IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITIO NO. 9064 OF 2019

1. Datta s/o Sakharam Kothule
R/o Shivaji Nagar,Selu
Tq. Selu, Dist. Parbhani
2. Parvati w/o Babasaheb Wagh
R/o Waghpimpri, Tq. Selu.
Dist. Parbhani
3. Jijabai s/o Ramrao Jubade
R/o Waghpimpri
Tq. Selu, Dist. Parbhani
4. Ashok s/o Gangadharrao Shere
R/o Shere Galli, Selu
Tq. Selu, Dist. Parbhani
5. Prabudayal Tekchandji Mantri
R/o Mondha, Selu,
Tq. Selu, Dist. Parbhani
6. Vijaykumar s/o Tekchandji Mantri
R/o Mondha, Selu
Tq. Selu, Dist. Parbhani
7. Ashok s/o Tekchandji Mantri **... Petitioners**
R/o Mondha, Selu,
Tq. Selu, Dist. Parbhani

VERSUS

1. The State of Maharashtra
Through the Secretary,
Cooperative and Textile,
Department, Mantralaya, Mumbai.

2. The Commissioner for Co-operation,
And Registrar, Co-operative
Societies, Maharashtra State,Pune.

3. The Divisional Joint Registrar
Cooperative Societies, Aurangabad.

4. The Liquidator, Parbhani Peoples Cooperative Bank Ltd. Parbhani and District Deputy Registrar, Cooperative Societies, Parbhani

5. Kailash Balaprasadji Ajmera R/o Vaishnavi, Maharani Laxmibai Road,New Mondha, Parbhan, Dist. Parbnhan,

Mr S P Brahme, Advocate h/for Mr. J.V. Patil, Advocate for the petitioners,
Mr P.S. Patil, A.G.P. for respondent Nos. 1 to 3.
Mr. S.V. Munde, Advocate for respondent No.4
Mr. R. N. Dhorde, Senior Advocate i/by Mr. V.S.Kadam, Advocate for respondent No.5

WITH

WRIT PETITION NO. 7784 OF 2019

1. M/s R. B. Construction Lokasha Bhavan, Mondha Road, Beed, Through its Partner Shri Roshan Vijayraj Bamb R/o Lokasha Bhavan, Mondha Road, Beed, Dist. Beed. **... Petitioner**

VERSUS

1. The State of Maharashtra Through the Secretary, Cooperative and Textile, Department, Mantralaya, Mumbai.

2. The Commissioner for Co-operation, And Registrar, Co-operative Societies, Maharashtra State,Pune.

3. The Divisional Joint Registrar Cooperative Societies, Aurangabad.

4. The Liquidator, Parbhani Peoples Cooperative Bank Ltd. Parbhani and District Deputy Registrar, Cooperative Societies, Parbhani

5. Kailash Balaprasadji Ajmera R/o Vaishnavi, Maharani Laxmibai Road,New Mondha, Parbhani, Dist. Parbhani,

Mr V D Salunke, Advocate h/for Mr. K. J. Suryawanshi, Advocate for the petitioner,
Mr P.S. Patil, A.G.P. for respondent Nos. 1 to 3.
Mr. S.V. Munde, Advocate for respondent No.4
Mr. R. N. Dhorde, Senior Advocate i/by Mr. V.S.Kadam, Advocate for respondent No.5

WITH

WRIT PETITIO NO. 10419 OF 2019

1. Surendra Ratanlalji Kasat R/o 'Ramratan' Subhash Road, Beed, District Beed. **... Petitioner**

VERSUS

1. The State of Maharashtra Through the Secretary, Cooperative and Textile, Department, Mantralaya, Mumbai.

2. The Commissioner for Co-operation, And Registrar, Co-operative Societies, Maharashtra State,Pune.

3. The Divisional Joint Registrar Cooperative Societies, Aurangabad.

4. The Liquidator, Parbhani Peoples Cooperative Bank Ltd. Parbhani and District Deputy Registrar, Cooperative Societies, Parbhani

5. Kailash Balaprasadji Ajmera
R/o Vaishnavi, Maharani Laxmibai
Road,New Mondha, Parbhani,
Dist. Parbhani,

Mr Ameya N Sabnis, Advocate for the petitioner,
Mr P.S. Patil, A.G.P. for respondents State

CORAM : S. V. GANGAPURWALA & ANIL S. KILOR, JJ.

