HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3994 OF 2008

Ashta Lokmanya Nagri Sahakari
Patsanstha Maryadit, Sangli. ... Petitioner.

V/s.

Shri Shankar Bapu Nimbalkar
and another. ... Respondents.

A.B.Vagyani for the petitioner.

Umesh Mankapure for respondent No.1.

A.I.Patel, AGP for respondent No.2- State.

CORAM: V.C.DAGA, J.

DATED: 16th September 2008.

JUDGMENT :

. Rule, returnable forthwith.

. Heard by consent of parties.

2. This petition, filed under Article 227 of the Constitution of India, is directed against the judgment and order dated 19th March, 2008 passed in Revision Application No.383/2007 by the Divisional Joint Registrar, Kolhapur Division, Kolhapur.

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Factual Matrix :

3. The petitioner herein is a Special Recovery Officer of Ashta Lokmanya Nagri Sahakari Pathsanstha Maryadit, Ashta, Sangli a credit society ("Credit Society" for short) registered under the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for short). On 7th February, 1997, the respondent No.1 approached to the Sangli Branch of the Credit Society for obtaining loan of Rs.1 lakh for construction of the house.

4. The Credit Society, on 23rd March, 1997, sanctioned loan in favour of the respondent No.1. The respondent No.1 has mortgaged his agricultural land being Gat No.22-B admeasuring 4 hectors situated at village Salagare, taluka- Miraj, district- Sangli by a registered deed of mortgage dated 14th March, 1997.

5. The respondent Nos.1 borrowed amount of loan and agreed to repay it with interest thereon. The amount of loan was used for construction of the house. However, he committed default in repayment of the outstanding dues of the Credit Society.

6. The respondent No.1 filed dispute under section 91 of the MCS Act being Dispute No.752/1999 in the Co-operative Court, Sangli against the Credit

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Society claiming for one time settlement of the loan account and also applied for injunction. The said dispute was, ultimately, withdrawn by respondent No.1 on 27th June, 2005.

7. The Credit Society initiated proceeding under section 101 of the MCS Act on 18th July, 2005 for the recovery of their dues with interest and expenses and obtained recovery certificate from respondent No.5, the Deputy Registrar, Co-operative Societies, Miraj. This order was not challenged by the respondent No.1. It, thus, became final and conclusive.

8. The Credit Society initiated execution proceedings. The petitioner- recovery officer issued public notice on 19th December, 2005 in "Dainik Tarun Bharat" news paper informing the public at large that the mortgaged property of respondent No.1 will be auctioned on 20th January, 2006 at village Salagare.

9. The Credit Society did not receive good bidders for the auction sale, as such fresh public notice was published on 10th February, 2006 in "Dainik Tarun Bharat" news paper informing the date of public auction scheduled on 23d February, 2006.

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

10. The respondent No.1 with the help of Shetkari Sanghatana, a political party obstructed the public auction. With the result, again the Credit Society was required to publish notice on 5th July, 2006 informing the date of public auction scheduled on 20th July, 2006. By the time fresh auction could be called, outstanding loan amount against respondent No.1 became due and payable in the sum of Rs.2,26,024.50.

11. On 20th July, 2006, auction sale was held in respect of 2 hectors of land out of the mortgaged property. The Credit Society received bid of Rs.2,61,000/- from one Mr.Vikram Kamble and Vijay Parit respectively. The auction purchasers deposited 15% of the auction sale price and the said amount was lying in deposit with the Credit Society. The Assistant Registrar, on 26th October, 2006, confirmed the auction sale.

12. The respondent No.1 had attempted to obstruct auction sale from time to time. He filed revision under section 154 of the MCS Act being Revision

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Application No.225/2006 before the Divisional Joint Registrar, Kolhapur on 20th September, 2006, to challenge the auction sale.

13. The respondent No.1 incidentally raised an objection to the recovery certificate obtained under section 101 of the MCS Act. According to him, the Assistant Registrar, Co-operative Societies, Islampur, who had issued the said recovery certificate, did not have territorial jurisdiction.

