

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

WRIT PETITION NO.7678 OF 2020

Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
R/o, Asarkheda, Taluka Badnapur
District Jalna .

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.
3. The Tahsildar,
Jafrabad, District Jalna.
4. Ranjana w/o Rajendra Jagtap
Age : 43 years, Occ: Agriculturist
R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

WITH

WRIT PETITION NO.7679 OF 2020

Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
R/o, Asarkheda, Taluka Badnapur
District Jalna .

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.
3. The Tahsildar,
Jafrabad, District Jalna.

4. Kaduba s/o Panditrao Jagtap
Age : 45 years, Occ: Agriculturist
R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

**WITH
WRIT PETITION NO.7680 OF 2020**

Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
R/o, Asarkheda, Taluka Badnapur
District Jalna .

PETITIONER**VERSUS**

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.
3. The Tahsildar,
Jafrabad, District Jalna.
4. Dnyaneshwar s/o Vitthal Khandebharad
Age : 28 years, Occ: Agriculturist
R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

**WITH
WRIT PETITION NO.7681 OF 2020**

1. Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
2. Akash s/o Raosaheb Bhavar,
Age : 20 years, Occ. Education
Both R/o, Asarkheda, Taluka Badnapur
District Jalna .

PETITIONERS**VERSUS**

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.

3. The Tahsildar,
Jafrabad, District Jalna.
4. Krishna s/o Vitthalrao Khandebharad
Age : 32 years, Occ: Agriculturist
5. Dnyaneshwar s/o Vitthalrao Khandebharad
Age : 28 years, Occ: Agriculturist

Both R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

...
Advocate for Petitioner : Mr. S.B. Deshpande i/b. J.P Legal Associates
AGP for respondents : Mr. S.N. Morampalle
Advocate for Respondent No.4 : Ms. Maya R. Jamdhade
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943 WRIT PETITION NO.7441 OF 2020

1. Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
2. Sangita w/o Raosaheb Bhavar,
Age : 43 years, Occ. Household
Both R/o, Asarkheda, Taluka Badnapur
District Jalna

PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.
3. The Tahsildar,
Jafrabad, District Jalna.
4. Vitthal s/o Namdeo Khandebharad
Age : 67 years, Occ: Agriculturist
R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

...
WITH
WRIT PETITION NO.7442 OF 2020

Raosaheb S/o Kundlik Bhavar,
Age : 50 years, Occ: Agriculturist,
R/o, Asarkheda, Taluka Badnapur
District Jalna .

PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Co-operative Societies,
Mantralaya, Mumbai.
2. The District Registrar, Money Lenders
and Co-operative Societies, Jalna.
3. The Tahsildar,
Jafrabad, District Jalna.
4. Jijabai w/o Ramchandra Khalekar
Age : 71 years, Occ: Nil
R/o Nivdunga, Taluka Jafrabad,
District Jalna.

RESPONDENTS

...
Advocate for Petitioner : Mr. S.B. Deshpande i/b. J.P Legal Associates
AGP for respondents : Mr. S.N. Morampalle
Advocate for Respondent No.4 : Ms. Maya R. Jamdhade
...

CORAM : MANGESH S. PATIL, J.

DATE : 08.12.2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith in all these proceedings. The learned advocates for the respondents waive service.

With the consent of both sides the matters are heard finally at the stage of admission.

2. The only dispute that arises in these proceedings is as to whether a Registrar General and his subordinates under the provisions of the Maharashtra Money Lending (Regulation) Act, 2014 has all the powers of Civil Court while undertaking inquiries under Sections 14 and 18 of that Act in the light of the provision contained in Section 15 of that Act.

3. The facts as are relevant for deciding these Writ Petitions may be summarized as under :

The respondent Nos. 4 in all these petitions filed a proceeding before the Registrar under Section 18 of the Maharashtra Money Lending Act asserting their individual transaction of sale in favour of the petitioner, who is the same person in all these proceedings, is a money lending transaction. By the orders impugned in these Writ Petitions the District Registrar on an application filed by the respondent Nos.4 issued a direction to the Tahsildar for carrying out Panchanama regarding possession over the properties in dispute. Hence these Writ Petitions.