RESERVED ON : 23rd September, 2019

PRONOUNCED ON : 8th November, 2019

JUDGMENT (Per Anil S. Kilor J.):

1. The Liquidator of Parbhani People's Cooperative Bank Ltd., Parbhani ('the Bank' for short), auctioned a plot admeasuring 2832.37 sq. mtr. along with a multi storey building standing on it, owned by the Bank. In all these writ petitions, the petitioners are calling in question the legality and propriety of the said auction, mainly on the grounds that the auction conditions were changed in the midst of the auction process, proper procedure was not adhered to , upset price fixed was highly inadequate, a fraud was committed in conduct of auction and there was collusion between the auction purchaser and auctioning authorities. Hence all these petitions are heard together and decided finally with the consent of the parties.

2. Brief facts which would be necessary to deal with

the issues involved in the present matter, are stated hence forward. The Respondent Parbhani People's Cooperative Bank Ltd. is a Cooperative Bank registered under the Provisions of Maharashtra Cooperative Societies, Act, 1960. As a result of alleged mismanagement and financial irregularities, the said bank went into liquidation in the year 2007. The property in question is a plot admeasuring 2832.37 sq. mtr along with multi-storey building standing on it, which was put to auction by the Liquidator. The upset price fixed to the tune of Rs.10,64,97,000/- and approved by the Commissioner, was based on valuation reports of two Government approved valuers and likewise due consideration to market value as per Government ready reckoner, was given.

3. The respondent Liquidator, on 03.05.2019, published E-Tender notice in two leading State level widely circulated newspapers and also published it on the web-page created by E-tendering agency.

4. The auction in question, was held on 28.05.2019. In all five bidders had participated in the said auction including the petitioner in Writ Petition No. 7784/2019. Offer of Rs.12.06 crores of the respondent- highest bidder

Kailash Balaprasadji Ajmera, was accepted by respondent authorities after negotiation. The highest bidder accordingly deposited the auctioned price of the property in question with the Liquidator. Albeit the offer of the petitioner in Writ petition No.7784/2019, was Rs.11,21,21,111/-.

5. This court, vide order dated 27th June, 2019, permitted the respondents authorities including liquidator to carry out further process, however, directed not to issue final allotment order and may not be parted with the property.

6. Shri Salunke, learned counsel appearing for the petitioner in Writ Petition No. 7784/2019, submits that the respondent authorities ought to have held negotiations with all the bidders, but it was exclusively held with the highest bidder, thereupon though he was agreed to pay higher price to the tune Rs.13.17 crores, said offer did not accept.

7. Shri Salunke, further submits that subsequent to publication of the tender notice on 03.05.2019, the terms and conditions of auction were modified and even the place of auction was changed on three occasions.

8. The learned counsel Shri Salunke, points out that it was mandatory that the auction shall be held in the presence of Joint Register, Cooperative Societies, however, the Joint Registrar was not present when the auction was held. Thus, according to him, the authorities did not follow the procedure prescribed as per law and as such the whole auction vitiates.

9. Shri Bramhe, learned counsel appearing for the petitioners in wrt petition No. 9064/2019, supplementary to the contentions of the petitioner in writ petition No.7784/2019, argues that the petitioners are the shareholders of the respondent Bank and the property in question was put to auction behind their back. He submits that the upset price is highly inadequate if compared with the market value prevalent on the date of auction.

10. Shri Bramhe, argues that the property auctioned for Rs.12.06 crores, could have fetched not less than Rs.25 crores. He alleges that the bidders are in relation with each others and the auction was conducted in collusion with respondent Nos.2 and 4 in Writ Petition No.9064/2019. He urges that a fraud has been committed in the auction process.

11. Shri Sabnis, learned counsel for the petitioner in Writ Petition No.104192/19, echoed the stand taken by the petitioners in Writ Petition No.7784/2019 and Writ petition No.9064/2019 and prayed for quashing the auction assailed in this petition.

