

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 986 OF 2019

Dnyandeo Sabaji Waphare and others ...Petitioners

versus

Sampada Nagari Sahakari Patsanstha
Maryadit and another ...Respondents

.....
Mr. N. V. Gaware, advocate for the petitioners
Mr. V. H. Dighe, advocate for respondent No.1.
Mr. K. B. Jadhavar, A.G.P. for respondent No.2.
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CORAM : V. K. JADHAV, J.
DATED : 1st MARCH, 2021

PER COURT:-

1. By consent, heard finally at admission stage.
2. Sampada Nagari Sahakari Patsanstha Limited (hereinafter for short referred to as the “respondent Patsanstha”) is a society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and the petitioners herein were the directors of the respondent Patsanstha. The said respondent Patsanstha went in liquidation and at present, the Deputy Registrar, Co-operative Societies, Ahmednagar is looking after the affairs of the respondent Patsanstha. Thereafter, some of the depositors of respondent Patsanstha had initiated proceedings before the District Consumer Dispute Redressal Forum, Ahmednagar (hereinafter, for short

referred to as the "Consumer Forum") against the respondent Patsanstha and 14 managing committee members for recovery of amount of their fixed deposits. The Consumer Forum, by passing separate orders in each of the said complaints, filed by the depositors on various dates, allowed the said complaints and further held that respondent Patsanstha and managing committee members, 15 in numbers, are jointly and severally liable to pay the amount to the depositors as per their fixed deposits alongwith interest with costs. Though the petitioners have raised contention that the said orders passed by the Consumer Forum are exparte, without giving reasonable opportunity of hearing to the petitioners and other directors, however, undisputedly the said orders passed by the Consumer Forum have now attained finality. Further those depositors have initiated Darkhast proceedings before the Consumer Forum for execution of the said judgment and orders passed by the Consumer Forum in their favour. Accordingly, in terms of provisions of Section 25(3) of the Consumer Protection Act, 1986, (hereinafter for short referred to as "the Act of 1986") the Consumer Forum has issued certificates for the said amounts varied from the depositors to depositors as per the order passed in their favour, to the Collector of the District for recovery of the amount in the same manner, as arrears of the land revenue. In consequence thereof, the Tahsildar, Ahmednagar has displayed the notice on 08.01.2019 on the notice board of the Tahsil office, Ahmednagar for auction sale of immovable properties of the defaulters. By way of this petition, the petitioners

are challenging the auction notice/order dated 08.01.2019 issued by respondent No.2 for auction of the properties mentioned in the notice.

3. Learned counsel for the petitioners submits that the Chapter XI of the Maharashtra Land Revenue Code, 1966 (for short "the Code") prescribes the provisions for realization of land revenue and other revenue demands. In terms of the provisions of Section 176 of the Code, the process for recovery of arrears is prescribed. Learned counsel submits that in terms of the provisions of Section 178(1) of the Code, a notice of demand is necessary to be issued. However, respondent No.2, without following proper procedure, has issued notice under Section 176 of the Code r.w. Section 181 of the Code, straight-way putting the personal properties of the petitioners for auction sale by issuing notice dated 08.01.2019 for the scheduled auction on 16.01.2019. Learned counsel submits that the said notice dated 08.01.2019 was displayed on the notice board of the Tahsil office at Ahmednagar and they have no personal notice. The petitioners were not served with the notice of Darkhast filed before the Consumer Forum. Thus, there is violation of the principles of natural justice. The petitioners were not given opportunity of hearing. On 16.01.2019 the petitioners have filed detail representation to respondent No.2 pointing out all aspects in respect of non service of notice and violation of principles of natural justice. However, respondent No.2, Tahsildar, without deciding the representation filed

by the petitioners, passed orders on 16.01.2019 to postpone the auction till 23.01.2019.

4. Learned counsel for the petitioners submits that there is vast difference between actual valuation, as carried out in the impugned notice and the market price of the properties. Thus, the notice dated 08.01.2019 is unjust, illegal, arbitrary and liable to be quashed and set aside. Learned counsel submits that respondent No.2 has issued the auction notice against the personal properties i.e. residential houses of the petitioners. Learned counsel submits that out of 14 directors/members, respondent No.2 is taking action against only 5 directors i.e. present petitioners, which is contrary to the judgment delivered by the Consumer Forum. Learned counsel has pointed out with the help of chart that actual valuation of the properties mentioned in the auction notice is much higher than the amount shown in the notice. Respondent No.2 is continuing with the auction proceeding of the properties of the petitioners below the market value which is not permissible. Learned counsel submits that the Consumer Forum has passed order against 14 managing committee members and directors of respondent Patsanstha and if the execution is carried out against the persons of the choice of respondent No.2, the same is contrary to the judgment of Consumer Forum. Learned counsel submits that out of five persons, one of the Director viz. Uttamrao Chemte expired on 29.11.2017, however, without bringing his legal heirs on record, respondent No.2 is

proceeding with the auction of properties standing in the name of deceased persons, which is contrary to the provisions of the Code.

