IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14389 OF 2019

1. Parbata Jija Pote,
Died through Lrs.

1A. Muktabai Uddhav Aghav,
Age: 70 yrs, Occ: Household,
R/o: Khairi, Tal- Selu, Dist-Parbhani.

1B. Sumitrabai Dashrath Ghule,
Age:38 yrs, Occ: Household,
R/o: Taltumba,
Tal- Selu, Dist-Parbhani.

1C. Kausabai Balasaheb Bade,
Age: 65 yrs, Occ: Household,
R/o: Kasari, Post- Tambwa,
Tal- Dharur, Dist- Beed.

1D. Mahadeo Parbata Pote,
Age: 50 yrs, Occ: Agri,
R/o: Raigavhan,
Tal- Partur, Dist- Jalna. … **Petitioners.**

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Co-operative, Marketing and
Textile Department,
Mantralaya, Mumbai-32.

2. The Registrar General of Money Lenders
and Registrar of Co-operative Societies,
Maharashtra State, Pune.

3. The Divisional Joint Registrar,
Co-operative Societies,
Aurangabad-Division, Aurangabad.

4. The District Deputy Registrar,
Co-operative Societies, Jalna and
District Registrar of Money Lending, Jalna.

5. Assistant Registrar,
Co-operative Societies,
Tal- Partur, Dist- Jalna.

6. Baliram Ashroba Kadape,
Age: 53 yrs, Occ: Business,
R/o: Raigavhan, Tal- Partur, Dist- Jalna.

7. Vijay Baliram Kadape,
Age: Major, Occ: Business,
R/o: Raigavhan, Tal- Partur,
Dist- Jalna. … **Respondents.**

WITH

WRIT PETITION NO.14387 OF 2019

Murlidhar Ganpati Kekan,
Age: 65 yrs, Occ: Agri,
R/o: Raigavhan,
Tal- Partur, Dist- Jalna. … **Petitioner.**

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Co-operative, Marketing and
Textile Department,
Mantralaya, Mumbai-32.

2. The Registrar General of Money Lenders
and Registrar of Co-operative Societies,
Maharashtra State, Pune.

3. The Divisional Joint Registrar,
Co-operative Societies,
Aurangabad-Division, Aurangabad.

4. The District Deputy Registrar,
Co-operative Societies, Jalna and
District Registrar of Money Lending, Jalna.

5. Assistant Registrar,
Co-operative Societies,
Tal- Partur, Dist- Jalna.

6. Baliram Ashroba Kadape,
Age: 53 yrs, Occ: Business,
R/o: Raigavhan, Tal- Partur, Dist- Jalna.

7. Walmik Baliram Kadape,
Age: 34 yrs., Occ: Business,
R/o: Raigavhan, Tal- Partur,

Dist- Jalna. … **Respondents.**

WITH

WRIT PETITION NO.254 OF 2020

1. Baliram Ashroba Kadape,
Age: 53 yrs, Occ: Agri. and Business,
R/o: Rayghavan, Tal- Partur, Dist- Jalna.

2. Vijay Baliram Kadape,
Age: 30 yrs., Occ : Agri. and Business,
R/o As above. … **Petitioners.**

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Co-operative Department,
Mantralaya, Mumbai-32.

2. The Registrar General of Money Lenders,
The Commissioner & Registrar of
Co-operative Societies Department,
Maharashtra State, Pune.

3. The Divisional Joint Registrar,
Co-operative Societies,
Aurangabad.

4. The District Deputy Registrar,
Co-operative Societies, Jalna and
Registrar of Money Lending,
Jalna, Dist. Jalna.

5. Parbata Jija Pote,
Died through Lrs.

5A. Muktabai Uddhav Aghav,
Age: 70 yrs, Occ: Household,
R/o: Khairi, Tal- Selu, Dist-Parbhani.

5B. Sumitrabai Dashrath Ghule,
Age:38 yrs, Occ: Household,
R/o: Taltumba,
Tal- Selu, Dist-Parbhani.

5C. Kausabai Balasaheb Bade,
Age: 65 yrs, Occ: Household,
R/o: Kasari, Post- Tambwa,
Tal- Dharur, Dist- Beed.

5D. Mahadeo Parbata Pote,
Age: 45 yrs, Occ: Agri,
R/o: Raigavhan,
Tal- Partur, Dist- Jalna. … **Respondents.**

...

Advocate for Petitioners in WP/14387/19, WP/14389/19 and Respondent No.5A to 5D in WP/254/20 : Mr. Abhijit C. Darandale.
Advocate for Petitioners in WP/254/20 and Respondent Nos.6 and 7 in WP/14387/19, WP/14389/19 : Mr. M. S. Karad h/f Mr. S. S. Thombre.
AGP for Respondents/State: Ms. R. R. Tandale.

…

CORAM : S. G. MEHARE, J.

