

(2012) 01 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 4368 of 2011

Chandrakant Shinde

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Co-operative Societies Act, 1960 — Section 101, 154, 154(1), 86A, 86F
Maharashtra Co-operative Societies Rules, 1961 — Rule 86A, 86B, 86C, 86D, 86E
Maharashtra Land Revenue Code, 1966 — Section 247

Citation : (2012) 2 ALLMR 590 : (2012) 5 BomCR 127 : (2012) 3 MhLj 441

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : A.D. Shinde holding for . and Mr. N.R. Bhavar, for the Appellant; V.G. Shelke, A.G.P. for Respondent Nos. 1, 2 and 5, Mr. V.D. Salunke h/f and Mr. B.A. Shinde, Advocate for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This petition takes exception to the issuance of recovery certificate No.205/04 dated 05.04.2004, by respondent No.2. There is also prayer clause (C) in the petition for quashing and setting aside order dated 21.02.2011, in Complaint No.40 of 2010, passed by respondent No.5Tahsildar, thereby confirming Mutation Entry No. 1673, in favour of respondent/Pat Sanstha and for that purpose necessary orders are sought by the petitioner.

2. Rule. Rule made returnable forthwith. Heard with the consent of parties finally at the admission stage.

3. The background facts which are disclosed in the petition for filing of this petition are as under :

4. The petitioner is resident of Kolpewadi, Tal. Kopargaon, Dist. Ahmednagar. It is case of the petitioner that he was in need of money. Therefore, he approached to respondent No.3/Pat Sanstha and requested for loan amount. Considering the

request and application for loan, respondent/Pat Sanstha sanctioned loan in favour of the petitioner and for said loan, respondent Nos. 7 and 8 herein stood as guarantors.

5. It is case of the petitioner that after obtaining such loan from respondent No.3/Pat Sanstha, the petitioner is regularly repaying said amount to respondent/Pat Sanstha. It is further case of the petitioner that he was surprised and shocked to receive attachment order of his property against the loan amount, which is already paid to respondent/Pat Sanstha by the petitioner. It is case of the petitioner that after receiving notices from respondent No.4, he rushed to the Office of respondent Nos.2 and 3 for enquiry about notice issued against the petitioner. On approaching respondent Nos.2 and 3 and upon demanding necessary documents in respect of loan transaction, the respondent has not given any response and has not given any single document to the petitioner.

6. It is specific case of the petitioner that respondent No.3 by keeping in dark to the petitioner, has unilaterally obtained certificate u/s 101 of the Maharashtra Cooperative Societies Act, against the petitioner from respondent No.2. The said certificate is issued without giving proper opportunity of being heard to the petitioner. It is further case of the petitioner that, said certificate is issued in violation of statutory rules i.e. 86A to 86F of the Maharashtra Cooperative Societies Rules, 1961. It is the case of the petitioner that, this Court in similar facts and circumstances of the case decided Writ Petition No.1717 of 2009, and allowed the same.

7. It is further case of the petitioner that, the Revenue Authorities have mutated name of respondent/society in the revenue record by M.E. No. 1673 and entered name of respondent No.3 even in 7/12 extract of land Gat No. 78 situated at village Kolpewadi, Tal. Kopargaon. It is further case of the petitioner that respondent No.5 without giving proper opportunity of being heard to the petitioner, was pleased to confirm the Mutation Entry in favour of respondent/Pat Sanstha, being Mutation Entry No. 1673. Hence, this Writ Petition is filed challenging the certificate issued by respondent No.2 u/s 101 of the Maharashtra Cooperative Societies Act and action of respondent No.5 confirming Mutation Entry No. 1673 in favour of respondent No. 3.

