



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3070 OF 2023

M/s Superb Auto Batteries Through Its Proprietor
Mohammad Hussain Mammu Shaikh And Another

VERSUS

The State Of Maharashtra Through Its Secretary And Others

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Advocate for the Petitioner : Mr. Nitin Bhavar Patil LLP

Advocate & Legal Consultancy

AGP for Respondents 1-3 : Mr. K B Jadhavar

Advocate for Respondents no.4,5 : Mr. N.P Bangar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 29th July, 2024

PER COURT :-

1. Petitioner impugns the Circular dated 17.4.2015 issued by respondent No.2-Commissioner of Co-operation and Registrar of the Co-operative Societies being contrary to section 2 (4) and 3 of the Maharashtra Cooperative Societies act, 1960 (for short the MCS act) by which the District Deputy Registrar has been conferred with the power to fix upset price. Petitioner also seeks declaration that recovery certificates issued by the Assistant Registrar, Co-operative Societies Shrirampur in application No.109 of 2003 and application No.108 of 2003 are in-executable in terms of section 98(a) of the MCS Act and Rule 107 of MCS Rules, 1961. Consequently, the Petitioner seeks to quash and set aside the proposal submitted by respondent nos.4 and 5 before the District Deputy Registrar Co-operative Societies,

Ahmednagar for fixation of upset price u/s 107 (11)(f) in respect of the property bearing gat no.19/B/24/10 and property no.711 situated at Datta Nagar, Tq. Shrirampur, District Ahmednagar.

2. Respondent no.3 i.e. District Deputy Registrar, Co-operative Societies, Ahmednagar filed affidavit-in-reply alongwith annexures. Communication dated 26.7.2023 made by respondent no.5 to respondent no.3 clearly states that proposal for upset price submitted to respondent no.3 has been returned by the District Deputy Registrar raising the issue of limitation by referring to section 136 of the Limitation Act, 1963. As such, no proposal is pending for fixation of the upset price.

3. In view of the aforesaid communication, learned Advocate appearing for petitioners submits that, at present, the cause of action to file the writ petition does not survive.

4. Mr. Bangar, learned advocate appearing for respondent nos.4 and 5-Bank also accepts the aforesaid position. Consequently, Writ Petition stands **dismissed** with liberty to petitioners to take up appropriate remedies as permissible under law, in case such contingency arise.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/-