**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.7451 of 2014
with
CA NO.162/2015, CA No.9844/2015, CA 9845/2015.**

1. Shree Samarth Sahakari Pat
Pedhi Maryadit Dhule, Main Branch
Near Subhash Stature, Nagarpatti
Dhule, Tq. & Dist. Dhule,
Through its Manager
Shri Sachin Suresh Kulkarni,
Age – 47 years, Occu-Service.

2. Shree Samarth Sahakari Pat
Pedhi Maryadit Dhule, Main Branch
Near Subhash Stature, Nagarpatti
Dhule, Tq. & Dist. Dhule,
Through its Administrator
Shri P.R. Patil. .. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department
Mantralaya, Mumbai – 32.

2. The District Collector,
Dhule, Dist. Dhule.

3. The Tahsildar, Dhule
Tahsil Office, Dhule
Tq. & Dist-Dhule

4. Shri Bipin Ramdas Chaudhari,
Age-Major, Occu-Business,
R/o. Agrawal Nagar, Dhule,
Tq. & Dist. Dhule. .. **RESPONDENTS**

...

Mr. Pramod S. Gaikwad, Advocate, for petitioners;
Mr. V.D. Godbharle, AGP., for Respondents No. 1 to 3;

Mr. Amit S. Savale, Advocate for Respondent no.4;
Mr. P.S. Paranjape, Adv. For Caveator/Intervenor in CA No.162/2015.
Mr. A.G. Magare, Advocate for intervenors in CA Nos. 9844/2015 & 9845/2015.

CORAM : R.M.BORDE &
P.R.BORA,JJ.

DATE : 24th August,2015.

JUDGMENT (PER:-P.R.BORA,J.)

1) Civil Application No.162/2015; 9844/2015 & 9845/2015 for intervention in the writ petition, are allowed and disposed of. The respective applicants are permitted to intervene in the petition.

2) Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

3) The petitioners have filed the present petition, seeking quashment of proclamation-cum-auction notice dated 16th July, 2014 issued by Tahsildar, Dhule, i.e. Respondent No.3 in the present petition. Petitioner No.1 is a co-operative society, registered under the provisions of The Maharashtra Co-operative Societies Act, 1960. Petitioner No.2 is

an Administrator of Petitioner No.1-society.

4) As is revealing from the contentions raised in the petition, some of the depositors of the petitioner-society had approached The District Consumer Dispute Redressal Forum, Dhule, seeking payment of their deposits after the date of maturity. The Consumer Forum allowed the Complaint so filed by the depositors and the depositors thereafter filed execution proceedings, as contemplated under Section 25 of The Consumer Protection Act, 1986.

5) It appears that the recovery certificates issued under Section 25(3) of The Consumer Protection Act, 1986, were forwarded to the revenue authorities for execution, as if arrears were of the land revenue and the revenue authorities were further directed to recover the same in accordance with law. It further appears that in the process of recovery, the Tahsildar, Dhule declared the proclamation-cum-auction notice dated 16th July, 2014 in respect of certain properties belonging to the society, more particularly described as under.

(1) Property situated at City Survey No.

1199/2/1A;

(2) Property situated at Mauje Avdhan bearing Gat No. 15/1 P, 15/2 out of that Plot No.7, 8, 9, 10;

(3) The property situated at Dhule bearing City Survey No.1756 having area 185.3 sq.mtrs.

6) The auction was to be held on 25th July, 2014 for realizing/recovering the amount of the depositors, whose names were mentioned in the proclamation-cum-auction notice. After receipt of the aforesaid proclamation dated 16th July, 2014, the petitioner society, vide its letter dated 9.8.2014, objected the said auction notice on various grounds. It was the contention of the petitioner society that some of the depositors, whose names were mentioned in the said proclamation-cum-auction notice, were wrongly and incorrectly mentioned since their claims had been already satisfied in toto. The further objection raised by the petitioner society was that no upset price/reserve price of the properties, put to auction, was quoted in the proclamation-cum-auction notice. However, the Tahsildar, Dhule proceeded with the auction. The record further reveals that the property shown at serial No.1 in the

proclamation dated 16.7.2014 was purchased by Respondent No.4 for the consideration of Rs.71,10,000/-; whereas the property at serial No.3 was sold for Rs.18,91,000/-. the property shown at serial No.2 could not be sold.

7) In the present petition, it is the contention of the petitioner society that since Tahsildar, Dhule did not adopt proper procedure, the property at Sr.No.1, i.e. CTS No. 1199/2/1A, did not fetch the appropriate price. It is further contended that the value of the said property at serial No.1 is much more than the price fetched during the auction. During the course of hearing, it was also contended by the petitioner society that it is in position to bring the prospective purchaser, who is willing to offer price to the tune of Rs.1.25 crore in regard to the said property. When such submission was made on behalf of the petitioner society, the petitioner society was directed by us to file the affidavit of the prospective purchaser, who is willing to offer the price quoted by the society. Accordingly, the petitioner society filed an affidavit of one Prasad Padmakar Kulkarni, who has offered the price of

Rupees one crore in respect of the property in question. It is further contended by the petitioner society that if the re-auction, by following the proper procedure, is directed, the subject property may fetch handsome price, which may be much more than the price, received in auction held on 28.8.2014.