8. Learned Counsel appearing for the petitioner submits that before issuing certificate under the provisions of Section 101 of the Maharashtra Cooperative Societies Act, respondent No.3 did not issue any notice to the petitioner. The procedure/rules 86A to 86F of the Maharashtra Cooperative Societies Rules are not followed by respondent No.2. Respondent No.2 in the first instance had not issued any notice to the petitioner before issuing certificate u/s 101 of the Maharashtra Cooperative Societies Act. Secondly, said certificate is issued without assigning any reasons. Learned Counsel for the petitioner vehemently argued that respondent No.2 has not followed the guidelines mentioned in circular dated 03.03.2001, issued by Office of the Commissioner for Cooperation and Registrar, Cooperative Societies M.A., Pune and in accordance with provisions

of statutory rules 86A to 86F of the said Act. It is the contention of the Counsel for the petitioner that, the Assistant Registrar while issuing such certificate acts as judicial authority and therefore principles of natural justice are required to be followed.

9. Learned Counsel for the petitioner pressed into service reported judgment of the Supreme Court in the case of State of West Bengal Vs. Atul Krishna Shaw and Another, and also in the case of Union of India (UOI) and Others Vs. Jai Prakash Singh and Another, . Relying upon those judgments, learned Counsel for the petitioner would submit that, in the first instance notice is not issued to the petitioner before issuing certificate by the Assistant Registrar, and secondly no reasons are assigned in support of issuance of such certificate under the provisions of Section 101 of the Maharashtra Cooperative Societies Act. Learned Counsel for the petitioner also pressed into service judgment of Division Bench of this Court in the case of Sundeeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors., 2010 (6) ALL M.R.550 and submitted that, in that case also learned Single Judge of this Court rejected the petition filed by the petitioner therein challenging the recovery certificate issued against the petitioner without following mandate of provisions of Rule 86A to 86F. Therefore, the Division Bench in the facts of that case held that such approach of learned Single Judge to reject the petition on the ground that alternate remedy of revision is available was not correct. The Division Bench in the said judgment has taken a view that, if the provisions of Rule 86A to 86F of the said rules are not followed and reasons are not assigned in support of issuance of certificate under the provisions of section 101 of the Maharashtra Cooperative Societies Act, in that case the writ petition can be entertained and necessary relief can be granted to the aggrieved person. Learned Counsel further invited my attention to the grounds taken in the petition, annexures thereto, circular at Exh.A5 dated 03.03.2001, statutory rules 86A to 86F of said Rules and other documents which are placed on record and submitted that this writ petition deserves to be allowed.

10. In pursuance of notices issued in this petition at 5th August, 2011, respective respondents have appeared through their Counsels and filed affidavit in reply The Assistant Registrar who is Respondent No.2 herein has also filed affidavit in reply In said affidavit in reply in para 3 it is stated that before issuing recovery certificate notice was given to the petitioner on 25.02.2004, 12.02.2004 and hearing was kept on 12.03.2004 and further on 19.03.2004. Necessary documents were provided to the petitioner and after that, recovery certificate was issued. In para 4 of said affidavit in reply it is stated that when the recovery certificate was issued by respondent No.2 against the petitioner, rule 86A to 86F were not inserted in the Maharashtra Cooperative Societies Rules, 1961. It was inserted by Notification No. CSL2005/C.R.516/15C dated 18.05.2007. Therefore, there is no question of violation of said rules in case of the petitioner. In para 5 it is stated that by M.E. No.1674, the Revenue Authorities mutated Revenue Record in favour of respondent No. 3/Society on the basis of "R" certificate issued by respondent No.2. It is further contended that, before issuing "R" certificate in

