IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No.5606 of 2016
With
Civil Application No.13337 of 2016

Laxman s/o Shivram Emekar. .. **Petitioner.**

Versus

The State of Maharashtra
and Others. .. **Respondents.**

Shri. S.B. Ghatol Patil, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. S.B. Gorde-Patil, Advocate, for respondent No.3.

Shri. Rajendra Deshmukh, Advocate for intervenor / applicant in Civil Application No.13337/2016.

CORAM: T.V. NALAWADE, J.

DATE : 13 DECEMBER 2016

ORDER:

1) Civil Application No.13337/2016 filed for intervention is allowed and stands disposed of.

2) The writ petition is filed for the relief of setting aside the decision taken by the authorised officer of the respondent bank to fix the reserve price of the property of respondent - cooperative sugar factory and also to sell the property by tender process to the applicant from Civil Application No.13337/2016. The decision is taken under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002 framed thereunder. Learned counsel for the petitioner, (petitioner is a member of the cooperative sugar factory), learned counsel for the creditor bank and learned counsel for the intervenor, purchaser are heard. As the purchaser was not party to the proceeding, civil application is filed by the purchaser for allowing the purchaser to intervene in the matter and make submissions. The sale took place during pendency of the writ petition. This Court by order dated 13-5-2016 has made the result of the tender process subject to the result of the present petition. In view of these facts learned counsel appointed by the intervenor was allowed to argue.

3) The cooperative sugar factory is from Nanded District. The crushing capacity of this factory is 1250 MT per day. The factory was started in the year 1999. There are around 1000 share holders who are farmers of that region. It is the case of the petitioner that more than 300 persons of Mukhed Tahsil got permanent employment in this factory and around 700 labour got work on daily basis in the factory. It is contended that the factory is catering the needs of the farmers and existence of the cooperative factory is necessary for overall development of that region. It is the case of the petitioner that the cooperative institution needs to be protected but the respondent, creditor bank is bent upon to sell the factory at throw away price and this will cause harm to the interests of all the farmers and other persons of that region.

4) It appears that due to drought condition there was no sufficient sugarcane in that area from 2013 and so from that year the respondent factory had stopped functioning. By giving security of plant & machinery, building and the land of the factory, loan was taken by the factory from respondent No.3 - Maharashtra State

Cooperative Bank and from other banks which are members of consortium scheme. The factory was running into losses. As on 31-3-2012 the amount of Rs.30.80 crores was over due from respondent No.4 - cooperative sugar factory and the account was classified as Non Performing Asset on 31-3-2012.

5) Steps were taken by respondent No.3, creditor against respondent No.4 under the aforesaid Act and ultimately on 9-9-2014 actual possession of the assets of the bank was taken over by the authorised officer of respondent No.3, creditor bank. The debtor, respondent No.4 or even the present petitioner did not challenge the said procedure and taking over of the possession of the factory was never challenged. Thus only the procedure which was followed for fixing upset price and the procedure of inviting tender by tender notice is under challenge in the present proceeding and the proceeding is limited to that extent. However, that challenge can be considered only if the matter can be decided on merits by this Court in view of the objection taken to the maintainability of the present proceeding.

6) Learned counsel for respondent No.3 creditor bank and also learned counsel for the purchaser, intervenor submitted that if there was grievance as regards the fixing of the reserved price, appropriate proceeding ought to have been filed under the provisions of the aforesaid Act and Rule 8 of the Rules framed under the said Act. It was submitted that as the forum is created to challenge such actions of the authorised officer, writ petition cannot be entertained. Learned counsel placed reliance on a case reported as **2012 (2) Bom.C.R. 139 (Sea Poly Plast India Pvt. Ltd. v. Union of India)** which is a Division Bench case of this Court. The Division Bench of this Court has considered in the case cited supra the scheme given under the aforesaid Act and the Rules. In similar circumstances this Court held in the case cited supra that remedy available to the borrower was filing appropriate proceeding before the D.R.T. under section 17 of the Act and such proceeding can be filed when there is grievance on factual aspect. It is observed that whether fixing of reserved price is arbitrary can also be gone into by the forum created. On this point reliance was placed on one more case by these learned counsel which is reported

as **2011 AIRSCW 1194 (Kanaiyalal Lalchand Sachdev v. State of Maharashtra)** and also on the case reported as **AIR 2010 SC 3413 (United Bank of India v. Satyawati Tondon)**.

7) Rule 8(5) of the aforesaid Rules gives methods for sale of property and one of the methods is "by inviting tenders from public". This method was used in the present matter. The price quoted by the intervenor is above the reserved price. In view of the law laid down in the cases cited supra and these circumstances, this Court holds that it is not possible to give decision on merits on the procedure followed for fixing reserved price and also the procedure followed for inviting tenders. It will be open to the borrower or the present petitioner to use the provisions of section 17 of the aforesaid Act.

