

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6109 OF 2021

Ananda Atmaram Gole	}	Petitioner
Versus		
State of Maharashtra and Ors.	}	Respondents

Mr. Suhas S. Deokar for the petitioner.

Ms. Madhubala Kajale-'B' Panel Counsel for State.

CORAM :- G. S. KULKARNI, J.

DATE :- SEPTEMBER 30, 2021

PC :-

1. Heard learned advocate for the petitioner.
2. This writ petition has been filed praying for the following relief: -

“(a) That by Writ of Certiorari and or by appropriate Writ, Direction and Order, Your Lordship be pleaded to quash and set aside Impugned Inquiry Report bearing Ja. Kra. Kaksh-1/ Napat/ Ka. 77/ Paschim Maharashtra Na. Pat/ 2016 and order dated 27/01/2016 passed by the Authorised officer the Paschim Maharashtra urban cooperative credit society ltd. Pachgani @ assistant registrar cooperative society taluka koregaon.”

3. Urgent circulation of the petition was sought in view of the notice dated 30th August 2021 issued by the concerned authorized officer, whereby, the petitioner's property bearing Gat No. 1717 has been put up for auction for recovery of an

amount of Rs. 3,66,923/- under a recovery certificate dated 5th April 2016 being the amount payable to the respondent no.4 [the Paschim Maharashtra Urban Cooperative Credit Society Ltd. Pachgani (under liquidation)].

4. The learned advocate for the petitioner submits that lawful procedure was not adopted by the respondents to proceed against the petitioner and also some other members/directors, hence, the report dated 27th November 2016 of the authorized officer could not have been acted upon. The learned advocate for the petitioner has drawn the Court's attention to an order dated 3rd January 2018 passed by the Hon'ble Minister for Co-operation in an appeal filed by one Bhanudas Gole, who was similarly situated as the petitioner; and more particularly to the findings as recorded by the Hon'ble Minister, that the steps, which were taken under sections 81, 83 and 89A were not in accordance with law so as to order recovery. It is submitted that the very same report of the authorized officer is being implemented under the recovery certificate qua the petitioner.

5. The learned advocate for the petitioner has submitted that an appeal was filed on 14 December 2016 by the

petitioner before the Hon'ble Minister challenging the recovery certificate, which has not been heard so far, despite attempts being made by the petitioner to get the same heard. In the circumstances, he has prayed that the recovery ought to be stayed.

6. On the other hand, Ms.Kajale has opposed the petition. She would submit that the petitioner be directed to deposit the amount, sought to be recovered from him under the recovery certificate. She would however not dispute that the petitioner's appeal is pending disposal before the Hon'ble Minister.

7. Having heard the learned counsel for the parties, in my opinion, there is much substance in the contentions as urged by the petitioner relying on the order passed by the Hon'ble Minister in Bhanudas Gole's case. A perusal of the said order would reveal that the Hon'ble Minister has observed that proper procedure was not followed in preparation of the report dated 27th January 2016 by the authorized officer, purportedly prepared under section 88 of the Maharashtra Co-operative Societies Act, 1960. Considering such lacunae, the Hon'ble Minister has allowed the appeal filed by Bhanudas Gole as

also quashed the said report. Prima facie there does not appear to be much difference between the case of Bhanudas Gole and the petitioner's case as the same report which has been **deprecated** by the Hon'ble Minister is being **impleaded** against the petitioner by issuance of the recovery certificate in question. Thus in my opinion, the petitioner would be entitled to a protection till the appeal is decided by the Hon'ble Minister, which is pending for more than 4 years.

8. In the above circumstances, the petition is being disposed of by the following order: -

ORDER

- i) The Hon'ble Minister for Co-operation is requested to decide the petitioner's appeal as early as possible and preferably within a period of 1 year from today.
 - ii) Till the petitioner's appeal is heard and decided, the notice dated 30th August 2021 issued by the recovery officer as against the petitioner shall remain stayed.
 - iii) All contentions of the parties on the pending appeal are expressly kept open.
9. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)