

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

WRIT PETITION NO. 4071 OF 2013

(VINAY RAMKRUSHNA SAOJI...VS.. STATE OF MAHARASHTRA THR. SECRETARY MINISTRY OF
REVENUE & FORESTS & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M.Ghare, Advocate for Petitioner.
Shri S.P.Deshpande, A.G.P. for Respondent Nos.1 to 6 & 11.
Shri D.R.Khapre, Advocate for Respondent No.7.
Shri S.R.Deshpande, Advocate for Respondent No.8.
Shri V.K.Paliwal, Advocate for Respondent No.9.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : MARCH 08, 2021.

1. This Court by order dated 19th November, 2018 called for R & P relating to the conduct of the auction. The matter was adjourned for three weeks.

2. The Registry sent communication for calling R & P from Deputy Superintendent of Land Records, Mehkar and Taluka Inspector of Land Records, Mehkar, District : Buldana. The record is not yet received.

3. We have carefully considered the designations of the respondents to the present petition. Since the prayer in the application calling for R & P is vague and the respondents are not properly described, record of proceedings in relation to measurement of land is not received. We have considered the challenge in the writ petition and we called upon the parties to argue the petition on merits.

4. By this petition auction purchaser who purchased the property in dispute in auction under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as “the Rules of 1961”) has challenged refusal on the part of the Revenue Authorities to deliver possession to the auction purchaser in pursuance of the Sale Certificate issued by Special Recovery Officer appointed under Section 156 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the Act of 1960”).

5. The case of the petitioner in substance is that once the proceedings under Rule 107 of the Rules of 1961 holding auction have attained finality up to this Court, the authorities under the provisions of the Maharashtra Land Revenue Code while measuring the land could not have gone into the validity of the auction. The said authorities had no option but to deliver possession of the property in dispute to the petitioner.

6. This Court on 14th January 2015 had disposed of the present petition by directing the respondent No.4-Tahsildar to proceed in accordance with law to place the petitioner in possession of the land.

7. After the Writ Petition was disposed of, the respondent No.8 filed an application for recalling the order dated 14th January 2015 along with the application for condonation of delay.

Thereafter on 13th March 2015 this Court recorded a statement on behalf of the petitioner that the petitioner has received possession of the land in dispute on 9th

March 2015 and this Court by recording the said statement directed the parties to maintain status-quo as of 13th March 2015.

By order dated 29th October 2015 this Court recalled its judgment dated 14th January 2015 and restored Writ Petition No.4071 of 2013 back on its file and fresh notice was issued to the un-served respondents.

This Court by order dated 25th February 2016 issued Rule in the present petition and taking into consideration the affidavit filed by respondent No.4-Tahsildar, it was directed that the respondent Nos. 8 and 9 shall not disturb possession of the petitioner during pendency of the petition.

8. Today, when the matter is called out, the learned Advocate for the petitioner invited our attention to the affidavit filed by the respondent No.4-Tahsildar Shri. Nirbhay Subhash Jain, who has stated in paragraph No.6 by way of additional submission that the petitioner has been placed in possession of the land in dispute on 9th March 2015.

9. The original dispute before the Taluka Inspector of Land Records arose because of failure to deliver possession in pursuance of the auction held under Rule 107 of the Rules of 1961. In view of the affidavit filed by the respondent No.4-Tahsildar, we are satisfied that the petitioner has been placed in possession of the land in dispute in pursuance of the auction held under Rule 107 of the Rules of 1961, nothing remains to be adjudicated in the present petition.

10. The facts on record reveal that respondent No.8 had purchased property in dispute in an auction sale by the authorities under the Act of 1960. Once the auction sale is confirmed by the Special Recovery Officer under Rule 107 of the Act of 1960, the title of the property vests with the auction purchaser namely the petitioner. Once the auction purchaser (present petitioner) has become absolute owner of the property, the borrower had no title to convey in favour of the respondent No.8.

In the above facts, Shri A.M.Ghare, learned Advocate for the petitioner, prayed that since the auction purchaser has been kept away from the possession of the land till 6th March 2015. The auction took place in the year 2006 and even thereafter the auction purchaser has to proceed with the present writ petition and other litigations instituted for and on behalf of the borrowers, he submitted that this Court should impose exemplary costs on the respondent No.8 and Respondent No.9.

11. Shri S.R.Deshpande, learned Advocate for the respondent No.8 submitted that there is no prayer in the writ petition seeking costs therefore, the costs cannot be imposed on the respondent No.8.

12. We have considered the submission of the petitioner and the Advocate for the respondent No.8. We are satisfied that though the auction was held in the year 2006,

till 2015 possession of the property, which is an agricultural land, was not delivered to the auction purchaser and the proceedings lingered on till 2021. In our view, third party auction purchaser needs to be protected from frivolous and vexatious pleas to create obstacle in delivery of the possession.

13. A distinction needs to be drawn between decree holder auction purchaser and third party auction purchaser. It is the duty of the Court to protect third party auction purchaser from frivolous pleas while delivering possession in his favour otherwise the ordinary citizen will not venture into the auction proceedings to purchase the property through Court Auction or through auction by the statutory authorities.

14. In our view, the auction purchaser who has litigated from 2006 till 2021 needs to be compensated for the act of the respondent Nos. 8 and respondent No.9. We, therefore, direct respondent No.8-Madhav Namdeo Dalvi and respondent No.9-Amol Bhimrao Kankal to pay an amount of Rupees Twenty Five Thousand each to the petitioner, within a period of four weeks from today.

15. In case of failure to pay the amount of costs, within a period of four weeks from today, the petitioner will be at liberty to recover the said costs as per Rules 21 and 24 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960.

The writ petition is **disposed of** accordingly.

CIVIL APPLN.NO.2537/2015.

In view of disposal of the Writ Petition, the application praying for restitution of the parties has become infructuous, hence, it is **disposed of**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)

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