

(2022) 04 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No.7652 Of 2018

Devidas

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Maharashtra Co Operative Societies Rules, 1961 — Rule 11(a)(b), 107
Maharashtra Co Operative Societies Act, 1960 — Section 101, 154

Citation : (2022) 04 BOM CK 0111

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : Abhijit Darandale, S. B. Pulkundwar, Sandeep Munde, R. R. Karpe, Manjusha Jagtap

Final Decision : Dismissed

Judgement

Nitin B. Suryawanshi, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition is filed under Articles 226 and 227 of the Constitution of India praying for the following reliefs -

"A. Call record and proceedings of case.

B. By issuing the writ of certiorari or any other appropriate writ, order or directions in the like nature quash and set aside the Recovery Certificate no. 1678/06 dated 05.10.2006 issued by the respondent No. 2 u/s. 101 of M.C.S. Act against the petitioner for the recovery of Rs.21,56,372/- and for that purpose issue necessary orders.

C. By issuing the writ of certiorari or any other appropriate writ, order or directions in the like nature quash and set aside the communication dated

09.03.2015 issued by the respondent no.3 confirming auction sale dated 05.02.2015 along with sale certificate dated 11.03.2015 and for that purpose issue necessary orders.

D. Pending the hearing and final disposal of this Writ Petition, grant stay to the effect and implementation of the Recovery Certificate no. 1678/06 dated 05.10.2006 issued by the respondent No. 2 u/s. 101 of the M.C.S. Act and for that purpose issue necessary orders.

E. Pending hearing and final disposal of this Writ Petition, grant stay to the effect and implementation of the sale certificate dated 11.03.2015 and for that purpose issue necessary orders.

F. Ad-interim relief in terms of prayer clause "D" and "E" may kindly be granted.

G. Any other relief which deems fit may please be granted in favour of the petitioners."

. Facts in brief, shorne of unnecessary details, are as follows -

3. In 2004, the petitioner applied for loan of Rs.15,50,000/-to respondent No. 4 credit co-operative society and offered to mortgage his agricultural land towards the security. The petitioner signed the loan application form and other documents and applied for the loan. However, the petitioner was orally told that his loan application is rejected. Thereafter, the petitioner shifted to Pune. In the month of November, 2017, the petitioner came to know that his property, mortgaged for the alleged loan, is sold by respondent No. 4 society, in auction proceedings. The petitioner applied for certified copy of recovery certificate issued under section 101 of the Maharashtra Co-operative Societies Act (hereinafter for short "the said Act") along with other documents, under the Right to Information Act, by application dated 4th February, 2017. Pursuant to the said application, the petitioner received documents i.e. loan application, loan account extract, application seeking recovery certificate, notice dated 15th September, 2006, Roznama, acknowledgment of notice issued by respondent No. 4 society and the recovery certificate.

4. The main ground of challenge by the petitioner is that neither any notice was given to the petitioner nor he was heard before issuing the impugned recovery certificate and the impugned recovery certificate is issued without passing a reasoned order. The certificate should be in Form B of the Maharashtra Co-operative Societies Rules, 1961 (for short "the said Rules"). According to him, the proceedings filed before respondent No. 2 seeking recovery certificate were not maintainable. He further assailed the auction sale on the ground that the same was conducted in violation of rule 107 of the said Rules. No demand notice was served on the petitioner. The sale proclamation, which is required to be issued in thirty days, was issued in fifteen days. The petitioner, therefore, challenges the recovery certificate dated 5th October, 2006 as well as the auction sale dated 5th February, 2015, by filing the present writ petition.

5. Heard Mr. Abhijit Darandale, learned advocate for the petitioner, Mr. S. B. Pulkundwar, learned Assistant Government Pleader for respondents No.1 to 3, Mr. Sandeep Munde holding for Mr. R. R. Karpe, learned advocate for respondents No.4 and 5 and Mrs. Manjusha Jagtap, learned advocate for respondent No.6, at length. Perused the documents filed on record and the replies filed on behalf of the respective respondents.

