IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2986 OF 2019

(Sau. Aasiya Siddhique w/o Mohd. Mushirul Haque Vs. Divisional Joint Registrar, Co-operative Societies, Amravati & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. V.K. Paliwal, Counsel for the petitioner.
Mr. A.A. Madiwale, A.G.P. for respondent nos. 1 and 2.
Mr. G.G. Mishra with Mr. R.K. Raulkar, Counsel for respondent no.3.

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CORAM : ANIL L. PANSARE, J.
NOVEMBER 19, 2024

Heard.

2] On 19/9/2024, following order was passed :

"Heard.

Vide order dated 23-7-2024, it was observed by this Court that there exists revenue entry dated 3-9-2019 and that said fact was not disclosed to this Court when the order granting interim relief was passed on 3-12-2019.

Perusal of revenue entry dated 3-9-2019 indicates that in terms of order passed by the District Deputy Registrar, Cooperative Societies, Buldhana and in terms of Section 100 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960') read with Rule 85 of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as 'the Rules of 1961'), the land under question has been transferred in the name of respondent no. 3 and possession thereof has been given.

Learned counsel for the petitioner submits that possession was never handed over to the respondent no. 3. Learned counsel for respondent no. 3 also submits that possession was not delivered to the respondent no. 3. In *fact, the respondent no 3 has written letter dated 26-7-2022 to the Collector to handover the possession in terms of Section 100 of the Act of 1960 read with Rule 85 of the Rules of 1961.*

The submissions of learned counsels for petitioner as also the respondent no. 3 are contrary to what has been recorded in the revenue entry dated 3-9-2019. Learned Assistant Government Pleader shall, therefore, take instructions from the concerned revenue officer and file affidavit as to what transpired on 3-9-2019, stating therein in clear terms as to whether physical possession was given to the respondent no. 3. If not, why is said fact not reflected in the revenue entry.

List in the week commencing from 7-10-2024."

3] In response to the aforesaid order, the Assistant Registrar, Co-operative Societies, Jalgaon Jamod, District – Buldhana, and not the Tahsildar, has filed affidavit, which was sans necessary details. He stated that the possession of the property under question could not be handed over to respondent no.3 because of law and order situation. The affidavit, however, was silent as to why the said fact is not mentioned in the revenue entry. Accordingly, the learned A.G.P. was instructed to be careful while making compliance of the order and was granted one more opportunity.

4] In response, yet another affidavit is filed, this time by the Deputy Superintendent of Land Records, Jalgaon Jamod, District – Buldhana, again not by the Tahsildar. He stated, and to the utter surprise, that revenue entry dated 3/9/2019 was taken in terms of order dated 26/7/2018 passed by the District Deputy Registrar, Co-operative Societies, but the entry was taken prior to handing over possession and, therefore, the revenue entry is silent on the point of reasons as to why the possession could not be delivered to respondent no.3 – Society. The Deputy Superintendent of Land Records has further stated that the Tahsildar, Jalgaon Jamod, District – Buldhana, had sent a communication dated 22/10/2020 to the authorized officer of respondent no.3 to get police assistance for taking possession of the said property. According to the Deputy Superintendent of Land Records, the revenue entry has been rightfully taken.

5] To my mind, the Deputy Superintendent of Land Records, while justifying the entry, has failed to act in accordance with law. He has taken revenue entry even prior to handing over possession of the property in utter disregard to Section 100 of the Maharashtra Co-operative Societies Act, 1960 (for short "Act of 1960"), read with Rule 85 of the Maharashtra Co-operative Societies Rules, 1961 (for short "Rules of 1961").

6] The importance of handing over possession in terms of recovery certificate is spelt out by a Co-ordinate Bench of this Court in the case of *Chhatrapati Sambhaji Maharaj Sahakari Patsanstha Maryadit Vs. Assistant Registrar of Co-operative Societies, Satara and another [2012(1) Mh.L.J. 746]* in following terms :

> *"8. The transfer of the property contemplates under sub-section (1) of section 100 of the said Act can be made when a property cannot be sold for want of buyers in execution of the Recover Certificate under section 101 of the said Act. Sub-section (1) of section 100 of the said Act provides that the Court or the Collector or the Registrar, as the case may be, is*

empowered to direct that such property or any portion thereof shall be transferred to the Society which had applied for the execution of the said order, in the manner prescribed. Sub-section (2) of section 100 thereof provides that where such property is transferred to the Society, the Collector or the Registrar, as the case may be, shall place the Society in possession of the property transferred or sold. Sub-section (1) of section 100 provides that the transfer has to be effected in the manner prescribed. Therefore, the Rule 85 of the said Rules becomes relevant inasmuch as the transfer has to be effected in terms of the said Rule. Sub-rule (13) of the Rule 85 of the said Rules provides that after the transfer, the Society shall use its best endeavour to sell the property as soon as the practicable to the best advantage of the society as well as that of the defaulter. It also provides that the first option shall be given to the defaulter. Sub-rule (14) of the said Rules provides that until the property is sold, the Society to which the property is transferred shall use its best endeavour to lease it or to make any other use in such a manner that it derives the largest possible income from the property. Sub-rule (15) is important which provides that when the Society realizes all its dues under the order sought to be executed from the proceeds of management of the property and if the property is unsold, the property shall be restored to the defaulter. Thus, a transfer under sub-section (1) of section 100 of the said Act is in that sense not an absolute transfer or sale of the property in favour of the Society. Neither section 100 of the said Act nor Rule 85 of the said Rules uses the word "sale". The object of transfer is that the property which cannot be sold in execution could be used by the Society for recovery of dues. Therefore, the Society is under an obligation to make an endeavour to sell the property and to realize the dues. Till the property is sold, it is the obligation of the Society to either lease the property or to use the same in such a manner that it derives profit. If the income derived from the property is sufficient to clear the dues of the Society, after the dues are cleared if the property remains *unsold, the Society is under an obligation to restore the same to the defaulter. The language used in sub-rule (13) of Rule 85 of the said Rules that an endeavour should be made to sell the property to the best advantage of the Society as well as that of the defaulter shows that a property which is transferred under sub-section (1) of section 100 of the said Act is held by the Society as a Trustee. In this behalf, it will be necessary to make a reference to Paragraph 7 of the decision of this Court in the case of Balkisan Manekchand Zaver (supra). The relevant part of Paragraph 7 of the said decision reads thus:-*

