

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 875 OF 2020

Bhiku Babna Jadhav, aged about 70 years,
Occ. Agriculturist, R/o Sadhu Nagar
(Mundana), Tq. Mahagaon, Distt.
Yavatmal.

.... **PETITIONER**

// **VERSUS** //

1. Commissioner and Registrar General,
Cooperative Societies, State of
Maharashtra, Pune.
2. Divisional Registrar (Money Lending) and
Divisional Joint Registrar, Co-operative
Societies, Amravati.
3. District Registrar (Money Lending),
Yavatmal.
4. Assistant Registrar, Cooperative Societies,
Mahagaon/ Pusad.
5. Laxman Dadarao Devkate, aged about 55
years, R/o Wadad (Mu.), Tq. Mahagaon,
Distt. Yavatmal.
6. Santosh Laxman Devkate, aged Major, R/o
Wadad (Mu.), Tq. Mahagaon, Distt.
Yavatmal.

.... **RESPONDENTS**

Shri R.S. Kurekar, Advocate for the petitioner.
Mrs. Barabde, A.G.P. for respondent nos. 1 to 4.
Shri K.V. Deshmukh, Advocate for the respondent nos. 5 and. 6.

CORAM : ROHIT B. DEO, J.
DATED : 21/02/2022.

ORAL JUDGMENT :

Heard. **RULE.** With Consent, the petition is heard finally.

2. This petition arises from proceedings initiated under the Maharashtra Money Lending (Regulation) Act, 2014 (the Act). I have scrutinized the material on record and the reasons recorded concurrently by the Appellate and the Revisional Authority, and having done so, I am satisfied that the petitioner has abused the process of law.

3. The petitioner approached the respondent 3 – District Registrar (Money Lending) Yavatmal under Section 18 of the Act.

4. Section 18 of the Act reads thus :

18. Return of immovable property acquired in course of money-lending -

(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of five years from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the

money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

- (3) *Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.*
- (4) *Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar:*

Provided that, the Divisional Registrar may admit the appeal after expiry of the period of one month, if the appellant satisfies him that he had sufficient cause for not preferring the appeal within the period.

- (5) *The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final.*
- (6) *Subject to the appeal provided under sub-section (4), the order passed or decisions given by the District Registrar under sub-section (2), shall be sufficient conveyance and it shall be the duty of every officer entrusted with the work relating to maintenance of land records under the Maharashtra Land Revenue Code, 1966, or under any other law for the time being in force, to give effect to such order in his records.”*

5. What is contemplated is that the said provision comes into play only if the immovable property, which is owned by the debtor, comes into possession of the money lender by way of sale, mortgage, lease, exchange or otherwise.

6. *Sine qua non* for the authority to exercise jurisdiction is the factum of ownership of the debtor in the immovable property and then the

subsequent transfer of ownership or possession of the property in favour of a person who is shown to be a money lender.

7. In the present case, it is irrefutable that the property which is an agricultural field ad-measuring 2.1 HR assigned Survey No. 204 situated in Mauza Wadad, Taluka Mahagaon is not owned by the petitioner. The owner of the said property is one Ashok Maske, who is not a party to the proceedings and from whom the respondent 6 Santosh has purchased the property. Mr. Kurekar has faintly argued that the petitioner had entered into an agreement to purchase the property, with Ashok Maske. Mr. Kurekar would submit that this provides a cause of action to approach the authority under Section 18 of the Act. The submission merits outright rejection for reasons more than one.

8. Firstly, there is nothing on the record to show that Ashok Maske had entered into an agreement with the petitioner. Ashok Maske is examined and he outrightly denies having entered into any agreement. Secondly, and more importantly, even if it assumed, *arguendo* that there was such an agreement no share or interest is created in property in view of the provisions of Section 54 of the Transfer of Property Act, 1882.

9. The petition is absolutely frivolous and is dismissed with costs of Rs.10,000/-.

10. At this stage, the learned counsel for the respondents 5 and 6 Mr.Kapil Deshmukh points out that after an illegal order came to be passed

by the first authority, which ultimately was set aside in appeal, the possession of the agricultural field was taken by the Assistant Registrar, Co-operative Societies, Mahagaon and handed over to the petitioner.

11. Needless to say, the order of the first authority was rightly set aside by the Appellate authority and the Revisional authority and now, this Court has confirmed that there was no cause of action at-all to approach the authority under Section 18 of the Act since the petitioner has no right, share or interest in the agricultural field in questioned.

12. The Assistant Registrar, Co-operative Societies, Mahagaon is directed to ensure that the possession of the property registered is handed over to the respondent 6, within the next seven days.

13. The Superintendent of Police, Yavatmal shall provide all necessary help to the Assistant Registrar, Co-operative Societies, Mahagaon to implement the directions of this Court, if there is any obstruction.

14. Learned Assistant Government Pleader is requested to bring this order to the notice of the Assistant Registrar, Co-operative Societies, Mahagaon, Distt. Yavatmal and the Superintendent of Police, Yavatmal within the next 48 hours.

15. Steno Copy of this order be supplied to the parties to act upon.