

## Amit Prakash Jori And Anr Vs State Of Maharashtra Thr. G.P. And Ors

**Court:** Bombay High Court

**Date of Decision:** Feb. 4, 2025

**Acts Referred:** Constitution of India, 1950 " Article 226

Maharashtra Cooperative Societies Act, 1960 " Section 101, 156

Maharashtra Cooperative Societies Rules, 1961 " Rule 107, 107(11)(d1),107(11)(d1)(vi)

Limitation Act, 1963 " Article 136

**Hon'ble Judges:** Amit Borkar, J

**Bench:** Single Bench

**Advocate:** Dr. Abhinav Chandrachud, Samay Pawar, O.A. Chandurkar, S.H. Kankal, Pradeep Gole

**Final Decision:** Dismissed

### Judgement

Amit Borkar, J.

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are challenging an order dated 16th August 2024 passed by the

District Magistrate, Pune, in exercise of powers under Rule 107(11)(d-1) appointing the Tehsildar as the officer empowered to take possession from

the petitioners.

2. Facts and circumstances giving rise to the filing of the present writ petition are as under:

The petitioners are the borrowers who were granted a loan of Rs.30 lakh by the respondent No.2 on 5th October 2016. On an application filed by the

respondent No.2 under Section 101 of the Maharashtra Cooperative Societies Act, 1960, the Assistant Registrar, Cooperative Societies issued a

certificate under Section 101 of the said Act for recovery of an amount of Rs.28,15,685/-. It is further submitted that the manner in which the

certificate was issued, and the subsequent recovery proceedings, have been tainted by procedural irregularities that vitiate the legal validity of the

enforcement process, thereby raising serious questions regarding adherence to statutory requirements and principles of natural justice.

3. The respondent No.4, being the Special Recovery Officer appointed under Section 156 of the Act, issued a notice of demand to the petitioners.

Subsequently, on 16th August 2024, the respondent No.5 passed the impugned order appointing the Tehsildar as the officer to take possession of the

mortgaged property.

4. Mr. Chandrachud, learned Advocate for the petitioners, submitted that the Special Recovery Officer who filed the application before the District

Magistrate under sub-Rule (vi) of clause (d-1) was not duly notified by the State Government as required under Rule 156. Consequently, the

application made on his behalf before the District Magistrate is not maintainable. Furthermore, he contended that, in passing the order under clause (d-

1), the District Magistrate was under an obligation to provide cogent reasons and to afford the borrower an opportunity of being heard, failing which

the order would stand in violation of the principles of natural justice. In support of his submission, he relied upon the judgments in *Automotive Tyre*

*Manufacturers Association v. Designated Authority & Ors.* (2011) 2 SCC 258, and *A.K. Kraipak & Ors. v. Union of India & Ors.* (1969) 2

SCC 262. The petitioners further submit that the absence of an adequate hearing mechanism amounts to a fundamental procedural lacuna which, in

turn, renders the impugned order legally untenable.

5. Mr. Gole, learned Advocate for respondents Nos.2 and 4, produced a gazette notification published on 21st July 2022, which designated the Special

Recovery Officer at Serial No.8 as the Special Recovery Officer for the Districts of Pune and Satara. He submitted that the power conferred upon

the District Magistrate under clause (d-1)(vi) is strictly confined to securing the compliance of the request made by the duly appointed Special

Recovery Officer, and therefore, the statutory framework does not contemplate the requirement of affording an opportunity of hearing to the

borrower or the guarantor. Accordingly, he prayed for the dismissal of the writ petition. Notwithstanding, it is submitted by the petitioners that such a

narrow construction of procedural safeguards has resulted in the denial of a fundamental right to be heard, thereby compromising the integrity of the

decision-making process and precipitating a potential miscarriage of justice.

6. The submissions advanced by the respective parties have been duly recorded and are now considered by this Court in light of the statutory

provisions and the applicable legal principles.

