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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.808 OF 2025
WITH
INTERIM APPLICATION NO.164 OF 2025

Gautam Manikchand Gelada
(as Karta of his HUF) ... Petitioner
V/s.
Iqbal Anwar Khan & Ors. ... Respondents

Mr. Swapnil Balajiwale with Mr. Ujwalkumar Chavhan for the petitioner.

Mr. S.S. Panchpor with Ms. P.A. Borhade and Ms. N.S. Mahadik for respondent No.1.

Mr. Sanjay D. Rayrikar, AGP for respondent Nos.2 and 3-State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 26, 2025

P.C.:

1. The present Writ Petition, preferred under Article 226 of the Constitution of India, calls into question the legality and propriety of an order rendered by the Divisional Joint Registrar (the “Revisional Authority”) in the exercise of powers conferred by Section 154 of the Maharashtra Cooperative Societies Act, 1960. By the impugned order, the Revisional Authority has set aside the certificate issued under Section 101 of the said Act on 16 October 2003, which was directed against the borrower and guarantor.

Significantly, the Revisional Authority has also annulled the consequential attachment orders dated 8 November 2001 and 31 October 2003, while relegating the applicant to seek redress by way of a civil suit for cancellation of the registered sale deed executed in favour of the petitioner.

2. The factual substratum of the dispute, as discernible from the record, centers on the property bearing CTS No.77/2 (admeasuring 118.70 square meters) and CTS No.79 (admeasuring 120.40 square meters), together with the constructions standing thereon (hereinafter collectively referred to as the “disputed property”). The said property constitutes the bone of contention between the parties, culminating in the impugned order of the Revisional Authority.

3. The record reveals that Respondent Nos.4 to 7 before the Revisional Authority (who are arraigned as Respondent Nos.6 to 9 in the present proceedings) had each availed of a loan facility of ₹8,00,000/- from Respondent No.2-Cooperative Bank (now Respondent No.4 in this petition). The property in question was, by common consensus, originally owned by one Mr. Mohammed Sarvar Khan Mohammed Hasan (“Sarvar Khan”). Upon his demise, he was survived by his wife, Smt. Aaishabee. Crucially, she stood as guarantor for the loans obtained by Respondent Nos.4 to 7.

4. It stands uncontroverted that Sarvar Khan passed away on 17 July 2000. On 5 August 2000, Aaishabee applied for the entry of her name in the revenue records, which was duly sanctioned by way of a mutation entry dated 11 September 2000. Notably, this entry carried a reference to a Will dated 13 June 2000. The fact that a Will — even if dated 13 June 2000 — was mentioned on the record prior to the disbursal of the loans calls for deliberation on whether this notice should have precluded or modified the Bank's actions in seeking remedies under the Maharashtra Cooperative Societies Act, 1960.

5. In due course, Respondent Nos.4 to 7 defaulted in repayment of the loans, prompting Respondent No.2-Cooperative Bank to initiate recovery proceedings under the Act. The Registrar, upon granting an opportunity of hearing to the borrowers and the guarantor, issued a certificate under Section 101 on 16 October 2003 in favour of the Bank, thereby enabling it to proceed against the attached property.

6. Following the issuance of the certificate under Section 101, Respondent No.3-Special Recovery Officer proceeded to attach both the properties, forming the subject matter of the Will dated 13 June 2000, by orders dated 8 November 2001 and 31 October 2003. These attachment orders were consequentially recorded in the mutation entries. Aggrieved thereby, Respondent No.1 approached the Revenue Authorities to challenge the mutation entries, culminating in protracted litigation that traveled up to this Court. By order dated 22 March 2013, this Court, in exercise of its writ jurisdiction, permitted Respondent No.1 to seek appropriate reliefs before the Revisional Authority.

7. Armed with the liberty granted by this Court, Respondent No.1 instituted Revision Application No.38 of 2013 along with an application for condonation of delay. The Divisional Joint Registrar, upon condoning the delay, set aside not only the certificate under Section 101 but also the attachment orders in question. However, while granting this relief, the Revisional Authority relegated Respondent No.1 to pursue a Civil Suit for annulment of the registered sale deed.

