**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

(CHHATISGARH)

Writ Petition No. 2515 /2001

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| Petitioner : | | O.P.Agrawal, aged about 49 years S/o R.R.Agrawal, Managing Director, Ekta Vihar Finance And Investment Pvt. Ltd., Civil Lines, Raipur (Chhatisgarh) |
| | | Versus |
| Respondents : | 1. | Additional Registrar, Co-operative Societies, Raipur (Chhatisgarh). |
| | 2. | Shri R.K.Thakur, Co-operative Inspector-Cum-Recovery Officer, Office of Deputy Registrar, Co-operative Societies, G.E.Road, Raipur (Chhatisgarh). |
| | 3. | V.K.Dubey, Co-operative Inspector-cum-Sale Officer, Office of Deputy Registrar, Co-operative Societies, G.E.Road, Raipur (Chhatisgarh) |
| | 4. | Jila Sahakari Kendriya Bank Maryadit, Raipur, Through its Manager/General Manager, Raipur (Chhatisgarh) |
| | 5. | Chhatisgarh Bunker Sahakari Sangh Maryadit, near Vivekanand Ashram, G.E.Road, Raipur through its Manager, Raipur (Chhatisgarh) |

P. R. No. 2515 Presented by Shri ... dated 29/11/01

**PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**

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**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## WP No.2515 of 2001

- Om Prakash Agrawal

**---- Petitioner**

**Versus**

- Addl.Registrar Co-Op.Society, Raipur and Others

**---- Respondents**

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| For Petitioner | : | Shri Prateek Sharma, Advocate |
| For Respondent/State | : | Shri Satish Gupta, GA |
| For Respondent No.4 | : | Shri Rajat Agrawal, Advocate under instructions from Shri S. C. Verma, Advocate |
| For Respondent No.5 | : | Shri Y. C. Sharma, Advocate |

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**28/08/2017**

By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged legality and validity of order dated 29-08-2001 passed by the Madhya Pradesh Cooperative Tribunal, Bhopal, by which, the petitioner's revision was dismissed and direction was issued for refund of ¾th amount of sale money deposited by the petitioner pursuant to the order of Recovery Officer. The petitioner also challenged the order dated 26-02-2001 passed by the Additional Registrar, Cooperative Society, in exercise of suo moto revisional jurisdiction, setting aside the auction proceedings finalized in favour of the petitioner in the matter of auction of the properties of respondent No.5 Society in connection with recovery of loan amount provided by the respondent No.4-bank.

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2. Respondent No.5-Society had taken loan from the District Cooperative Central Bank Limited, Raipur. Upon failure to repay the amount of loan, respondent-Bank initiated proceedings of recovery by way of auction of properties of the Cooperative Society, by issuing auction notice in the year 2000. In the auction proceedings, as many as 9 auction purchasers participated and the petitioner was declared to be successful bidder having offered Rs.52,80,800/- in respect of the auction property which consisted of land ad measuring 13,202 square feet with two buildings situated thereon of the Cooperative Society. The petitioner deposited ¼ th amount on the date, when petitioner's bid was accepted. Though, the petitioner was required to deposit the balance ¾ th of the amount within 15 days, the Sale Officer further extended the period up to three weeks. The petitioner, later on, deposited the balance amount. The sale certificate was issued in favour of the petitioner on 20-11-2000. Later on, the Chairman of the bank raised an objection on 28-11-2000 relating to process of auction which led to certain enquiry and culmination in issuance of notice on 16-01-2001, purporting to invoke suo moto revisional jurisdiction by the Additional Registrar. The petitioner submitted his reply, which did not find favour and finally order was passed by the Additional Registrar, setting aside the auction proceedings and directing fresh auction. Aggrieved by the said order, the petitioner preferred revision, which was also dismissed, giving rise to this petition.

3. In this case, auction was held in the year 2000. When the auction proceedings were set aside and the Cooperative Tribunal also passed an order directing refund, thereafter, the petitioner was paid entire amount of Rs.52,80,800/-. According to the petitioner, he received this amount under protest.

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4. Auction proceedings were held illegal firstly on the ground that there is violation of provision contained under Section 66(2)(e) of the Madhya Pradesh Cooperative Societies Rules, 1962 (In short "the Rules of 1962"), in as much as the auction notice was not affixed in the office of the bank and in the Tahsil Office. The other ground is that the balance 3/4th of the bid amount was not deposited within the statutory period of 15 days from the date of sale and without there being any order of extension by the Recovery Officer, the Sale Officer, without authority, extended the period of deposit and thirdly on the ground that the sale certificate was issued by the Sale officer though under the law, the competent authority for issuance of sale certificate is Recovery Officer.

