



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16231 OF 2024

Vijay Arun Pawar and Others.

...Petitioners.

Versus

State of Maharashtra and Others.

...Respondents.

Mr. Nitin Gaware Patil and Jay Salunke for the Petitioner.
Mr. Y. D. Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : November 12, 2024.

P. C. :

1. Heard.
2. By this petition, the challenge is to the auction notice dated 20th August 2024 issued by the Respondent No.4 and the recovery certificate dated 26th November 2019 issued by the Respondent No.3.
3. Learned counsel appearing for the Petitioner submits that the recovery certificate which was issued in Form-V is in violation of the procedure prescribed under Chapter VIII-A of the the Maharashtra Co-operative Societies Rules, 1961 [for short, "***the said Rules***"]. Pointing out the said provisions, he submits that before certificate could have been issued in prescribed Form-V, it was necessary for the Respondent No.3 to pass a reasoned judgment and order granting application as

per Rule 86F of the said Rules. He submits that it is only thereafter certificate could have been issued. Drawing attention of this Court to the recovery certificate, he submits that there is no reasoned judgment prior to the issuance of certificate in prescribed Form-V and therefore, there is non compliance of the Rules which mandates that the matter to be remanded to the Respondent No.3 for being considered afresh. He submits that subsequently auction notice has been issued which is also subject matter of challenge before this Court. In support of his submissions, he relies upon the decision of Division Bench of this Court in ***Sundeeep Polymers v. State of Mah*¹**.

4. Perusal of the recovery certificate would *prima facie* substantiate the submissions of learned counsel for the Petitioner that before issuing the recovery certificate in Form-V, requirement of Rule 86F of the said Rules has not been followed. *Prima facie*, it appears that while issuing the recovery certificate the contentions have been decided in the said certificate whereas Rule 86F of the said Rules provides that a separate reasoned judgment and order is passed before issuance of certificate. The decision in ***Sundeeep*** (supra) supports the case of Petitioner.

5. Although remedy for challenging the recovery certificate is provided under Section 154 of the Maharashtra Co-operative Societies

1 2010(7) Mh.L.J. 538.

Act, 1960, considering that there is non compliance of the mandatory rules, remedy of approaching this Court by way of writ petition is not barred.

6. Issue notice to the Respondents returnable on **3rd December, 2024**. In addition to Court notice, advocate for the Petitioner to serve the Respondents by private notice by all possible modes of service and file affidavit of service before the next date.

7. Learned AGP waive notice for the Respondent Nos.1, 2 and 3.

8. As the recovery certificate is not in accordance with the mandatory rules framed under the Maharashtra Co-operative Societies Act, 1960 and considering the decision in **Sundeeep** (supra), and although auction notice has been issued in the month of August 2024 and it is stated that no bids were received and auction has not taken place, till the next date, no further steps be taken in furtherance of recovery certificate.

[Sharmila U. Deshmukh, J.]