5. Mr. Dighe, learned counsel for respondent No.1 Patsanstha through the Assistant Registrar, Co-operative Societies, Ahmednagar and the Liquidator submits that respondent No.1 is registered Nagari Sahakari Patsanstha having several branches. Petitioner Nos. 1 and 2-husband and wife, respectively, were the founder members of respondent Patsanstha and till its liquidation either petitioner No.1 or petitioner No.2 was the Chairman. The entire affairs of the respondent Patsanstha was controlled by petitioner Nos. 1 and 2. The total 19697 persons have kept their amounts as a fixed deposit with respondent Patsanstha prior to 15 years back. However, due to mismanagement and misappropriation, they are not in a position to get their principal amount also. Learned counsel submits that as per the record, the principal amount towards the fixed deposits is near about Rs.32.25 Crores. Learned counsel submits that inquiry under Section 88 of the Societies Act was conducted against the members of the managing committee and the officers, including the present petitioners and the said inquiry was going on for near about 4/5 years. Ultimately, Inquiry Officer has passed final order fixing the liability on the concerned persons and the amount of liability is more than Rs.26.00 Crores. In the meantime, some of the depositors have approached the Consumer Forum by filing separate complaints in the year 2011. After hearing the parties, the Consumer Forum by

separate orders in respect of each of the depositors allowed the complaints and held that the respondents therein are jointly and severally liable to pay the amount to the depositors. Learned counsel submits that the respondents in the said complaints before the Consumer Forum including the present petitioners have not challenged the judgment and orders passed by the Consumer Forum. Thus, the orders passed by the Consumer Forum in those complaints have attained finality. Learned counsel submits that in the execution proceedings, the Consumer Forum has issued certificates in terms of the provisions of Section 25(3) of the Act of 1986 and accordingly the Collector and his subordinate officers had taken further steps for recovery of amount as arrears of land revenue. Learned counsel submits that before the properties were put for auction, the revenue authorities have issued notices to the concerned persons, including the petitioners for entering the name of the Government in the revenue record. Accordingly, name of Government is entered in the revenue record of the properties, which are put for auction. The copies of the mutation entry Nos. 11127, 10636, 17976, 56932 are placed on record and marked at Exhibit R-1 (Collectively). Learned counsel submits that even on the earlier point of time, recovery officer of respondent Patsanstha has put the properties of the petitioners and others for auction vide auction notice dated 16.7.2018, however at that time, no one had participated in the said auction proceeding and therefore, the said auction has not reached to its logical end. Learned counsel submits that the present

proceedings are filed only with an ulterior motive to obstruct the auction process and fixed depositors shall not get their amount back for which they are struggling since last many years. Learned counsel submits that during the course of enquiry and the continuation of litigation, several depositors have died. Learned counsel submits that there is no substance in this writ petition and the writ petition is liable to be dismissed.

6. Learned A.G.P. for respondent No.2 submits that in terms of the judgment and orders passed by the Consumer Forum, the execution proceedings came to be filed and accordingly, recovery certificates are issued in terms of provisions of section 25(3) of the Act of 1986, by the Consumer Forum. After receipt of the said recovery certificates, the Collector, Ahmednagar has directed respondent No.2 to execute and implement the directions given in the said certificates issued by the Consumer Forum. Learned A.G.P. submits that after receipt of said recovery certificate, respondent No.2 has issued demand notices of different dates under Rule 5 of the Maharashtra Realization of Land Revenue Rules, 1967, to the petitioners directing them to deposit their relevant amount alongwith interest thereon as the arrears of land revenue. However, the petitioners have failed to deposit the amount in response to the said demand notices and therefore, respondent No.2 has issued notice under Rule 6 of the Rules of 1967 directing the petitioners to deposit the amount and failure to deposit the same, the defaulter is

liable to forfeit its occupancy or alienated holding as described in the notices. The said notices have also been duly served on the petitioners. Furthermore, respondent No.2 has attached the bank account of the respondent Patsanstha; however, the bank account of the respondent Patsanstha was inadequate to satisfy the claim. Thus, respondent No.2 has proceeded further and pleased to seize the immovable properties of the petitioners. Even though the petitioners were aware about the steps taken by respondent No.2 from time to time, however, never bothered to deposit the amount before respondent No.2. Thus, respondent No.2 has rightly issued auction notice dated 08.01.2019 in terms of the procedure as contemplated under Sections 176 and 178 of the Code.

