



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6044 OF 2024**

**KASHINATH SAKHARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO. 6029 OF 2024**

**RAJARAM DULLABH PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO. 6135 OF 2024**

**ANITA KAILAS PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO. 6136 OF 2024**

**GIRISH RAJARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO. 6138 OF 2024**

**SAKHARAM DULLABH PATIL DIED THROUGH LRS KAILAS
SAKHARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO. 6134 OF 2024**

**YOGITA SUBHASH PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

AND
WRIT PETITION NO. 6153 OF 2024

VANDANA KASHINATH PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

AND
WRIT PETITION NO. 6139 OF 2024

KAILAS SAKHARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

AND
WRIT PETITION NO. 6311 OF 2024

SUBHASH TUKARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

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Mr. Amit S. Savale, Advocate for the Petitioners.

Mr. A. V. Lavte, AGP for Respondent Nos.1, 2, 4 and 5.

Mr. A. G. Choudhari, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 26th AUGUST 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matters are taken up for final hearing at the stage of admission.

2. The petitioners impugn order dated 24.05.2024 passed by the Collector and District Magistrate, Nandurbar bearing Outward No.२०२४/गृह/कक्ष-२/ड-२/कावि-३२४, thereby directing Executive Magistrate/Tahsildar, Shahada to hand over possession of the properties to Recovery Officer of Shri. P. K. Anna Patil Janata Sahakari Bank Limited, Nandurbar through Circle Officer in

pursuance to the application filed by Special Recovery Officer under Rule 107(11) of Maharashtra Co-operative Societies Rules, 1961 (for short 'MCS Rules, 1961').

3. Mr. Savale, learned Advocate appearing for petitioners submits that petitioners were borrowers of loans from respondent no.3-Co-operative Credit Society. Since there was default in payment of loans, respondent no.3 obtained recovery certificates against petitioners under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act, 1960'). In furtherance to such certificate, properties of the petitioners were attached and charge was created.

4. The respondent no.3 initiated proceeding under Rule 107(11) (d) of the MCS Rules, 1961 and sent proposal to respondent no.2 for physical possession of the properties. Consequently, impugned order dated 24.05.2024 has been passed directing respondent no.4 to hand over possession of the properties to respondent no.3.

5. Mr. Savale would submit that impugned order is passed without giving opportunity of hearing to petitioners. He submits that respondent no.3-Special Recovery Officer has no authority to continue with recovery proceeding or approach respondent no.2 to take steps in accordance with Rule 107(11) (d) of MCS Rules, 1961. Consequently, order passed by respondent no.2 and action proposed by respondent no.4 is null and void. He would submit that in terms of Section 109 of the MCS Act, 1960, the term of Liquidator expires after 10 years from the date of his appointment. In present case, term of Liquidator was expired. The respondent no.3-Special Recovery Officer cannot independently function, when term of Liquidator under whose instruction respondent no.3 was

functioning was expired. According to him, on expiry of term of Liquidator, Credit Society is no more in existence and Recovery Officer lacks jurisdiction to take steps, particularly move any proceeding before the District Magistrate-respondent no.2. Mr. Savale would invite attention of this Court to the provisions of Section 105(c) and Section 156(b) of MCS Act, 1960 to contend that on appointment of Liquidator under Section 103 of the MCS Act, 1960, the power to sell immovable or movable property or deal with such property would vest with Liquidator. He would submit that under Section 156 of the MCS Act, 1960, the Registrar or any person appointed by him would have powers to make recovery. However, Recovery Officer so appointed does not possess independent power to take steps for recovery. He would, therefore submit that on expiry of term of Liquidator, he become *functus-officio*. Consequently, Recovery Officer would also loose his authority to take any steps in furtherance to the recovery of dues under Society under the Act.

6. By inviting attention of this Court to Rule 89(17) of MCS Rules, 1961 he submits that on conclusion liquidation proceedings, an actionable claims shall vest with Registrar, who may appoint a custodian or receiver to realize such remaining assets and actionable claims. However, in present case, on the date when impugned order was passed, the Registrar had not appointed custodian. Hence, proceeding initiated by Recovery Officer is *ultra vires* and impugned order passed by the District Magistrate based on requisition of Recovery Officer is null and void.

7. Per contra, Mr. Choudhari, learned Advocate appearing for respondent no.3 referring to the affidavit-in-reply filed by Mr. Virendrasinh Raghuwanshi, Special Recovery Officer submits that

period of Liquidator has been enhanced to 15 years as per amendment under Section 109(1) of the MCS Act, 1960. In present case, after termination of liquidation proceeding by order dated 28.06.2024, the Registrar is pleased to appoint receiver/custodian under provisions of Rule 89(17) of the MCS Rules, 1961. Subsequently, said order was modified on 09.07.2024. He would submit that in terms of Section 156 of the MCS Act, 1960 read with Rule 2(h) of MCS Rules, 1961, Recovery Officer has every authority to continue with the recovery proceedings independent of liquidation proceedings. He points out that recovery certificates issued under Section 101 of the MCS Act, 1960 against the petitioners have attained finality. The challenge raised by the petitioners by filing Revision under Section 154 and writ petitions have been failed. The petitioners made various attempts to stall recovery proceedings. The recovery proceeding is delayed by more than five years. In pursuance of the directions of this Court in Writ Petition No.4582/2024, respondent no.2 has taken action regarding possession of properties attached. The huge dues of Maharashtra State Co-operative Bank and depositors are awaiting for disbursement of the amount. He would submit that now Registrar has appointed receiver/custodian, who can take possession of the properties in pursuance of the impugned order. The petitioners do not have any right or locus to raise grievance at this stage. Therefore, he seeks to dismiss the writ petitions.

8. Having considered submissions advanced, apparently petitioners have lost battle and suffered final order under Section 101 of the MCS Act, 1960. Their mortgaged or charged properties are sought to be possessed by respondent no.3 by initiating proceeding before respondent no.2. The Recovery Officer is empowered under Section 156 of the MCS Act, 1960 r/w Rule 2(h)

of the MCS Rules, 1961 to take steps for recovery of dues, although term of Liquidator is expired. From the provisions of Maharashtra Co-operative Societies Act or Rules it is not discernible that term of Recovery Officer is co-terminus with Liquidator. The Recovery Officer appointed under MCS Act would continue to function and answerable to Registrar and in case of appointment of receiver/custodian, mortgaged property can be given into his possession. In present case, admittedly Registrar has appointed receiver/custodian in exercise of powers under Rule 89(17) of MCS Rules, 1961 and possession of mortgaged properties can be handed over to receiver/custodian.

9. Pertinently, Recovery Officer appointed under Section 156 of the MCS Act, 1960 is empowered to exercise the powers of Registrar under Section 156 in the district. The exercise of such powers are not dependent upon term of Liquidator. Therefore, assuming that term of Liquidator was expired, there was no express or implied bar on the authority of the Recovery Officer to take steps by filing application to respondent no.2 seeking possession of mortgaged properties of borrowers. Therefore, contentions raised on behalf of the petitioners are liable to be rejected. Pertinently, petitioners have lost right in the properties mortgaged with the Bank. They cannot put hurdle in recovery proceedings by putting some technical reasons. In that view of the matter, Writ Petitions san merit, hence, dismissed.

10. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE