

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1495 OF 2017

(DINESH AKHILCHANDRA TAORI....VS.. ASSISTANT REGISTRAR, COOP. SOCIETIES & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S.Sharma, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 21, 2019.

Heard.

The respondent No.4 borrowed an amount of Rs.1,15,00,000/- from the respondent No.5-Bank. The respondent Nos.2 and 3 stood guarantors as co-borrowers. The respondent No.2 had mortgaged Corporation House No.347-A, situated at Modi No.1, Sitabuldi, Nagpur with the respondent No.5-Bank. The petitioner is nephew of the respondent No.2. The petitioner has filed Special Civil Suit No. 207 of 2015 against the respondent Nos. 2 and 3 M/s. Vyankatesh Board Mills Ltd. and State Bank of India praying for decree for partition, separate possession, declaration and permanent injunction.

According to the petitioner, he is entitled for 1/3rd share in portion of Plot No.10 (new No.26/12) Mouza : Lendra Park along with three storeyed building bearing Corporation House No.314, City Survey No.54, Sheet No.(18) 1/11, Mouza : Lendra, situated at Khare Town, Dharampeth, Nagpur. According to the petitioner, the present respondent No.2-Sohanlal committed a fraud by representing to the respondent No.5-Bank that he is exclusive owner of the above

referred property by virtue of a Will alleged to have been executed by Shri Ghanshyamdas Hariram Taori (grandfather of the petitioner and father of the respondent No.2) on 23rd October 1994 and on this misrepresentation, the respondent No.5-Bank disbursed the amount of loan. The petitioner claims that he is in possession of some portion of the above referred property. As the civil suit progressed, the petitioner has amended the plaint and has sought decree in respect of the Corporation House No.347/A situated at Modi No.1, Sitabuldi, Nagpur also.

The respondent No.5 has initiated proceedings for recovery of the amount payable by the respondent Nos.2 to 4. The Deputy Registrar, Co-operative Societies has issued Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960. This Recovery Certificate is challenged by the petitioner in this writ petition. According to the petitioner, the property bearing Corporation House No. 347/A, situated at Modi No.1, Sitabuldi, Nagpur cannot be sold/auctioned to recover the amount of loan payable by the respondent Nos.2 to 4. One of the allegation of the petitioner is that the officials of the respondent No.5-Bank colluded with the respondent Nos. 2 to 4 and without following prescribed procedure and ascertaining that the respondent No.2 was not in possession of the property, the property was mortgaged.

The petitioner has not brought anything on record to show that the respondent Nos. 2 to 4 have challenged the Recovery Certificate. None appears for the respondent Nos. 3 and 4, though served. Though, advocate has put in appearance for the respondent No.2, he is not present at the time of hearing.

Considering the facts of the case, I am of the view that the order passed by the Deputy Registrar of the Co-operative Societies issuing Recovery Certificate does not suffer from any illegality or perversity which necessitates interference by this Court in the extraordinary jurisdiction. The legitimate recovery by the respondent No.5-Bank cannot be stopped on the basis of the objection raised by the petitioner. Even according to the petitioner, the respondent Nos. 2 and 3 are having share in the property bearing Corporation House No. 347/A, situated at Modi No.1, Sitabuldi, Nagpur. The petitioner is claiming only 1/3rd share in the property. According to the petitioner, the respondent Nos. 2 and 3 are also having 2/3rd share in the property situated at Khare Town, Dharampeth, Nagpur. It is well settled that the decree for partition and separate possession can be executed by adjusting the share of the different parties. If the petitioner succeeds in the civil suit, he would be entitled for his share and the executing Court would be carving out his share in the property situated at Khare Town, Dharampeth, Nagpur.

In view of the above, I see no reason to interfere with the order passed by the Deputy Registrar of the Co-operative Societies issuing the Recovery Certificate.

Hence, the writ petition is **dismissed**.

It was expected from the respondent No.2 that he would assist the Court for deciding this writ petition. Though the respondent No.2 has put in appearance through an Advocate, the assistance expected from the respondent No.2 is not received.

Considering the conduct of the respondent No.2, it is directed that he shall pay costs of Rs.Fifty Thousand to the respondent No.5-Bank. The amount shall be paid by demand draft. The receipt showing payment of amount of costs shall be produced on record of this petition along with an affidavit of the respondent No.2, within one month.

JUDGE

RRaut..