IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14520 OF 2023

Amrut Annasaheb Dhumal
Age : 59 years, Occu. Agri.,
R/o : At Post Musalwadi, Tq. Rahuri,
Dist. Ahmednagar .. Petitioner

Versus

1] The State of Maharshtra,
Through its Minister
Co-operation and Marketing
Maharashtra State,
Mantralaya, Mumbai – 32.

2] Additional Chief Secretary,
Co-operation & Marketing,
Maharashtra State,
Mantralaya, Mumbai – 32.

3] The Commissioner for Co-operation,
Maharashtra State, Pune
Central Building – 411 001

4] The Commissioner for Sugar,
Maharashtra State,
Sahkar Sankul, Pune

5] The Collector,
Collector Office, Ahmednagar,
Tq. & Dist. Ahmednagar

6] The Regional Jt. Director (Sugar),
2nd Floor, Trilok Chambers,
Lal Taki Road, Ahmednagar

7] The Deputy District Registrar,
Co-operative Society, Ahmednagar,
Tq. & Dist. Ahmednagar

8] The Tehsildar,
Tehsildar Office, Rahuri,
Tq. Rahuri, Dist. Ahmednagar

9] The Ahmednagar District Central
Co-operative Bank Ltd., Ahmednagar,
Head Office, Station Road,
Near S.T. Stand, Ahmednagar,
Through its Chairman

10] Dr. Baburao Bapuji Tanpure
Co-operative Sugar Factory Ltd.,
Shrishivajinagar, Tq. Rahuri,
Dist. Ahmednagar
Through its Managing Director .. Respondents

WITH
CIVIL APPLICATION NO. 6789 OF 2024
(Amrut Annasaheb Dhumal V. The State of Maharashtra
Through its Minister & Ors.);

CIVIL APPLICATION NO. 2383 OF 2024
(Namdeo Pandurang Dhokne Patil V. Amrut Annasaheb Dhumal & Ors.)

AND
CIVIL APPLICATION NO. 3271 OF 2024
(Shamrao Shankarrao Nimse Patil Vs. The State of Maharashtra
Through its Minister and others)

...
Advocate for petitioner and applicant in CA/6789/2024 : Mr. Ajeet B. Kale
AGP for the respondent – State : Mrs. P.J. Bharad
Advocate for respondent no. 9 : Mr. R.N. Dhorde, Sr. Advocate
i/b. Mr. V.R. Dhorde
Advocate for respondent no. 10 : Mr. S.S. Thombre
Advocate for the applicant : Mr. A.V. Hon (CA/2383/2024)
None present for the applicant in CA/3271/2024
...

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

RESERVED ON : 02 SEPTEMBER 2024
PRONOUNCED ON : 20 SEPTEMBER 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. The AGP waives service for respondents no. 1 to 8. Mr. Dhorde waives service for respondent no. 9 and Mr. Thombre waives service for respondent no. 10.

2. The petitioner is coming with following prayers :

> "*(C) To hold and declare that the action of taking over the possession of the assets of the respondent no. 10 sugar factory by the respondent no. 9 is contrary to the provisions of law, illegal and violative of the provisions of the SARFAESI Act, 2002 and for that purpose issue necessary writs and orders.*
>
> *(D) To direct the respondents to hold an inquiry with respect to the reconstruction of loans obtained by trhe Board of Directors on their Hamipatra in the year 2016-2021 and illegal handing over of the assets of the respondent no. 10 sugar factory by the 4 member administrative board by unanimously withdrawing the suit filed at DRT, Aurangabad, and for that purpose issue writs or direction.*
>
> *(E) To hold and declare that the possession obtained by the respondent no. 9 bank of the assets of the respondent no. 10 sugar factory is illegal direct the respondent no. 9 bank to hand over the secured assets back to the respondent no. 10 co-operative sugar factory and for that purpose issue necessary writs and orders.*
>
> *(F) To direct the respondent no. 9 to recover the amount of the reconstructed loans of the respondent no. 10 sugar factory in view of the Hamipatra submitted by the Board of Directors against the said loan, from the personal assets of the then Board of Directors and for that purpose issue necessary writs and orders.*
>
> *(G) To direct the respondent no. 6 to conduct an inquiry regarding the frauds and financial irregularities committed by the last Board of Directors by appointing one person committee and to recover the amount from the Board of Directors as a contribution to the assets of the respondent no. 10 Co-operative sugar factory U/s 156(1)(d) of the Maharashtra Co-operative Socities Act, 1960."*

