IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6859 OF 2020

Latika Narendra Patil and another … Petitioners

Versus

The State of Maharashtra and others … Respondents

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for the petitioners
Mr. Y. G. Gujrathi, AGP for respondent Nos. 1 o 4
Mr. P. N. Nagargoje, Advocate h/f Mr. D. B. Thoke, Advocate for respondent Nos. 5 and 6
Mr. A. G. Talhar, Advocate for respondent No.7

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 02nd MARCH, 2021
PRONOUNCED ON : 08th APRIL, 2021

PER COURT :-

. The challenge in this writ petition is to the order dated 03.10.2019 passed by the Additional District Magistrate, Jalgaon. Vide the impugned order, the Additional District Magistrate has directed to stay handing over possession of the agricultural land (*Gut* No.96/1) to the petitioners herein until decision of Regular Civil Suit (R.C.S.) No.8 of 2008 pending in the Court of Civil Judge, Junior Division, Raver.

2. The petitioners have purchased the land *Gut* No.96/1 in a public auction held on 24.04.2017. One Rupali w/o Chetan Paratne had obtained loan of Rs.25,00,000/- (Rupees Twenty Five Lakh) from “The Bhusawal Peoples Co-operative Bank Limited” (respondent No.5 herein), way back in 2004. Shri Liladhar Laxman Bharambe, the father of Rupali, was the guarantor for the said loan. It appears that land *Gut* No.96/1 had been given by him as security for repayment of the loan. Since the borrower defaulted on the loan, the bank obtained Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, ‘the Act of 1960’) on 20.10.2005. The land *Gut* No.96/1 also came to be attached under Rule 107(10) of the Maharashtra Co-operative Societies Rules (for short ‘the Rules’) on 28.10.2005. The bank, after complying with the Rules, issued notice dated 20.03.2017 to both the borrower and the guarantor, informing that if the loan amount is not paid, the land would be sold in auction on 24.04.2017. Since the loan amount remained unpaid, the land came to be sold in public auction. Eight bidders had participated. The petitioners offered Rs.16,25,000/-. The bid of the petitioners came to be accepted as being the the highest one. It was over and above the price fixed by the District Deputy Registrar (DDR). The sale certificate was issued

by the DDR on 23.04.2018. The sale came to be confirmed. The bank, on receipt of the entire sale consideration, executed the sale-deed in favour of the petitioners on 07.05.2018. The bank, thereafter, submitted the proposal to the District Magistrate for delivery of possession. The District Magistrate, on 31.05.2018, issued notice to the borrower and the guarantor to handover possession of the land. They remained absent. Possession, therefore, could not be handed over. The District Magistrate, vide his order dated 29.07.2019, passed the order with a direction to the Assistant Registrar, to handover possession of the land to the petitioners. The Additional District Magistrate, however, passed the impugned order dated 03.10.2019, staying delivery of possession, pending the decision of R.C.S. No.8 of 2008.

3. Shri V. D. Hon, learned Senior Advocate, appearing for the petitioners would submit that both the borrower and the guarantor tried to stall delivery of possession of the land to the petitioners. They have been unsuccessful in their such attempts. The son and the wife of the guarantor filed the suit for restraining him from transferring the land. It was a collusive suit. In 2015, the suit was dismissed in default. The suit, however, came to be restored.

Interim order came to be passed, restraining the guarantor from transferring the land in whatsoever manner. Neither the petitioners nor the bank have been parties to the said suit. The order passed in the suit is therefore not binding on them. The possession of the land is to be delivered in accordance with the provisions under the Act and the Rules. The Additional District Magistrate is subordinate to the District Magistrate. He should not have passed the impugned order, when the District Magistrate, vide his order dated 29.07.2019, had directed to handover possession of the land to the petitioners. The learned Senior Advocate, therefore, urged for allowing the writ petition.

4. The learned AGP would support the impugned order.

5. Shri A. G. Talhar, learned Advocate appearing for respondent No.7 would, on the other hand, submit that the petitioner No.1 is the daughter of Ex-Chairman of the bank. Petitioner No.2 is the close relative of bank officials. The non official members, the committee of the Liquidator indulged in arranging the sale and with the help of the Recovery Officers, properties of borrowers and guarantors are purchased at throw away price. The agricultural land in question was shown to have been sold in auction

dated 24.04.2017. In fact, no such auction did take place at Grampanchayat office. The Peon serving with the Grampanchayat has filed an affidavit in this regard. The village Sarpanch has also given a certificate that no such auction proceedings were conducted on the given date in the office of the Grampanchayat. The persons shown to have participated in the auction have informed to have never participated in the auction. Their signatures have been obtained on the document, later on. The respondent No.7 is unable to challenge the auction sale due to financial constraints. He is unable to deposit 50% of the amount. The Liquidator, Recovery Officer and officials of the Co-operation Department are hands in glove. The borrowers have made a complaint in this regard to the higher officials of the Co-operative Department and inquiry in that regard has been ordered. The person appointed as Inquiry Officer, is a member of Liquidator committee and he has participated in illegal activities. The learned Advocate urged this Court to protect the interest of the borrower and the respondent No.7. Some documents have also been produced on record to show that inquiry was made into proceedings of public auction of the properties of some of the borrowers, guarantors of the loans advanced by the bank. One Advocate Shri Anil Nemade was the Inquiry Officer. The report of inquiry puts blame at the bank officials. The learned Advocate, therefore, urged for dismissal of the writ petition.

