

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3178 Of 2025

Mrs. Raisa Haji Abdulkarim Bhura .. Petitioner

Versus

District Dy. Registrar Co-operative, .. Respondents
Societies 3 Western Suburban Mumbai
Division & Ors.

...

Mr.Arun Kumar Yadav for the Petitioner.

Mr.Mohit Jadhav, Addl G.P. a/w Nazia Sheikh, AGP for
respondent no.1.

Mr. Sagar Batavia for respondent no.4.

CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J
DATED : 13th FEBRUARY, 2025

ORDER:- (PER BHARATI DANGRE J)

1. The petition filed under Article 226 of the Constitution of India has raised a challenge to the order dated 28/08/2024, passed by the District Deputy Registrar, Co-operative Societies, Revision Application filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960, thereby rejecting the Revision Application preferred by the petitioner and also calling in question the action initiated by the respondents for attachment and sale of the flat belonging to the petitioner.

The petition has impleaded the District Deputy Registrar, Co-operative Societies as well as the Deputy Registrar

Ashish

Co-operative Societies, and the Special Recovery and Sales Officer, of the Mumbai District Co-operative Housing Federation as respondents.

2. We have heard learned counsel Mr. Arun Kumar Yadav for the petitioner and the learned Additional Government Pleader Mr. Mohit Jadhav, for the respondent authorities.

3. The petitioner, is a member of the respondent no.4 Society and is in occupation of Flat No. D/18, in its building and she is aggrieved by the proceedings initiated against her in pursuance of the Recovery Certificate which was issued when the respondent no.4, filed an application for recovery of an amount of Rs.2,42,889/- under Section 101 of the Maharashtra Co-operative Societies Act, 1960 since the Society alleged that the petitioner is in arrears of amount of maintenance towards water supply, electricity supply etc., in addition, to the payment of property taxes, water charges and contribution towards repairs and maintenance. The application preferred by the Society provided the details of the amount to be recovered from the petitioner as a member of the Society and therefore, the certificate was prayed for under Section 101 of the Maharashtra Co-operative Societies Act, for recovery of the aforesaid amount.

On 9/06/2009, the Deputy Registrar of Co-operative Societies H/W Ward i.e. respondent no.3 issued the certificate indicating that the petitioner should deposit the amount along with 21 % interest and if there is a failure to do so, the property

belonging to the noticee including immovable property shall be subjected to sale.

4. According to the learned counsel for the petitioner, on 13/09/2004, the petitioner made payment of a sum of Rs. 2,00,000/- vide cheque issued on 9/08/2004 towards full and final settlement of the outstanding dues of recovery until 30/09/2004, but the audit report dated 21/04/2005 reflected the balance outstanding dues as 7099.30/- whereas the Audit Report dated 31/03/2006 showed the outstanding amount of Rs. 1,55,953/- under head of Schedule 'B'.

The counsel would argue that in the Annual General Meeting of the Society held on 28/10/2006, the final settlement was acknowledged since the petitioner had deposited Rs. 2,00,000/- and it was agreed that the balance amount of Rs. 1,21,720/- be condoned and waived by the Managing Committee of the Society.

The grievance of the petitioner is, despite the aforesaid settlement being effected, when a new Managing Committee became operational, it once again took up the issue of unpaid dues.

5. For establishing the aforesaid claim that there was full and final settlement between the parties, the petitioner has relied upon a document placed at Exhibit-P dated 30/11/2006, but perusal of the said document disclose that it is the 'Draft Minutes of the Annual General Meeting' held on 28/10/2006,

and therefore, it is not certain whether it had become final.

It is the case of the petitioner that duplicate Share Certificate was issued in her favour on 13/05/2014 and on death of her husband on 19/08/2021, she continued to remain the member of the Society. In the Annual General Meeting of the Society held on 14/09/2024, it was resolved to recover the amount of Rs. 13,81,359/- from the petitioner along with two others. The minutes noted that against the recovery proceedings initiated against the petitioner when the Registrar had order recovery of dues of Rs. 6,41,452/- by auctioning her flat, she had filed a Review Petition and it was therefore resolved to recover balance outstanding of Rs. 13,81,359 (July to September 2024).

6. The learned counsel for the petitioner would rely upon Article 136 of the Limitation Act, 1963 which has prescribed period of 12 years for execution of any decree or order of any Civil Court.

We wonder whether the entry 136 would cover the case of the petitioner, since what is sought to be executed is the Recovery Certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, which is issued when certain sums and arrears are due to Society. Another argument of the learned counsel is, that 101 certificate could not have been issued, as under the said provision the Society is entitle to recover the loan amount or a sum of advanced to an individual member but it would not cover the amount due and payable to the Society.

7. We must reject both the contentions raised, since the petitioner had already filed a revision before the Deputy Registrar Co-operative Societies under Section 154 of the Act of 1960, against the order passed under Section 107 and on hearing, the Revision Application has been dismissed by recording that since the amount is due for recovery and the Recovery Certificate was already received, by following the procedure, the flat has been set out for auction and though some amount was alleged to be deposited, the entire amount due for recovery was not repaid and therefore, it is held that the notice dated 1/09/2021, issued by the Deputy Registrar Co-operative Societies and the notice by recovery officer dated 25/02/2021, do not warrant any interference and hence the revision has been dismissed on 28/08/2024, which faces a challenge before us.

8. On perusal of the impugned order which raise a challenge to the order of Recovery Officer in the wake of the proceedings initiated for the amount due to the Society, we do not find any legal or factual error in the said order since it is recorded that the applicant is also creating obstruction in the re-development procedure and the recovery is due since the year 2009 and many a times the Society attempted to settle the matter amicably by holding joint meeting, when the applicant had given an undertaking that she is ready to pay the dues, but have failed to pay the amount, and for this reason Revision Application has

been rightly rejected.

9. Finding no legal lacunae in the impunged order, we are not persuaded to show any indulgence to the petitioner, as a result the petition is disposed off.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)