

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12480 OF 2022

Sai Dweep Co-operative Housing
Society Ltd. and Anr.
Versus

.. Petitioners

The State of Maharashtra and Ors.

.. Respondents

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Mr.Naushad Engineer a/w. Mr.Vinodini Srinivasan, Mr.Indrajeet Hinghane, Mr.Tejas Mahamuni i/b. M/s.Hinghane & Mahamuni Partners, Advocate for the Petitioners.

Mr.V.S. Ghokhale, “B”, Panel Counsel for the Respondent – State.

Mr.S.S. Patwardhan a/w. Ms.Mrinal Shelkar, Advocate for Respondent No.3.

Mr.Rohit Gupta, Advocate for Respondent No.5.

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CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.

DATED : 17 October 2022.

P.C. :

Heard the learned counsel for the parties.

2 Learned counsel for the Respondents disputes the locus of the deponent and also questions the maintainability of the Petition on the ground of availability of alternate remedy.

3 By this Petition, the Petitioners are seeking directions to set aside the notice dated 14 September 2022, issued by Respondent No.4–Recovery Officer of Respondent No.3–Bank purporting to sell properties owned by the Petitioners by way of public auction.

4 The Petition is filed on behalf of two Co-operative Housing Societies. It is affirmed by one member of these two co-operative societies. As to the locus of the Petitioners to represent co-operative housing society, the Petitioners have sought to rely upon a resolution passed by the members seeking to authorize the Petitioner, the one member. As to the query, as to why the Petitions are not filed through Chairman or Secretary or Managing Body of this Co-operative Society, it is informed to us that the Chairman is one of the contesting Respondents. Therefore, there appears to be a dispute as regards the managing committee of the Co-operative society. The Petition is not filed by the members in their capacity as a member making the grievance that Managing Committee is not filing a Petition.

5 Be that as it may, even otherwise filing of this Petition was entirely avoidable when the Petitioner seeking to represent the co-operative Housing Society had made a grievance that they have nothing to do with the borrowers of the co-operative Society put to sale, the Respondent-Bank had pointed out that the notice is only by a member and it is not even a letterhead of the Co-operative society. In spite of that, the Respondent-Bank was ready to give opportunity to the Petitioners and had kept the hearing on 11 October 2022 calling upon the Petitioners to produce certain documents. According to the learned counsel representing the Bank, the Petitioners did not attend and stated documents are not necessary. It is thereafter once the proceedings have gone ahead and property is to be put to sale, this Writ Petition is filed. Had the Petitioner's complied with the communications dated 6 October 2022, it was not necessary for them to file this writ petition.

6 By way of indulgence, we grant one more opportunity to the Petitioners by extending the date stated in the communication dated 6 October 2022 to 19 October 2022. Time and place will be informed to the Petitioners. The requirement of providing the documents stated therein remain the same. Thereafter, the Recovery

Officer will consider the representation made by the Petitioners as on behalf of individual members collectively and take necessary decision. As per governing rules the recovery officer would not give effect to the outcome of the auction for a period of 30 days.

7 Writ Petition is accordingly disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.