favour of respondent No. 3/Society proper hearing was given to the petitioner. Notices were issued on 19.06.2009 and hearing was kept on 17.07.2009 and after giving proper opportunity of hearing, "R" certificate was issued. At that time the petitioner was present. Copy of Roznama dated 17.07.2009, notice dated 19.06.2009, reply of the petitioner through his advocate S.W. Damale dated 29.06.2009, application of Recovery Officer dated 07.08.2009 are placed on record along with affidavit in reply In para 7 it is contended that the petitioner has alternate remedy of filing Revision before the Divisional Joint Registrar, Cooperative Societies, Nashik u/s 154 of the Maharashtra Cooperative Societies Act. But to avoid to deposit 50% amount of over dues with respondent No.3 Society, the petitioner has filed this Writ Petition. In para 10 it is stated that before issuing "R" certificate proper opportunity of hearing is given to the petitioner. Along with affidavit in reply as Exh.R1, copy of notice which was issued to the petitioner is placed on record. Notification No. CSL2005/C.R.516/15C dated 18th May, 2007 issued by the State Government, Department of Cooperation, Marketing and Textiles, Mantralaya, Mumbai is placed on record. Other documents are also placed on record to suggest that before issuing certificate, notice was issued to the petitioner and also hearing is given to the petitioner. Further, additional affidavit is also filed by respondent No.2 in pursuance of order passed by this Court on 12th December, 2011, thereby giving details of the amount which is borrowed by the petitioner herein.

11. Respondent Nos. 3 & 4 have also filed affidavit in reply In para 4 of the said affidavit in reply the Assistant Registrar, Cooperative Societies, Kopargaon, issued notice to the respondents on 25.02.2004 and hearing was kept on 12.03.2004. Thereafter also the Assistant Registrar issued notice on 12.03.2004 and hearing was kept on 19.03.2004. It is stated that the petitioner was present before the Assistant Registrar, Cooperative Societies, Kopargaon and after hearing the petitioner and respondent/society, respondent No.2 issued recovery certificate in favour of answering respondent on 05.04.2004 for recovery of amount of Rs. 1,62,086/with further interest at the rate of 21%. In para 5, it is stated that to challenge the certificate issued by respondent No.2 u/s 101 of the Maharashtra Cooperative Societies Act, 1960, the petitioner has alternate remedy u/s 154 of the M.C.S. Act, 1960. It is further stated that to avoid depositing 50% amount of dues, the petitioner has filed writ petition. In para 6 it is stated that if the petitioner is aggrieved by order of Tahsildar confirming the Mutation Entry No. 1673 in favour of answering respondent, in that case the petitioner has remedy of appeal u/s 247 of the Maharashtra Land Revenue Code, 1966 before the S.D.O. In para 7 there is reference to the Civil Suit No. 48 of 2008, which was filed by the petitioner before the Civil Court on 29.06.2009 in respect of recovery of amount. It is further stated that the authorities have issued "R" certificate after hearing the petitioner and after due notice to the petitioner. In para 7 it is stated that the recovery certificate is issued on 05.04.2004 and the petitioner has challenged said recovery certificate by way of filing writ petition in the year 2011 and therefore there is delay and laches on

the part of the present petitioner. Therefore, the petition is liable to be dismissed. In para 8, it is stated that there is no any violation of Rule 86A to 86F of the Maharashtra Cooperative Societies Rules.

12. Respondent Nos.3 & 4 have also filed additional affidavit in reply In para 3 details of amount which was borrowed by the petitioner are given. Other details are also given in said paragraph. In para 4 & 5 it is stated that the respondent society is Gramin Bigar Shetkari Patsanstha and it is not for agricultural purposes. There is reference to the relevant bylaws in the said paragraph. In para 5 specific averments are made that loan of Rs.1,50,000/was sanctioned to the petitioner on 13.07.2007 for the purpose of repairing house. As per sanction letter, rate of interest is 19% and it is also stated that 2% will be penal interest, if borrower failed to repay the installments of loan. There is also reference to the promissory note on 13.07.2001 by the petitioner. In para 6 it is contended that the petitioner has mortgaged his land admeasuring 60R from Gat No.78 of village Kolpewadi towards the security of said loan. In para 7 it is stated that Rs.15,000/ are kept by the petitioner in fixed deposit interest at the rate of 12%. Other details are also given in par 8,9,10 and also other foregoing paragraphs. In para 12 there is reference to judgment of Division Bench of this Court in the case of The Maharashtra Nagri Sahakari Bank Limited Vs. Ravindra Kulkarni and Others, and relying upon said pronouncement, it is stated that the petition filed by the petitioner is not maintainable in view of alternate remedy of revision available u/s 154 of the Maharashtra Cooperative Societies Act.

