IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10866 OF 2016

The Ahmednagar District Central Co-operative Bank Ltd., Station Road, Ahmednagar .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr.V.R. Dhorde, Advocate for the petitioner.
Ms.R.P. Gour, AGP for respondent Nos. 1 to 5.
Mr.A.D. Ostwal, Advocate for respondent No.6.

CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE,JJ.
DATED : 23.11.2017

P.C. :-

1. The petitioner assails the auction sale of the properties of Mula Sahakari Soot Girni Ltd., conducted by respondent No.3 - liquidator.

2. Mr.Dhorde, learned Sr. Advocate for the petitioner strenuously contends that the petitioner is a secured creditor of respondent No.3 Mula Sahakari Soot Girni Ltd., Rahuri (Soot Girni). The petitioner has to recover huge amount to the tune of Rs.3,81,25,423/- (Rupees Three Crores Eighty One Lakhs Twenty Five Thousand Four Hundred Twenty Three) as on the date of sale of the property. The amount is increasing day by day. Respondent No.3 – Soot Girni went into liquidation. The Special Recovery Officer of the bank attached immovable property of the Soot Girni. As per the valuation done by the petitioner through Government valuer, the valuation of the immovable property of respondent No.3 comes to Rs.4.10 crores. The bank had issued tender notice for auction sale of property. Unfortunately, no buyers were received. The sale could not be effectuated. This Court in Writ Petition No.610 of 2001 directed the Registrar and Collector to take steps for sale of the property within six months. Learned

Sr. Advocate submits that respondent No.3 published e-auction notice in daily newspaper and on web-site for sale of the landed property of the respondent – Soot Girni. The land of Soot Girni is sold for paltry sum of Rs.2,51,48,000/- to respondent No.6 – APMC. The learned Sr. Advocate further submits that objection was raised before the Collector and the Registrar, District Co-operative Societies, Aurangabad, stating that the price received is less than valuation, but to no avail.

3. Learned Sr. Advocate further submits that the petitioner bank has also got the valuation of the respondent – Soot Girni's property done by the Government approved valuer, who has valued the property at Rs.4.10 crores. The respondent ought not to have sold the property below the said price. The sole purpose of auction is to get the optimum price. The upset price itself is on the lower side. Naturally the bidders would not bid above the upset price in auction. The process is vitiated on account of fixing the valuation on lower

side. The valuation of Rs.4.10 crores arrived at by the valuer of the petitioner bank is also by the Government approved valuer. The details were given about the said valuation. The same ought to have been considered. The sale of the assets at such lower price cannot be confirmed. The same requires to be set aside. Learned Sr. Advocate relied on the judgment of the Apex Court in the case of **Kerala Financial Corporation Vs. Vincent Paul & Another, reported in (2011) 4 SCC 171.**

4. Learned Sr. Advocate further submits that time and again the executive instructions are issued by the Government to the effect that unless and until three buyers are available, the auction of the property shall not be conducted. In the present case, only two bidders were available and the auction sale of the assets of respondent No.3 conducted amongst two bidders is bad in law. Learned Sr. Advocate submits that the property of one Rahuri Taluka Shetkari Sahakari Soot Girni was also conducted. Same was not finalized as three bidders were

not received. However, in-case of respondent No.3, auction sale is finalized even though only two bidders have participated in the auction. The respondent could not have sold the said property. The auction proceedings show that undue favour has been shown to respondent No.6.

5. Learned Sr. Advocate further submits that as per the tender published in the news paper auction proceedings were to be conducted on 14.03.2016. However, time to time the date of action was extended. The extended date of auction was never published in the newspaper so as to attract large number of buyers. As the extended dates of auction were not published in the newspaper, large number of buyers were not attracted. Eventually, the best price was not received in the auction sale. Five times the date of auction was extended. The extended dates of sale were never published in the newspaper. When such huge property was put to auction, in all fairness the respondent ought to have published the extended date of auction in the national

newspaper. Same having not been done, would also vitiate the auction sale. Learned Sr. Advocate submits that for all the aforesaid reasons, the auction sale be set aside and the auction be directed to be re-conducted of the assets of respondent No.3 by fixing upset price at Rs.4.10 crores.