8. Learned Counsel for the petitioner contends that the Revisional Authority erred in condoning the inordinate delay of nine years. He submits that, absent the deposit of fifty per cent of the decreed amount, the revision under Section 154 of the Maharashtra Cooperative Societies Act, 1960 was not maintainable. Additionally, learned Counsel would urge that the petitioner, being a bona fide purchaser for value without notice of any adverse claim, stands protected in law. In his submission, the Divisional Joint Registrar had no jurisdiction to annul the order of attachment, particularly in light of the petitioner's status as an innocent purchaser.

9. A perusal of the available record discloses that loans were disbursed to Respondent Nos.4 to 7 in March 2001. Notably, an entry had already been recorded on 11 September 2000, signifying the existence of a Will in favour of Respondent No.1. The said entry set out details of the Will, under which only a life interest was conferred upon the wife, Smt. Aaishabee, who stood as guarantor for the loan. On a holistic reading of the Will, it is manifest that Respondent No.1 was conferred ownership rights, which devolved upon him on the demise of the original owner, late Mr. Sarvar Khan.

10. Since Respondent No.1 became the owner immediately upon the demise of the original testator, the property could not lawfully serve as security for a loan granted solely to Respondent Nos.4 to

11. It follows that the attachment effected by Respondent No.3–Special Recovery Officer, on a property not belonging to the borrower or guarantor, is void in law. Reliance was rightly placed upon the decision of the Hon'ble Supreme Court in *State of Orissa v. Brundaban Sharma*, 1995 Supp (3) SCC 249, at page 258, wherein it has been expounded:

> "*That apart, as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title, and its validity can be questioned or its invalidity be set up in any proceeding or at any stage."*
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> *The Court therein recognized that an action which is void ab initio can be assailed at any time, even after considerable delay.*"

12. Given that the Will conferring ownership on respondent No.1 predated the loan transaction, and the property was never validly mortgaged or offered as security, the attachment must be construed as non est in law. Thus, the Divisional Joint Registrar was justified in setting aside the attachment in exercise of its revisional powers under Section 154 of the Maharashtra Cooperative Societies Act, 1960.

13. That being said, the pendency of a civil suit warrants circumspection. The issues of whether the petitioner qualifies as a bona fide purchaser for value without notice and will being genuine subject to proof under Evidence Act are one that calls for a full-fledged trial. The Civil Court, equipped with powers to record evidence and evaluate competing claims, stands best placed to adjudicate this critical questions. Both sides must be accorded the opportunity to lead evidence to substantiate or refute the plea of bona fide purchase. Questions of title and bona fide purchase are invariably matters for the civil court, given their complexity and the necessity for detailed evidence. Consequently, the Divisional Joint Registrar's decision to relegate the parties to the Civil Court is firmly aligned with established legal doctrine.

14. Insofar as the certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 is concerned, the record indicates that the certificate was issued against the borrower and guarantor, not against Respondent No.1. Since no liability was fastened upon Respondent No.1 under the certificate, the latter could scarcely be construed as a person aggrieved by that issuance. Consequently, the Divisional Joint Registrar's order quashing the Section 101 certificate, dated 16 October 2023, does not withstand judicial scrutiny.

15. In the light of the above discussion, the impugned order dated 16 October 2003, to the extent it sets aside the certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960, is hereby quashed and set aside.

16. Accordingly, this Writ Petition stands disposed of on the aforesaid terms. There shall be no order as to costs.

17. In view of disposal of the writ petition, all pending interlocutory applications stand dismissed as having become infructuous.

18. It is made clear that in the event the Civil Court ultimately returns a finding that the petitioner is not a bona fide purchaser for value without notice, Respondent No.2-Cooperative Bank (arrayed herein as Respondent No.4) shall be obliged to refund the entire amount paid by the petitioner towards the transaction in question, together with costs and interest, in accordance with sub-rule (13) of Rule 110 of the Maharashtra Cooperative Societies Rules, 1961.

(AMIT BORKAR, J.)