



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10486 OF 2024

Vinod S/o Mansing Pardeshi,
Age : 59 years, Occu. Labour,
R/o At Post Nagardevla,
Tq. Pachora, Dist. Jalgaon

.. Petitioner

Versus

The State of Maharashtra
Through its Principal Secretary,
Department of Co-operation,
Mantralaya, Fort, Mumbai and others

.. Respondents

...
Advocate for petitioner : Mr. A.G. Dalal
AGP for the respondent – State : Mr. R.S. Wani
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 25 SEPTEMBER 2024

ORAL ORDER (MANGESH S. PATIL, J.) :

The petitioner is coming with following prayer :

“(B) Kindly quash and set-aside the impugned order dated 03.07.2023 passed by the respondent No.2”

2. Respondent no. 2 is the Additional Collector, Jalgaon who has passed the impugned order directing petitioner's brother Chhagansing to hand over the writ property to the Recovery Officer on a specific date, time and place, pursuant to the provisions of rule 107(11)(d-1)(vi)(a) of the Maharashtra Co-operative Societies Rules,

1961 and directing the Recovery Officer to hand over its possession to respondent no. 6 - Co-operative Credit Society.

3. Learned advocate for the petitioner submits that though the debtor of the Co-operative Credit Society is his brother, the property was jointly owned by both of them and being a joint owner, he cannot be dis-possessed for recovery of the debt due by him to the credit co-operative society.

4. The issue, whether the property under distress, is jointly owned or otherwise and examination of the petitioner's right in it, would be pure questions of facts and can only be gone into and determined in an appropriate proceeding and cannot be done in exercise of the powers under Article 226 of the Constitution of India.

5. Apart from the above state-of-affairs, the only prayer of the petitioner seeks a writ of *prohibition* stalling the legal process being undertaken under the provisions of the Maharashtra Co-operative Societies Rules, 1961. No such injunction can be issued prohibiting a due process of law. It would always be open for the petitioner to resort to the appropriate remedy even if he intends to exercise his right to possess an immovable property based on title. Writ jurisdiction would not be an appropriate remedy.

6. We make it clear that the petitioner may resort to appropriate remedy as is available to him in law.

7. Before parting, it is necessary to place on record that the matter was heard in the first session and after we expressed our disinclination to entertain the petition, learned advocate Mr. Dalal sought time to take instructions from the petitioner and we had granted him a pass-over. When the matter was repeatedly called out again in the second session, learned advocate did not turn up. He being an Officer of the Court, was expected to show a basic courtesy to the Court by appearing before it in the second session and should have made some statement; rather he was duty bound to do so as an Officer of the Court and being a practising Advocate. We strongly deprecate his such conduct.

8. The writ petition is dismissed in *limine*.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/