
(2012) 06 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 906 of 1992

Paramdas Zama Rathod

APPELLANT

Vs

SMT. Deokabai D. Patil and Others

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 154

Citation : (2013) 2 ALLMR 723

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

Bench : Single Bench

Advocate : Sangeet L.V, for the Appellant; D.R. Kale. AGP for Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This petition takes exception to the judgment and order dated 31st August, 1989 passed by the Minister of State for Co-operation in Revision Application No. RVA 2777/56550/CR-248-15C and also the order dated 26th October, 1977 passed by the Divisional Joint Registrar, Co-operative Societies, Bombay Division, New Bombay. One Mr. Dayaram Ramu Patil was defaulter of Vividh Karyakari Seva Sahakari Society of Chincholi Pimpri. The outstanding amount due towards said Dayaram Patil was about 3880/-. The said Dayaram died on 29th December, 1973, leaving behind him Gitabai wife and three daughters who are also party respondents in the present petition. The Special Recovery Officer ordered to attach the property of late Dayaram on 23rd January, 1975. The said property is situated in Gat No. 110 of Shevga - Pimpri, Post Chincholi, Taluka Jamner, District Jalgaon. It appears that late Dayaram could not repay the outstanding amount to the said society and therefore, the Special Recovery Officer ordered to attach the land Gat No. 110 of Shevga Pimpri totaling about 12 acres, 08 gunthas. It appears that the said property ordered to be attached was in lieu of loan which was taken by the deceased Dayaram from the said society. The said attached property was put to auction on 22nd May,

1976 in accordance with the relevant rules. The Recovery Officer published notice on 19th May, 1976 in Daily Janshakti specifying the details of the auction which was to be held on 22nd May, 1976. Accordingly, auction of the property took place on 21st May, 1976. It is the case of the petitioner that in the said auction, the petitioner was the highest bidder who offered Rs. 7500/- in the said auction and purchased the said property. The said auction was confirmed by the Assistant Registrar, Cooperative Societies (Recovery), Jalgaon by issuing certificate on 9th September, 1976.

2. The respondent Nos.1 to 3 herein raised objection by way of filing an application to the Assistant Registrar not to confirm the auction sale. The said application was filed on 23rd July, 1976. The said application came to be rejected by confirming the auction sale on 9th September, 1976.

It is the case of the petitioner that in pursuant to the confirmation of the sale, the petitioner was put in possession of the property by the Tahsildar, Jamner in the year, 1976. The respondents No. 1 to 3 herein, aggrieved by the confirmation of the sale, filed a revision application u/s 154 of the Maharashtra Co-operative Societies Act before the Divisional Joint Registrar, Co-operative Societies, Bombay Division, New Bombay. The Divisional Joint Registrar, by his order dated 26th October, 1977 admitted the claim of the respondents No. 1 to 3 and set aside the order dated 9th September, 1976 passed by the Recovery Officer and the Assistant Registrar, Coop. Societies (Recovery), Jalgaon.

3. Aggrieved by the order passed by the Divisional Joint Registrar, Cooperative Societies, Bombay the petitioner herein preferred revision application to the State Minister for Co-operation u/s 154 of the said Act. The Minister heard the said revision application and was pleased to reject the application of the petitioner by its judgment and order dated 31st August, 1989. Being aggrieved, this writ petition has been preferred by the petitioner.

4. This writ petition was heard by this Court for admission on 11th June, 1992 when this Court was pleased to adjourn the hearing of the writ petition at the instance of the learned AGP appearing in the matter. However, while adjourning the matter, ad interim relief in terms of prayer clause (C) was granted. It further appears that the writ petition was listed for admission from time to time and ad interim relief granted by this Court was continued. It further appears that notices were issued to the respondents and the matter was again heard for admission on 1st September, 1992, when this Court was pleased to issue Rule. However, interim relief already granted was vacated and this Court further observed as Rs. No interim relief pending the petition."