3. Mr. Kale, learned advocate for the petitioner would submit that respondent no. 10 is a co-operative sugar factory duly registered as such under the Maharashtra Co-operative Societies Act, 1960 (Act) and is governed by the provisions of the Act as well as the rules of

1961 framed thereunder. He started strenuously arguing as to the manner in which the board of directors mismanaged the affairs of the sugar factory, leading it to indebtedness and even its factory and other assets were required to be attached under section 13(2) and subsequently taken possession of under section 14 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**SARFEASI Act**) by the respondent no. 9 – bank. On being pointed out that already the petitioner was before this Court with exactly the same prayers in writ petition no. 11354 of 2023 and by the order dated 14-09-2023, he was allowed to withdraw that writ petition and was allowed to merely pursue the other remedies available under the Act and to approach the authorities / state functionaries for redressal of the grievance and expected these authorities to consider the grievance and to take appropriate decision on its merits in accordance with law, and raising a specific query as to how the petitioner would continue with prayer clauses (C) to (F) (supra), Mr. Kale, on instructions, submitted that the petitioner would not press for these prayers and would only proceed with prayer clause (G), whereby he is soliciting appointment of a committee for enquiring into the fraud and financial irregularities under section 78 of the Act and soliciting a writ of *mandamus* against the respondent no. 6 - the Regional Joint Director (Sugar).

4. Mr. Kale would submit that pursuant to the liberty granted by this Court on 14-09-2023, the petitioner approached the respondent no. 6 and submitted representation on 20-09-2023 (**Exhibit - V**), giving details regarding the rampant misdeeds committed by the then board of directors right from the year 2015. He would submit that it was also pointed out as to how the then board of directors, without any right or authority much less for sufficient reason, withdrew the proceedings before the Debts Recovery Tribunal (**DRT**) wherein a challenge was put up to the auction of the respondent no. 9 - bank and inspite of the DRT having granted stay to the further auction in a proceeding under section 13(4) of the SARFAESI Act. It was also pointed out as to how the then board of directors in a clandestine manner indulged in some settlement with the respondent no. 9 and managed to hand over the sugar factor by entering into a settlement contrary to the interest of the co-operative sugar factory.

5. Mr. Kale would further submit that it was also pointed out that crushing of sugarcane was undertaken even without obtaining crushing licence for the year 2021-22, from the respondent no. 4 - Commissioner of Sugar, and he had imposed penalty of Rs.16,30,85,000/- because of such illegal action of the board of directors. Even the respondent no. 8 - Tehsildar, Rahuri, on 08-12-2021, had expressly reported about the illegal excavation of mines and

minerals and had imposed huge fine of Rs.54,81,59,400/-. In spite of such serious allegations, substantiated by such strong evidence, the respondent no. 5 failed to exercise the powers under section 78 of the Act.

6. Mr. Kale would, lastly, submit that in spite of persuasion, the respondent no. 5 simply refused to exercise the powers and instead of undertaking an enquiry, has rejected his application by communications dated 16-10-2023 and 01-11-2023 that he had no power to question the proceedings being undertaken under the SARFAESI Act, without even a whisper about the request to undertake an enquiry under the relevant provisions of the Act.

7. The learned AGP for respondents no. 1 to 8 and Mr. Thombre for the respondent no. 10 would submit that the respondent n. 6 is the Regional Joint Director (Sugar) and Sub-Registrar of the Co-operative Societies. He has been appointed after the tenure of the board of directors was over and by resorting to provisions of section 77-A(1) and has been continued as such even for the subsequent period, by resorting to section 73AAA read with section 157 of the Act. They would submit that since it is a proceeding under the SARFAESI Act whereby the respondent no. 9 - bank has recovered possession of the secured assets of the sugar factory, under the provisions of the SARFAESI Act, the respondent no. 6 has righly

refused to undertake any enquiry into the manner in which the then board of directors allegedly withdrew the suit in the DRT and surrendered possession to the respondent no. 9 - bank. They would submit that the petitioner is driven by ulterior motive, having suffered recovery order under the Act. Without disclosing it, he is seeking to refer to the provisions of the Act making rampant allegations against everyone. The fact was conveniently concealed and this Court may not in exercise of writ jurisdiction issue *mandamus* at his instance.

