

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.12118 OF 2015**Adv.Vijay S/o Ashok Devare Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.N.Nagargoje, advocate for the petitioner.

Ms.R.P.Gour, A.G.P. for the State.

Mr.S.P.Brahme, advocate for Respondent No.6.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 05.12.2016.

PER COURT :

1. Heard.

2. Mr.Nagargoje, learned counsel for the petitioner states that the auction sale conducted of the property owned by the present Respondent No.5 is assailed in the present petition. According to the learned counsel, under the scheme the Government had sanctioned some amount in favour of Respondent No.5 to make repayment of the depositors. An amount of Rs.15,43,426/- (Rupees fifteen lacs forty three thousand four hundred twenty six only) was due. The Government provided the finance. The Society did not repay the same. According to the learned counsel, as per

Government Resolution dated 4.8.2009, the amount is to be repaid to the Government by recovering it from the borrowers. No steps were taken for recovering the amount from the borrowers instead the person acting as an Administrator, so also Liquidator took decision to auction the property. The upset price fixed was Rs.41,16,000/- (Rupees forty one lacs sixteen thousand only) and the property was sold at Rs.42,81,000/- (Rupees forty two lacs eighty one thousand). Before sale of the property, no recovery certificate U/s 101 of the Maharashtra Cooperative Societies Act was obtained nor the procedure as is laid down under Rule 107 of the Maharashtra Cooperative Societies Rules were followed. The learned counsel submits that even if Section 155 of the Maharashtra Cooperative Societies Act, is made applicable, still, the amount can be recovered as arrears of land revenue for which a special procedure has been laid down. According to the learned counsel, no such procedure has been followed. Even there was no proper publication of the auction sale proceedings. The learned counsel submits that as the procedure for auction sale is not followed, the auction stands vitiated and deserves to be set aside. The learned counsel further submits that the amount as required under the Rules has not been deposited by the auction purchasers. 15% has to be deposited on the same day and 85% has to be deposited within 15 days. The said stipulation is also not followed. On this count also

the auction sale is vitiated.

3. Mr.Brahme, learned counsel for the auction purchaser states that pursuant to the auction notice, the petitioner had participated in the bid and was the highest bidder. The auction was confirmed on 10.12.2015. The sale certificate was issued on 10.12.2015 and the sale deed was executed on 16.12.2015. The possession was handed over on 23.12.2015 to the auction purchaser. According to the learned counsel, the Liquidator was competent to initiate the proceedings of recovery of sum due to Government by invoking powers U/s 105(1)(c) of the Maharashtra Cooperative Societies Act. The Registrar was empowered U/s 105 of the said Act to auction the property. The learned counsel submits that the amount has been deposited within time as stipulated.

4. Learned A.G.P. states that the society committed default in payment of Government dues, as such the procedure U/s 101 of the Maharashtra Cooperative Societies Act and Rule 107 of the Maharashtra Cooperative Societies Rules are not required to be followed. According to the learned A.G.P., the District Deputy Registrar had appointed Mr.N.K.Patil, as Recovery Officer and the powers were delegated to him on 2.11.2016. Permission was also given by the D.D.R. on 2.8.2016 to sell the property. The procedure has been followed. After the sale proceeds are received, the dues of the Government has been paid and the residual amount

is being disbursed amongst the depositors on priority basis.

5. We have considered the submissions. It is not disputed that the Government had financed Respondent No.5 Society and Respondent No.5 Society could not repay the amount to the Government. The Government dues were outstanding. As such decision was taken to auction the property of Respondent No.5 Society. Even the depositors were not being paid the amount. Pursuant to the same, the steps were taken to sell the property. At the relevant time the Liquidator was appointed on Respondent No.5 Society. D.D.R. appointed one Mr.N.K.Patil, as Recovery Officer and permission was granted by the D.D.R. to sell the property on 12.8.2015. Provisions of Section 155 of the Maharashtra Cooperative Societies Act were followed. Public notice was given in two local newspapers and after receiving the offer of more than the upset price, the property was sold. The purchaser has deposited the entire amount vide D.D. dated 18.11.2015, 26.11.2015 and 8.12.2015. Even the dues of the depositors are unpaid and the residual sale proceeds after satisfying the debt of the Government is being utilised for paying the amount of the depositors. The sale in fact is also in the interest of depositors.

6. Considering aforesaid conspectus, no case for interference

is made out. The Writ Petition is dismissed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.05.12.2016.
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