairly and particularly with a senior citizen like the petitioner. It is in the least honouring its contractual commitments. The petitioner has made payment of Rs. 3.20 lakhs on 9th December 2007, Rs. 5.10 lakhs on 5th January 2008, and Rs. 24.80 lakhs on 31st January 2008.

11. The petitioner says that the sale deed has been executed on 25th October 2018 and a later sale deed is of 29th January 2019.

12. Mr Samant made complaint that the petitioner took time for stamping the instrument but does not dispute that after the stamping the petitioner was entitled to obtain physical possession of

the property and it was the bounden duty of the 2nd respondent to hand over the same to him. If the 2nd respondent had to take steps against the respondent No. 3 to dispossess him and then obtain possession from him so as to in turn hand over the property or the land to the petitioner, we expected it to do so at least after the execution of the sale deeds. The first sale deed is dated 25th October 2018 and the second is dated 2nd January 2019. We have not been shown any record much less any order of any competent Court or authority passed at the instance of the 3rd respondent. He has not challenged these registered deeds.

13. Moreover, it cannot be that in respect of an auction conducted 12 years ago, the Recovery Officer has done nothing at all to ensure possession and delivery. If what was being auctioned was a litigation, then that is a separate thing. But what was put to auction was immovable property. We notice that the auction notice gave a reserve price of about Rs.30 lakhs. Obviously, that could not have been the price with a pre-existing contesting or rival right or claim but only a value of property of which it was possible to deliver possession.

14. In such circumstances, we direct that within four weeks from today the physical possession of the property should be handed over to the petitioner. Else, after four weeks the entire sum retained by the 2nd respondent shall be refunded to the Petitioner with simple interest at the rate of 8% (eight per cent) per annum from the date of each payment until realization.

15. The writ petition is disposed of in these terms.

**(S. C. DHARMADHIKARI, J)**

**(G. S. PATEL, J)**