13. Learned A.G.P. appearing for the State invited my attention to the affidavit in reply, annexures thereto and record available with him and submitted that before issuing certificate u/s 101 of the Maharashtra Cooperative Societies Act, notice was issued to the petitioner. Said notice was sent by R.P.A.D. There is endorsement on the copies of said notice that said notice is received by the petitioner. It is further submitted that the statutory rules i.e. 86A to 86F of said rules have come into force w.e.f. 18.05.2007. However, case of the petitioner is not governed by the said rules and therefore there was no question of following said rules by the Assistant Registrar before issuing certificate u/s 101 of the Maharashtra Cooperative Societies Act. Learned A.G.P. further submits that before issuing "R" certificate, necessary procedure has been followed and also he is heard and then certificate is issued. If the petitioner is aggrieved, he can file appropriate proceedings under the Maharashtra Revenue Code. Therefore, learned A.G.P. would submit that the petition is devoid of any merits and same may be dismissed.

14. Learned Counsel appearing for respondent Nos. 3 and 4 submitted that in view of provisions of section 154 of the Maharashtra Cooperative Societies Act, efficacious and alternate remedy of revision is available to the petitioner. It is submitted that in petition nowhere it is submitted that why said remedy cannot be availed by the petitioner. It is further submitted that provisions of section 101 of the Maharashtra Cooperative Societies Act are summary in nature. It is not

contemplated by said section that the party is required to be heard and reasons are required to be recorded before issuing certificate u/s 101 of the Maharashtra Cooperative Societies Act. Learned Counsel also submitted that admittedly recovery certificate is issued by respondent No.2 on 05.04.2004, however, writ petition is filed in the year 2011 and on that ground alone the writ petition is required to be dismissed. Learned Counsel further submitted that when this matter was heard by this Court on 12th December, 2011, learned Counsel for the petitioner submitted that the loan is agricultural loan and permissible interest rate is only 6% p.a. Learned Counsel submitted that nowhere said assertion is reflected in the writ petition. It is further submitted that this Court was misled by stating that, such amount is disbursed as agricultural loan and therefore respondent Nos. 3 and 4 can only charge interest at the rate of 6% p.a. Therefore, according to the learned Counsel appearing for respondent Nos. 3 and 4, the petitioner has not approached this Court with clean hands and therefore the writ petition is required to be dismissed on that count alone. In support of this contention, learned Counsel for respondent Nos.3 and 4 placed reliance upon reported judgment of Division Bench of this Court in the case of Parinda Milind Keer Vs. Indian Oil Corporation Ltd., a public limited company, .

15. Learned Counsel further submitted that provisions of Rule 86A to 86F of said rules are made applicable from the year 2007 and in the instant case the Assistant Registrar, Cooperative Societies, Kopargaon, has issued recovery certificate in the year 2004. Therefore, those rules cannot be made applicable with retrospective effect. Learned Counsel further submitted that though there is circular, which is issued in 2001, there is no mention of said circular in the petition. However, by way of filing rejoinder affidavit, said circular is placed on record by the petitioner, which may not be considered. It is further submitted that said circular is in the nature of guidelines and it has no statutory force. It is further submitted that even if it is assumed for a moment that, such circular was in force before recovery certificate is issued by respondent No.2, in that case also it was open for the petitioner to avail remedy of revision and to bring to the notice of revisional authority that such circular is in force and contrary to the guidelines issued in said circular, the Assistant Registrar has issued said recovery certificate u/s 101 of the Maharashtra Cooperative Societies Act. Learned Counsel further submits that, this is not the case in which notices are not issued at all to the petitioner. There is record to suggest that before issuing certificate by respondent No.2, notice was sent by R.P.A.D. and there is acknowledgment by the petitioner of receiving such notice. Therefore, learned Counsel for respondent Nos.3 and 4 relying upon additional affidavit in reply and other documents placed on record would submit that this writ petition may be dismissed.