8) Learned counsel for the petitioner placed reliance on the observations made by this Court, Division Bench, in **Writ Petition No.10934/2010 (Shaikh Gulab Shaikh Ahmed v. State of Maharashtra)**. Learned counsel submitted that in that case this Court had intervened by

using the power given under Article 226 of the Constitution of India. The facts of case cited were totally different. In the case of Shaikh Gulab (supra) this Court had come to the conclusion that necessary procedure was not followed, there was no sale in law, and there was apparent fraud and due to that the property of the factory was being sold at throw-away price. In the case of Shaikh Gulab (cited supra) this Court had placed reliance on the observations made by the Apex Court in the case reported as **1971 (1) SCC 309 (State of West Bengal v. North Adjal Coal Co. Ltd.)** and had held that intervention of this Court was necessary even when alternate remedy was available under sections 17 and 18 of the aforesaid Act. It cannot be disputed that whether use of Article 226 of the Constitution of India is advisable or not would depend on facts and circumstances of that case.

9) For limited purpose, to ascertain whether wide publicity was given or not and whether the tender notice inviting tenders had created confusion and due that the prospective purchasers remained away, this Court has gone through the relevant record. To some extent this

Court is considering the method adopted for fixing the reserved price.

10) Admittedly the tender notice was published in two daily news papers like Dainik Loksatta, which had wide publication in Maharashtra, an English news paper - Daily Financial Express. The tender notice was published on 30-4-2016. Time to fill tender was given upto 13-5-2016. In the advertisement the property was described in two lots like lot No.1 and lot No.2 as under.

(1) Lot No.1 : Factory Building, Plant & Machinery, land 21.47 H.R.

(2) Lot No.2 : Main Shed, Plant & Machinery.

11) Learned counsel for the petitioner submitted that confusion was created as the property was described in two lots and it was not possible to purchaser to infer that Lot No.2 was included in Lot No.1. This submission is not at all acceptable. If the description of the property given in lot Nos.1 and 2 is seen carefully it can be said that lot No.1 included all the property but lot No.2

included only plant and machinery and the property was to be given to the bidder who was ready to purchase both landed and movable property like plant and machinery.

12) Learned Advocate for the petitioner submitted that the extent of liability of the factory towards provident fund etc. was not mentioned and this also must have confused the purchaser. On this point also this Court holds that there is no force at least for the present proceeding. The other information was available and that could have been collected by purchasing the broacher. Thus, the price of Rs.28.5 crores was the price of visible assets like land, building, plant and machinery and the purchaser was to undertake other liabilities of the factory like payment of taxes, cess, provident fund etc. The value of this liability was around Rs.8.26 crores. Thus the purchaser was to pay consideration of around Rs.36.26 crores for purchasing the land, building, plant and machinery of the factory.

13) When the petition was filed there was vague allegation in the petition that the reserved price

mentioned in the tender notice was much below the market price. On 4-7-2016 the petitioner filed affidavit and with it the petitioner filed report of his valuer, who is approved Government valuer. The respondent was seriously disputing the valuation done by the valuer appointed by the petitioner by submitting that no physical inspection was possible for the said valuer as the property was in possession of respondent No.3 and no permission was obtained by the said valuer from the factory for inspection. One more submission was made. It was submitted for the respondents that the valuation which was done by the approved valuer appointed by the authorised officer was on the basis of inspection done on 17-8-2015 and the valuation which was done by the valuer appointed by the petitioner was on the basis of so called inspection dated 24-5-2016. It was submitted that there was difference of 9 months and so some difference in the price fixed by the two valuers is bound to be there. Both of them used ready reckoner for fixing the value of land.

14) If the valuation done by the two valuers is compared, it can be said that there is not much difference

in the two valuations. The valuer appointed by the authorised officer of the bank had given the valuation of land and building as Rs.14.19 crores. On the other hand, the valuer appointed by the petitioner has given valuation of land and building of around Rs.22 crores. The valuation of the land is shown less by the valuer of the petitioner but the valuation of the building is shown more. The valuation of the land and machinery was given as Rs.15.50 crores which is round figure by the valuer of the authorised officer and the value of the plant and machinery is given as Rs.19.5 crores by the valuer appointed by the present petitioner. Thus total valuation of the land and building, plant and machinery which was used for fixing reserved price was Rs.29.68 crores as per the valuer appointed by the authorised officer and this price was Rs.34.5 crores as per the valuer appointed by the petitioner. The record shows that valuation of some portion of assets like some portion of land given by the valuer appointed by the authorised officer was required to be deducted as the said portion was not mortgaged. The area which was actually mortgaged was 21.21 hectares as against 23.24 hectares mentioned in the advertisement.

