

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4868 OF 2020

Rambhau Maruti Umbare  
Age Major, Occ : Agri.,  
R/o Ganraj Nivas, Bank colony,  
Osmanabad. ..PETITIONER

VERSUS

1. Divisional Joint Registrar  
Co-operative Societies, Latur  
Division, Latur.
2. The District Deputy Registrar,  
Co-operative Societies, Osmanabad.
3. The Special Recovery Officer,  
Vasantdada Nagari Sahakari Bank  
Ltd., Osmanabad "Aarth Bhavan"  
Shivaji Chowk, Osmanabad.
4. Vasantdada Nagari Sahakari Bank  
Ltd., Osmanabad "Aarth Bhavan"  
Shivaji Chowk, Osmanabad.
5. Shriram Highway Services  
Pro. Nandkumar Haridas Kshirsagar  
Waruda Road, Petrol Pump,  
Osmanabad.
6. Siddheshwar Ramrao Patil  
Age : major, Occ : Agri.,  
R/o at post Chikhali,  
Tq. & Dist. Osmanabad. ..RESPONDENTS

...

Mr.L.H. Kawale, Advocate for the petitioner.  
Mr.G.O. Wattamwar, AGP for respondent nos.1 and 2.  
Mr.M.B. Kolpe, Advocate for respondent nos.3 and 4.  
Mr.N.R. Pawade, Advocate for respondent nos. 5 and 6

CORAM : V.L.ACHLIYA,J.  
DATE : 16.07.2020

**ORAL JUDGMENT:**

Rule. Rule returnable forthwith.  
With the consent of the learned counsel for the petitioner and learned counsel for the respondents the Petition is heard finally at the stage of admission.

2] By this petition filed under Article 226 and 227 of the Constitution of India, petitioner has claimed the relief which reads as under:

B] The order dated 17.06.2020 passed by respondent no.1 in revision application no.17/2020, the order dated 29.1.2020 issued by the respondent no.2 granting approval to the upset price of property of the petitioner and sale notice dated 24.06.2020 issued by the respondent no.3, may kindly be quashed and set aside.

3] In brief, it is the contention of the learned counsel for the petitioner that the respondent no.1 has heard and decided the revision petition filed by the petitioner without notice and opportunity of hearing to the petitioner, that too, during lock-down. It is submitted that the respondent no.5 has secured loan from the respondent no.4. The property bearing Survey No.187/4 admeasuring 81 R. situated at Osmanabad, which has been given on lease to BPCL Company shown as given in mortgage as a collateral security towards loan advanced to respondent no.5. It is submitted that the petitioner is 90 years old. By taking disadvantage of his age and illiteracy the respondent nos.3 to 5 have shown him as guarantor for the loan obtained by the respondent no.5. In fact the property in question given to BPCL on lease for 29 years for running petrol pump vide registered agreement dated 18.01.2013.

4] The respondent no.4 has initiated proceedings towards recovery of loan on account of default made by the respondent no.5. It is the contention of the petitioner that the respondent no.5 is politician and influential person. Instead of making an attempt to recover the amount from principal borrower, the respondent nos.3 and 4 acting in collusion with respondent no.5 are trying to sell the property of petitioner. They are selling the property without following the mandatory procedure prescribed under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. The property is worth Rs.5 crores. Without seeking physical possession of said property and obtaining requisite order from the Chief Metropolitan Magistrate or District Magistrate trying to take possession and auction the property. Proposal to sell the said property with upset price

Rs.1,07,73,000/- submitted by the respondent no.3 for approval of respondent no.2 was submitted on 13.03.2019. Without giving opportunity of hearing and following procedure prescribed under law, the respondent no.2 has granted approval to said proposal vide order dated 29.01.2020. Pursuant to approval given the respondent no.3 issued the sale notice. Being aggrieved, the petitioner preferred revision petition before the respondent no.2 and also filed application seeking stay to the order dated 29.01.2020 as well as sale notice dated 04.02.2020.

5] By order dated 04.03.2020 the respondent no.1 entertained the Petition and directed the respondent nos.3 and 4 to maintain status-quo in respect of said property till further orders. The respondent no.1 posted the case for hearing on

01.04.2020. However, on 24.03.2020 due to pandemic of COVID-19, the State as well as Central Government declared the lock-down which has been extended time to time. In view of the declaration of lock-down, no hearing was expected to be taken on 01.04.2020. So also petitioner was unable to attend the hearing. The respondent no.1 was expected not to proceed with the hearing of the case on 01.04.2020 and onward till the lock-down in operation. By virtue of order dated 26.03.2020 passed by this Court at Principal Seat at Mumbai, all the interim orders operating stand extended till 15.04.2020. By the subsequent orders dated 15.04.2020 and 17.06.2020 the operation of the interim orders continued till 15.07.2020.

6] Although lock-down was in operation w.e.f. 24.03.2020 the respondent no.1 took up the matter for hearing on 10.06.2020 and vide

order dated 17.06.2020 dismissed the revision petition filed by petitioner without affording opportunity of hearing to the petitioner. It is submitted that the petitioner has good case to succeed on merits. The mandatory procedure prescribed under law has not been followed in fixing upset price. As per Rule 107 (11) (f-1) of the Maharashtra Co-operative Societies Rules, 1961, it is incumbent upon respondent no.2 to obtain the valuation report from approved Government valuer within one month from the date of receipt of proposal from the Recovery Officer. However, the respondent no.2 overlooked the mandatory procedure prescribed under law and approved the proposal to fix the upset price of said property as Rs.1,07,73,000/-. By virtue of said order, the property worth Rs.5 crores has been put to auction for a meager sum of Rs.1,07,73,000/-. It is submitted that order

to fix upset price of said property has been passed in total disregard to provisions contained under Rule 107 (11) (d-1) of the Maharashtra Co-operative Societies Rules, 1961 and the petitioner have good case to succeed on merits. It is submitted that the impugned order has been passed in gross violation of principles of natural justice.