4. Learned advocate Mr. Deshpande for the petitioners submits that the Legislature in its wisdom has conferred with the powers of Civil Court on the Registrars as laid down under Section 15 of the Maharashtra Money Lending Act. However, the Legislature has circumscribed such exercise of powers only in respect of 4 items enlisted therein as Clauses (a) to (d). By referring to Clause (c) he would submit that it is only for

examination of witnesses that a commission can be issued by the Registrar under that provision. There is no specific empowerment authorizing him to even issue commissions for local inspection. He would point out that Section 75 of the Code of Civil Procedure read with Order XXVI of the Code of Civil Procedure confers upon Civil Court powers to issue commissions in respect of many proceedings including examination of witnesses and local inspection. When the Legislature has omitted to confer this power to issue commission for local inspection, the impugned order is palpably *de hors* the provision of the law and therefore illegal.

5. The learned advocate Mr. Deshpande further points out that in fact the very proceeding contemplated under Section 18 presupposes that the borrower is claiming return of the property including possession thereof. It is therefore absolutely irrelevant for the Registrar while conducting an inquiry under that provision to investigate as to who actually is in possession of the property under the alleged money lending transaction, more so when the borrower himself asserts his possession.

6. Apart from the above submissions the learned advocate Mr. Deshpande also points out as to how independently the petitioner has filed suits against the respondent Nos. 4 and obtained a temporary injunction protecting his possession in the properties in dispute. He would point out that the decisions of the District Court granting injunction in his favour were subsequently challenged by the respondent Nos. 4 by preferring Writ Petitions which have however been withdrawn. Consequently, when the

order of a Civil Court confirms his possession *prima facie*, the impugned direction by the Registrar is of no consequence. He therefore submits that the impugned orders be quashed and set aside.

7. The learned AGP and the learned advocate for the respondent No.4 in all these proceedings support the impugned order. They submit that when the powers have been conferred to inquire into and to ascertain if the transaction is a money lending transaction, investigation in respect of possession becomes imperative. In Section 15 of the Maharashtra Money Lending Act all the powers of the Civil Court have been conferred upon the authorities under the Act. It is pursuant to the provision contained in Sections 15 and 18 that the Registrar by the impugned orders has directed a commission for holding Panchnama as regards possession.

8. Section 15 of the Maharashtra Money Lending (Regulation) reads as under :

“15. Registrar General and his subordinates to have powers of Civil Court

For the purposes of sections 6 and 16, the Registrar General, Divisional Registrar, District Registrar, Assistant Registrar and the officer authorized under section 16; and for the purposes of ¹[sections 14 and 18], the District Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

(a) enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents and material objects ;

(c) issuing commissions for the examination of witnesses ; and

(d) proof of facts by affidavits.”

9. It is apparent that the Legislature has conferred upon the authorities under the Money Lending Act powers of a Civil Court but not all. Items (a) to (d) are the aspects with regard to which such power is expected to be exercised. What has not been provided specifically by the Legislature cannot be read into it. Rather when the Legislature in its wisdom has omitted to provide the specific powers one cannot read a provision assuming that it could have intended to assign all the powers of a Civil Court. The very fact that the Legislature has specifically mentioned the 4 powers which are otherwise exercisable by the Civil Court to be exercised by the authorities under the Maharashtra Money Lending Act, one needs to assume that the Legislature did not intend to confer any other power.

10. Considering the fact that by providing Clause (c) the Legislature has only empowered the authorities under the Maharashtra Money Lending Act to issue commission for examination of witnesses one cannot read the provisions to mean that such commission can be issued even for local inspection etc. Therefore, in my considered view, the powers exercised by the concerned Registrar while passing the impugned orders directing the Tahsildar to hold panchanam as regards possession of the properties in dispute are *de hors* the provisions of law.

11. One need not go into the aspects as to who actually is in possession of the properties in the present inquiry particularly when the matter is already seized with a Civil Court and orders of temporary injunction have already been passed in favour of the petitioners and have

reached finality.

12. In view of the above, the impugned orders having been passed without having any authority in law are liable to be quashed and set aside.

13. The Writ Petitions are allowed. The impugned orders are quashed and set aside. The Rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

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