6. The question involved in this writ petition is as to whether the Additional District Magistrate in the facts and circumstances of the case, was justified in passing the impugned order dated 03.10.2019, whereby he has stayed the delivery of possession of the land sold in public auction, until the decision of R.C.S.No.8 of 2008.

7. One Rupali w/o Chetan Paratne had obtained loan of Rs.25,00,000/- from the bank, way back in 2004. Her father Liladhar is the guarantor to the said loan. Since both of them defaulted on the loan, the bank obtained the recovery certificate under Section 101 of the Act of 1960, way back in October 2005. The land *Gut* No.96/1 belonging to the borrower, came to be attached pursuant to Rule 101(10) of the Rules, in October 2005 itself. The guarantor had filed Writ Petition No.3094 of 2007 challenging issuance of recovery certificate dated 20.10.2005. The said writ petition was dismissed on the ground of availability of alternate remedy in the nature of revision application. The guarantor appears to have not availed the said remedy under Section 154 of the Act of 1960. It appears that

the land was put to public auction. Its offset price was fixed by the DDR. The land came to be sold in public auction held on 24.07.2017, accepting the highest bid of the petitioners. The said has been confirmed. Sale certificate has been issued. On payment of the purchase price the sale-deed has also been executed in favour of the petitioners. It is only the matter of delivery of possession of the land purchased by the petitioners.

8. Respondent No.7 had filed Writ Petition No.6571 of 2018, taking exception to the auction sale. The petition was dismissed on the ground of *locus-standi*. The guarantor, again moved the writ petition (Writ Petition No.14240 of 2018), challenging the order of the DDR issuing the sale certificate. This Court, vide order dated 21.12.2018, refused to grant interim relief in the said writ petition. Para 3 of the said order reads thus:

> *"3. The petitioner-guarantor is the father of the borrower. The borrower had availed of hypothicated cash credit worth ₹25,00,000/- which was disbursed on 26 February 2004. The borrower did not pay a single farthing towards the repayment. The recovery certificate was issued on 20 October 2005. The writ petition filed was rejected on the ground of alternate remedy. A revision was not filed nor the amount was deposited. Several auctions were carried out. The son of the petitioner filed a Civil Suit. The order of status quo passed in the civil suit was vacated and the suit was dismissed for default. Thereafter auction was held. The property was purchased*

by the respondents-purchasers. Sale was confirmed and at this stage, the petitioner now seeks to stall handing over the possession. The petitioner, his son and daughter have made every attempt to stall the proceedings without repaying the amount of loan they have availed of. The petitioner has invoked equity jurisdiction of this Court. Looking to the conduct of the petitioner, the petitioner is dis-entitled to grant of any ad-interim order. Ad-interim relief is refused."

9. Respondent No.7, son of the borrower filed R.C.S. No.8 of 2008 against his father – guarantor. The suit was dismissed in default in the year 2015. The suit came to be restored. The learned Advocate for the petitioners has a reason to contend that it is a collusive suit between the son and the father just with a view to stall sale of the land attached towards recovery of the loan amount. In the said suit, the learned Joint Civil Judge, Junior Division, Raver, has passed the interim order dated 01.09.2017. The said order reads thus:

"*1) Application is partly allowed.*
2) Non-applicant no.1 or any person on his behalf is hereby temporarily restrained from transferring the suit properties mentioned in para 2 of this application in any manner in favour of any person till the decision of this matter.
3) Cost of this application shall be the cost in this matter."

10. Admittedly, neither the petitioners nor the bank or the recovery officers are parties to the said suit. The interim order dated

01.09.2017 passed in the said suit, would therefore, not be binding on these persons. The possession of the land sold in the auction, is sought to be delivered to the petitioners. The learned Additional District Magistrate, was therefore, not justified in passing the impugned order when everything appears to have taken placed in accordance with the provisions under the Act and Rules and more so, when the aforesaid persons are not parties to the said suit.

11. True, the respondent No.7 in his affidavit has made serious allegations against the bank officials, Liquidator and officials of the Co-operation Department of the State of Maharashtra. If those allegations are true, the proceedings of the auction sale may be liable to be set aside. What has been alleged in the affidavit-in-reply are the disputed questions of fact. Needless to mention that respondent No.7 and his father may take exception to the proceedings of issuance of sale certificate and subsequent consequential proceedings in an appropriate proceedings before the appropriate forum, if permissible in law. It appears that it was the loan amount of Rs.25,00,000/-, but no farthing has been paid towards repayment of the loan. By this time, the amount of loan might have gone up substantially.

Be that as it may, for the reasons given herein above, I am of the view that the learned Additional District Magistrate was not justified in passing the impugned order. The writ petition, therefore, succeeds. The impugned order dated 03.10.2019, passed by the learned Additional District Magistrate, Jalgaon, is set aside.

12. In the aforesaid terms, the writ petition is disposed of.

[R. G. AVACHAT, J.]

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