7] On the other hand, learned counsel representing the respondent nos.3 and 4 supported the order passed by the respondent no.1. In brief, it is the contention of the respondent no.1 that the petitioner is trying to protract the recovery proceedings under the garb of filing of such petition. It is submitted that the petitioner has secured interim stay without notice to the respondent and stall the recovery proceedings. While granting *ex parte* stay on 04.03.2020, the respondent no.1 has fixed the next date as

01.04.2020. In that view, there was no necessity to issue notice to the petitioner intimating the date of hearing as 01.04.2020. On 01.04.2020, as none appeared in the matter the respondent no.1 posted the case for hearing on 03.06.2020. On 03.06.2020, the respondent no.4 appeared through their advocate. So also Recovery Officer appeared in-person. Since the petitioner failed to appear the respondent no.1 posted hearing on 10.06.2020. On 10.06.2020, the petitioner and his advocate failed to appear and therefore the respondent no.1 proceeded to hear the petition in absence of petitioner. After hearing the respondent nos.3 and 4 the respondent no.1 reserved the case for passing order. By order dated 17.06.2020, the respondent no.1 has dismissed the petition. While deciding petition the respondent no.1 has considered the contentions raised in the petition. It is submitted that the order

dated 17.06.2020 has been passed on merits and petition filed is devoid of merits.

8] In view of the contention raised by the petitioner that the impugned order has been passed without notice to the petitioner and during the lock-down in operation the learned AGP was directed to ascertain the factual position from respondent no.1 and produce copies of *Roznama* of the proceedings. Pursuant to the direction, the learned AGP has tendered photo copy of *Roznama* received by fax from the respondent no.1. Learned AGP submits that as the petitioner failed to appear on the date fixed in the matter, the respondent no.1 has proceeded to hear the respondents and passed the order by considering the contention raised in the petition.

9] I have carefully considered the submissions advanced in the light of copy of

the Roznama of the proceedings produced on record by the learned AGP representing the respondent nos.1 and 2. Learned AGP representing the respondent nos.1 and 2 as well as learned counsel representing the respondent nos.3 and 4 have not disputed that the impugned order has been passed without affording opportunity of personal hearing to the petitioner. It reflects from the order that the revision petition was presented on 25.02.2020. The respondent no.1 has taken up the petition for hearing on 04.03.2020. After hearing learned counsel for the petitioner, the respondent no.1 pleased to pass order to maintain status quo and posted the matter for hearing on 01.04.2020. In that view, it is evident from the record that the revision petition was presented and interim stay was granted before declaration of lock-down. The next date of hearing was given as 01.04.2020 before which the State wide lockdown was

declared on 24.03.2020 due to outburst of COVID-19. On 26.03.2020, the Principal Seat of this Court at Mumbai passed the order of continuation of interim orders operating in various judicial and quasi judicial proceedings.

10] Perusal of the Roznama of revision proceeding reflects that the respondent no.1 has listed the petition on 01.04.2020. On 01.04.2020, the petitioner as well as the respondents were absent. Therefore, the respondent no.1 adjourned the hearing to 03.06.2020. It appears that on 03.06.2020 the respondent no.4 appeared through their Advocate and filed reply. The petitioner was absent. The respondent no.1 posted the case for hearing on 10.06.2020. On 10.06.2020, the advocate representing respondent no.1 and recovery officer appeared. Petitioner was absent. The respondent no.1 proceeded to hear

the case in absence of petitioner and closed the proceedings for passing order. On 17.06.2020, the impugned order has been passed. In that view, the Roznama of the revision proceedings maintained by respondent no.1 duly support the contention of the petitioner that the revision petition has been decided in his absence and that too during the lock-down in operation. No notice of hearing was given to petitioner before passing the impugned order.

11] In view of the extraordinary situation prevailing and the functioning of Court and quasi judicial authority was disrupted and it become impossible for parties to approach the Courts or such authority seeking continuation of interim orders passed in such proceedings, the High Court has passed the order dated 26.03.2020 to continue the interim orders operating in

various judicial and quasi judicial proceedings. Initial order was passed on 26/03/2020 at the Principal Seat at Mumbai and by subsequent orders passed thereafter the said order continued from time to time.

12] In view of the lock-down in operation all the activities have come to stand still. People were prohibited to come out of their houses, except to meet their urgent requirement. No mode of transportation available for litigants to travel and attend the proceeding before the Court as well as quasi judicial authority, it was not expected on the part of the respondent no.1 to have shown undue haste in deciding the Revision Petition in absence of the petitioner. For this reason alone, the impugned order deserves to be set aside as same being passed in gross violation of principles of natural justice. The case needs to be

remanded to respondent no.1 to decide the same afresh after giving opportunity of hearing to petitioner as well as respondents.

13] Accordingly, the Petition is partly allowed. The impugned order dated 17.06.2020 passed by respondent no.1 is set aside. The case is remanded to respondent no.1 to decide the revision petition afresh after giving opportunity of hearing to petitioner as well as concern respondents.

14] Parties are directed to appear before the respondent no.1 on 3<sup>rd</sup> August, 2020 at 11 a.m. On appearance of parties, the respondent no.1 is directed to fix the date of hearing and then decide the petition as expeditiously as possible and preferably within eight weeks from the date of appearance of parties.

15] Rule made absolute in above  
terms.

**[V.L.ACHLIYA]**  
**JUDGE**

DDC