5. Learned counsel for the petitioner argued that in so far as affixation of notice is concerned, even if its accepted that there was no notice affixed in the office of the bank, order passed by the Additional Registrar shows that the bank had received a notice of auction and till the auction was complete or within 30 days from the date of auction, no objection was raised by the bank. Though, there was no publication in the Tahsil Office, in view of the undisputed position that the notice was published in the local newspaper which has been pleaded in para 5.5 of the petition and the same has not been disputed in the reply of the respondents, it would be a case of substantial compliance with the requirement of publication of notice. It is submitted that in any case, neither any of the purchaser nor the judgment debtor/cooperative society raised any dispute in this regard that for want of proper notice, adequate price could not be received and the property was auctioned at very low rate. In this regard, submission is that even according to respondents, total property ad measuring 60,800 square feet was valued by the authority at Rs.1 Crore. Out of this property, land ad measuring 13,202 square feet and a part of building were sold by way of auction and there is no material to show that the value of this part of the property was

much more than the rate, at which, auction was finally struck in favour of the petitioner. Therefore, only on the ground of technical violation of the aforesaid provision of the rule, it could not be said that the auction proceedings were vitiated. Next submission of learned counsel for the petitioner is that if there was some delay in depositing the amount, the petitioner could not be faulted with, because the Sale Officer had extended the time and it is beyond dispute that the petitioner deposited the entire amount within the time extended along with stamp duty. Therefore, the petitioner cannot be held responsible for delay, even if there was no order of recovery of Recovery Officer. Short submission of learned counsel for the petitioner is that as far as issuance of sale certificate is concerned, the matter rests with the competent authority and if the sale certificate was issued by the Sale officer, that by itself would not vitiate the entire auction proceedings and this can be rectified by directing the Recovery Officer to issue proper sale certificate. In support of his submission, learned counsel for the petitioner has placed reliance upon the decisions in the case of ***Sundaram Finance vs. NEPC Ltd., AIR 1984 MP 170 (F.B.), Shadab Co-operative Sugar Mills Vs. Special Secretary, (2006) 12 SCC 404, M/s D. N. Roy vs. State of Bihar, AIR 1971 SC 1045, Automotive Tyre Manufacturers vs. Designated Authority, (2011) 2 SCC 258, Saheb Khan vs. Mohd. Yusufuddin, AIR 2006 SC 1871 and Valji Khimji & Co. vs. Official Liquidator, (2008) 9 SCC 299.***

6. Per contra, learned counsel for the respondents submits that the irregularities, which have been found in the auction proceedings were material one, by which, the entire auction proceedings were vitiated. It is submitted that no wide publication was given to the auction notice and except daily newspaer, no other publication was made by the Sale Officer. Other submission of learned counsel for the respondents is that once there is violation of the statutory rules,

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requiring publication in more than one mode, publication by some of those modes, would not result in substantial compliance of the provision. Next submission of learned counsel for the respondents is that in any case, the petitioner was refunded the entire amount and only after receiving back the entire amount deposited by him, he filed this petition and during the pendency of this petition, loan of the Cooperative Society was finally settled with the bank and entire amount has been repaid and there is no other amount lying outstanding with the respondent-Cooperative society. It is then submitted that the statutory requirement of depositing balance amount within 15 days could be extended only by the competent authority acting as Recovery Officer and not by the Sale Officer. Therefore, there was clear violation by the petitioner in not depositing the balance amount. It is submitted that the provisions contained in Rule 66 (6)(iii) provides that the sale certificate could be issued only by the Recovery Officer and not by the Sale Officer.

7. I find that in the present case, the auction proceedings were initiated towards recovery of the loan borrowed by the Cooperative Society from the bank. When the auction sale in favour of the petitioner was declared illegal by the Additional Registrar and order in affirmation was passed by the Cooperative Tribunal, before filing present petition, entire amount deposited by the petitioner, was received back by the petitioner, though under protest. This petition has remained pending since 2001. It is stated by learned counsel for the respondents that in the meantime, the entire amount of loan liability has been discharged and settlement has taken place between the Cooperative society and the bank way back in the year 2008.

8. Amongst various grounds for setting aside auction sale, this Court has taken notice of violation of the provisions relating to mandatory deposit of 3/4th

of the bid amount as required under Clause 66(2)(h) of the Rules, which reads as under:-

> **Rule 66(2)(h):-** "The remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be paid within fifteen days from the date of sale:
>
> Provided that the time for payment of the cost of the stamp may for good and sufficient reasons, be extended at the discretion of the Recovery Officer upto thirty days from the date of sale:
>
> Provided further that in calculating the amounts to be paid under this clause, the purchaser shall have the advantage of any set-off to which he may be entitled under clause(k)."

The provision clearly shows that the amount will be deposited within 15 days from the date of sale and power of extending the period of deposit vests only with the Recovery Officer and not the Sale Officer. Therefore, in these circumstances, rule regarding deposit of auction money within the stipulated period has been violated. Statutory consequences therefore, has to follow. It is not a case that any ex-post facto sanction was granted by the Recovery Officer affirming the extension of sale of the Sale Officer.

9. Without going into other submissions made, this Court would restrict its hands from interfering with the orders passed by the Additional Registrar and Cooperative Tribunal except that whatever amount has been refunded to the petitioner shall not be subjected to any recovery in future, because it has been stated that the loan liability of the Cooperative Society has been settled with the bank. To that extent, order passed by the Cooperative Tribunal is set aside.

10. The petition is accordingly partly allowed.

**Sd/-**
**Manindra Mohan Shrivastava**
**Judge**

Tumane