12. The Petitioners have placed reliance upon following judgments in support of their case.(2008 (9) SCC 299, Valji Khimji Vs. Official Liquidator; (2000) 6 SCC 69, Divya Manufacturing Vs. Union Bank of India; (2005) 5 SCC 274, Union Bank of India Vs. Official Liquidator; AIR 1999 SC 1715, Allahabad Bank Vs. Bengal Paper Mill; and a Judgment of this Court in Aurangabad Zilha Krishi and Auddhyogik Bahuuddeshiya – Sarva Seva Sahakari Sansthacha Sahakari Sangh Maryadit in Writ Petition No.4266/2011 dated 29th November, 2011.

13. Shri P. S. Patil, learned Addl. Government Pleader appearing for the Commissioner, submits that by letter dated 01.04.2019, the Liquidator had submitted a proposal for auction of property of the Bank and requested to grant approval to upset price quoted in the proposal. He points out that, based on the valuation reports of two private Government approved valuers and likewise

considering the market value as per Government ready reckoner, the Commissioner granted permission for auction with the upset price Rs.10,64,17,000/-, vide permission letter dt. 08.04.2019, on certain conditions including the condition to hold negotiations with all the bidders.

14. He further submits that subsequently the said condition of negotiation was modified vide letter dt. 16.5.2019, to the effect that the negotiation shall be held with the highest bidder only. The said condition was modified considering the objection received pertaining to said condition, relying upon a circular of the Central Vigilance Commission dated 25.10.2005. Thus he submits that, there is no illegality committed as alleged in fixing of upset price or modifying the condition of negotiation.

15. Shri S. V. Mundhe, learned counsel, appearing for the respondent- Liquidator, submits that the Liquidator was appointed by the District Deputy Registrar, Cooperative Societies in the year 2007 under the provisions of the Maharashtra Cooperative Societies Act and the Rules. He further submits that the procedure as prescribed under the Act and Rules, are scrupulously

followed and no illegality was committed in fixing the upset price, as alleged.

16. The learned Senior Advocate Shri R. N. Dhorde assisted by learned counsel Mr. V. S. Kadam, for the successful bidder submits that building in question is about 36 years old and because it is unoccupied since 2007, the structure of the building is in dilapidated condition. He submits that looking to these facts the valuers have rightly calculated the price of the property in question, taking into consideration all the necessary factors. Hence according to him the upset price fixed is proper and adequate.

17. He further points out that e-tender notice was issued and it was published in two leading State level widely circulated news papers and notice was pasted at the prominent places in the premises of the head office of the Bank, wherein upset price was disclosed. Thus according to him the petitioners in writ Petition No.9064/2019, who are claiming to be the shareholders of the Bank, were aware about the upset price and also about the fact that the property of the Bank was being put to auction. He further pointed out that notice of auction

was published on 03.05.2019 and the petitioners in Writ Petition No. 9064/2019, have approached to this Court on 17.07.2019 i.e. after two and half months, during which auctioned price was deposited by his client on acceptance of his offer.

18. The learned senior Advocate Mr. Dhorde, has pointed out that being highest bidder he was called for negotiations whereafter he made an offer of Rs.12.06 Corers which was accepted and sale was finalised. The learned senior counsel Mr Dhorde relies on following judgments in support of his case: 2015(10) SCC 94, Vedica Procon Private Ltd. vs. Balleshwar Greens Private Ltd.; 2008(9) SCC 299, Valji Khimji and Company Vs. Official Liquidator; 2000 (1) SCC 633, Duncan Industries Ltd. Vs. State of U.P. and others; 2016 (15) SCC 272, Montecarlo Ltd. Vs. National Thermal Corporation; AIR 2012 SC 2915, M/s Michigan Rubber Ltd. Vs. State of Karnataka and others; 2017 (5) Mh.L.J. 651, D.G.Road Safety Pvt. Ltd. Vs. MSRTC and others; 2014 (2) Mh.L.J. 673, Saj Enterprises Vs. Municipal Corporation Bombay.

19. To consider the rival contentions of the parties, firstly as regards upset price, this Court thought through

the valuation reports to make the realistic appraisal of the factors considered at the time of valuation. In the valuation report submitted by one Mr Sanjay Chandak who is having Education qualification B.E. (Civil) NIE, FIV, he has calculated the Upset price of the property to the tune of Rs.10,64,17,000/- which includes valuation of the land, building and other miscellaneous amenities.