"7. It is clear that on a combined reading of section 98 and 100 of the New Act and Rule 85, the land transferred to the Bank in pursuance of the certificate issued by the Collector is not a transfer by sale and such a transfer did not create ownership of the said land in favour of the respondent-bank. The Bank ought to be held to possess the land on its transfer as a Trustee till such time the land was sold by auction sale. Sub-rule (14) of Rule 85 provides that until the property is sold, the society to which the property is transferred under sub-rule (5) shall use its best largest possible income from the property and sub-rule (15) of the said Rule states that when the society to which property is transferred under sub-rule (5) has realised all its dues, under the order in execution of which the property was transferred, from the proceeds of management of the property, the property, if unsold, shall be restored to the defaulter.""

7] As could be seen, when the property could not be sold for want of buyers in execution of recovery certificate, the revenue officials are under obligation to follow a procedure as laid down under Section 100 of the Act of 1960 read with Rule 85 of the Rules of 1961. The Collector or the Registrar is under obligation to place the Society in possession of the property transferred or sold. Sub-section (1) of Section 100 provides that transfer has to be effected in the manner prescribed under Rule 85 of the Rules of 1961. Sub-rule (13) of Rule 85 of the Rules of 1961 would require the Society to take every endeavour to sell the property as soon as practicable and to the best advantage of the Society as well as that of the defaulter (petitioner herein). Other obligations are also envisaged, which delve upon the manner in which the unsold property is to be put to use by the Society. This could only be possible if the possession is delivered to the Society, which, in fact, is the mandate of the law.

8] Despite such status, the Deputy Superintendent of Land Records has, by way of affidavit, not only committed grave error of law by taking mutation entry of handing over possession of the property prior to making an attempt to deliver the possession, but also made an attempt to justify the said entry by saying that the said revenue entry has been rightfully taken in terms of order dated 26/7/2018 and as per the provisions of the Maharashtra Land Revenue Code, 1966.

9] What transpires from above is that the Tahsildar concerned has not responded to the order passed by the Court but has addressed a communication to the learned A.G.P. Rather, the Assistant Registrar, Co-operative Societies has filed affidavit, which was found to be not satisfactory and later on, the Deputy Superintendent of Land Records has filed affidavit disclosing only the illegalities committed in discharging his official duties.

10] The casual and negligent approach of the aforesaid officers has resulted into financial loss to respondent no.3 – Society and has further defeated the purpose of issuing recovery certificate under Section 101 of the Act of 1960.

11] The appointing authority of the aforesaid officers, namely, the Tahsildar, the Assistant Registrar, Co-operative Societies and the Deputy Superintendent of Land Records concerned, shall, therefore, enquire into the matter and take appropriate action against the erring officials, including those who have failed to respond to the order passed by this Court. The report be furnished by 12/12/2024.

12] Coming to the petition, the petitioner (principal borrower) is aggrieved by order dated 10/1/2019 passed by respondent no.1 - Divisional Joint Registrar, Co-operative Society, Amravati, refusing to condone delay of 11 years and 3 months on the ground that ignorance of law cannot be a ground for condoning delay. The said order has been passed because the petitioner approached respondent no.1 with a plea that her husband had challenged the recovery certificate before the Co-operative Court, Amravati being case no. 773/2007, which came to be dismissed on 8/11/2017. Thereafter, the petitioner approached the District Consumer Forum being complaint no. 152/2017, which came to be dismissed vide order dated 24/5/2018. The petitioner has filed appeal being appeal no. 102/2018 before the State Consumer Redressal Forum, which is pending. The petitioner then states that for want of proper advice, there occurred delay.

13] What transpires from above is that the petitioner's husband and not the petitioner filed proceedings before the Co-operative Court, Amravati, which came to be dismissed in the year 2017. The petitioner remained silent for these ten years and thereafter approached the District Consumer Forum and is now pursuing the appeal against the order of dismissal. At the same time, the petitioner has approached respondent no.1 with a plea that for want of knowledge and for want of proper advice, she could not approach respondent no.1 in time.

14] It is difficult to understand as to how the petitioner could pursue appeal before the State Consumer Redressal Forum and at the same time take a plea that appropriate proceeding is to file revision under Section 154(3) of the Act of 1960. The only reason which is apparent, is that the petitioner is abusing the process of law to defeat the remedies available to respondent no.3, and for such conduct, the petitioner should be put to exemplary cost. Needless to say that the petitioner has failed to render any cause, much less sufficient cause, to approach respondent no.1 after the period of more than 11 years.

15] The petition is accordingly dismissed with cost of Rs.50,000/- to be paid to respondent no.3 within four weeks from today.

16] The order as regards releasing amount of Rs.50,000/- in favour of respondent no.3, which he was directed to deposit to show his *bona fides,* will be passed once report is received from the appointing authority. The learned A.G.P. shall furnish copy of order to concerned appointing authority for due compliance.

17] List the petition on 18/12/2024 only for compliance of earlier part of order.

(ANIL L. PANSARE, J.)

Sumit