



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

907 WRIT PETITION NO. 8458 OF 2018

YASHWANT TATYABA DOMBALE AND ANOTHER THROUGH GPA MAHESH
RAMCHANDRA TENGALE

VERSUS

GHODEGAON VIVIDH KARYKARI SEVA SAHAKARI SOCIETY LTD
GHODEGAON THROUGH SECRETARY AND ANOTHER

WITH

CIVIL APPLICATION NO. 7745 OF 2024

IN WP/8458/2018

YASHWANT TATYABA DOMBALE DIED AND ANOTHER

VERSUS

GHODEGAON VIVIDH KARYKARI SEVA SAHAKARI SOCIETY LTD
GHODEGAON THROUGH SECRETARY AND ANOTHER

WITH

CIVIL APPLICATION NO. 11119 OF 2019

IN WP/8458/2018

YASHWANT TATYABA DOMBALE AND ANOTHER THROUGH GPA MAHESH
RAMCHANDRA TENGALE

VERSUS

GHODEGAON VIVIDH KARYKARI SEVA SAHAKARI SOCIETY LTD
GHODEGAON THROUGH SECRETARY AND ANOTHER

Mr.S.V. Natu, Advocate for the petitioner.
Mr.M.R. Sonawane, Advocate for respondent No.1.
Mr.S.V. Badakh, AGP for the respondent-State.

CORAM : KISHORE C. SANT, J.
DATE : 01.10.2024

PC :-

01. Heard learned Advocates for the parties. This petition is taken up for final disposal at the stage of admission, by consent of the parties.

02. Initiation of the proceeding is by way of letter dated 30.04.2013, wherein the society-respondent no.1 made representation to the Tahsildar praying for creating charge over the various properties including properties belonging to the petitioners. On the basis of this letter, a charge-was created on the said property. The proceeding thereafter was taken up to the level of Divisional Commissioner by way of revision bearing RTS Revision No.859 of 2017. The learned Commissioner rejected the revision confirming the order passed by the Collector, Ahmednagar. The petitioners approached this Court. The main contention of the petitioners is that they purchased the land in the year 2008. On the date of purchase there was no charge on the property. There is no dispute about this fact. The respondent-society without furnishing any sufficient information and particulars, made representation and the Tahsildar acted upon said representation. He submits that initiation of the action itself is without any basis. Further

proceeding thereafter, is also without any foundation. He thus prays for setting aside order passed by the learned Additional Divisional Commissioner, Nashik and prays for removal of the charge on the property.

03. The learned Advocate for the respondent-Society vehemently opposes the petition. He submits that the society had advanced loan to the vendor of the petitioners and therefore charge was created on the land. Thereafter, without following any procedure and on the basis of some fraudulent letter, the charge was removed and immediately thereafter sale-deed was executed. He submits that the money of the society is a public money and therefore they need to take action and protect interest of the society. Unless charge is created, it will not be possible for the society to recover the amount. He, thus, supports the order passed by the authority and prays for rejection of the petition.

04. The learned AGP supports the impugned order.

05. In rejoinder learned Advocate Mr. Natu pointed out that in-fact the society had filed a proceeding under section 101 of the Co-operative Societies Act, before the Assistant Registrar, Co-operative

Societies, Shrigonda against vendor for recovery of the amount. The Asstt. Registrar has specifically recorded that the disbursement of the loan itself appears to be doubtful and refused issuance of certificate. Said order attained finality as the revision by the society also came to be dismissed. The said revision was also filed in the year 2013 i.e. after 8 long years.

06. After hearing the parties, it clearly appears that in 2005 itself, the Assistant Registrar had refused to issue certificate under section 101 of the Act. Said order has attained finality and thereafter there is no challenge by the Society. It is, thus, clear that the finding recorded by the Assistant Registrar for loan transaction itself appears to be doubtful, is accepted by the society. When such is the case, it does not lie in the mouth of the Society that still there should be charge on the property. Though it is alleged that initially charge was removed by giving false and fabricated letter, but it appears clearly that after 2005, the Society could not have proceeded for recovery as certificate itself was refused. Said transaction is of 2002. Till 2013 the society did not take any steps. This speaks volumes about conduct of the society. The entire conduct of the society thus shows that they are not prompt and vigilant and they are not equipped with sufficient documents. The learned Tahsildar also while

creating charge has acted only on the letter dated 30.04.2013 and without any supporting documents. Thus, this court finds that the entire exercise is without any basis and foundation. The Society has utterly failed even before this Court to substantiate its case that there are dues and society is entitled to recover the dues. Looking to all the above, this Court finds that the Authorities have certainly failed to appreciate these facts. The main action of taking the entry of charge on the land of the petitioners itself is illegal and thus the entire action needs to be quashed and set aside.

07. In view of this, the petition is allowed in terms of prayer clause (B). No order as to costs. Pending civil applications stand disposed off.

[KISHORE C. SANT, J.]