

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD.**

**WRIT PETITION NO. 14178 OF 2017**

Liquidator For, 'Aamdar Balasaheb Thorat',  
Nagari Sahakari Pat Sanstha Ltd.,  
Ashvi, Tal. Sangamner, Dist. Ahmednagar,  
Rajesh Sharad Joshi,  
Age : 39 years, Occu. Service,  
R/o. Sangamner, Dist. Ahmednagar.

**...Petitioner**

**Versus**

1. Shri. Yadav Dagadu Andhale,  
Age : Major, Occu. Agriculture,
  2. Smt. Parvatabai Yadav Andhale,  
Age : Major, Occu. Agriculture,  
No. 1 & 2 R/o. Pratappur,  
Tal. Sangamner, Dist. Ahmednagar.
  3. Divisional Joint Registrar of  
Co-operative Society, For Nashik Division,  
Gadkari Chowk, Nashik.
  4. Hon. Secretary for Co-operative Department,  
State of Maharashtra, Mantralaya, Mumbai.
- ...Respondents**

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Shri. Amrutlal Z. Gandhi, Advocate for the petitioner  
Shri. K. N. Shermale, Advocate for respondent nos. 1 and 2  
Shri. K. B. Jadhavar, AGP for respondent/State

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AND

**WRIT PETITION NO. 14796 OF 2019**

1. Yadav s/o Dagadu Andhale,  
Age : 75 years, Occu. Agril,  
R/o. Pratapur, Tq. Sangamner,  
Dist. Ahmednagar.

2. Parvatabai s/o Yadav Andhale,  
Age : 70 years, Occu. Agril,  
R/o. Pratapur, Tq. Sangamner,  
Dist. Ahmednagar.

...Petitioners

**Versus**

1. The Liquidator for 'Aamdass Balasaheb Thorat'  
Nagari Sahakari Pat Sanstha Ltd., Ashvi,  
Tq. Sangamner, Dist. Ahmednagar,  
Shri. Rajesh s/o Sharad Joshi,  
Age : 41 years, Occu. Service,  
R/o. Sangamner, Tal. Sangamner,  
Dist. Ahmednagar.
2. The Divisional Joint Registrar,  
Cooperative Societies,  
Nashik Division, Nashik.
3. The State of Maharashtra  
through it's -  
The Principal Secretary,  
Co-operative Department,  
Mantralaya, Mumbai.

...Respondents

.....

Shri. K. N. Shermale, Advocate for the petitioners  
Shri. Amrutlal Z. Gandhi, Advocate for respondent no. 1  
Shri. K. B. Jadhavar, AGP for respondent nos. 2 and 3

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**CORAM : BHARATI H. DANGRE, J.**  
**DATE : JANUARY 13<sup>TH</sup>, 2022**

**ORAL JUDGMENT : -**

1. The two writ petitions challenge two distinct orders but since the orders impugned arise out of the similar background, the

petitions were heard together and being disposed off by this common judgment.

2. In writ petition no. 14178 of 2017, the liquidator of 'Aamdar Balasaheb Thorat' Nagari Sahakari Pat Sanstha Ltd., Ashwi, Tq. Sangamner, Dist. Ahmednagar (hereinafter referred to as 'Pat Sanstha') is the petitioner along with one Shri. Yadav Dagadu Andhale and Smt. Parvatabai Yadav Andhale as the respondent nos. 1 and 2. The Divisional Joint Registrar of Cooperative Societies, Nashik Division, Nashik and the Secretary of the Co-operative Department, State of Maharashtra, Mumbai, are the other respondents.

. The said writ petition pose a challenge to the order passed by the Civil Judge Senior Division, Sangamner in Spl. Darkhast No. 102/2002, dated 29.04.2017 passed below Exh. 168 and the petitioner seek a relief to the effect that the application filed by the petitioner on 13.03.2015 on the ground that the power exercised by the Divisional Joint Registrar on 05.03.2013, thereby granting permission to continue the Darkhast by invoking power under Section 107 of the Maharashtra Cooperative Societies Act, 1960 be allowed. The said writ petition assail the power of the Divisional Joint Registrar to pass the said order, and the ground raised in the petition is to the effect that when the power of the Registrar are

conferred on the Dy. Registrar for the Taluka, then whether the Divisional Joint Registrar of the Cooperative Societies was empowered to exercise the said power.

. In another writ petition no. 14796/2019, the petitioners are Yadav Andhale and Parvatabai Andhale and the petition is instituted against the liquidator of the Pat Sanstha and the Divisional Joint Registrar of Cooperative Societies and the State of Maharashtra and raise a challenge to the order passed by the Civil Judge Senior Division, Sangamner, rejecting the application below Exh. 204 filed by the petitioners for the purposes of continuing the proceedings in Reg. Darkhast against the properties mentioned therein vide Gram Panchayat Milkat No. 10 and subsequently numbered as 11 and the application of the petitioners came to be rejected on the ground that the petitioners failed to demonstrate that the property under attachment being Gram Panchayat Milkat No. 9 which came to be attached in the execution proceedings under Order 21 Rule 66 CPC, is not the same property as Gram Panchayat Milkat Property No. 10 and 11.

3. The brief background for institution of the Reg. Darkhast would reveal that the petitioners Yadav Andhale and Parvatabai Andhale filed a Suit bearing no. 377/1998 for recovery of amount

deposited with the respondent No. 1 - 'Pat Sanstha' before the learned Co-operative Court at Kopergaon which came to be decreed on 31.08.2002, wherein the Co-operative Court directed the respondent no.1 to pay an amount of Rs. 2,86,260/- along with interest @18% p.a. from 01.08.1997 upto realization of the entire amount.

4. Pursuant to the said judgment and award, the petitioner filed execution proceeding before the learned Civil Judge Senior Division, Sangamner bearing no. 102/2002 in which the respondent no. 1 appeared and resisted the claim. During the pendency of the said Darkhast, the Dy. Registrar, Co-operative Society, Sangamner initiated an inquiry under Section 101 of the Maharashtra Cooperative Societies Act, 1960 against the Society and after inquiry, declared the society to be wound up and appointed a liquidator by virtue of Section 103 of the Act of 1960. In the wake of appointment of the liquidator, since Section 107 of the Maharashtra Cooperative Societies Act contemplated a permission for continuation of proceedings against the society from the Registrar, the petitioner preferred an application for permission to continue the proceedings against the society to the learned Registrar and upon considering the legal position, the Joint Registrar, Nashik granted leave to continue

the said Darkhast vide his order dated 05.03.2013, where with reference to Darkhast No. 102/2002 and Darkhast No. 28/2008 which were the proceedings held to be pending against the society and permission came to be granted to continue the said proceedings in the court of CJSD Sangamner. Pursuant to the said order, the executing court proceeded with the execution proceedings wherein the liquidator of the pat sanstha filed an application below Exh. 168 alleging that the execution cannot be continued and is required to be closed as the permission granted by the Divisional Joint Registrar to continue the Darkhast is without jurisdiction. This application was adjudicated by the Civil Judge Senior Division, Sangamner and on 29.04.2017 it came to be rejected, which is a subject matter of writ petition no. 14796/2019.

5. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

6. I have heard learned Counsel Shri. K. N. Shermale for the petitioners/decreed holders, the learned Counsel Shri. Amrutlal Gandhi for Liquidator for 'Aamdar Balasaheb Thorat' Nagari Sahakari Pat Sanstha and the learned AGP Shri. K. B. Jadhavar for the State.

7. On an objection being raised by the liquidator to the effect that it was only the Dy. Registrar who was competent to issue permission for continuance of the Darkhast, it is necessary to make reference to Section 107 which is contained in Chapter X of the Act of 1960, which provide for liquidation. Section 103 provide for appointment of liquidators and Section 105 set out the powers of the liquidator. Section 107 create a bar of suit, in winding up and dissolution matters which provide that, save as expressly provided in this Act, no civil court shall take cognizance of any matter connected with the winding up or dissolution of a society under the Act; and when a winding up order has been made, no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose. In the wake of the aforesaid provision, upon an application being preferred, by the petitioners to continue the liquidation proceedings, the Divisional Joint Registrar, Cooperative Societies, has passed the order permitting the proceedings to continue.

8. The learned Counsel for the petitioner by inviting attention to Section 3 of the Maharashtra Cooperative Societies Act, 1960 and notification issued by the State Government on 07.08.1993 vide

G.O.No. CSL1493/1162/CR-47/15-C would submit that the powers of the Registrar are conferred upon the officers designated in Column No. 2 for the areas specified and for a taluka, the Dy. Registrar and Assistant Registrars shall exercise the powers of the Registrar and, therefore, the argument advanced is the Divisional Joint Registrar of Cooperative Societies in the division could not have exercised the powers of the Dy. Registrar of the taluka. This argument was specifically considered by the learned Judge in the impugned order dated 29.04.2017 and he has rejected the said argument with the following observation : -