6. Ms. Gour, learned AGP for respondents submits that the procedure was scrupulously followed. The valuation was got done from the Government approved valuer. The Government approved valuer has valued the immovable assets of respondent No.3 by considering the rates of the ready reckoner and reasons have given by the valuer for valuing the property at the rate which he has valued. No illegality has been committed in that regard. Learned AGP submits that the auction notice was published in three languages and in total 32 newspapers. Many of them were national newspapers. The extended dates were issued through corrigendum and published on web-site from time to time. Three bids were received. All three

bidders have paid earnest amount. On the last date of actual bid, third bidder did not participate when the auction process was held. Respondent No.6 was the highest bidder and the property was sold to him. No illegality has been committed by the respondent while conduction the auction sale.

7. Mr. Ostwal, learned Advocate for respondent No.6 supports the arguments of learned AGP and further submits that it was pursuant to the tender notice, respondent No.6 has applied and participated in the auction proceedings. Being the highest bidder, the sale is conducted in his favour. The respondent has complied all the terms and conditions of the tender. The respondent No.6 has deposited entire amount. The sale deed is executed in his favour and all process has been completed. The respondent No.6 is not a private party.

8. We have considered submissions canvassed by the learned advocates for the respective parties.

9. It appears that present petitioner is a creditor of respondent No.3. The petitioner has initiated proceedings under section 91 of the Maharashtra Co-operative Societies Act against respondent No.3 for recovery of its dues. The dispute filed by the petitioner before the Co-operative Court against the respondent No.3 for recovery of the amount is allowed. Respondent No.3 went into liquidation. Present petitioner through its Special Recovery Officer attached the property of respondent No.3 and thereafter proceeded for sale of the immovable assets of respondent No.3. Even tender notice was issued by the petitioner for sale of assets of respondent No.3 on 24.08.2013. But unfortunately no tenders were received and sale could not be effectuated in the said auction proceeding. The petitioner had fixed upset price of 4.10 crores. Writ Petition No.610 of 2010 filed by an employee was pending before this Court. In the said writ petition this Court on 09.06.2015 passed order directing the parties to take

steps to sell immovable property of respondent No.3 within six months. Pursuant thereto the property was put to auction by the liquidator.

10. The petitioner has assailed the auction proceeding basically on two grounds (1) The valuation of the property and the upset price is fixed on the lower side and that (2) Three bidders had not participated in the auction proceedings.

11. It would appear that when the petitioner had floated tender for sale of the immovable assets of respondent No.3 and fixed upset price at Rs.4.10 crores. The petitioner did not receive any bidder. The sale could not be effectuated. Subsequently, under the orders of this Court, the property of respondent No.3 is again put to auction. Valuation was obtained by the respondents before putting the said property to auction from the Government approved valuer. The valuation report is placed on record. In the said valuation report, the

details and the parameters considered while valuing the property has been detailed. As per the said valuation report, the price of property survey No.337/1 admeasuring 3 H 97 R was valued at the rate of Rs.450/- per sq. mtr. and as per the ready reckoner the price was Rs.200/- per sq. mtr.; whereas in respect of property Survey No.339/4 admeasuring 1 H 67 R value of the property as per ready reckoner is Rs.360/- per sq. mtr. and the same was valued at Rs.700/- per sq. mtr. considering that the said property is abutting highway and other property 337/1 was not abutting the highway. At the valuation of Rs.4.10 crores, the petitioner, did not receive any bidder. The sale by auction is also a distress sale. The Government approved valuer has taken into consideration the relevant aspects and fixed the valuation and property is sold at the rate above the said valuation.

12. It would appear that pursuant to the auction notice, three bidders had filled in their tender along with earnest money of Rs.10 lakhs each. But third bidder

did not participate during the actual bidding and amongst remaining two, respondent No.6 was the highest bidder and the property is sold to respondent No.6. In view of the fact that three bids were received pursuant to the tender notice, it cannot be said that the respondents have committed any illegality in auctioning the property after receiving three bids though subsequently third bidder did not actually participate in the final bid.

13. The objection that extended date of auction was not published would not survive as it is shown that the extended date of auction was published on web site. The auction was e-auction and extended dates were always published on web-site.

14. No *mala fides* can be attributed in the auction sale under the facts and circumstances of the case. Respondent No.6 is a body established under the statute and the property is purchased by the said body and not a private individual.

15. In the light of above, no interference is called for. The writ petition is dismissed. No costs.

[S.M.GAVHANE,J.] **[S.V.GANGAPURWALA,J.]**

snk/2017/NOV17/wp10866.16