

(2010) 07 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No's. 2070, 2073, 2274, 2701, 2804, 2805 and 5281 of 2010

Vithal Fatangade and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : (2011) 4 ALLMR 260 : (2011) 6 BomCR 829 : (2011) 2 MhLj 194

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : R.T. Nagargoje, for the Appellant; D.R. Korade, AGP, R.S. Deshmukh, G.D. Kale and S.V. Kurundkar, Additional Government Pleader, for the Respondent

Judgement

V.R. Kingaonkar, J.—Rule. Rule made returnable forthwith and heard finally with consent of learned Counsel for the parties.

2. By this common judgment, all these petitions are being decided together inasmuch as common questions of fact and law are involved therein.

3. The Petitioners challenge recovery certificates issued u/s 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") and notices u/s 107 issued by the Recovery Officer. They allege that they were not given due opportunity of hearing during the proceedings. They further alleged that some of them were not served with notices nor any opportunity was given to explain the stance. Their contention is that the recovery certificates have been issued without following provisions of Rules 86-A to 86-F of the Maharashtra Co-operative Societies Rules, 1961 (for short, "the MCS Rules"). Only the Petitioners in Writ Petition No. 5281/2010 were served with notices; however, the procedure envisaged under the said Rules has not been followed by the Deputy Registrar. They would submit that the Deputy Registrar of Co-operative Societies (Taluka Aurangabad) half-hazardously proceeded to issue the certificates without taking due care to examine the record and also to verify whether the notices were served on them. Consequently, they seek indulgence of this Court to nullify the

certificates issued against them.

4. Heard learned Counsel for the parties and learned A.G.P.

5. At the outset, it is pertinent to notice that the Deputy Registrar, Cooperative Societies (Shri Brijesh Laxmanrao Jadhav) categorically admits in his reply to Writ Petition No. 2070/2010 that the notices could not be served on the Petitioners. He submits that due to inadvertence, the proceedings u/s 101 continued in spite of non-service of the notices. This is not a single gaffe on his part. It is explicit that he executed the quasi-judicial work without following the due procedure as envisaged under the Rules 86-A to 86-F of the MCS Rules. The quasi-judicial work is executed in perfunctory manner. This has unnecessarily caused the Petitioner to knock the doors of this Court, though such round of litigation could be avoided had the Deputy Registrar, Co-operative Societies taken due care while executing the quasi-judicial work. The Respondent No. 2 (Shri Brijesh Laxmanrao Jadhav) in person is at fault, nay is most negligent and casual in executing the quasi-judicial work. Hence, it is necessary to award exemplary costs to the Petitioners by holding the said Deputy Registrar personally liable to pay such costs. For, if this is not done, the tendency to do casual quasi-judicial work without following basic principles of the procedure is likely to be increased. It is necessary to ensure that such half-hazardous work is kept within limits and that such persons would not be embolden. It is unfortunate that the onerous work is being handled by such persons who lack basic knowledge and may be, training in the discharge of quasi-judicial work.

6. Considering the submissions of the counsel for the Petitioners, it is amply clear that the recovery certificates have been issued without following the due procedure and also without ensuring proper service of notices on the Petitioners. This has resulted into unnecessary wastage of time and money by the Petitioners as well as the Co-operative Bank. Under the circumstances, it goes without saying that the recovery certificates issued against the Petitioners are invalid, bad in law and liable to be struck down. The learned Single Bench of this Court in a group of writ petitions (W.P. No. 1717/2009 and Ors.) held that certificate issued without following amended Rules 86-A to 86-F of the MCS Rules is unsustainable. It is further held that enquiry is required to be conducted in accordance with the Rules. Similar view is taken in *Khushal Mundhe Vs. State of Maharashtra and Others*, .

7. Considering the foregoing reasons and the basic infirmities found in the certificates issued against the Petitioners, the petitions are allowed. The impugned certificates to the extent they are issued against the Petitioners are set aside and so also, the notices of recovery are set aside. The Deputy Registrar, Cooperative Societies, Taluka Aurangabad shall conduct de novo enquiry as per the Rules and after following the due procedure. The parties to the petitions shall appear before the Deputy Registrar on 16th August, 2010. The parties waive the notices for appearance before the Deputy Registrar. The Petitioners may file their written statement/reply on the day of appearance, or at the most, within two (2)

weeks thereafter and the proceedings of enquiry shall be completed expeditiously as contemplated under the relevant provisions and the Rules and as far as possible within period of four (4) months. The Respondent No. 2 (Shri Brijesh Laxmanrao Jadhav) shall personally pay cost of Rs. 5000/- (rupees five thousand) to each of the Petitioner. It shall be deductible from his salary. The Commissioner of Co-operative Societies, Pune shall take note of this lapse committed by the Deputy Registrar, Co-operative Societies (Shri Brijesh Laxmanrao Jadhav) and may issue general instructions to the other Deputy Registrars/Assistant Registrars (Co-operative Societies) to take due care while dealing with the enquiries u/s 101 of the MCS Act. The learned Additional/ Assistant Govt. Pleader to send copy of the judgment to the concerned Commissioner of Co-operative Societies for the compliance. Rule made absolute accordingly.

8. The parties may act on copy of this judgment and order, duly authenticated by the Court Sheristedar.