

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8883 OF 2024

Prakash Dhondilal Shah

... Petitioner

V/s.

Indira Nagari Sahakari Pat Sanstha Mry. and ors. ... Respondents

Mr. Chetan Patil i/by Mr. Mandar G. Bagkar, Advocates for the Petitioner.

Ms. A. A. Nadkarni, AGP for the State.

CORAM : SANDEEP V. MARNE, J.

Dated : 11 February, 2025.

PC. :

1. The challenge in the present petition is to the order dated 4th July, 2022 passed by the Divisional Joint Registrar, Co-operative societies, Kolhapur, rejecting Revision Application No.417 of 2018 preferred by the Petitioner on account of failure on his part to deposit 50% of the recoverable amount under provisions of 154(2A) of the Maharashtra Co-operative Societies Act, 1960.

2. By rejecting the Revision Application, the Divisional Joint Registrar has confirmed the decision of the District Deputy Registrar dated 24th October, 2018.

3. I have heard Mr. Patil, learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

4. The first objection raised by Mr. Patil is about failure on the part of the District Deputy Registrar to exercise jurisdiction vested under provisions of Sub-Rule 14 of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. He would submit that under provisions of Rule 107(14), the Petitioner had a right to apply for setting aside the same before the District Deputy Registrar on the ground of material irregularity or mistake or fraud in publishing it. He would submit that the auction was conducted on 13th August, 2018 and the Petitioner filed his application for setting aside the auction on 11th September, 2018. The objection is rejected by the District Deputy Registrar on 24th October, 2018 holding that he did not have jurisdiction to decide Petitioner's Application.

5. The next ground raised by Mr. Patil is about the person occupying the post of Divisional Joint Registrar deciding Revision Application No.417 of 2018 preferred by the Petitioner. He would point out that Mr. A.P. Kakade earlier functioned as District Deputy Registrar, Kolhapur, when the auction process was conducted and who had rejected Petitioner's Application under Rule 107(14)(1) on 24th October, 2018. By the time, the Revision was decided, the same Officer was promoted as Divisional Joint Registrar and instead of recusing himself in the matter of decision of the Revision Application, he sat on appeal over the order passed by himself and rejected the Revision Application by order dated 4th July, 2018.

6. Though there appears to be substance in the submissions canvassed by Mr. Patil, in my view there are atleast three following reasons why this Court is not inclined to entertain the present petition :-

(i) In the entire petition, Petitioner has not pointed out the exact material irregularity, mistake, fraud etc. in the conduct of auction sale. Though it is sought to be suggested that 11 plots are sold for consideration of Rs.21,15,100/-, not a single document is produced on record to indicate that the value of the said 11 plots is actually higher than the one at which they are sold in auction. It appears that the Petitioner had raised objection to fixation of upset price and has also filed a Revision against the decision rejecting its objection to upset price. However, neither in his objection before the District Deputy Registrar nor alongwith the present petition, Petitioner had produced any valuation report, indicating any error in fixation of the upset price. In absence of any material produced by this Court, it becomes difficult to believe that the credit society has auctioned the plots of the Petitioner at a substantially lower price than their market value. No other material irregularity in the auction sale is demonstrated in the present petition.

(ii) The 11 plots have been purchased by 9 different purchasers and their sale has been confirmed on 1st November, 2018. Dispute being aware of the names of auction purchasers, the Petitioner did not implead them in his Revision filed before Divisional Joint Registrar. The purchasers are not impleaded as parties in the present petition as well. Thus Petitioner is seeking relief of setting aside the auction sale without even impleading the

purchasers, who would ultimately get affected by relief granted in his favour.

(iii) The order of the Divisional Joint Registrar was passed on 4th July, 2022 whereas the present petition has been filed on 6th September, 2023. There is inordinate delay and laches on the part of the Petitioner in filing the present petition. Mere reason of old age pleaded in paragraph No.12 of the petition cannot be a ground for entertaining the present petition, ignoring gross laches on the part of the Petitioner. By now, period of 7 long years has elapsed from the date of purchase of plots by 8 purchasers. The said purchasers are completely oblivious about any proceedings initiated by the Petitioner challenging the auction sale.

7. For the above reasons, I am not inclined to exercise extra-ordinary jurisdiction under Article 227 of the Constitution of India.

8. The writ petition is accordingly rejected.

(SANDEEP V. MARNE, J.)