14. The respondent No.1 did not comply with mandatory provision of section 154(2)(a) of the MCS Act requiring him to deposit 50% of the loan amount and/or auction sale price. He did not join the auction purchaser as party respondent. The petitioner raised objection by filing reply to the said revision application. The Divisional Joint Registrar, Co-operative Societies, Kolhapur, vide his order dated 3rd January, 2007, partly allowed the said revision application and thereby set aside the auction sale dated 20th July, 2006 subject to repayment of the outstanding dues of the Credit Society after taking fresh accounts.

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

15. Pursuant to the above order, a Government Auditor, Shri K.A.Shinde of the District Central Co-operative Bank Ltd., Sangli was directed to recalculate interest amount and take fresh accounts within one month from the date of the order. The Government Auditor, Shri K.A.Shinde, submitted his report on 17th March, 2007. The respondent No.1 did not repay the amount as per the calculations made and/or the accounts settled by the Government Auditor in view of the above order.

16. The Divisional Joint Registrar vide his letter dated 12th September, 2007 informed the Credit Society to take appropriate steps as per the order dated 3rd January, 2007 passed in Revision Application No.226/2006.

17. In view of the aforesaid directions, the petitioner issued a notice dated 22nd September, 2007 to respondent No.1 demanding due amount of Rs.2,07,851/- as per the Government Auditor's Report. The order of Divisional Joint Registrar dated 3rd January, 2007 was not complied with by the respondent No.1. He did not pay or deposit amount due and payable as settled by the Government Auditor. The

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

outstanding loan amount till 30th April, 2008 became due and payable in the sum of Rs.2,21,971/-.

18. The respondent No.1 chose to file another revision being Revision Application No.383/2007 before the Divisional Joint Registrar, Kolhapur Division challenging the aforesaid report submitted by the Government Auditor and the notice dated 22nd September, 2007 issued by the petitioner demanding due amount. The objection was again raised by the petitioner to the tenability of the second revision, that too, against the report of the Auditor, at the instance of respondent No.1 additionally contending that it was time barred and; that the mandatory provision was not complied with by the respondent No.1 requiring him to deposit 50% of the due amount. However, the Divisional Joint Registrar, Kolhapur Division, Kolhapur entertained revision petition and on the top of it allowed it by the impugned order directing settlement of account as mentioned in the earlier order dated 19th March, 2008. This order is a subject matter of challenge in this writ petition filed under Article 227 of the Constitution of India.

Consideration :

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

19. Having heard rival parties, the first question which needs consideration is as to how second revision application was maintainable at the instance of respondent No.1, that too against the report of the Government Auditor and the demand notice dated 22nd September, 2007 when the earlier order of the revisional authority dated 3rd January, 2007 was rightly or wrongly holding the field.

20. The earlier order was passed by one Shri P.W.Patil, the then Divisional Joint Registrar, Kolhapur in Revision Application No.225/2006, whereas the second order impugned in this petition is passed by Dr.A.B.Jogdand, Divisional Joint Registrar, Kolhapur in Revision Application No.383/2007. This Court is at loss to understand how second revision application was entertained by the Divisional Joint Registrar on the face of the judgment of this Court in the case of **Matru Ashish Co-op. Hsg.Society Ltd. v. Bhagwan V. Moorjaney**, 2004 (3) Mh.L.J. 98; **Madhukar Deshmukh v. Jalgaon Jilha Maratha Vidya Prasarak Co-op. Samaj Ltd.**, 2002 (3) Mh.L.J. 201; and **Harish Com.Premises Co-op.Soc.Ltd. v. Varsha D. Joshi**, 2006 (5) Bom.C.R. 853. As a matter of fact, Shri A.B.Jogdand, Divisional Joint Registrar is liable to

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

be proceeded with for having committed contempt of this Court by not following the law laid down by this Court of which he cannot plead ignorance being a officer holding higher position that of the Divisional Joint Registrar.