16. With the able assistance of the learned Counsels appearing for the parties, I have gone through the writ petition, annexures thereto, affidavit in replies filed by the respective respondents and other documents made available for perusal. At this stage, it would be appropriate to mention the undisputed facts in the matter. It is not in dispute that the Assistant Registrar, Cooperative Societies,

Kopargaon i.e. respondent No.2 herein, has issued recovery certificate under the provisions of Section 101 of the Cooperative Societies Act in April, 2004. Though learned Counsel appearing for the petitioner strenuously contended that no notice was received by the petitioner, however, from the perusal of record, which is made available by learned A.G.P., it is abundantly clear that notice was issued by R.P.A.D. and said notice has been served upon the petitioner and to that effect there is acknowledgment by the petitioner. Therefore, said contention raised by the petitioner that no notice was received is devoid of any merits and same stands rejected.

17. Another contention of learned Counsel appearing for the petitioner that in view of provisions of section 86A to 86F of the said Rules and in view of circular dated 03.03.2001 issued by the Officer of Commissioner for Cooperation and Registrar Cooperative Societies, M.S., Pune, respondent No.2 herein was under obligation to follow principle of natural justice and to assign the reasons before issuing recovery certificate is concerned, in the first place it is admitted position that provisions of Rules 86A to 86E are introduced/inserted in the relevant rules, in the year 2007. Therefore, said rules will be necessarily applicable prospectively, nothing has been brought to the notice of this Court that application of said rules is made with retrospective effect, and the case of the petitioner is covered under said rules. It is true that there is circular issued by Officer of Commissioner for Cooperation and Registrar Cooperative Societies, M.S. Pune, on 03.03.2001, in which certain guidelines are given and procedure is prescribed, which is to be followed before issuing recovery certificate as contemplated u/s 101 of the Maharashtra Cooperative Societies Act. However, upon plain reading of said circular, it is clear that said circular has no statutory force. Nevertheless, such circular/guidelines are required to be followed by the parties who are working under the control of Office of the Commissioner for Cooperation and Registrar Cooperative Societies, M.S. Pune. However, there is no reason forthcoming from the petitioner that, why such circular cannot be considered by the revisional authority i.e. Joint Divisional Registrar. It is also not in dispute that certificate is issued as back as in the year 2004 and writ petition is filed in the year 2011. There is no reason forthcoming from the petitioner that why it took seven years from him to challenge certificate, that too by way of filing writ petition and by invoking extra ordinary jurisdiction of this Court by bypassing remedy of revision. Therefore, I find considerable force in the argument of the respondents that this petition suffers from delay and latches. This matter was heard on 12.12.2011. It is clear from perusal of affidavit in reply filed by the respondent No.3 and also documents annexed thereto, that establishment of said Sanstha is for nonagricultural purpose. Loan was advanced to the petitioner for repair/construction of house. When the Counsel for the petitioner is confronted with query that whether there is any pleading in the petition that, such loan was advanced by respondent No.3 for the purpose of agricultural operations or as agricultural loan, the Counsel for the petitioner has not brought anything to the notice of this Court, that said amount was advanced

for agricultural purposes. Therefore, while rejecting the writ petition, twofold contention of the Counsel for respondent No. 3 and 4 that, the petition suffers from latches, and secondly the revision is maintainable, is required to be accepted.

