

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.616 OF 2020

Ashok Jayantilal Shah

Veena Ashok Shah

... Petitioners

Versus

The State of Maharashtra

through The Secretary

Co-operative Department

And Others

... Respondents

.....

Mr. Anoshak Daver a/w Mr. Rushabh Sheth i/b Mr. Sachin Masurkar
for the Petitioners.

Mr. Manish Upadhye, AGP for Respondent Nos. 1 and 7.

Mr. Mahendra M. Agavekar a/w Ms. Shraddha Chavan for Respondent
No.3.

Mr. Mandar Soman for Respondent Nos.4 to 6.

.....

CORAM : S.C. GUPTE, J.

DATE : 24 FEBRUARY 2020

P.C. :

. This writ petition challenges a recovery notice issued by Special Recovery Officer of Respondent No.3 bank under the provisions of Maharashtra Co-operative Societies Act ("MCS Act") and Rules framed thereunder for taking physical possession of a flat, which forms the subject matter of the present petition. The recovery notice was issued in pursuance of an order passed by the Chief Metropolitan Magistrate on 4 December 2019 appointing the authority as Special Recovery Officer for taking physical possession of the flat. The grievance of the

Petitioners herein, who claim to be *bona fide* purchasers of the subject flat with value and without notice, is that before taking any steps in respect of the subject flat, no hearing was given to the Petitioners. It is submitted that leave aside hearing, there was not even notice issued to the Petitioners before passing any order.

2 Learned Counsel for Respondent no.3 submits that the Petitioners have remedy under Section 154 of MCS Act by filing a revision to the Divisional Joint Registrar of Co-operative Societies. No doubt, the Petitioners have such remedy. Considering, however, that the impugned order was passed admittedly without issuing any notice to the Respondent, who was the sole affected party by the impugned order, it is imperative that the original order itself must go and the Petitioners should be heard, before the Special Recovery Officer passes any order in the matter of attachment or sale of the suit flat.

3 In the premises, the impugned order dated 4 December 2019 passed by learned Chief Metropolitan Magistrate, Explanade, Mumbai and the impugned notice dated 6 February 2020 passed by Respondent No.2 are quashed and set aside and Respondent No.2-Special Recovery Officer is directed to hear the Petitioners in the matter of attachment and sale of the subject flat. All rights and contentions of the parties on merits are kept open.

4 The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)

Rajesh V. Chittewan

Digitally signed by
Rajesh V. Chittewan
Date: 2020.02.27
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