

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4069 OF 2024

Rajendra Ganpat Waje And Ors

...Petitioners

Versus

Divisional Joint Registrars, Co-operative

Societies, Pune Div. Pune And Ors

...Respondents

....

Mr. Drupad S. Patil, with Mr. Suyash Sule, for the Petitioner.

Ms. V. R. Raje, A.G.P. for the Respondent – State.

Mr. Aadesh M. Patil, for Respondent Nos. 3 & 4.

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CORAM : AVINASH G. GHAROTE, J.

DATE : 11th JULY, 2024

P.C.:

1. Heard learned counsel for the petitioner. The Petition challenges the Order dated 05.06.2023, passed by the Divisional Joint Registrar in Revision No. 185 of 2015 (page 67) by dismissing the Revision, thereby confirming rejection of objections raised by the petitioner, who is transferee from the original borrower, in respect of the immovable property owned by the original borrower, under a sale deed dated 28.04.2011, in respect of which a certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (the MCS Act) was issued on

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31.05.2011, and a demand under Section 156 r/w Rule 107 was issued on 07.06.2011.

2. The learned counsel for the petitioner, assailing the order in Revision, contends by relying upon the language of Section 99 of the MCS Act, that what is prevented thereby is the private transfer of property made after the issue of a certificate under Section 101, which is declared as void. He therefore submits, that private transfer, which has been made earlier in point of time than the issuance of certificate under Section 101 would be protected, and therefore not liable to attachment and sale for the dues of the original borrower/vendor in respect of which the certificate under Section 101 has been granted subsequent in point of time. In support of this submissions he places reliance upon *Narsinha N. Naik & Anr Vs. The Divisional Joint Registrar*¹

3. Mr. Patil, learned counsel appearing for the respondent nos. 3 and 4 support the impugned order, contending that there is no prohibition for the recovery certificate to be enforced against the property which was owned by the original

¹ In Writ Petition No. 6498 of 1998 decided on 14.12.2012.

borrower, inspite of the fact that it has changed hands prior to the issuance of the certificate under Section 101, as that is in pursuance to the personal guarantee issued by the original borrower /vendor.

4. The learned AGP for respondent nos. 1 and 2 supports the impugned order.

5. It is not in dispute, though dates are not available, that the original borrower/respondent no. 5, had taken a loan from the respondent no. 3 in which, apart from executing a deed of hypothecation, he had also given his personal guarantee. Recovery proceeding under Section 101 of the MCS act, was initiated by respondent no. 3 against the respondent no. 5 on 23.09.2010, which resulted in passing of the Recovery Certificate on 31.05.2011. It is during pendency of this proceeding for recovery initiated by the respondent no. 3, that the respondent no. 5 has transferred the immovable property owned by her to the present petitioner by the sale deed dated 28.04.2011. This would clearly indicate that the transfer by the respondent no. 5 in favour of the petitioner, was with an intention to avoid liability under the Revenue Recovery Certificate (RRC), which was likely to be

issued.

6. It is also not in dispute, that the RRC dated 31.05.2011, is for the amount of Rs. 55,45,984/-.

7. The contention that since the transfer in favour of the petitioner was on 28.04.2011, was prior to the issuance of the RRC which was issued on 31.05.2011, and therefore the property transferred would not be subject to attachment, in my considered opinion, is without any merits for the reason that section 99 of the MCS Act, does not grant any such protection, to transaction entered into by the original borrower prior to the issuance of the RRC. All that is says is that a private transfer of the property made after the issuance of the RRC would be void against the society, which would indicate that it is a beneficial provision, enacted for the purpose of securing the interest of the society by the enforcement of the RRC against the property of the original borrower, inspite of change of hands, on account of transfers effected by the original borrower. Section 99, cannot be said to mean, that transfers, before the issuance of RRC stand protected from attachment and sale. Infact this can never be the position for if that is accepted then no society, would be in a position, to

recover its dues, on account of the unscrupulous borrower, having transferred all rights in the immovable property held by him prior to the issuance of the RRC.

8. It is also not in dispute that the original borrower who was the owner of the property in question had also given his personal guarantee which would encompass all movable and immovable properties, held by him to be available for the purpose of satisfying the liability incurred by him. May be the original borrower/respondent no. 5 has not disclosed the pendency of the RRC proceedings, or the fact of his having stood as a guarantor for the repayment of loan incurred by him, to the petitioner at the time of transfer, however, that by itself, would not take out the immovable property held by him, out of the purview of enforcing the RRC, on account of the transfer, as the personal guarantee given by him attaches itself to all his movable and immovable properties. A perusal of *Narsinha N. Naik (supra)* relied upon by the learned counsel for the petitioner, in my considered opinion does not lay down a proposition, that a transfer by a original borrower who has given his personal guarantee, during the pendency of RRC proceedings would be protected.

9. In view of the above discussion, I do not see any reason to interfere in the impugned order passed by the learned Divisional Joint Registrar, as I do not see any merit in the petition or ground made out to interfere.

10. The petition is therefore dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)