Due to this circumstance, the reserved price fixed by the authorised officer came down and it was around Rs.28 crores. Thus there was a difference of around Rs.6 crores in the two valuations.

15) In view of the aforesaid difference in the valuation made by the two valuers who were the approved Government valuers, this Court had asked learned counsel for the petitioner to come with any purchaser who was ready to give higher price or at least the price fixed by the valuer appointed by the petitioner. This opportunity was given well before the decision of the Central Government of demonetization. Learned counsel for the petitioner could not give offer of higher price from anybody. Learned counsel submitted that he is not in a position to bring any such purchaser.

16) On the date of the petition there was nothing with the petitioner to contend that the reserved price fixed by the authorised officer of the bank was much below the market price. In view of the aforesaid circumstances, this Court holds that even after collecting

the report from the valuer appointed by the petitioner the things have not changed. In view of these circumstances, it cannot be said for the purpose of the present proceeding that the reserved price fixed by the authorised officer of the bank is very much on lower side. This Court has already observed that this factual aspect can be gone into by the appropriate forum created under the aforesaid Act. Only to ascertain as to whether there is fraud and steps are taken to benefit a particular person this Court has considered the aforesaid record. Thus, there is no other alternative than to dismiss the petition.

17) Before parting with the order, this Court deems it necessary to remind the "State" of its constitutional duty with regard to cooperative movement. Articles 38, 39, 43 and 48 and the Directive Principles of the State Policy of the Constitution of India are applicable when there is situation like the present one. Only after ascertaining the feasibility, permission is given by the authority created by the Central Government to start sugar factory. It can be said that there is also investment of the State in such sugar factory and that is in many ways. Investment is by

giving subsidy, investment is by creation of infrastructure like roads, giving subsidy to farmers on fertilizer, giving subsidy to farmers on seeds etc. The Western part of the Maharashtra has made more development only due to the roots taken by the cooperative movement in that region. When a cooperative sugar factory is started at one place not only the people from that area but the people from the surrounding area get lots of opportunities. Along with sugar factory, allied activities start. The factory itself can start generation of electricity, manufacturing paper, manufacturing ethanol, alcohol etc. For keeping the factory working, for maintenance, permanent employees are required and also labours on daily wages are appointed. When such factory is started, the issues of the farmers get employment in the factory and some get job on daily wage basis as the persons running the factory are from the farmers and factory is run for the interests of the farmers of that area. At many places the persons managing such factory supply fertilizer, spend money on advance technology of agriculture, spend money on animal husbandry etc. The crushing season of the factory is almost of 5 months and the people of that region and the surrounding region get involved in all kinds of hectic activities. Many persons do petty businesses like vehicle repairing, transport, hotelling in that area and the surrounding area when there is such a factory.

18) For starting of cooperative sugar factory on many occasions farmers give their land without taking any compensation and in most of the cases they give land at throw away price as they know that such sugar factory will help overall development of that region. In many cases, Government lands, gairans, are given for such cooperative institutions. All these circumstances show that when a cooperative sugar factory is sold to a private purchaser, the private purchaser definitely gets benefited in many ways.

19) When factory is started, the management takes steps to see that farmers start sugarcane plantation. In many cases the farmers develop roads and help in activity like creation of infrastructure even of rails. Steps are taken to see that there is continuous power supply to such factory. All these facilities become available to the

purchaser without spending anything and without being required to wait for creation of such infrastructure. Thus when a cooperative sugar factory is sold to a private person he gets benefits of all kinds but the farmers are the losers. Private persons purchasing the factory have different approach and they aways like to make money and that may be at the cost of the farmers. In most of the cases private persons running the factory do not care of the interests of the farmers and other persons of that region. It can be said that in one way such cooperative factory is discharging the duty of "State" shown in the aforesaid Articles of the Constitution of India. In view of these circumstances, when the situation like the present one arises, it becomes the duty of the State to intervene. There may be any reason for creation of the situation like the present one but the State needs to protect and support such institution. There are already laws like Maharashtra Cooperative Societies Act 1960 giving ways for intervention. New laws can be made to have effective supervision or for taking over the management of such institution and that needs to be done in the interest of the persons of that region.

20) This is second instance of its kind which has come before this Court. It is sad that the farmers who have invested money and who must have toiled hard for getting this factory are loosing their own machine of development. With the hope that the State will give anxious thought over this subject, this Court is giving direction to the Registrar (Judicial) to send copy of this order to the Principal Secretary to the Government, Law and Judiciary Department for placing the same before the Hon'ble Minster of the concerned Department. The Registrar (Judicial) is to send one more copy directly to the Hon'ble Minister of Cooperation Department. With these observations following order :-

21) The writ petition is dismissed. Interim relief is vacated. The Registrar (Judicial) to send copies of this order as observed in the order by this Court.

Sd/-
(T.V. NALAWADE, J.)

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