



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

WRIT PETITION NO. 10883 OF 2015

1. Jainnatbee Sahebjadekhan Pathan
Age 95 years, Occu. Household
2. Afsanabee Sahebjadekhan Pathan
Age 50 years, Occu. Household
3. Shahnazbee Sahebjadekhan Pathan
Age 55 years, Occu. Household
4. Shamshadbee Sahebjadekhan Pathan
Age 60 years, Occu. Household
5. Intekhan Hidayatkhan Pathan
Age 29 years, Occu. Agriculture

All R/o. Newasa (Kd), Taluka Newasa
District Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary for
Co-operation Departments
Mantralaya, Mumbai
2. The Assistant Registrar,
Co-operative Societies, Newasa,
Taluka Newasa, District Ahmednagar
3. Shree Mahaveer Gramin Bigar Sheti
Sahakari Patsanstha Limited
At Sonai, Taluka Newasa,
District Ahmednagar
Through its Chairman
Shri Raviraj Tukaram Gadakh,
Age 40 years, Occu. Agriculture,
R/o. Panaswadi, Taluka Newasa,
District Ahmednagar

4. The Special Recovery and Sales Officer,
Shree Mahaveer Gramin Bigar Sheti
Sahakari Patsanstha Limited
At Sonai, Taluka Newasa,
District Ahmednagar .. Respondents

Mr. V. D. Hon, Senior Advocate along with Mr. Shubham S. Kote,
Mr. Ashwin V. Hon, Advocates for Petitioners;
Mr. S. M. Ganachari, A.G.P. for Respondents No.1 and 2;
Mr. S. R. Sapkal, Advocate holding for Mr. V. D. Sapkal, Senior
Advocate for respondent No.3

CORAM : SACHIN S. DESHMUKH, J.

DATE : 16-10-2025

ORDER:-

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final hearing.
2. The challenge in the present petition, is to the Recovery Certificate No.1773/2010 dated 27.10.2010, issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act") by respondent No.2 - the Assistant Registrar, Co-operative Societies, Newasa and the consequential orders passed by respondent No.4 - Special Recovery and Sales Officer in respect of the entries effected in the property record of the lands of the petitioners.
3. Facts leading to filing of the present petition, can be summarized as under :

The petitioners are the legal heirs of deceased Hidayatkhan

Sahebjadekhan Pathan. Respondent No.3 had applied to respondent No.2, for issuance of Recovery Certificate against one Pathan Hidayatkhan Javedkhan. Lands were never mortgaged by Hidayatkhan Sahebjadekhan Pathan. However, in spite of the same, the lands are attached and entries creating charge has been effected in the revenue record. The petitioners collected necessary documents on 24.07.2015 and noticed that the application for loan was made by Hidayatkhan Javedkhan Pathan for a loan of Rs.4 Lakh from respondent No.3 and in the process, house No.843 situated at Newasa was mortgaged in relation to the loan. Respondent No.3 manipulated the entire record. In the certificate, amount of Rs.4 Lakh was sanctioned as loan on 06.09.2001 and dues and arrears of recovery has been shown as Rs.18,93,422/- payable jointly and severally by borrowers and guarantors.

4. Mr. Hon, learned Senior Counsel appearing for the petitioners, submitted as under:-

i) Upon receipt of application for recovery certificate, respondent No.2 has not followed the due procedure as prescribed under Section 101 of the Act and Chapter 8-A of the Rules of 1961, including scrutiny of application, service of notice, production of documents etc. and issue certificate in Form V as prescribed under Rule 86-B, C, E and F of the Rules.

ii). Respondent No.2 ought to have verified due service on the

parties i.e. borrower, guarantors. Respondent No.3, only with a view to create evidence, had ostensibly sent RPAD notice from Sonai for services on the petitioners. Signatures thereon are also forged. Respondent No.2, without verifying the documents and giving any opportunity of hearing to the parties, had issued the certificate. The entire proceeding is *de hors* the statutory provisions and respondent No.2 mechanically issued certificate in favour of respondent No.3 for recovery of amount of Rs.18,93,422/- with interest @ 15 % per annum, without complying with the principles of natural justice.

iii) The agricultural lands of the petitioners bearing gut no. 114/1, 115, 116, 823, 487 and 113/1 situated at Newasa (Kd), Tq.Newasa, District Ahmednagar, were never mortgaged with respondent No.3. Respondents No.3 and 4 had approached the Tahsildar, Newasa on the basis of Recovery certificate for creating charges on the properties. The concerned authority without giving any opportunity of hearing to the petitioners has created the charge on the lands.

iv) The order under challenge is contrary to the provisions of law as respondent No.2 failed to consider the fact that respondent No.4, without following the provisions of Chapter VIII-A of the Rules, issued Recovery Certificate. Since the respondent No.2 has failed to comply with mandatory provisions under Section 101 of

the Act read with Rule 86 of the Rules, the same is unsustainable.

