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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13819 OF 2024

Bapusaheb Ganpatrao Gawali … Petitioner

V/s.

The Divisional Joint Registrar & Ors. … Respondents

Mr. V.S. Tadake for the petitioner.

Mr. Mufeez Ansari for respondent Nos.4 to 6.

Mr. P.V. Nelson Rajan, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 20, 2025

P.C.:

1. The present writ petition under Article 226 of the Constitution of India assails the legality and propriety of the auction sale conducted on 5th August 2024 and the subsequent issuance of a sale certificate by the Sub-Registrar of Assurances (SRO) under Rule 107 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the MCS Act"). The petitioner contends that the said auction sale and the execution of the sale certificate are vitiated due to lack of jurisdiction, procedural irregularities, and an erroneous assumption of power by the authorities concerned.

2. This Court, in Writ Petition No. 2919 of 2008 (*Accentuate Developers Pvt. Ltd. v. Anushool Metals Pvt. Ltd. & Ors.*), decided on 14th June 2024, has categorically held that the process of auction or the issuance of a certificate of confirmation of sale does not amount to an "order or decision" within the meaning of Section 154 of the MCS Act. Consequently, a revision application challenging such an auction or sale confirmation is inherently not maintainable. The said judgment is in consonance with the settled principle of law that where a statute does not contemplate a specific remedy for a particular grievance, such a challenge cannot be entertained by a forum exercising revisional jurisdiction. The Revisional Authority, therefore, patently exceeded its jurisdiction in entertaining and allowing the revision application, rendering its decision without legal sanctity.

3. The learned counsel for the respondents has raised an objection regarding the maintainability of the present writ petition, contending that the order dated 17th May 2016 has been sought to be challenged after an inordinate delay, thereby attracting the doctrine of laches. However, the Hon'ble Supreme Court in *State of Orissa v. Brundaban Sharma*, 1995 Supp (3) SCC 249, at page 258, has elucidated that where an order is void *ab initio*, its validity can be questioned at any stage. The relevant observations of the Supreme Court are apposite:

> *"Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta, 27 years did pass. But its authenticity and correctness were shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit? Who was responsible for it? The reasons are not far to seek. They are self-evident.*

> *So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay after it had come to the Board's knowledge. 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."*

4. The principle laid down in the aforesaid judgment applies with equal force to the facts of the present case. Since the revision application itself was not maintainable, the order passed by the Divisional Joint Registrar is without jurisdiction and is, therefore, a nullity in the eyes of law. A void order does not acquire legality merely by the passage of time, and its validity can be challenged even after a substantial delay. Accordingly, the challenge to the impugned order is maintainable despite the lapse of eight years.

5. Nevertheless, it is clarified that respondent Nos. 4 to 6 shall be at liberty to challenge the auction sale or the issuance of the sale certificate before this Court by way of an independent writ petition, should they so desire. The period spent in prosecuting the revision application before the Divisional Joint Registrar shall be deemed as bona fide proceedings for the purposes of Section 14 of the Limitation Act, 1963. This provision ensures that a litigant who has pursued a remedy in good faith before a forum, which ultimately lacked jurisdiction, is not prejudiced in subsequent proceedings.

6. In the event respondent Nos. 4 to 6 institute such a writ petition, it shall be open for the respondent-Bank to raise objections regarding its maintainability, including but not limited to the ground that the said respondents have already availed of an alternate remedy by filing a civil suit challenging the auction process.

7. It is further clarified that the auction purchaser shall be at liberty to contend that in view of the provisions of Section 31 of the Specific Relief Act, 1963, the authorities under the MCS Act lack jurisdiction to annul a registered sale deed.

8. With the aforesaid observations and clarifications, the writ petition stands disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)