IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6089 OF 2019

Manjudevi W/o Nanakram Batheja and others **.Vs.** State of Mah., through its Secretary, Department of Food & Civil Supply, Mantralaya, Mumbai and others

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

Shri R.L. Khapre, Senior Adv. a/b Shri M.R. Joharapurkar, Adv. for petitioners.
Shri A.S. Fulzele, A.G.P. for respondent Nos.1 to 3/State.
Shri C.M. Samarth, Advocate for respondent No.4.
Shri P.D. Meghe, Advocate for respondent No.5.

CORAM : ANIL S. KILOR, AND SMT.M.S. JAWALKAR JJ.

DATED : 19/03/2024

1. On a request of respondent No.4- Maharashtra State Tribal Development Corporation, a proceeding of recovery under Rule 17 of the Maharashtra Realisation of Land Revenue Rules, 1967 (hereinafter referred to as "the Rules of 1967") was initiated against the petitioners and order dated 21.01.2019 was accordingly issued by the Additional Tahsildar, which is the subject matter of the present petition.

2. The challenge is raised to the said order dated 21.01.2019 on the ground that, there cannot be initiation of any recovery proceeding under Rule 17 of the Rules of 1967 unless preconditions as enumerated under Rule 17 of the Rules of 1967 are fulfilled. The preconditions are

namely, any sum due to any department of Government or a local authority or a co-operative society is recoverable under Rule 17 of the Rules of 1967, which does not cover any Corporation like the respondent No.4.

3. For this purpose, the learned counsel for the petitioners has placed reliance on a judgment of the Single Bench of this Court to which one of us was party (Anil S. Kilor, J.) in Writ Petition No.3695 of 2019, wherein it is held thus :

> *"8. As far as the demand notices are concerned, i.e. dated 19.09.2018 and 20.11.2018, it is an admitted fact that there is no adjudication or determination of the amount alleged to have defaulted by the petitioner. Such demand notices were issued by the Tahsildar under Rule 17 of the Rules of 1967. Rule 17 of the Rules of 1967 reads thus:*
>
> > ***"17. Procedure for recovering sums recoverable as and arrear of land revenue :-***
> > *(1) Where any sum due to any department of Government or a local authority or a co-operative society is recoverable as an arrear of land revenue from any defaulter, such department, local authority or, as the case may be, co-operative society may send a requisition in writing for recovering the sum to the Tahsildar of the taluka in which the defaulter resides or has property.*
> > *(2) Such requisition shall contain the following particulars, namely*
> > *(a) Full name and address of the defaulter:*
> > *(b) The sum to be recovered:*
> > *(c) The provisions of law under which the sum is recoverable as an arrear of land revenue:*
> > *(d) The process by which the sum may be recovered:*

> *(e) The property against which the process may be executed.*
> *(3) On receipt of such requisition, the Tahsildar shall dispose it of in accordance with the provision of the Code and these rules."*

> *9. From the language of Rule 17 of the Rules of 1967, it says that where any sum due to any department of Government or a local authority or a co-operative society is recoverable as an arrear of land revenue from any defaulter, in that case this will come into play on the request of the Co-operative Society or as the case may be.*
>
> *10. In the present matter, there is no order directing the petitioner to pay the said amount and on failure of the petitioner to pay the said amount, it shall be recovered from the petitioner as land revenue.*
>
> *11. So in absence of any such order, Rule 17 of the Rules of 1967 will also not come into play and therefore, the action taken by the Tahsildar in issuing demand notices under Rule 17 of the Rules of 1967 or the order of attachment of property under Rule 11 of the Rules of 1967, are without jurisdiction and without following the due procedure. Accordingly, the demand notices as well as the order of attachment of immovable property, are hereby quashed and set aside."*

4. Since the respondent No.3 is not in a position to point out that, any recovery certificate was issued against the petitioners or the respondent No.4 falls in any of the category mentioned in Rule 17 of the Rules of 1967, on whose instance such proceeding can be initiated, we are of the opinion that, the impugned notice dated 14.11.2018 issued by the Tahsildar and the order dated 21.01.2019 issued by Additional Tahsildar need to be quashed and set aside. Accordingly, we pass the following order:

i) The writ petition is **partly allowed.**

ii) The impugned notice dated 14.11.2018 passed by the Tahsildar in Revenue Case No.03/RRC-71/2018-19 and the order dated 21.01.2019 passed by the Additional Tahsildar in Revenue Case No.03/RRC-71/2018-19, are hereby quashed and set aside.

iii) The respondents are at liberty to initiate the recovery certificate proceeding as permissible under the law after following the due procedure of law and if any such proceeding is initiated, the petitioners may raise the objections to it if so desire, including the objection that the respondent No.4 does not fall within the category of authority as mentioned under Rule 17 of the Rules of 1967.

Writ Petition is **disposed of** accordingly. No order as to costs.

(SMT. M.S. JAWALKAR, J) (ANIL S. KILOR, J)