7. The relevant provision of Section 156 and Rule 107(11)(d-1)(vi) of the Maharashtra Cooperative Societies Rules, 1961 are reproduced here for

clarity and proper contextual understanding:

“156. Registrar’s powers to recover certain sums by attachment and sale of property

(1) The Registrar or any officer subordinate to him and empowered by him in this behalf of an officer of such society as may be notified by the State Government,

who is empowered by the Registrar in this behalf may, subject to such rules as may be made by the State Government, but without prejudice, to any other mode of

recovery provided by or under this Act, recover:--

(a) any amount due under a decree or order of a Civil Court obtained by a society;

(b) any amount due under a decision, award or order of the Registrar, Co-operative Court or Liquidator or Co-operative Appellate Court;

(c) any sum awarded by way of costs under this Act.

(d) any sum ordered to be paid under this Act as a contribution to the assets of the Society;

(e) any amount due under a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or under sub-section (1) of section 137 or section

154B-29;

together with interest, if any, due on such amount or sum and the costs of process according to the scales of fees laid down by the Registrar, from time to time, by

the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or

passed.

(2) The Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section, or when passing any orders or

any application made to him for such recovery, to be Civil court for the purposes of article 136 in the Schedule to the Limitation Act, 1963.

Rule 107(11)(d-1)(vi)

(a) Where the possession of any property is required to be taken by the Recovery Officer under the provisions of this rule, the Recovery Officer may, for the purpose

of taking possession, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such property is situate to take

possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him, take

possession of such property and forward such property to the Recovery Officer.

(b) For the purpose of securing compliance with this sub-rule, the Chief Metropolitan Magistrate or the District Magistrate, may take or cause to be taken such

steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(c) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this sub-rule shall be questioned in any court or before any

authority.

8. At this stage, it is pertinent to refer to Section 156 of the Act. This provision empowers the Registrar or any officer subordinate to and duly

empowered by him, or, alternatively, an officer of a society notified by the State Government to recover the amount due under a decree or order of

a civil court obtained by a society, or any amount due under a decision of the Cooperative Court, Liquidator, or any other sums specified within the

section. In our considered opinion, the language of the provision is unambiguous in vesting recovery powers in the aforementioned officers. It is further

observed that sub-section (2) confers upon the Registrar, or the officer thus empowered, the status of a civil court while exercising the powers

conferred under sub-section (1) of Section 156. This designation is particularly significant for the purpose of recovery under Article 136 of the

schedule to the Limitation Act, 1963. The Court is satisfied that such provision ensures that the recovery process is not arbitrarily curtailed by the

limitations prescribed under the Limitation Act.

9. In addition, Rule 107 prescribes a comprehensive procedure for the adjudication and subsequent sale of property under Section 156. Specifically,

sub-rule (11) of Rule 107 lays down the procedure for the sale of property, irrespective of whether there has been an adjudication of immovable

property. It is equally important to note that sub-rule 19(a) provides an opportunity to the affected person to raise a claim or objection to the

attachment, on the ground that such property is not liable to attachment. Upon the raising of such an objection, the Recovery Officer is duly

empowered to adjudicate the claim or objection on its merits. Further, clause (b) of the same provision mandates that if such a claim or objection is

raised, the Recovery Officer shall postpone the sale pending the investigation of the said claim or objection. In the event that an adverse order is

subsequently passed in relation to the objection raised under sub-clause (a), the aggrieved party is conferred with the right to file a civil suit.

10. On careful perusal of sub-rule (vi), it is evident that the Special Recovery Officer, empowered under Section 156 of the Maharashtra Cooperative

Societies Act, 1960, is duly authorized to issue a written request to either the Chief Metropolitan Magistrate or the District Magistrate within whose

jurisdiction the property is situated for the purpose of taking possession thereof. Further, sub-rule (b) clearly empowers the respective Magistrate to

take such steps or employ such force as, in his opinion, is necessary for the execution of this request. It is also noteworthy that sub-rule (c) provides

that any action taken by the said Magistrate in accordance with this sub-rule shall not be subject to judicial review, thereby reinforcing the

executionary nature of the powers conferred.

11. The scheme of sub-rule (vi) of Rule 107(11)(d-1) unequivocally indicates that the Special Recovery Officer's entitlement is confined to

making a written application to the appropriate authority (i.e., the District Magistrate or Chief Metropolitan Magistrate). The subsequent exercise of

power by the Magistrate is strictly executionary in nature, limited to taking possession of the property and forwarding it to the Recovery Officer. It is

thus clear that no quasi-judicial functions or discretionary application of the mind is imposed upon the Magistrate in this context. The statutory

framework mandates only that, upon receipt of a duly made application by the Special Recovery Officer, the Magistrate is bound to effect the

possession of the property without any obligation to conduct an independent inquiry on merits of the claims or to afford an opportunity for hearing to

the borrower.