5. Mr. Hon, learned senior counsel for the petitioners, in support of the submissions, has placed reliance on the case of *Balasaheb vs. the Joint Registrar, 2015(3) Mh.L.J. 482* and submitted that respondent No.2 and 4, while creating charge on the properties of the petitioners, ought to have taken into consideration that the certificate was issued in the name of Pathan Hidayatkhan Javedkhan, whereas the name of father of petitioners' is Pathan Hidayatkhan Sahebjadekhan and, therefore, the properties of the petitioners could not be attached or charge cannot be created.

6. Mr. Hon, learned senior counsel relied on the following cases;

- (i) *Devendra s/o. Vasudeo Jambhulkar verses Additional/ Joint Commissioner of Income Tax, Nagpur and others, 2023(6) Mh.L.J. 342;*
- (ii) *Sundeeep Polymers verses State of Maharashtra and Others, 2010(7) Mh.L.J. 538; and*
- (iii) *Swati Mangesh Sawant verses State of Maharashtra and Others, 2024(2) Mh.L.J. 339.*

7. Per contra, Mr. Sapkal, learned counsel for respondent No.3 has raised objection to the maintainability of the present petition since alternate remedy is available, therefore, prayed for dismissal of the petition.

8. In the case of *Devendra s/o. Vasudeo Jambhulkar (supra)*, it is held that an alternative statutory remedy does not operate as a

bar to maintainability of a writ petition in at least three contingencies, i.e. where writ petition has been filed for enforcement of fundamental rights or where there has been violation of principles of natural justice or where order passed in the proceedings are wholly without jurisdiction or ultra vires of an Act, is challenged.

9. In the case of Sundeep Polymers Pvt. Ltd. And others (supra), the Division Bench of this Court, in paragraph No.10 held as under;

“10. It is mandatory for the Authorities to follow the Rules provided in Chapter VIII-A of the Maharashtra Co-operative Societies Rules 1961 while issuing Recovery Certificates. It is amply clear that in this case the Recovery Certificate has been issued without following due procedure and also without proper service of notice on the appellants and the Rules of natural justice are violated. Hence the Recovery Certificate issued must be held to be invalid and bad in law and needs to be struck down. This has resulted into unnecessary waste of time and money by the appellants as well as the bank.”

10. Also, in *Swati Mangesh Sawant* (supra), this Court has observed that an alternative statutory remedy does not operate as a bar to maintainability of a writ petition.

11. Rules 86-A to 86-F of the said Rules makes it clear that the Authorities discharge the quasi judicial function. Thus, the Authorities have to follow the rules of natural justice. In the present case, the Authority, without complying the principles of natural justice *vis-a-vis* relevant rules which obligates hearing , has

issued Recovery Certificate under Section 101 of the said Act. The Authorities are under statutory obligation to strictly adhere with the Rules provided under the Chapter VIIIA of the Maharashtra Co-operative Societies Rules 1961 in the process of issuing Recovery Certificate.

12. Perusal of the record indicates and establishes that the Recovery Certificate has been issued without proper service on the present petitioner. Thus, the rules of natural justice are flagrantly violated. Therefore, the Recovery Certificate issued must be regarded as invalid and bad in law. Therefore, the same deserves to be struck down.

13. Considering the aforesaid reasons and the act of the authority while issuing the recovery certificate in question, is in brazen violation of the Rules of 1961, the Recovery Certificate issued by the respondent No.2 - the Assistant Registrar, Co-operative Societies, Newasa and the consequential orders passed by respondent No.4 - Special Recovery and Sales Officer and the entries made in the property extract of the lands of the petitioners, by mutation entry No.10655, are set aside.

14. Respondent No.2 - the Assistant Registrar, Co-operative Societies, Newasa, shall conduct the proceedings afresh strictly in accordance with the Rules and following due procedure and, thereafter, pass an appropriate order.

15. The parties to the proceedings shall appear before respondent No.2 on 28.11.2025 at 11.30 a.m.

16. The petitioners may file its response on the date of appearance.

17. The proceeding shall be concluded in accordance with the the relevant Rules, within a period of three months from the receipt of this order.

18. Writ petition is allowed in the above terms.

19. Rule is made absolute accordingly. No order as to costs.

[SACHIN S. DESHMUKH]
JUDGE

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