RESERVED ON : 28.02.2024
PRONOUNCED ON : 24.04.2024

JUDGMENT :-

1. Rule. The Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners, the landlords, in Writ Petition No. 14387/2019 and Writ Petition No.14389 2019 have impugned the judgment and order of Respondent No.2 passed in Revision Petition Nos.20/2019 dated 16.09.2019 and 32/2019 dated 16.11.2019, respectively, against the respondent, the alleged Money lender.

3. The petitioners, the alleged money lender in Writ Petition No.254/2020, has impugned the judgment and order of Respondent No.2 passed in Revision Petition No. 32/2019 dated 16.11.2019 against the petitioners in Writ Petition No. 14389/2019.

4. The landlords had filed the complaints against the alleged moneylenders under Section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short, 'Act of 2014'). In brief, the allegations against the alleged money lender were that they were in need of money. Therefore, they raised the loan on interest from alleged money lenders and executed sale deeds of their lands towards the security of the loan on 08.07.2002 and 22.11.2005, respectively. They repaid the loan and requested the alleged money lenders to re-transfer the lands, but they avoided it. They were engaged in illegal money lending and had purchased around 700 acres of land. They had re-transferred a few of the lands to the borrowers. They gave a big list of the transactions of money lending. They repaid the loan with a heavy rate of interest. They threatened the landlords that unless they paid the loan money, they would not re-transfer the land to them. They are political leaders.

5. On the complaint, respondent No.1 made an inquiry and visited the houses, shops, and other places of the alleged moneylenders. Respondent No.4 made the inquiry through Assistant Registrar Co-operative Societies, Partur. He submitted his inquiry report to him and found 36 documents of sale deeds, bonds, 7/12 extracts etc. He recorded the statements of 30 persons. Out of them, eight persons supported the allegations of money lending, and 27 denied that they had a money lending business or transaction with them. After receiving the detailed report, respondent No.3 gave both sides an opportunity and concluded that the alleged moneylenders engaged in illegal money lending transactions by his order dated 27.03.2018. The alleged moneylenders, had assailed the said orders of respondent No. 4 by way of appeal under Section 18(4) of the Act of 2014 to respondent No.3. Respondent No.3 allowed the appeal and quashed and set aside the order of respondent No.4. Against the said order, the present petitioners had filed the revision applications under Section 9 of the Act of 2014. Respondent No.2 quashed and set aside the order of respondent No.3 and remitted the matter to respondent No.4 for fresh inquiry on merits.

6. The stand of the alleged moneylenders was that they were not engaged in illegal moneylending. They were purchasing land by paying the consideration as per the agreement. They never charged the interest. The so-called evidence collected against them was insufficient to believe they were the illegal money lenders. They had filed a civil suit No.315 of 2017 against petitioners. Transactions were genuine and consensual. The petitioners' applications were barred by limitation. They have had no sale purchase transactions from 2012 to 2016. There was no evidence to establish that they were engaged in illegal money lending. The landlords also did not produce evidence of paying the interest. Respondent No.4, without inquiry, incorrectly concluded that they were engaged in illegal money lending. By order dated 09.02.2018 passed in Criminal Application No.3884 of 2017, the High Court quashed and set aside the crime registered on the complaint of the landlords. The landlords cannot file a revision against the judgment under Section 18(4) of the Act of 2014. Twenty-seven (27) persons did not support the allegations of money lending. No reasons were mentioned in the impugned order that the alleged moneylenders were engaged in illegal money lending. There is no evidence that the report of the Assistant Registrar was served upon them. It is also not observed that

who is in possession of the suit land. The order of the Civil Court granting a temporary injunction has also been ignored. An opportunity was not granted to them to make a statement on 15 sale deeds found in his house search.

7. Both learned counsels for the landlords have argued at length on facts. They emphasized the documents found in the custody of the alleged moneylenders. They have argued that a sufficient evidence was available before the Authorities to establish that they were engaged in illegal money lending. There were a large number of complaints against them. There was an oral agreement to resale the suit lands on repaying the loan with interest. In 2015, the entire loan with interest was paid. However, they refused to re-transfer the said lands. They never challenged the inquiry report of the Assistant Registrar. They had filed a simple suit for injunction, and a temporary injunction was prayed for. The impugned order is without reason.

8. Learned counsel for the alleged moneylenders has vehemently argued that a civil suit was pending about the suit land. Only the Civil Court has the power to declare the sale deed null and void. When the Civil Suit is pending, The Money Lending Registrar has no power to inquire into the Act of 2014.

The report of the Assistant Registrar was not correct. The respondents/landlord never impugned the sale deed of 2002 and 2005 till 2016. Due to political rivalry, its validity was challenged after eleven years. The inquiry under the Act of 2014 is a summary inquiry. The authorities did not consider the fact that the FIR registered against the alleged moneylenders was quashed and set aside, which affected the summary inquiry. The sale deeds were genuine and not out of illegal money lending.

