

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2371 OF 2020

Buldhana Urban Credit Cooperative
Society Ltd. (Multistate), Branch Sillod
Through its Authorized Officer,
Sanjay S/o Ananda Dalvi ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

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Mr. Tejesh Dande, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent Nos. 1 and 2.
Mr. A.M. Karad, Advocate for Respondent No.3.
Mr. A.B. Girase, Advocate for Respondent Nos. 4 and 5.

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**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 19th OCTOBER, 2020

PER COURT:-

1. The petitioner is challenging the various communications as well as mutation entries and the auction.
2. Mr. Sangit, the learned counsel for the petitioner submits that the entire property of respondent No.3 is mortgaged with the petitioner – society for the repayment of the loan sanctioned by the petitioner to respondent No.3. The respondent No.2 without notice to the petitioner, engaged in sale of the properties. The petitioner at no material point of time was made not aware that the charge of the

petitioner over the property of the respondent No.3 is shifted. The auction notices are illegal. The shifting of the charge over the properties mortgaged to the petitioner is also illegal and without adhering the principles of natural justice.

3. The learned I/c. Government Pleader submits that it was pursuant to the orders of this Court the charge of the Bank was shifted. There are various properties of respondent No.3 mortgaged with the Bank. The Banks interest is also protected. It was in a view to secure the interest of the retired employees of respondent No.3, the authority decided to shift the charge of the petitioner Bank on other properties of respondent No.3. This court had also passed the orders in various writ petitions filed by the employees. The Tahsildar is required to comply the orders of this Court.

4. Mr. Girase, the learned counsel for the respondent Nos. 4 and 5 submits that the auction of mortgaged properties of Respondent No.3 was conducted in the year 2017. The registered sale deed is also executed in favour of respondent No.4. The entire process of attachment and auction was followed. The learned counsel submits that even the auction proceeding was initiated in the year 2020 and respondent No.5 was declared as an auction purchaser. It is because of the pendency of the present proceeding, the sale deed could not be

executed and the remaining amount is not deposited by the Respondent No.5. The petitioner has the alternate remedy available.

5. As far as the auction proceeding conducted by respondent No.2 for recovery of the amount under the revenue certificate in the year 2017 is concerned, the registered sale deed is also executed. The petitioner did not challenge those proceedings before this Court. The contention of the petitioner is that the petitioner is not aware of the same.

6. Be that as it may, the petitioner will be at liberty to take appropriate steps in respect of the mutation entries effected in the year 2017 and the auction proceedings of mortgaged properties and the registered sale deed in favour of Respondent No.4 in the year 2017.

7. As far as the auction proceedings, charge and the mutation entries in the year 2017 is concerned, the respondent No.2 is taking aid of order of this Court to justify his action. The Court in its order had made clear that the Tahsildar may execute the revenue recovery certificate, if there is no impediment in the nature of the property being attached or charged under other law. The properties were mortgaged with the petitioner under the registered mortgage deeds. While shifting the attachment and charge of properties mortgaged, it

was incumbent upon the authority to inform the creditor. It appears that notices were never issued to the petitioner. The learned I/c. Government Pleader confirms that the notices were not issued to the petitioner.

8. The petitioner has an alternate remedy available to challenge the mutation entries and all other proceedings.

9. Considering the above, we grant liberty to the petitioner to avail the alternate remedy even in respect of the auction of the year 2017 and 2020 so also the change of mutation executed in the year 2017 and 2020. In that regard, in case such proceedings are initiated, all contentions of the respective parties are kept open. The authorities shall consider the time spent in prosecuting the present writ petition.

10. For a period of three weeks from today, the position as it is shall be maintained and no further steps be taken in the proceeding pursuant to the auction in favour of respondent No.5 so as to enable the petitioner to take up appropriate proceedings and seek necessary orders therein.

11. The writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

S.P. Rane

(S.V. GANGAPURWALA)
JUDGE