7. Learned A.G.P. for respondent No.2 submits that the petitioners have also submitted an application dated 16.01.2019 in response to the auction notice dated 08.01.2019 before respondent No.2 requesting to afford an opportunity of hearing. Accordingly, respondent No.2 has granted time to the petitioners and adjourned the auction proceeding till 23.01.2019. Meanwhile, this court has passed order on 22.01.2019 in the present writ petition and directed that the auction scheduled on 23.01.2019 shall proceed but it should not be finalised till the next date. Learned A.G.P. submits that the auction process has been completed by respondent No.2 on 23.01.2019 and the highest bid was for Rs.1,05,00,000/-. Out of the said amount, 25% amount has been deposited by the bidder with

respondent No.2. Learned A.G.P. submits that there is no merit and substance in the present writ petition filed by the petitioners and the writ petition is thus liable to be dismissed.

8. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

9. Undisputedly, the orders passed by the Consumer Forum in various complaints filed by the depositors have attained the finality. The petitioners have not challenged the said orders. Admittedly, the petitioners were directors of the respondent Patsanstha. The Consumer Forum in all those complaints held the managing committee members and its directors, including the present petitioners, liable to pay the amount jointly and severally alongwith interest. In view of the same, I find no substance in the submissions made on behalf of the petitioners that they are only liable to the extent of the amount falling to their share and the entire liability cannot be fastened on them.

10. It further appears that the said depositors have approached the Consumer Forum for enforcement of the orders and accordingly in terms of sub-section (3) of Section 25 of the Act of 1986, the Consumer Forum has issued certificates for the said amount to the

Collector of the District for recovery of amount, in the same manner, as arrears of land revenue.

11. Chapter XI of the Code prescribes the provisions for realization of land revenue and other revenue on demands. As per the provisions of Section 176 of the Code, the process for recovery of arrears is prescribed. Section 176 of the Code is reproduced as under:-

“176. Process of recovery of arrears. - An arrear of land revenue may be recovered by any or more of the following processes, that is to say,-

- (a) by serving a written notice of demand on the defaulter under Section 178;*
- (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under Section 179;*
- (c) by distraint and sale of the defaulter's movable property under Section 180;*
- (d) by attachment and sale of the defaulter's immovable property under Section 181;*
- (e) by attachment of the defaulter's immovable property under Section 182;*
- (f) by arrest and imprisonment of the defaulter under Sections 183 and 184.*
- (g) in the case of alienated holding consisting of entire villages, or shares of village, by attachment of the said villages or shares of villages under Sections 185 to 190 (both inclusive):*

***Provided that,** the processes specified in clauses (c), (d) and (e) shall not permit the attachment and sale of the following, namely:-*

- (i) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, his wife and children, and such personal ornaments as, in accordance with the religious usage, cannot be parted with by any woman;*
- (ii) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry, except an implement driven by mechanical power and such cattle and seed as may, in the opinion of the Collector, be necessary to enable him to*

earn his livelihood as such and also such portion of the agricultural produce as in the opinion of the Collector is necessary for the purpose of providing, until the next harvest, for the due cultivation of the land and for support of the holder and his family;

(iii) articles set aside exclusively for the use of religious endowments;

(iv) houses and other buildings (with the materials and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

12. So far as the serving of written notice of demand on the defaulter under Section 178 of the Code in terms of clause (f) of Section 176 of the Code, as above, normally a notice of demand may be issued on or after the day following that on which the arrear accrues. In terms of Section 173 of the Code, any land revenue due and not paid on or before the prescribed dates becomes therefrom an arrear, and the persons responsible for it under the provision of Section 168 or otherwise become defaulters. In the instant case, when the amount due from the petitioners has been directed to be recovered by issuing certificate under section 25(3) of the Act of 1986, question of issuing notice of demand on or after the day following that on which the arrear accrues in terms of the Section 178 of the Code, would be meaningless.

13. Accordingly, in terms of provisions of Section 181 of the Code, respondent No.2 has decided to sale the defaulters immovable property. I have carefully gone through all annexures and papers, I do not find any procedural lapses on the part of respondent No.2.

14. It appears the Consumer Forum way back in the year 2014 and onwards passed orders on various complaints holding the present petitioners and other directors jointly and severally liable to pay the amount under the fixed deposits to the complainants therein. However, the depositors are not getting their amount back. It further appears that those depositors have kept their hard earned amount in the fixed deposits 10/15 years back prior to the liquidation of respondent Patsanstha. Learned counsel appearing for respondent No.1 has also informed to us that many such depositors died during pendency of the litigation. It appears that the petitioners are protracting the process of auction and depriving the depositors in whose favour the orders have been passed by the Consumer Forum. There is no substance at all in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

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