18. Though the Counsel for the petitioner strenuously contended that this Court in the case of Sundeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors., 2010 (6) ALL MR 550, has taken a view that incase recovery certificate is issued u/s 101 of the Maharashtra Cooperative Societies Act, 1960, without following the procedure prescribed in Chapter VIIIA of the said rules, however, in the facts of this case, said rules cannot be made applicable with retrospective effect, since certificate is issued in the year 2004. In the present case the provisions of rules 86A to 86F of said rules are not applicable since respondent No.2 has issued certificate on 05.04.2004.

19. The Division Bench in the case of The Maharashtra Nagri Sahakari Bank Limited Vs. Ravindra Kulkarni and Others, , held as under :

16. Under the circumstances, we are of the considered view that the alternate statutory remedy was available to Resps. No. 1 & 2 herein, u/s 154(1) of the Cooperative Societies Act of preferring revision before the State Government, and therefore, filing of Writ Petition No. 2957/2009, under Article 227 of the Constitution of India, by them was unwarranted, and consequently, the impugned order dated 08.09.2009 passed by learned Single Judge therein granting interim relief, deserves to be quashed and set aside.

20. The facts of this case are distinguishable from the facts in the case of Sundeep (Supra). In the facts of that case, it is evident from perusal of para 5 that the Assistant Registrar/respondent No.4 therein issued exparte recovery certificate. However, in the present case, even upon service of notice, the petitioner chose to remain absent before the Assistant Registrar. Therefore, the facts of that case are totally different. In that case it appears that, the recovery certificate was issued by the Assistant Registrar after inserting Rules 86A to 86F in the relevant Rules. Therefore, there is no substance in the submissions of learned Counsel for the petitioner that the ratio laid down in the said judgment is applicable in the present case.

21. It is true that the quasi judicial authority is required to follow principle of natural justice and reasons are also required to be recorded before passing any order or issuing recovery certificate in the present case. However, there is nothing on record to show why that, the petitioner cannot agitate all these grounds before the revisional authority. There is no bar to entertain the writ petition, if really case is made out or exceptional circumstances are brought to the notice of this Court. However, in the present case, recovery certificate is issued in the year 2004, the writ petition is filed in the year 2011.

22. The Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, , in para 26 held as under :

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved.

23. Therefore, for the reasons aforesaid, there is no reason to hold that, the writ petition is maintainable by bypassing remedy of revision which is available to the petitioner. In the facts of this case, when the petition filed in the year 2011, challenging recovery certificate which was issued by the respondent No.2 in the year 2004, there is no reason on record showing that, why the petitioner could not approach the revisional authority u/s 154 of the Maharashtra Cooperative Societies Act. It is also not case of the petitioner that revisional authority cannot entertain the contentions which are raised in this petition. Therefore, for the reasons aforesaid, in the facts of the case, it is required to be concluded that, the remedy of revision is available to the petitioner if he is aggrieved by the action of respondent No.2, issuing recovery certificate under the provisions of section 101 of the Maharashtra Cooperative Societies Act.

24. Coming to the another prayer of the petitioner that "R" certificate is issued by the authority without following proper procedure, from the perusal of the material placed on record by the respondents, it is abundantly clear that notice was given. The petitioner was heard before issuing certificate. There is also remedy available to the petitioner to challenge the said order of Tahsildar u/s 247 of the Maharashtra Land Revenue Code and therefore there is no reason to entertain this writ petition challenging the order of the Tahsildar issuing "R" certificate in favour of respondent Nos. 3 and 4.

25. Though this Court finds some substance in the argument of learned Counsel for the petitioner that quasi judicial authority while passing any order, is required to follow principle of natural justice and required to record reasons in support of the order, Said contention can be raised before the Revisional authority and revisional authority can very well consider the said submission.

26. Therefore, in the facts and circumstances of this case, I do not find any reasons to entertain this writ petition, therefore, the writ petition stands dismissed. Rule stands discharged. Interim relief stands vacated. However, it is clarified that dismissal of this writ petition will not come in the way of petitioner, if he wishes to file revision u/s 154 of the Maharashtra Cooperative Societies Act, 1960.