5. The respondents No. 1 to 3 have filed affidavit-in-reply on 10th August, 1992. The said affidavit-in-reply has been filed by one of the respondents namely Deokibai on behalf of other respondents as well. It is stated in the said reply that the respondents No. 1, 2 and 3 are sisters. They are Legal Representatives of deceased Dayaram. The said Dayaram had taken loan from Vividh Seva Society,

Chincholi and total dues payable from him to the said society were Rs. 3,880/-. Dayaram died on 29.12.1973. It is further stated that Dayaram left behind land Gat No. 110 at Shevga Pimpri admeasuring 10 hectares and 35 gunthas. The said land was put to auction on 21st May, 1976 for recovery of Rs. 3880!-. According to these respondents, as stated in the affidavit-in-reply, the auction of the said land was not proper and was not in accordance with law. Initially auction was to take place on 19th April, 1975. The order of proclamation was served only on the wife of Dayaram who had left him and remarried. The said order was also served on respondent No. 1 Deokibai. However, it was not served on two other legal representatives of Dayaram. The other two daughters - Dagadubai and Anjanabai were not served with the order of proclamation or order of auction. It is further stated in the affidavit-in-reply that on 19th April, 1975, nobody came forward to purchase the land which was put to auction and thereafter, auction was declared twice without serving notices on the owners who are the heirs of deceased Dayaram, i.e. respondents 1 to 3 herein. Without proper notice to the respondents No. 1 to 3 at the relevant time, the property was put to auction on 21st May, 1976 and in that auction, the petitioner Paramdas purchased the said land for Rs. 7500!-. It is stated in the reply that said Paramdas paid Rs. 1125/- only on the day of auction and paid remaining amount on 31st May, 1976. Though, application was filed before the Assistant Registrar (Recovery), Jalgaon on 23.7.1976 by the respondent No. 1 praying therein not to confirm the auction sale, the said auction sale came to be confirmed on 9th September, 1976. The respondents No. 1 to 3 presented revision application before the Divisional Joint Registrar, Cooperative Societies, Bombay on 1st November, 1976. The respondents averred in the said revision that while conducting the auction sale, illegalities are committed by the authorities and, therefore, the auction sale itself was ab-initio void as no notices were served on all the owners. The respondent No. 3 Anjanabai was minor at the relevant time and, therefore, it was duty of the Recovery Officer and Assistant Registrar to protect her interest. However, the authority has not done so. The respondents No. 1 deposited Rs. 1800/- on 14th December, 1976 and Rs. 600/- on 15th December, 1976 in the loan account of Dayaram. Thus, in all Rs. 4,600/- were deposited though the total dues were Rs. 4,287/-. At the relevant time, there was stay granted by the Divisional Joint Registrar which could facilitate the respondents to deposit the outstanding amount. During the pendency of revision, before the Divisional Joint Registrar, there was stay for handing over possession and the said order was given by the Divisional Joint Registrar on the condition that the entire amount of arrears were to be paid within one month and seven days from the date of order. It is the case of the respondents, as reflected in the affidavit-in-reply, that before passing the orders by the Divisional Joint Registrar, the amount of Rs. 2200/- was already paid and the remaining amount was to be paid before 12th December, 1976 but, the said amount was deposited on 14th December, 1976 and 15th December, 1976. So, there was delay of only two days. Taking undue advantage of this two days" delay, the said stay order granted by the Divisional Joint Registrar was vacated on 22nd January, 1977 and possession was given in January, 1977 to the

petitioner. It is the case of the respondents that though the entire amount of dues was paid before the possession was given to the petitioner, the Assistant Registrar and Recovery Officer wrongly put the petitioner in possession.

By order dated 26th October, 1977, the Divisional Joint Registrar, Cooperative Societies, Bombay was pleased to set aside the auction sale and the order of confirmation passed by the Recovery Officer and Assistant Registrar (Recovery) dated 9th September, 1976. It is the case of the respondents that they are entitled to get possession since 26.10.1977. It is

specifically stated in para 4 of the affidavit-in-reply that though the entire amount due in the loan account of deceased Dayaram was deposited, the concerned authority has wrongly put the petitioner in possession of the property. In para 5 of the affidavit-in-reply, it is stated that though the petitioner has produced two documents dated 4th October, 1982 signed by respondent No. 1 and one document dated 29th March, 1983 purported to be signed by respondent No. 1 to 3, however, these documents are not at all admitted by the respondents. The respondents No. 1 to 3 are illiterate women. The auction was confirmed in September, 1976. The revision petition was allowed on 26th October, 1977. Due to this pendency, though the entire loan amount was deposited by the respondents No. 1 to 3 in the loan account of Dayaram, they were not getting possession. It is specifically stated in para 5 that one Ramdas Patil was Secretary of the said society from which loan was taken by Dayaram. Said Ramdas Patil had been secretary from 1971 till 1991. He told the Respondent No. 1 that if she does not take back the amount, she will lose the amount which is already deposited and the land as well. According to the said Ramdas Patil, the amount paid by Devakibai was kept in suspense account of the society. Therefore, it will be forfeited to the Government, if she does not withdraw it and, thereafter, she may not get back the said amount and the land as well. Therefore, Ramdas Patil working as Secretary of the society was persuading respondent No. 1 to withdraw the amount from the society. Devakibai is an illiterate woman, she listened the advice of said Ramdas Patil and withdrew the said amount, she gave her signature on blank papers to withdraw the said amount. The said documents are also placed on record which are prepared in the hand writing of said Ramdas Patil. It is further case of the respondents that though signature of the respondent No. 1 was taken in the year, 1982, the actual amount was paid in the year 1988. When the respondent No. 1 realized that for about 10 years she was not getting either the land or the amount deposited, on the advice of said Ramdas Patil, she withdrew the amount deposited in loan account of deceased Dayaram.

6. It is stated by the respondents 1 to 3 in para 6 of their affidavit that there are concurrent findings recorded by the Divisional Joint Registrar and the Minister in revision and, therefore, this Court may not interfere in the concurrent findings recorded by the Divisional Joint Registrar and the State Minister. It is specifically stated in para 6 that as per the order of the Minister in revision, the amount of

Rs. 7500/- has been paid by the answering respondent No. 1. In fact, it was not necessary to pay Rs. 7500/- but, on safer side, the respondent No. 1 deposited Rs. 7500/- in the said Society on 7th October, 1989. Though the petitioner was aware about the order of the Minister dated 31st August, 1989, the petitioner has chosen to file this writ petition only in the year, 1992. The respondent No. 1 made application to the Tahsildar, Jamner on 7th October, 1989 requesting therein to give back possession of the land in question. However, possession was not given back to the respondents No. 1 to 3. On 11th October, 1989, the said society sent a letter to the petitioner informing him about the decision of the Minister and requesting him to pay back amount of Rs. 7500/- from the Bank, which was sent under Registered Post by the Bank. However, it appears that the said amount was not taken by the petitioner. It is stated by the respondents No. 1 to 3 that the delay in filing the petition has not been explained at all by the petitioner. It is stated in para 9 of the affidavit that the handing over of the possession to the petitioner by the concerned authority was in illegal manner though, at the relevant time, the entire due amount was deposited by the respondent No. 1 in the account of deceased Dayaram. It is further stated that the respondents have already deposited the entire amount even more than the amount due and therefore, direction should be given to the proper authority to hand over possession to the respondents No. 1 to 3 immediately.

7. It appears that the respondents No. 4 and 5 have also filed affidavit-in-reply and prayed for dismissal of the writ petition.

8. The learned Counsel appearing for the petitioner submitted that, the land which was put in auction by the concerned authority, was purchased by the petitioner since he was the highest bidder. The entire amount was deposited and thereafter, even possession of the said land has been handed over to the petitioner. The learned Counsel submitted that though the Divisional Joint Registrar, Co-operative Societies gave opportunity to the respondents No. 1 to 3 to deposit the entire amount, the said amount was not deposited within time and, therefore, the possession of the land was handed over to the petitioner. It is submitted that the respondents No. 1 to 3 were not entitled for any notice since the wife of the deceased Dayaram Patil was given notice of the proceedings which were initiated by the Assistant Registrar, Co-operative Societies for recovery of loan amount. It is submitted that the deceased Dayaram Patil has not made any nomination in the name of respondents No. 1 to 3 and, therefore, they have no any right, title or interest in the land Gat No. 110, which is subject matter of the petition. They are also not competent to challenge the auction made by the Officers appointed under the said Act. It is submitted that the auction has been carried out in accordance with law, after giving notices to the heirs. The notice of auction sale was published in the local newspaper Batmidar. The respondents No. 1 to 3 did not avail the opportunity of making timely payment due from Dayaram Patil, which was payable to the said society and the Maharashtra State Co-op. Land Development Bank Ltd., Jamner Branch. It is submitted that the said auction sale has been confirmed, taking recourse to the

Rule 107 of the Maharashtra Co-operative Societies Rules, therefore, it cannot be said that the said confirmation of auction sale was illegal. It is further submitted that the authorities have taken all the necessary steps as contemplated under the relevant Rules and after following the procedure, the land was auctioned and being a higher bidder, the land was given to the petitioner. It is submitted that the Divisional Joint Registrar has not assigned any cogent reasons for accepting the case of the respondents No. 1 to 3. The learned Counsel also invited my attention to the operative part of the order passed by the State Minister for Co-operation and submitted that in pursuant to the order passed in revision, filed by the petitioner, the respondents No. 1 to 3 have not deposited the amount within two weeks. The petitioner being bonafide purchaser of the land, which was placed in auction and being higher bidder, he has purchased the same. Therefore, he is entitled to continue his possession over the said land. The learned Counsel also invited my attention to the pleadings in the petition, grounds taken therein, annexures thereto and submitted that this petition deserves to be allowed.

9. The learned AGP appearing for respondents No. 4 and 5 invited my attention to the affidavit-in-reply and relying upon the averments in the said affidavit, prayed for dismissal of the writ petition.

10. Though the respondents No. 1 to 3 are served and filed affidavit-in-reply, none appears for them. However, affidavit filed by them is on record and reference to their affidavit as already been made herein before.

11. Upon hearing the learned Counsel for the petitioner and the learned AGP appearing for respondents 4 and 5 and upon perusal of the affidavit-in-reply filed by the respondents No. 1 to 3, it appears that the main ground on which the respondents No. 1 to 3 assailed the orders of the authorities issuing recovery certificate, auction proceedings, confirmation of auction sale on the ground that there was no notice to the respondents No. 1 to 3 before such a property was auctioned by the authorities. From perusal of the judgment and order passed by the Divisional Joint Registrar, it appears that the Divisional Joint Registrar in his judgment, has taken a note of repayment of loan amount by the respondents No. 1 to 3. The relevant para from the judgment of the Divisional Joint Registrar reads, thus:

After hearing the arguments of both the Advocates, I have gone through the records of the proceeding before me. It may be mentioned here that Smt. Deokabai paid the balance amount of Rs. 1800/- on 14.12.1976 and Rs. 600/- on 15.12.1976. Thus, in all, she paid Rs. 4600/- to the V.K.S. Society (Rs.2200/- on 9.9.76) as per letter dated 28.12.76 from the V.K. Society, against her dues of Rs. 4287/- as on 30.12.76. This shows that she paid the balance amount to the society even though there is a delay for two days according tot he stay order granted by me on 5.11.76. The letter dated 22.12.7 issued by the Maharashtra State Cooperative Land Development Bank Ltd., is not relevant to the present case.

12. By the afore mentioned observations, the Divisional Joint Registrar admitted the revision application filed by the respondents No. 1 to 3 on 1st November, 1976 and the order No. DEV/IV-Rec/Chincholi dated 9.9.76 passed by the Recovery Officer and Assistant Registrar, C.S. (Recovery), Jalgaon confirming the auction sale, came to be set aside. This order was assailed by the petitioner herein before the State Minister for Co-operation. However, the said revision was also rejected by the State Minister. While rejecting the said revision application filed by the petitioner, the State Minister has confirmed the order passed by the Divisional Joint Registrar dated 26th October, 1977 and also vacated the stay granted initially on 16.11.1977. The revisional authority has also cancelled the order dated 9.9.1976 passed by the Assistant Registrar, Co-operative Societies (Recovery), Jalgaon. It is specifically observed in clause (3) of the order passed by the State Minister that the respondent No. 1 was to deposit the amount within fifteen days from the date of passing of the said order, in the account of the concerned V.K.S.S. Society. The said order came to be passed on 31st August, 1989. There is no denial by the petitioner that in pursuance to the said order, respondents No. 1 to 3 have deposited Rs. 7500/-. The respondents No. 1 to 3 have also stated in para 6 of their affidavit that the said amount has been deposited by them in the account of said society.

13. Though the learned Counsel for the petitioner strenuously contended that the wife of deceased Dayaram was only entitled for notice of the proceedings which were initiated by the authorities under the said Act and Rules, the affidavit-in-reply filed by the respondents 1 to 3 makes it abundantly clear that the order of proclamation was served only on the wife of Dayaram who had left him and remarried. Therefore, the respondents No. 1 to 3 were entitled being Legal Representatives of deceased Dayaram Patil for notice from the competent authorities and also for hearing. It is an admitted position that the notices are not served on two daughters of the deceased Dayaram who are party respondents in this writ petition. There is no specific denial by the petitioner that respondents No. 2 and 3 herein are not served and order of proclamation of auction came to be passed in absence of notice to respondents No. 2 and 3. Even, in absence of any provision for notice or hearing, principles of natural justice would require that the affected person should be heard before passing any such orders. It is not in dispute that the respondents No. 1 to 3 herein are daughters of the deceased Dayaram. There is also no denial of the fact that wife of said Dayaram got remarried, as stated by the respondents No. 1 to 3 in para No. 1 of their affidavit. Apart from not issuing notice to the respondents No. 2 and 3, it further appears from perusal of the judgment of the Divisional Joint Registrar that the entire amount was deposited by the respondent No. 1 in the loan account of deceased Dayaram in said society. However, Ramdas Patil, who was working as Secretary at the relevant time, by obtaining signature of respondent No. 1 on blank paper, had convinced her to withdraw the said amount. Under those circumstances, though the amount was deposited in the year, 1976, the same was withdrawn by the respondent No. 1 in the year, 1988.

However, the fact remains that in pursuance to the order passed by the State Minister in revision, the amount of Rs. 7500/- has been already deposited by the respondents No. 1 to 3 in the account of the said society. It is true that the delay in filing any proceedings is required to be construed or interpreted liberally. However, in the present case when the dispute was in respect of the property, the petitioner should have taken immediate steps to challenge the order passed in revision by the State Minister. However, it appears that the writ petition was filed in the year, 1992 though the order in revision passed by the State Minister had been passed in the year, 1989. Therefore, taking overall view of the matter, the respondents No. 1 to 3 who are the legal representatives of the deceased Dayaram, after his death, were entitled to have interest in his properties, movable or immovable, since the wife of Dayaram got remarried. Therefore, it was incumbent upon the authorities to issue / give notice to the respondents No. 1 to 3 either in the proceedings of recovery or auction sale or confirmation of auction sale. However, it appears that notice was not given to at least to respondents No. 2 and 3. In that view of the matter, there was clear breach of principles of natural justice. Apart from that, the respondent No. 1 to 3 did not deposit the entire amount as observed by the Divisional Joint Registrar in his judgment and order. Therefore, taking overall view of the matter, it appears to this Court that the view taken by the Divisional Joint Registrar, which has been confirmed by the State Minister is reasonable and plausible view, which needs no interference. Even if, it is assumed for a moment that another view is possible, however, once this Court is convinced that the view taken by the authorities is reasonable and possible view, there is no ground to disturb the same in writ petition. Therefore, writ petition stands dismissed. Rule stands discharged.

Since the interim relief granted by this Court has been vacated on 1st September, 1992, in all probabilities, the respondents No. 1 to 3 must have been restored with possession of the land, which is subject matter of this writ petition. In case, no such steps are taken by the authorities, the concerned authorities are directed to restore possession of the said land to the respondents No. 1 to 3 within four weeks from today and send report of such restoring of possession to respondent No. 1 to 3, to the Registrar of this Court within two weeks thereafter. The learned AGP to communicate this directions to the concerned authorities. Since the respondents No. 1 to 3 are not represented by any Counsel, the Registry to send copy of this judgment and order to the respondents No. 1 to 3 on their address, as expeditiously as possible and report compliance. It is needless to clarify that the petitioner's amount, which has been deposited by him towards auction sale, be refunded to him, in accordance with relevant rules.