12. The Court is emphasizing that the power granted under sub-rule (vi) of Rule 107(11)(d-1) is strictly executionary. This means that when a Special

Recovery Officer makes a written request to the District Magistrate (or Chief Metropolitan Magistrate) for taking possession of a property, the role of

the Magistrate is not to independently assess or adjudicate the merits of the underlying dispute (which would involve the exercise of a discretionary,

quasi-judicial function). Instead, the Magistrate is merely carrying out a direct administrative or executional task as mandated by the rules. The

function here is to enforce the request made by the Recovery Officer by taking possession of the property and transferring it to him.

13. A quasi-judicial function typically involves an element of discretion—where the decision-maker is required to examine evidence, consider

arguments, and apply a balanced judgment after giving an opportunity to the affected party to be heard. In contrast, the statutory provision in question

does not require the District Magistrate to engage in any such discretionary evaluation. The rule clearly directs that on receipt of a proper written

application by the Special Recovery Officer, the Magistrate must execute the order without an independent inquiry into the correctness as to dues

mentioned in that application. There is no mandate for a hearing or a detailed investigation into the borrower's objections before executing the

possession order.

14. Because the powers exercised are purely executionary, the decision of the District Magistrate is not one that involves applying a discretionary or

evaluative standard. It is a mechanical implementation of a request that is clearly set out by the law. Therefore, the concerns that arise in cases

involving quasi-judicial decisions—where the decision-maker's application of mind or discretion is expected to ensure fairness—do not apply

here. There is no risk of bias or unfairness in the execution of a clear statutory directive where no evaluation of evidence or balancing of competing

interests is required. The District Magistrate's actions are bound by the clear statutory mandate to execute the request without the need to assess

its merits or to provide an opportunity for hearing.

15. Consequently, this court is of the opinion that Rule 107(11) (d-1)(vi) does not, and cannot, confer any discretion upon the Chief Metropolitan

Magistrate or the District Magistrate to consider any dispute proposed by either the borrower or any other person in relation to disputed claims.

16. The cases cited by the petitioners *Automotive Tyre Manufacturers Association v. Designated Authority & Ors.* and *A.K. Kraipak &*

*Ors.* deal with scenarios where the decision-maker is performing a administrative or quasi-judicial function. In those cases, the Supreme Court has

emphasized the need for providing reasons, affording an opportunity for hearing, and ensuring that any decision made is fair, transparent, and

accountable due to the discretionary nature of the functions involved. However, since the power exercised by the District Magistrate here is merely

executionary (i.e., simply carrying out the recovery officer's request without applying any discretionary judgment), these judgments do not apply in

the current context.

17. Thus, the Court is, essentially, stating that, the statutory framework limits the District Magistrate's role to that of an executor,

and as such, the protections afforded by quasi-judicial scrutiny in other contexts do not apply here.

18. With respect to the petitioners' contention that the Special Recovery Officer was not notified by the State Government under Section 156 of

the Act, it is observed that the copy of the gazette produced by respondents Nos.2 and 4 clearly indicates that the name of the Special Recovery

Officer appears at Serial No.38 in the gazette published on 21st July 2022, thereby conferring upon him the jurisdictional purview for the areas of Pune

and Satara. This documentary evidence conclusively demonstrates that the requisite notification was duly effected.

19. In view of the analysis above, it is held that no jurisdictional error has been committed by respondent No.5 in exercising the powers conferred upon

him. Consequently, the writ petition is devoid of merit and must accordingly be dismissed, with no costs awarded.

20. At this juncture, the learned Advocate for the petitioners have sought a stay of the impugned order. However, in view of the reasons articulated

above, particularly the executionary nature of the powers exercised by the District Magistrate and the absence of any quasi-judicial discretion, the

petitioners have failed to establish any prima facie case warranting the grant of such a stay. Therefore, the application for stay is hereby rejected.