

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3386 OF 2017

M/S DSPN PROJECTS THROUGH ITS PROPRIETOR
SULABHA W/O DINESH CHAUDHARI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. P.R. Katneshwarkar, Advocate for petitioners
Mr. S.P. Tiwari, AGP for respondent-State
Mr. Ajinkyakumar Deshmukh, Advocate h/f Mr. A.V. Hon, Advocate
for respondent no.4
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 15-10-2018

ORDER :

1. Heard learned counsel for the appearing parties.
2. Present writ petition has been preferred by the judgment debtor aggrieved by re-determination of the upset price at appellate level by Commissioner of Co-operation and under the same, reducing the upset price determined by the District Deputy Registrar. Impugned order is dated 23-05-2016.
3. Learned counsel for the parties refer to third proviso to clause (f) to sub-rule 11 of rule 107 of Maharashtra Co-operative Societies Rules, 1961, which reads as under :-

- “(f) When any immovable property is sold under these rules, the sale shall be subject to the prior encumbrances on the property, if any. The applicant shall, when the amount for the realisation of which the sale is held exceed Rs.100, furnish to the Recovery Officer within such time as may be fixed by him or by the Recovery Officer, an encumbrance certificate from the Registration Department for the period of not less than twelve years prior to the date of attachment of the property sought to be sold, or in cases falling under the proviso to sub-rule (10), prior to the date of the application for execution. The time for production of the encumbrance certificate may be extended at the discretion of the Recovery Officer, as the case may be. The sale shall be by public auction to the highest bidder :

Provided that it shall be open to the Recovery Officer to decline to accept the highest bid where the price offered appears to be unduly low or for other adequate reasons :

Provided further that, the Recovery Officer shall obtain prior approval of the Registrar to the upset price of movable and immovable property before publication of proclamation of sale :

Provided also that, upset price shall be approved by the Registrar by considering the comparative prevailing prices in the market, ready reckoner rates, by obtaining valuation from the approved valuer within one month from the date of receipt of proposal from the Recovery Officer, after hearing the judgment debtor. Such approval upset price shall be valid for six months from the date of approval.

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4. In view of aforesaid, it appears that the efficacy of determination of upset price or for that matter, even writ petition loses its significance. In the circumstances, the whole process will have to be undertaken once again by the District Deputy Registrar.

5. As such, with aforesaid observation, writ petition is disposed of.

6. All the contentions are open for the parties.

[SUNIL P. DESHMUKH]
JUDGE

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