

Dear Friends, I am allotted with important topic of Maharashtra State Co-operative Societies Act, 1960.

Topics for our discussion are recovery proceedings U/S 101 of MCS Act, 1960 and second important topic is liquidation and winding up of co-op society U/S 102-107 of MCS Act, 1960.

Friends it is pertinent to note that, proceedings under above sections or quasi judicial one, therefore having some limitations under law.

RECOVERY CERTIFICATE U/S 101

Let us discuss first the recovery proceedings U/S 101 of MCS Act, 1960 which is to be concluded after issuance of recovery certificate by concerned Registrar. Under sub section 1 of section 101 categories of the societies are mentioned having right to apply for recovery certificate to the concerned Registrar.

- Resource society giving crop finance and seasonal finance under Bombay Agricultural Debtor Relief Act, 1947 or advancing loan for other agricultural purposes for not less than 18 months and not more than 5 years may file application for recovery of arrears from its members.
- A crop protection society can file application for its arrears of initial cost or for contribution for obtaining services required for their crop protection. Even application can be presented against land owner who refused to become members of such society.
- Lift irrigation society may file application for arrears of subscription due who have availed irrigation facility for providing water supply.
- At Taluka and Block level village artisans multipurpose society may file

application for recovery of advance of loan for cash credit facility given to artisans.

- Most important and popularly applicable to those who hold their accommodation in the State of Maharashtra by forming housing societies. Such societies may apply for recovery of its maintenance and service charges.
- A Co-op Dairy Society may file application for recovery of loan advance or for recovery of arrears of any sum advance to its members.
- Urban Co-op Bank may apply for recovery of the arrears of its dues.
- District Central Co-op Bank may file application for any sum advance to its members.
- Non-Agriculture Co-op Credit Society may file a application for recovery of arrears of dues.
- Salary earner Co-op Societies may file application for recovery of arrears of dues.
- Fisheries Co-op Society may file application for recovery of arrears of dues from its members.
- Any such society or class of societies as the State Government may deemed fit by notifying in the official gadget may file application against its members for its arrears and dues.

Note: Other agriculture purposes include, dairy, pisci-culture and poultry so also maintenance and service charges means as are defined in byelaws

of the concerned Housing Society.

After receipt of the application concerned Registrar is bound to issue summons/ notices to concerned members or non-members as the case may be calling upon his explanation as to why recovery certificate could not be issued against him. Registrar must satisfy himself as to the court fee stamp and necessary deposits paid by concerned society. After receipt of the notice/ summon the concerned member or non-member may either personally or through his representative authorised in this behalf or through advocate may file reply to the application filed by the society. Both the parties, applicant society as well as the opponent have every right to file their documentary evidence in support of their respective contention.

Registrar after giving opportunity of being heard to both the sides may issue recovery certificate in favour of the society.

It is also to be noted here that Registrar has power to issue recovery certificate even if managing committee failed to do so. Suomoto Registrar if satisfied that the society have failed to take action for recovery of any amount due as arrears, he may on his motion make such enquiries and may pass order of issuing recovery certificate under.

The certificate issued by the registrar accordingly shall be final and conclusive proof of arrears stated to be due therein and the same is recoverable as arrears of land revenues. A revision can lie against such order of grant of service U/S 154 of MCS Act, 1960.

Important to be remembered is that no court is competent to question about said certificate.

Under the act the Collector or the Registrar is competent to execute the said certificate under the Bombay Land Revenue code, 1879.

In my opinion Section 101 is not much effective than section 91 of MCS Act, 1960. The sweet choice is left with the society to either approach Registrar U/S 101 or to the co-operative court U/S 91. I did come across number of certificates issued U/S 101 but society could not recover its dues because recovery is only under land revenue code. There are limitations but the award U/S 91 is like a decree of Civil Court and can be executed by force. Court being full judicial officer and Registrar quasi judicial officer, execution is likely to be affected. The proceedings U/S 101 cannot be effective as there are no powers vest with concerned Registrar to pass interim orders. In our personal discussion on schedule date I will explain by giving illustrations, examples and citations in this regard.

LIQUIDATION

U/S 102 of MCS Act, 1960 liquidation proceeding can be initiated against the society which is not working properly and is detrimental to the object of the society. If the interest of the members are in danger or cease to work or possesses shares or deposits not exceeding Rs. 500/- then only liquidation process can be started. Registrar can also initiate liquidation proceeding for want of comply of any conditions placed at the time of its registration.