6. Learned advocate for the petitioner vehemently submits that the petitioner did not receive any amount towards the alleged loan and, therefore, he approached respondent No. 4 Credit Co-operative Society and sought explanation about misuse of the blank loan documents, however, neither any explanation nor the documents, i.e. copy of resolution sanctioning alleged loan were given to him.

7. It is further contention of the learned advocate for the petitioner that no demand notice under Rule 11 (a) (b) of the said Rules is served on the petitioner. No procedure under Rule 107 of the said Rules is followed while fixing the upset price and while conducting the auction sale. He further relied on the reply filed on behalf of respondents No. 2 and 3 that notice was not served on the petitioner during the proceedings under section 101 of the said Act.

8. Learned advocate for the petitioner has relied on the orders passed by Co-ordinate Bench of this Court in similar circumstances (Writ Petition No. 1929/2010 dated 28th June, 2010; Writ Petitions No.2650 of 2011 and 2651 of 2011 dated 4th May, 2011; 6784 of 2011 dated 26th March, 2012 and Writ Petition No. 5939 of 2012, 6029 of 2012 and 6037 of 2012 dated 4th September, 2017) whereby the recovery certificates issued under section 101 of the said Act in favour of the respondent No. 4 society, were set aside and the matters were remanded back to the Registrar for fresh consideration on merits. Reliance is also placed on a decision of this Court in the case of "Sundeep Polymers Pvt Ltd., V/s State of Maharashtra and Others" 2010 (7) Mh.L.J. 538. It is, therefore, submitted that the impugned certificate and the auction sale conducted pursuant to the same are liable to be quashed and set aside.

9. On the other hand, learned advocate for respondents No.4 and 5 vehemently opposed the petition on the ground that the petition is filed after lapse of twelve years. The recovery certificate under section 101 of the said Act was issued in the year 2006 and the same is challenged in the year 2018. Hence, on this ground alone, the writ petition is liable to be dismissed. Further submission is, earlier this Court entertained petitions, as the petitioners therein approached the Court within reasonable time, however, since the present petitioner has approached this Court after twelve years, this petition is liable to be dismissed on that ground alone. He contends that the notice was sent to the petitioner on the address given by him to respondent No. 4 society. Proclamation of the auction sale was published in "Daily Sakal" on 20th January, 2015, which according to him, constitutes valid service on the petitioner. In support of his submissions, he placed reliance in "New Delhi Municipal Council V/s Pan Singh and Others" (2007) 9 SCC 278 and "S. S. Balu and Another V/s State of Kerala and Others" (2009) 2

SCC 479.

10. Learned advocate for respondent No. 6, who had purchased the property of the petitioner in auction sale, submits that respondent No. 6 had filed Regular Civil Suit No. 369 of 2015 on 26th June, 2015 seeking injunction against the present petitioner and his relatives in respect property of the petitioner purchased by him in the auction sale. In the said suit, the petitioner though appeared on 21st August, 2015, however did not file written statement and the suit was decided ex-parte against all the defendants. It is, therefore, submitted that the petitioner had knowledge about the auction of his land in the year 2015 itself. Further submission is that respondent No. 6 has sold the property of the petitioner purchased by him in the auction sale, to a third party namely Mr. Shrenik Suwalal Shingvi on 21st June, 2018. She, therefore, submits that there is no substance in the petition and the petition is liable to be dismissed.

11. Learned Assistant Government Pleader appearing for respondents No. 1 to 3 supports the impugned recovery certificate and the auction sale, by contending that proper procedure is followed while conducting the sale.

12. Indisputably, recovery certificate issued under section 101 of the said Act on 5th September, 2006 is challenged by the petitioner by filing the present writ petition on 2nd April, 2018. As such, on the ground of delay, the writ petition is liable to be dismissed.

13. Though the petitioner admits his signature on the loan documents, he claims that when his signatures were obtained, the loan documents were blank. He further claims that no loan amount was ever disbursed to him. It is thus, clear that this petition raises several disputed questions of fact, which cannot be gone into in the extraordinary writ jurisdiction of this Court. Therefore on this ground also, this court is not inclined to entertain the writ petition.