“12. As stated above, the Government has conferred the powers of the Registrar on the Deputy Registrar at Taluka places. However, it does not mean that powers given to the Registrar which are exercised by Divisional Joint Registrar under the Act of 1960 are withdrawn. In the order dated 07/08/1993, issued by the Government, it is specifically mentioned that the Officers specified in Column No. 2 of the Schedule Annexed thereto are appointed to assist the Registrar. Even Section 3 of the Act of 1960 empowers the Government to appoint the Officers with such designations as it may specify to assist the Registrar. Thus, it is clear that Deputy Registrar is appointed to assist the Registrar and the Divisional Joint Registrar. Only because powers under the Act of 1960 exercised by the Registrar are conferred upon the Deputy Registrar, it can not be concluded that the powers of the Registrar which are exercised by Divisional Joint Registrar under Section 107 of the Act of 1960 are withdrawn. In my considered opinion though the Government has conferred the powers of the Registrar upon Deputy Registrar at Taluka places, the permission dated 05/03/2013 issued by Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik to continue this Darkhast would be legal and valid. Hence, the application being devoid of merits is liable to be rejected. ...”

9. It is pertinent to note that the power under Section 107 is to be exercised by the Registrar and Section 3 of the Act which contain a provision for appointment of Registrar and the subordinates adumbrate that the State Government may appoint a person to be the Registrar of the Cooperative Societies for the State; and may appoint one or more persons to assist such Registrar, with such designations and in such local areas or throughout the State, as it may specify in that behalf, and may by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The Section enumerate that the person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government.

. In the wake of the said provision, the State Government has from time to time conferred the power of the Registrar upon the various authorities, subordinate to the Registrar, to exercise power in the area or jurisdiction specified by the State Government. In exercise of the said power, the State Government had appointed officers to assist the Registrar in the areas specified and the

notification which has been placed on record would reveal that though the Registrar / Addl. Registrar / Jt. Registrar at the headquarters would exercise his power throughout the State, the various authorities like the Divisional Joint Registrar at the level of the division, the District Dy. Registrar at district level and the areas specified in the notification and the Dy. Registrar and Asst. Registrar at taluka level is empowered to exercise the powers of Registrar under the Act and under the said Rules except the powers which are specifically mentioned to be exercisable only by the Registrar. The Dy. Registrar and Asst. Registrar in taluka shall exercise the powers of Registrar but, that will not denude the Registrar or the Divisional Joint Registrar, who exercise the powers of the Registrar in the division to invoke the power of the Registrar and the argument advanced that it was the only subordinate authority i.e. Dy. Registrar at taluka level who could have exercised the power, is without any basis. In **Sadashiv Vithoba Hatkar Vs. State of Maharashtra** reported in 2004 (1) Mh.L.J. 744, the learned Single Judge of this Court has clarified about the powers to be exercised by the Registrar in the wake of Section 152 of the Act and by referring to the notification issued by the State Government, the learned Single Judge (Justice S. A. Bobde, J. as he was then) in paragraph no. 10 has observed as under : -

"10. Having regard to the provisions of Section 3 of the Act, which empowers the State Government to appoint one or more persons to assist such Registrar with such designation and in such local areas or throughout the State, as it may specify in that behalf, it is clear that the Divisional Joint Registrar is equivalent to that of Registrar, Joint Registrar for local areas such as Division. In this view of the matter, the decision taken by the Divisional Joint Registrar in the present case, must be construed to be a decision of the Joint Registrar and, therefore, the same is appealable to the State Government under Clause (a) of Section 152(1) of the Act and the State has rightly entertained and decided the appeal."

. The position of law being well settled *qua* the exercise of the power delegated to a subordinate authority, it is an accepted position in law that to delegate to another is not to denude oneself and the word "delegation" implies that the powers are committed to another person or body, which are as a rule, always subject to resumption by the authority delegating it. The delegating authority continue his power to act concurrently on matters within the area of delegated authority except insofar as it may already have become bound by an act of its delegate.

. In any case in the present case, the issue involved is about exercise of power by the Registrar under Section 107 of the Act and since the power of the Registrar has been delegated to various authorities to be exercised *qua* the area assigned to them, each one of them acting as a delegatee from the Registrar, the exercise of power

by the Divisional Joint Registrar, Cooperative Societies, who is empowered to exercise all powers of the Registrar for the division except the power under Section 152, being the power under appeal and the power of revision under Section 154, the exercise of power by him cannot be said to be suffering from any flaw and merely because the District Dy. Registrar and Asst. Registrar in taluka are empowered to exercise the powers of the Registrar in the taluka, the power being exercised by the Divisional Joint Registrar of the division cannot be said to be usurpation of his powers. The Divisional Joint Registrar, Cooperative Societies, has exercised the power of Registrar, is empowered to exercise the same and by exercising the said power he has directed continuation of the Darkhast, despite appointment of liquidator and the winding up process being in progress. The order dated 05.03.2013 do not travel beyond the powers of Divisional Joint Registrar, Nashik Division and holding that the power has been rightly exercised, the Civil Judge Senior Division, Sangamner has rightly rejected the objection filed by the petitioner/liquidator below Exh. 168.

