

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2618 OF 2017

Oval Co-operative Housing Society Ltd. Petitioner
versus
State of Maharashtra & Ors. ... Respondents

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- Mr.C.P. Deogirikar, Advocate for the Petitioner.
- Mrs.R.A. Salunkhe, AGP for the State/Respondent.
- Mr.Dileep Udhan, Deputy Registrar, Housing Co-operative Society Office, Pune, present.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE : 03rd NOVEMBER, 2017.

P.C. :

1. The only relief sought by the present Writ Petition is the direction to the Respondent Nos.2 and 3 to fix the upset price of the property in question on the basis of the valuation report submitted to the said Respondents by the Petitioner. The said relief is sought in the background of the fact that the Petitioner is seeking execution of the Award dated 30/04/2012 passed by the Co-operative Court, Mumbai, in Dispute Application No.CC/1/110 of 2007 between the Petitioner/Society and the Respondents herein. The said award of the Co-

operative Court has been confirmed by the Co-operative Appellate Court by judgment and order dated 22/10/2012. The Petitioner put the said Award into execution and thereafter the property i.e. the flat in question being flat No.8, 3rd floor, Rajesh Mansion, Dinsaw Vachha Road, Mumbai – 400 020, came to be attached and the occasion to auction the flat has arisen. However, the Maharashtra Co-operative Societies Rules, 1961, postulate a procedure to be followed prior to the auction being held, the said procedure entails the upset price to be fixed under 107(11) Clause (f) of the said Rules. The said clause (f) obligates the Respondent to fix upset price within one month of the receipt of the valuation report from the concerned party, which in the present case is the Petitioner. Since the same has not been done, the Petitioner/Society has approached this Court by way of above Petition.

2. On behalf of the authorities exercising powers u/s Maharashtra Co-operative Societies Act, especially the Respondent Nos.2 and 3, herein an affidavit has been filed by one Dnyaneshwar Ramchandra Dongre, Deputy Registrar, Co-

operative Societies, 'A' Ward, Mumbai. After stating the antecedent facts, it has been stated that the Petitioner would have to comply with the rule 107(11)(f) of the Rules in the matter of submitting a fresh valuation report and to pay the exact valuation fee. Hence the gist of the said affidavit is that a fresh valuation report would have to be submitted by the Petitioner and only thereafter the process of fixing the upset price would be carried out by the Respondent Nos.2 and 3.

3. In the said context, it is required to be noted that the Petitioner had submitted the said valuation report of one Raj Surveyors & Associate Pvt Ltd., who are Government Valuers to the Special Recovery Officer on 16/06/2014. The said Special Recovery Officer thereafter submitted the valuation report to the Deputy Registrar, 'A' Ward on 05/08/2014. There is also no dispute about the fact that the Petitioner had made the necessary payment to the Respondent authorities for fixing the upset price. However, as indicated above, the said process has not been completed by the Respondent Nos.2 and 3 and the Respondents have now come up with a case that the Petitioner is required to submit a fresh valuation report.

4. In our view, in the light of the fact that the Petitioner had already submitted the valuation report, vide letter dated 16/06/2014 to the Special Recovery Officer, who in turn had submitted the valuation report to the Deputy Registrar, 'A' ward on 05/08/2014, it was for the Respondent to complete the process within one month of the receipt of the said valuation report from the Special Recovery Officer on 05/08/2014. Having not done so, the Respondent now cannot direct the Petitioners to submit a fresh valuation report. It is required to be noted that the submission of the fresh valuation report would obviously entail financial consequences to the Petitioner, which is a housing society and that the said financial consequences would be for no fault of the Petitioner/Society.

5. In our view, therefore, it is necessary that the Respondent Nos.2 and 3 proceed with the fixing of the upset price on the basis of valuation report, which has already been submitted by the Petitioner by considering the said report and taking all other contemporaneous factors into consideration whilst fixing the upset price. It is required to be noted that the

Petitioner Society, which as indicated above, is a housing society and awaiting to recover its dues from the Respondent, who is a defaulting member for about 30 years, according to the learned counsel for the Petitioner. The learned AGP on the instructions of Mr.Dileep Udhan, the Deputy Registrar, Housing Co-operative Society Office Deputy Registrar, Pune, makes a statement that the Additional Commissioner Co-operation would fix the upset price within 8 weeks from date. Statement accepted.

6. In view of the said statement, it is expected of the Commissioner or the Additional Commissioner Co-operation to fix the upset price in terms of said statement, so that execution proceedings filed by the Petitioner can proceed. We accordingly dispose of the above Petition by recording the statement made by the learned AGP.

7. The Writ Petition to accordingly stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)