9. Learned counsel for the alleged moneylenders further vehemently argued that there is no pleading about the amount of loan or the mode of repayment of the loan. Only 8 persons out of 40 supported the petitioners. The Rule of the majority ought to have been applied. The petitioners did not lodge the report from 2005 to 2016. Their silence speaks a lot that it was not a moneylending. Since the Act of 2014 was introduced and included the money lending against executing a sale deed towards the security loan, a false complaint has been filed. There was absolutely no evidence of money lending. There was no appropriate authorization for Parbata to file the complaint. Mahadeo was the witness to the sale transaction. It was purely a sale transaction.

10. Both learned counsels have argued on facts and emphasized a large number of sale transactions. However, they did not seriously question the tenability of the revisions tenability under Section 9 of the Act of 2014.

11. As far as the argument of learned counsel for alleged moneylenders that a civil suit is pending, the inquiry under Section 18 of the Act of 2014 cannot be made is concerned; their suit was a simplicitor for injunction. The inquiry under Section 18 of the Act of 2014 is an independent inquiry, and the Authorities have been appointed under the said Act to initiate an action against the execution of the sale deed as security for a loan advanced by the money lender in the course of money lending. It is not just a formal inquiry. The District Registrar has to satisfy that the immovable property came in possession of the money lender as a security for a loan. Sub-section (2) excludes the other provisions of the law in force for the time being to pass appropriate orders. In other words, it may be said that there was a non-obstante clause in Sub Section (2), and the powers have been conferred upon the District Registrar to order the restoration of possession of the property to the debtor on recording the reasons and also declared the instrument or conveyance as invalid. However,

before passing any order, the person against whom the allegations of illegal money lending have been leveled shall be given an opportunity to state his objections. The law further provides for appeal under Section 18(2) against the order of the District Registrar. As per Sub-Section 4 of Section 18, the judgment of the Divisional Registrar in appeal is final.

12. Rule 17 of Rules 2014 provides for the procedure for making an inquiry to deal with an application under Section 18. The District Registrar or the inquiry officer has all the powers of the Civil Court for the purpose of enforcing the attendance of any person and examining him on oath to ascertain the nature of the transaction and, if required, any additional document on record he may proceed to order the concerned to produce the record and documents. The provisions of the Acts and Rules of 2014 make it a complete Code. The said Act also has given the effect of the Division of the Registrar as if the so-called sale deed stands declared invalid and the order passed under Sub Section (2) of Section 18 is executable in the same manner as if a decree passed by the Civil Court. Therefore, the Court is not impressed upon the argument of the learned counsel for the alleged moneylenders that the District Registrar has no power to make an inquiry

when the suit of the money lender for an injunction is pending. Filing the suit by the so-called borrower may have a different effect.

13. After having gone through the record and relevant law provisions, the Court believes that the issue of jurisdiction goes to the root of the matter.

14. The question is, "Has respondent No.2 revisional jurisdiction against the judgment of respondent No.3 in an appeal under Section 18(4) of the Act of 2014?".

15. It is not disputed that there was a large number of sale deeds executed in favour of the alleged moneylenders. Only 08 vendors out of 40 alleged against the petitioners that they were engaged in illegal money lending. However, such material evidence was ignored. Section 9 of the Act of 2014 provides for revisionary powers of the Registrar General/ respondent No.2, it reads thus :

> "**9.** The Registrar General may, suo motu or on an application, call for and examine the record of any enquiry or proceedings of any matter where the order has been passed or decision has been given by an officer subordinate to him, and no appeal lies against such decision or order for the purpose of satisfying himself as to the legality and propriety of the decision or order and as to the regularity

> of the proceedings. If during the course of such inquiry, the Registrar General is satisfied that the decision or order so called for should be modified, annulled or reversed, he may, after giving a person likely to be affected thereby an opportunity of being heard, pass such order thereon as he may seem just."

16. Section 18(4) and (5) of the Act of 2014 provides for the appeal. The said Sub Section reads thus :

> "**18 (4)** Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar :
>
> Provided that the Divisional Registrar may admit the appeal after the expiry of the period of one month if the appellant satisfies him that he had sufficient cause for not preferring the appeal within the period.
>
> **(5)** The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final."

17. Reading Sections 9 and 18(4) and 18(5), in no manner of doubt, it could be understood that the revision lies only against the order or decision against which no appeal lies. The appeal lies against the order of the Sub Registrar under Section 18(1) and (2), and the judgment of the Appellate Authority is final. A bare reading of these two sections clearly

indicates that no revision would lie after passing the judgment in appeal. On this sole ground, the impugned judgment and order of respondent No.2 is liable to be quashed and set aside. The order without jurisdiction is non-est in the eye of law. Therefore, the findings recorded by Respondent No.2 were without jurisdiction has no force of law. Hence, they are entitled to be quashed and set aside. All these three petitions are liable to be dismissed as the revisions were not tenable. Since the revisions were not tenable, the impugned orders were void ab initio. Hence, quashed and set aside.

18. For the above reasons, all the writ petitions stand dismissed.

19. Rule made discharged.

20. No order as to costs.

(S. G. MEHARE, J.)

...

vmk/-