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

WRIT PETITION NO. 9359 OF 2015

Nagar Taluka Sakhar Kamgar Union ...Petitioner

VERSUS

The State of Maharashtra & ors. ...Respondents

.....

Shri A.S.Shelke, advocate for petitioner
Smt. M.A.Deshpande, A.G.P. For respondent nos. 1 to 3
Shri A.D.Shinde, advocate for respondent no.4
Shri Sandeep Gorde Patil, advocate for respondent no.5
Shri M.S.Deshmukh, advocate for respondent no.6
Shri K.B.Choudhari, advocate for respondent no.7

.....

CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 10th January, 2017

O R D E R :-

The petitioner is Union of workers employed with respondent no.4 Sugar Factory. The respondent no.4 Karkhana is in liquidation. The assets of respondent no.4 Karkhana were sold by respondent no.5 Bank by invoking its powers under the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as SARFAESI Act). The assets were sought to be sold in two lots, second lot was sold and respondent no. 6 is the purchaser of the said auction. The petitioners claim their dues from the purchaser.

2. Mr. Shelke, learned counsel for the petitioner strenuously contends that auction notice, published by respondent no.5 putting property of respondent no.4 in auction, very clearly laid down that the purchaser will be liable to pay workers dues pursuant to the said auction. The respondent no.6 was declared as successful bidder and possession was given to respondent no.6 of the assets sold pursuant to the said auction. According to the learned counsel, as it was laid down that the purchaser would be liable to pay the dues of the workers, the respondent no.6 is under obligation to perform its part of contract and pay the dues of the workers. The respondent no.6 now cannot turn around and contend otherwise. Learned counsel submits that

the contention of respondent that Writ Petition is not maintainable against private party is not tenable. For the said purpose, the learned counsel relies on the judgment of the Apex Court in the case of **Binni Ltd. Vs Sadasivan**, reported in **(2005) 6 SCC 657.** The authorised officer had asked for the details of the dues of workers from the liquidator. The same was also forwarded by the liquidator to the Bank stating that the total dues are Rs.1,49,54,265/-.

3. The learned counsel submits that when liquidator has certified the dues, the same can be said to be crystalised claim or adjudicated claim and in view of that respondent is duty bound to pay amount.

4. Mr. Gorde Patil, learned counsel for respondent/Bank submits that the said sale of the property to the respondent no.6 was on, as is where is basis and with all the dues attached thereto. The learned counsel for the

respondent/Bank submits that petitioner cannot rely on the provisions of the Cooperative Societies Act, as the provisions of SARFAESI Act override the provisions of the Cooperative Societies Act. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **Marathwada Gramin Bank vs Maharashtra State Cooperative Bank Ltd. And others** reported in **2007 (2) Mh.L.J. 594.**

5. Mr. Khandare, learned counsel for respondent no.6 submits that the Writ Petition filed by the petitioner is not maintainable. Respondent no.6 is a private party and against a private party the Writ Petition is not maintainable. The learned counsel relies on the judgment of the Apex Court in the case of **K K Saksena vs International Commission On Irrigation and Drainage and others** reported in **(2015) 4 SCC 670.** The learned counsel further submits that after the property is sold under the SARFAESI Act for non-payment of the dues of the Bank, and if

there is no notice of charge to the purchaser, the purchaser is not liable. The learned counsel relies on the judgment of the Apex Court in the case of **A.Senthil Kumar and another vs Assistant Commissioner (Ct) and others** reported in **2011 (3) Bank. J. 79.** The learned counsel further submits that the respondent no.6 only purchased the assets of respondent Karkhana and not management of Karkhana, in such case respondent no.6 would not be liable. The learned counsel relies on the judgment in the case of **Isha Marbles vs Bihar State Electricity Board & anr.** reported in **1995 (1) BC 529.**

6. We have also heard learned A.G.P.

7. The assets of respondent Karkhana were put to auction by the Bank in two lots. The respondent no.6 is the purchaser of lot no.2 of the assets. The auction notice states that the property is sold on, as is where is, basis and also states about the workers' dues to be borne by

the purchaser. The sale certificate is issued. The sale certificate on record nowhere states about the workers' dues. The sale certificate states that the Bank has received full payment of movable property as per the tender and the purchaser has accepted all the encumbrances presently there on the property, which may arise in future and agreed to pay the same as per the tender publication accepted by the purchaser. The tender and its conditions are also placed on record. The auction notice is only invitation to offer. The terms and conditions of the tender document, more particularly clause 4 states as under : -

> "4. The Bank intends to sell the assets detailed above as "**AS IS WHERE IS, AS IS WHAT IS AND WHATEVER THERE IS BASIS WHICH IS WITHOUT ANY WARRANTY, GUARANTEE, WITHOUT ANY RECOURSE, ASSURANCE AND UNDERTAKING OR REPRESENTATION OF ANY KIND WHATSOEVER**". The AO does not take or assume any responsibility for any shortfall of the movable/immovable assets, for procuring any permissions etc.,or for any dues, statutory or otherwise viz. Provident Fund, Sales Tax, Central Excise,Workers' Dues, Property Tax, Electricity Charges,

> Water Charges etc., of any authority established by law. Such dues if any,both existing and future relating to the property will have to be borne/paid by the purchaser. The encumbrances marked in 7/12 Extracts also need to be borne/paid by the Purchaser whatever is applicable as per law. **All the statutory dues/encumbrances shall be borne/paid by the Bidder bidding for Lot No.3. All the statutory dues/encumbrances shall be borne/paid on pro rata basis of the sale price for the bidders binding for Lot No.1 and Lot No.2.**"

8. The said clause states that authorized officer does not take or assume any responsibility for any short fall of the movable/immovably assets for procuring any permission or for any dues statutory or otherwise like Provident Fund, Sales Tax, Central Excise, Workers' Dues, Property Tax, Electricity Charges, Water Charges etc. of any authority established by law. The said dues if any both existing and future relating to the property i.e. will be borne by the purchaser. The dues are referable to the property i.e. purchase by the purchaser in the auction. The respondent no.6 is not purchaser of Karkhana or

its management, but has only purchased part of the property under lot no.2. Respondent no.6 was not given any notice of the charge over the property in question with regard to the workers dues i.e. charge over the property. The judgment relied by respondent no.6 in a case of **A.Senthil Kumar** would be relevant.

9. The auction notice cannot be said to be a tender document as it is merely invitation to offer. The tender document containing the terms and conditions certainly would be binding on the parties. The tender document with its terms and conditions does not make it explicitly clear that the purchaser is liable to pay the workers dues. It would have been another thing if the purchaser would have purchased the Karkhana or its management or if the said certificate or tender document would have made it clear about the purchaser being liable to bear the workers dues. Only because same is stated in the auction notice, which is only an invitation to offer, the case of

the petitioner cannot be considered.

10. As on the factual aspects we have held that petitioner is not entitled for relief, the contention of the respondent about the tenability of the present Writ Petition qua respondent no.6 is not considered. The Writ Petition is disposed of. No costs.

(K.L.WADANE, J.) (S.V.GANGAPURWALA, J.)