. Since no legal infirmity can be noticed in the impugned orders, upholding the same the writ petition no. 14178 of 2017 is dismissed. Rule is discharged.

10. As far as Writ Petition No. 14796/2019 is concerned, the challenge is to the order passed below Exh. 204.

. While the proceedings of the Darkhast were permitted to be continued by the orders of the Divisional Joint Registrar, and the said order being subjected to writ petition no. 14178/2017, in which on 12.12.2018 this Court had issued the following directions.

"5. In the meanwhile, the Executing Court shall proceed with the execution proceedings and shall also take note of the statement made by the liquidator today in this Court that he has no objection if the property of the society attached by the executing court is put to an auction."

11. After the said order was passed, the liquidator made several attempts to create obstacles in the way of the executing court putting the said property to auction and this constrained the originals petitioners Yadav Andhale and Parvatabai Andhale to file Contempt Petition. The petitioners also filed an application below Exh. 204, contending that the respondent no. 1 is having an immovable property and the said property is attached by the court. It was specifically pleaded that when the property was attached at that time the property was allotted number 9, as per the Gram Panchayat record, however during the pendency of the execution proceedings, the said property was converted into Gram Panchayat Milkat No. 10 and at a later point of time the Milkat No. 10 is again converted into

Gram Panchayat Milkat No. 11, but it was specifically pleaded that the property is one and the same, resultantly the property under attachment is now numbered as property no. 11 and, therefore, the said property should be put to auction by virtue of Order 21 Rule 66 of CPC.

. The respondent resisted the said application with only on one ground i.e. city survey number would be considered for the purpose of title and not the record of the Gram Panchayat. It was further contended that city survey bearing no. 688 belongs to one Shri. Kailash Shrikishan Biyani and Prakash Ramchandra Kolapkar. It was also contended that the respondent no. 1 had taken efforts to recover the amount from 21 borrowers and the value of the property is Rs. 80.00 lakhs but the petitioner has shown it's value as Rs. 10.00 lakhs.

12. On consideration of the rival claims *qua* Exh. 204, the Civil Judge Senior Division, Sangamner rejected the application on the ground that the property attached by the Court is Gram Panchayat Milkat no. 9 and the petitioners have not placed on record any document to show that the Gram Panchayat Milkat no. 9 is converted in Gram Panchayat Milkat No. 11. This order came to be passed on 01.08.2009 and is the order assailed in writ petition no. 14796/2019.

. When the impugned order is perused along with the record and proceedings of the said writ petition, the objection of the respondents which found favour with the learned Judge in the impugned order is found to be baseless for a simple reason that the Sarpanch/Block Development Officer had issued a Dakhala thereby declaring that Gram Panchayat Milkat No. 9, 10 and 11 is one and the same and the numbers of the property have been revised from time to time but factually the property is one and the same. The said declaration dated 17.09.2019 came to be issued by the Gram Panchayat on an application made by Shri. Andhale and in the light of the said document, there was no reason for the authority to have any doubt in it's mind about the identification of the property. The judgment debtor/respondent is making every attempt to avoid execution of the decree and when the Gram Panchayat itself has given a Dakhala to the effect that the property under attachment which was initially described as Milkat No. 9, subsequently stood revised as Milkat No. 10 and thereafter as Milkat no. 11, there is no scope for any doubt being raised that Gram Panchayat milkat no. 9 which was initially attached, would not permit attachment of Gram Panchayat Milkat No. 11, particularly in the light of the Dakhala given by the Sarpanch / Gram Vikas Adhikari of Gram Panchayat, Ashwi (Bk), Tq. Sangamner. The impugned order dated 01.08.2019

passed below Exh. 204, therefore cannot be sustained and is quashed and set aside. In the wake of the said order, the executing Court shall proceed with the execution, in light of the directions issued by this Court on 12.12.2018. The writ petition no. 14796 of 2019 is allowed in terms of prayer clause 'B'. Rule is made absolute to the extent of this writ petition.

**[ BHARATI H. DANGRE ]**  
**JUDGE**