



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2657 OF 2025

Ramrao Dashrath Arsule

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Govind R. Ingole, Advocate for the Petitioner.

Mr. K. S. Patil, AGP for Respondents/State.

CORAM : KISHORE C. SANT, J.

DATED : 28th FEBRUARY, 2025.

P C. :-

. The grievance of the petitioner in this petition is against the notice issued under Section 107 (11) (VI) of the Maharashtra Co-operative Societies Act (for short “M.C.S. Act”) by the Tahsildar, Vasmat directing to take possession of property of the petitioner. The notice is issued pursuant to recovery proceedings and pursuant to certificate under Section 101 of the M.C.S. Act.

2. It is the case of the petitioner that, certificate under Section 101 of the M.C.S. Act is issued without hearing him. No notice was issued. The petitioner happens to be only guarantor whose property is mortgaged while securing loan. His second ground is that, now the Tahsildar has delegated his power to the Circle Inspector to take

possession. This cannot be done under law. He relies upon the Division Bench order passed at Principal Seat at Mumbai in Writ Petition (Stamp) No. 26048/2019 dated 12.12.2019. In the said case, the Division Bench held that, when the authority i.e. Tahsildar has to take action under SARFAESI Act, it is only Tahsildar who can take the action. The Tahsildar himself is a delegatee and he cannot further delegate the authority below him. In that view, the action in that case was quashed with direction to the Tahsildar to do the needful by himself.

3. In the present case, the petitioner happens to be guarantor. His property is mortgaged. Both things are not disputed by the petitioner. The only question is that, he was not given opportunity of hearing by the authority before passing the order under Section 101 of the M.C.S. Act.

4. This Court at present need not go into merits of the matter. This Court specifically asked the petitioner as to whether the petitioner is ready to deposit 50% of the amount to show bonafides so that this Court can pass the order. The petitioner is not willing to deposit any amount in this Court. This Court thus finds that, the petition need not be entertained. It is open for the petitioner to avail alternative remedy available under the law.

5. With this, the writ petition stands dismissed. No order as to costs.

(KISHORE C. SANT, J.)

P.S.B.