Liquidation process is nothing but closure of living institute. It is expected that in the process of liquidation if there are chances of restoration then priority must be given to restore the society but I did not come across any such effort made by the officers empowered under liquidation process. We generally presume that result of liquidation must be closure of the institute or cancellation of the registration or de-registration of the society.

There are several grounds on which a concerned Registrar can appoint a liquidator. grounds are enumerated as under:

- If the working of the society is detrimental to the object of the society.
- If the interest of the members are in danger.
- Advances are more and recovery is either nil or no amount could be recovered.
- Purpose for which the society is established is vitiated.
- There is a huge amount of misappropriation and fraud in the society.
- Misapplication of funds.
- Society got indulge in illegal activities.
- Management of the society failed to run society properly.

Concerned Registrar is authorised to appoint liquidator on the society. Either suomoto or on the application of anybody interested in the society may approach the Registrar to deal with assets of the society.

On complaint or suomoto, if the Registrar is satisfied that there is a substance after enquiring U/S 84-89(A) or on the Audit report, on application of 3-4 members of the society present at the Special General Body Meeting, he can pass order of appointment of the liquidator.

Suomoto if he is satisfied that,

- Working did not commence.
- Society ceased to work.
- Possesses share or deposits not exceeding Rs. 500/-
- Failed to comply any condition of the registration, then he can ask even interim order for winding up of the society. If he is of the opinion that society ought to be wound up, he may pass interim order to this effect. He is bound to send copy of interim order to the society calling upon explanation to vacate interim order. He may confirm the interim order in case illegality is seen.

U/S 84 inspection of indebtedness of the society is to be seen, creditors may apply for the same. The order of Registrar must be served on creditors and society too.

U/S 89 Registrar has power to inspect the working of society. If he is satisfied that,

- Society failed to act prudently U/S 79,
- No proper accounting,
- Society is not working as per the direction given by the State Government from time to time,
- Returns U/S 79 are not submitted, He can very well order for appointment of liquidator.

APPOINTMENT OF LIQUIDATOR

After issuance of interim or final order, liquidator is to be appointed and his remuneration is to be fixed by the concerned Registrar. Effect of appointment is that after interim order society should hand over custody and control of the property to the liquidator and also effect actionable claims. Entire record is also to be given to the liquidator and nobody from the society has access to it.

After final order Managing Committee has to vacate chairs and no General body can exercise powers.

Registrar C.S. has all powers and control over the liquidator. He can remove the liquidator and appoint a fresh one. Whole assets of the society vest in liquidator. Mutation is also to be done in the name of liquidator. No court can question the same on the ground of possession dispossession etc.

In case the interim order is vacated then liquidator is bound to

handover custody of property and record to the society person from whom he took over the same. All the acts in this proceeding are binding on the society even though the order is cancelled.

APPEAL

Appeal under 104 against final order under 102 passed by Registrar, special Registrar, additional Registrar to the State Government.

In case of any other officer mentioned above then to the concerned Registrar C.S. There is a proviso that no appeal shall lie against order if it is U/S 102 (1)(C) i.e. not commence work, cease working or share capital and member deposit is less than RS. 500/-

No appeal is entertained unless prescribed court fees and deposit of cost of hearing is paid.

While discharging the duties as a liquidator, he has many power given under the act,

- He can file a case, civil suit even a criminal proceeding on behalf of the society. He can defend too.
- He can carry on business of society if beneficial to winding up.
- To sell movable or immovable by auction or by contract etc.
- He can lease the property.
- He can raise the money.
- He can investigate claims against society.
- He can compromise, settle and decide the matter.
- He can send requisition U/S 98.
- He can file a case in Co-operative court U/S 91.

- He can determine cost in proportion of liquidation.
- He can fix time for the creditors for the claim.
- He has power to issue summonses and compel production of documents.
- He can do all the acts necessary for the betterment of the society.
- Most important power is to restore the society or reconstruct the same by approaching the concerned Registrar.

But he has no power to vote

Effect is that of a joint petition and is realisation of assets of the society by sale or by any other means. Very important point is that no dispute or civil suit shall lie against this. So also U/S 107 there is a specific bar of civil court.

The liquidation proceedings can be terminated by concerned registrar. It is expected that the proceeding of winding up should be closed probably within 6 years from the date the liquidator takes over the custody and control of the property of the society. The Registrar can extend the time in certain circumstances but any case it should not be more than 10 years. After 10 years the proceedings deemed to have been terminated.

After receipt of concluding and final report from the liquidator, Registrar has to direct liquidator to convene general meeting of the members to record his final report. Surplus assets may be disposed of by the concerned Registrar with the prior permission and sanction of the Government.