8) Shri Dattatraya Eknath Shejul, who is working as Tahsildar, Dhule, has filed an affidavit in reply on behalf of Respondent Nos.2 and 3, opposing the contentions raised in the petition and the prayers made therein. According to these respondents, no fault can be found in the proclamation-cum-auction notice issued by Respondent No.3 on 16.7.2014. It is their further contention that Respondent No.3 has followed the necessary procedure for auction of the properties and the proclamation issued by them is legal and proper. It is their further contention that prior to conducting the auction of the properties, in question, Respondent No.3 has obtained the upset price from Collector of Stamps, Dhule on 27.8.2014. It is their further contention that the two properties, which have been sold in the auction, have fetched the price

more than the upset price. These respondents have, therefore, prayed for dismissal of the petition.

9) Respondent No.4 has also filed his affidavit in reply, opposing submissions raised in the Petition. As submitted by him, since the Petitioners have not sought quashment of auction held on 28.08.2014 and have only sought quashment of auction notice, the petition is liable to be dismissed on this sole ground. Respondent No.4 has further contended that, when auction proceedings are already completed and sale is confirmed in favour of Respondent No.4, it is unlawful and against the interest of justice to allow any prospective purchaser to intervene or to offer more price for the properties already sold in the auction. It is further contended that, price offered by Respondent No.4 has been accepted by Respondent No.3, by taking into account the then market price of the property, and as such also, no interference is required, either in the notice of auction or the auction held pursuant to the said notice.

10) We have carefully considered the submissions

made on behalf of learned counsel for the respective parties. Perusal of the impugned proclamation cum auction notice issued on 16.07.2014 clearly demonstrates that, in the said proclamation cum auction notice, neither description of the properties, put to auction, is given, nor the reserve price of the said properties has been quoted.

11) In ***Gajraj Jain V/s. State of Bihar – (2004) 7 SCC 151***, the issue was raised before the Apex Court, whether absence of valuation report and reserve bid vitiates the auction sale. It was argued in that matter that, absence of valuation report and the reserve bid do not vitiate the auction. However, the Hon'ble Apex Court rejected the said contention and held that in absence of proper mechanism, the auction and the sale becomes only a pretence. It was further held that, if maximum participation is to be attained and optimum value is to be received, then bidders should know the details of the assets and its estimated value.

12) In the instant case also, it is noticed that in absence of valuation report and reserve price of

the properties put to auction, the subject property did not fetch the appropriate price. From the documents filed on record by Respondents No.2 and 3, it is revealed that, the letter, seeking valuation of the properties, in question, was issued to Collector of Stamps, Dhule on 27.08.2014, i.e. just one day prior to the date of auction and the valuation was obtained from the Collector of Stamps, Dhule on the same day i.e. on 27.08.2014. It is evident that the valuation so received was on the basis of ready-reckoner. To obtain the best possible price, the Tahsildar, Dhule must have obtained the valuation from the approved valuer and should have fixed the reserve price accordingly. Further, the reserve price must have been quoted in the auction notice. The Respondent No.3 has admittedly not complied with these mandatory requirements.

13) From the affidavit filed by one Shri Prasad Padmakar Kulkarni, to which we have referred earlier, it is quite clear that for the property i.e. City Survey No.1199/2/1A, the deponent has offered the price Rs.1,00,00,000/- (Rupees One Crore); whereas in auction, the property has been sold for the price

of Rs.71,10,000/-. It appears to us that if the proper procedure is adopted, the said property may fetch more price than received earlier. As held by the Hon'ble Apex Court in the case of *Gajraj Jain (cited supra)*, absence of valuation report and reserved bid is a sufficient ground, according to us, for vitiating the auction notice dated 16.07.2014. We accordingly set aside the auction notice so far as it relates to the auction of the property bearing CTS No.1199/2/1A situated at Dhule. Since the petitioners have restricted their submissions only to the extent of the aforesaid property, we have passed the order only to that extent. Needless to state that since we have set aside the auction notice, the subsequent transactions held in pursuance of the auction notice are impliedly set aside so far as they relate to CTS No.1199/2/1A situated at Dhule.

14) The intervenors are the depositors of the petitioner society. The only concern expressed by them is in respect of payment of their deposited money, i.e. fixed deposits, which have been already matured. It was, therefore, their only submission that the process of auction shall be expedited and

shall be held by following proper procedure. As such, We find it appropriate to direct Respondent Nos. 2 and 3 to re-conduct the auction of the subject property by following proper mechanism. We direct Respondent Nos. 2 and 3 to give maximum publicity to the auction notice. We further direct that the valuation of the property to be auctioned, shall be obtained from the approved valuer in addition to the valuation according to the ready reckoner and the same may be provided and made known to the prospective purchasers in the auction notice itself. Such process of auction shall be completed expeditiously and preferably within a period of two months from the date of this order.

15) We have shown our indulgence in the present matter in the larger interest of the depositors of the petitioner society and only with intention that the subject property shall yield the best possible price so that some more depositors of the petitioner society, who are in que waiting for their turn to come may get back their hard-earned money deposited by them in the Fixed Deposit Receipts with the petitioner-society.

16) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

sd/-	**sd/-**
(P.R.BORA)	**(R.M.BORDE)**
JUDGE	**JUDGE**

bdv/