8. We have considered the rival submissions and perused the papers.

9. True it is that the scope of the petition stands considerably reduced in the light of the petitioner not pressing rest of the prayers and consequently, one need not, in this proceeding, embark upon any scrutiny of the allegations being levelled to the extent of the alleged action of the respondent no. 9 – bank, to take over the secured assets of the respondent no. 10 - sugar factor under the provisions of the SARFAESI Act. To this extent, the stand of the respondent no. 6 cannot be taken exception of. He, indeed, cannot be directed to act in defiance of the provisions of the SARFAESI Act. Even the respondent no. 9 bank cannot be questioned in respect of the process undertaken under the provisions of the SARFAESI Act.

10. However, simultaneously, one cannot ignore the fact that the respondent no. 6, being the Regional Joint Director (Sugar) has power and jurisdiction to undertake enquiry under the relevant provisions of the Act, if something is reported to him touching the mismanagement of the respondent no. 10 - sugar factory.

11. Irrespective of the alleged ulterior motive on the part of the petitioner to put up allegations about mismanagement, the fact remains that there are indeed certain circumstances raked up by him regarding illegal excavation of mines and minerals resulting in Tehsildar imposing fine of Rs.54,81,59,400/- and the respondent no. 3 - Commissioner of Sugar imposing penalty of Rs.16,30,85,000/- for illegal crushing of sugar, if the respondent no. 10 - co-operative sugar factor is penalized to such extent indicating and reflecting on the mismanagement of its affairs, the respondent no. 6 should have acted. He could not have simply refused to exercise the powers with a convenient stand of having no power and jurisdiction to cause interference in a proceeding happening under the SARFAESI Act. He could have certainly undertaken enquiry and fixed the responsibility as to how sugarcane was crushed during the season 2021-2022 without obtaining a licence and as to how could there be such illegal excavation to the extent found by the Tehsildar.

12. True it is that the respondent no. 10 - sugar factory seems to have preferred appeal to the State against the order of respondent no. 3 - Commissioner of Sugar, imposing penalty and there is stay to the recovery, still, the fact whether the licence was obtained or otherwise can certainly be looked into by the respondent no. 6, in exercise of the powers under Chapter VII and VIII of the Act.

13. Obviously, under Article 226 of the Constitution of India this Court cannot undertake threadbare scrutiny of the allegations but when *prima facie* some substance can be made out from the allegations reported by the petitioner to the respondent no. 6 vide his communication dated 20-09-2023, pursuant to the directions of this Court dated 14-09-2023 in writ petition no. 11354 of 2023, the respondent no. 6 was duty bound to consider the allegations and even if he was of the opinion that the allegations were not sufficient enough to exercise that power, he could have expressly stated so. It appears that, by the communications dated 16-10-2023 and 01-11-2023, he merely responded to the part of the complaint made by the petitioner, without expressly dealing with the allegations pertaining to the alleged illegal crushing of the sugar for the crushing season 2021-22 and illegal excavation found by the Tehsildar, Rahuri. This is clearly demonstrative of abdication of duty by a public officer and would be sufficient to issue a writ of *mandamus*.

14. The writ petition to that extent, therefore, deserves to be allowed.

15. The writ petition is allowed partly.

16. The respondent no. 6 shall initiate inquiry and shall take suitable action by examining the petitioner's allegations to the extent of the alleged mismanagement in respect of illegal crushing undertaken in the crushing season 2021-22 and the illegal excavation of the mines and minerals as found by Tehsildar, as expeditiously as possible and in any case within 16 weeks.

17. Rule is made absolute accordingly.

18. Pending civil applications are disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/