21. Secondly, this Court is also at loss to understand as to how the second revision application was maintainable against the report of the auditor which is neither an order nor direction issued under the provisions of the Act. It was nothing but a quantification of the amount as directed vide order dated 3rd January, 2007 passed by the then Divisional Joint Registrar, Kolhapur. Consequently, notice dated 22nd September, 2007 was issued demanding amount calculated by the auditor. All these actions were nothing but the steps taken in execution and implementation of the earlier order dated 3rd January, 2007. These glaring facts are apparent on the face of record. Shri A.B.Jogdand, Divisional Joint Registrar while passing the impugned order has conveniently closed his eyes to factual matrix available on record.

22. Apart from the above, once the impugned order under section 101 has become final and conclusive,

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

then it was not open even for Mr.P.W.Patil, the Divisional Joint Registrar to direct recalculation of the amount due and come to conclusion. It was not open for Mr.Patil to touch the amount mentioned in the recovery certificate issued under section 101 of the MCS Act, especially, when it had become final and conclusive. He has also over-stepped his jurisdiction. This Court exercising writ jurisdiction under Article 227 of the Constitution of India cannot shut its eyes to this glaring illegalities. The revisional authority had no jurisdiction to overturn the contract between the parties and to substitute its own views.

23. The impugned orders passed by Shri P.W.Patil and Shri A.B.Jogdand, the then Divisional Joint Registrars not only showed impropriety but they have also overstepped their jurisdiction for reasons best known to them.

24. The facts are available on record to draw an inference that the respondent No.1 made all his attempts to obstruct the auction sale of the mortgaged property by taking help of the political party, namely, Shetkari Sanghatana. He has obstructed the

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

recovery of money belonging to the co-operative society and these two officers of the Co-operative Department helped the respondent No.1 in his endeavour to arrest recovery proceedings.

25. The learned counsel for respondent No.1 during the course of hearing went on to make wild allegations against the Credit Society alleging that no credits of the repayments made by him were given in the accounts maintained by the Credit Society. This Court had to summon ledger account of the Credit Society to find out whether or not the credits were given. Ultimately, the submission made by respondent No.1 turned out to be absolutely false.

26. On the above backdrop, the impugned order dated 19th March, 2008 as well as earlier order dated 3rd January 2007 to the extent it reopens the account of the Credit Society are liable to be set aside. The matter also needs to be reported to the Commissioner, Co-operation, Maharashtra State, Pune and the Secretary, Co-operation Department, Government of Maharashtra, Mumbai so as to bring it to their notice the arbitrary and colourable exercise of powers by Shri P.W.Patil and Shri A.B.Jogdand, the then

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Divisional Joint Registrars by overturning the law laid down by this Court. The State Government should not feel shy to take appropriate remedial action, if found necessary.

27. In the result, not only impugned order dated 19th March, 2008 is quashed and set aside but order dated 3rd January, 2007, to the extent it reopens an account, is also liable to be declared as bad and illegal. The said order to that extent is also set aside. The petition is allowed. Since the Recovery Certificate has become final and conclusive, the Recovery Officer shall proceed to recover amount due from the respondent No.1 as per the recovery certificate ignoring the calculations made by the Government Auditor, since all those directions were issued in the proceedings which were without jurisdiction. All orders which are without jurisdiction are liable to be ignored. [see **Kiran Singh v. Chaman Paswan**, AIR 1954 SC 340 (para-6)]

28. Rule is made absolute in terms of this order with costs quantified in the sum of Rs.25,000/- to be paid by respondent No.1 to the petitioner.

::: Downloaded on - 01/04/2024 15:42:56 :::

HIGH COURT OF JUDICATURE AT BOMBAY

29. The registry is directed to forward the copy of this order to the Commissioner of Co-operation, Maharashtra State, Pune and the Principal Secretary, Department of Co-operation, Government of Maharashtra, Mumbai for information.

V.C.DAGA, J.)

::: Downloaded on - 01/04/2024 15:42:56 :::