14. The record indicates that the land which had fallen to the share of the petitioner in the partition amongst his family members was mortgaged by him. Brothers and other family members of the petitioner are owners and cultivators of the lands adjoining to the mortgaged land of the petitioner and they are staying in the same village i.e. Katrad, Taluka – Rahuri, District – Ahmednagar, where their lands are situated. Even if for the sake of arguments, the contention of the petitioner is accepted that he had gone to Pune and had no notice of the proceedings of recovery certificate as well as auction of his mortgaged land, the fact remains that all his brothers and blood relatives are cultivating their respective lands adjacent to the mortgaged land of the petitioner, when it was auctioned. Thus, it can be safely inferred that they must have intimated the petitioner about the proceedings of auction of petitioner's land. In this view of the matter, it is not possible to accept the contention of the petitioner that he had no knowledge about recovery certificate as well as about auction of his land.

15. It has come in the affidavit of respondent No.6 that after he purchased the petitioner's land in auction in the year 2015, he had initiated Regular Civil Suit

No. 369 of 2015 on 26th June, 2015 for injunction against the petitioner and his brothers etc. In the said suit, the petitioner had appeared on 21st August, 2015, however, did not file written statement and the suit was decreed ex parte against all the defendants.

16. Thus, in the year 2015 itself, the petitioner had knowledge about the auction of his land, still the petitioner filed present writ petition in the year 2018. This also shows that the petitioner has belatedly approached this Court. Respondent No. 6 has further sold the land purchased by him in the auction, to Mr. Shrenik Suwalal Shingvi and he is not a party before this Court.

17. The petitioner has an alternate efficacious remedy of filing revision under section 154 of the said Act, challenging the recovery certificate as well as the auction of his property. But, there, the petitioner would be required to deposit 50% of the amount of recovery certificate and since the petitioner does not wish to deposit the said amount, he has directly approached this Court, after inordinate delay. In view of availability of alternate remedy also this Court is not inclined to entertain the writ petition filed by the petitioner.

18. Much reliance is placed by the learned advocate for the petitioner on the decisions of the co-ordinate bench of this Court rendered in similar circumstances. The petitioners therein had challenged recovery certificates issued against them at the instance of respondents No.4 and 5, which were set aside by this Court on the sole ground that no opportunity of hearing was given to the petitioners therein. It needs to be noted here that those petitions were filed in the year 2010 and 2012. Since the petitioners therein had approached this Court within reasonable time, therefore, this Court entertained the petitions. However, in the present case, since the petitioner has approached this Court after a lapse of 12 years, this Court is not inclined to entertain the writ petition. Hence, said decisions relied on by the petitioner would not help him.

19. In "S. S. Balu" (supra), it is held by the Apex Court that the delay defeats equity and relief can be denied on the ground of delay alone though relief is granted to other similarly situated persons, who approach the court within reasonable time.

20. Learned advocate for respondents No. 4 and 5 was justified in relying on "New Delhi Municipal Council" (supra) wherein it is held that although there is no period of limitation provided for filing a writ petition, the same should be filed within a reasonable time. The discretionary jurisdiction under Article 226 of the Constitution of the India may not be exercised in favour of those, who approach the Court after a long time. The delay and laches are relevant factors for exercise of equitable jurisdiction. This decision supports the submissions of learned advocate for respondents No.4 and 5.

21. In "Sundeeep Polymers Pvt Ltd." (supra), in the facts of that case, the division bench of this Court, has held that the certificate issued without following due procedure and without proper service of notice is invalid and bad in law and it is

mandatory for the authorities to follow the rules provided in Chapter 8 of the said Rules while issuing the recovery certificate.

There cannot be any dispute about the said proposition of law, however, in the facts of the present case, since the petitioner has belatedly approached, this Court is not inclined to exercise discretionary jurisdiction in favour of the petitioner.

22. For the aforestated reasons the writ petition, which is devoid of merit, is dismissed with liberty to the petitioner to avail alternate remedy, if he is so advised. In case the petitioner avails alternate remedy, the recovery effected by auctioning his property shall be taken into consideration. In that case, revisional authority shall decide the revision on its own merits without being influenced by the observations of this Court in the present order.