20. In the valuation report of one Mr. Sanjay S. Kapse who is also a Government approved valuer, the Upset price was determined to the tune of Rs.10,59,56,040/- which also includes the cost of land, building and other miscellaneous items like compound wall etc. Both the Government approved private valuers while arriving at a particular price, have considered the property as a commercial property and also taken into consideration various factors including location of the property, type of construction, total area of construction, life of building, future life of construction, guidance rate as per Registrar office etc. The said fact shows that the valuers have taken into consideration all the relevant factors in consideration while fixing the price of the property and nothing contrary was brought to the notice of this Court by the petitioners.

21. The third report of valuation which is based on Government ready reckoner was submitted by the Joint Registrar, Class-II, Parbhani-I who is a Government Valuer and according to him the valuation of the property in question was Rs.6,66,01833/- which also including cost of the plot and building. Valuation reports of private valuers are of March,2019 and of Government Valuer is of February, 2019.

22. In the said backdrop, the contentions of the petitioners that the valuation of the property in the present case is undervalued and highly inadequate cannot be accepted. Moreover nothing contrary is brought on record except an offer of Rs. 13.71 corers, made by one of the petitioners. There is nothing to demonstrate that the property in question could have fetched Rs.25 corers as claimed by the petitioners in Writ Petition No. 9064/2019. Furthermore, the petitioners in the said writ petition neither raised objection to the Upset price on publication of auction notice, nor they brought any buyer before this Court, who is ready to pay Rs.25 corers.

23. In absence of any material to establish alleged inadequacy of upset price fixed, we have arrived at a

conclusion that no illegality is committed by the Commissioner in fixing and granting approval to the upset price to the tune of Rs. 10.64.17.000/-, of the property in question. We, therefore, reject the challenge made to the upset price of the property in question.

24. Now the next question which emerges for our consideration is, whether to reopen the concluded auction proceeding for the reason higher offer is made by one of the petitioners, in respect of sale of property in question.

25. In that regard we will refer to undisputed facts, which are as follows:

The Liquidator, published a notice of auction on 03.05.2019, in two widely circulated newspapers. In all five bidders had participated including the petitioner in Writ Petition No. 7784/2019 who had offered Rs. 11,21,21,111/- whereas the offer of the highest bidder after negotiation was Rs.12.06 corers which was accepted by the Commissioner. The petitioner in W.P. 7784/19 subsequent to acceptance of offer of successful bidder, had raised his offer to Rs. 13.71 corers. No justification put forward by the said petitioner as to why the offer of

Rs.13.71 corers made by him subsequent to acceptance of offer of highest bidder, was not made at the initial stage .

26. In the case of **Vedica Procon Private Ltd.** (supra) cited by the successful bidder, the Hon'ble Supreme Court, after considering and relying upon various judgments, in para 47, has held thus:

> "47. A survey of the above mentioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. the earliest judgment relied upon by the first respondent in Navlakha & Sons laid down the legal position very clearly that a subsequent higher officer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Dviya Mfg. Co. this Court departed from the principle laid down in Navlakha & Sons. We have already explained what exactly is the departure and how such a departure was not justified."

27. In a case of **Royal Medical Trust & another Vs. Union of India & another,** reported in **(2017) 16 Supreme**

Court Cases 605, the Hon'ble Supreme Court has held thus:

> "28. It is well settled in law that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the Court is guided by specific nature of the case, it will not amount to the ratio of the judgment. Lord Halsbury in *Quinn V. Leathem* has ruled : (AC P. 506)
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> "…. every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found."

28. In the light of the judgment in **Royal Medical Trust** (supra), the judgments relied upon by the petitioners in support of their case, are not applicable to the present case and are distinguishable on facts. In the case of **Valji Khimji** (supra) the Hon'ble Supreme court allowed the appeals on the ground that the High Court had committed mistake in considering the assets proposed for auction as scrap and valuation of the

property was substantially inadequate. However In the present case this court has arrived at a conclusion as observed above that upset price fixed to the tune of Rs. 10.64.17.000/-, was adequate. Thus, the said judgment in **Valji Khimji** (supra) will not apply to this case and the same is distinguishable for the above said reasons.

29. In the case of **Divya Manufacturing** (supra), the facts are that from Rs.73 lakhs, the offer was increased up to Rs.2 crores from which the Court had came to the conclusion that price earlier offered was highly inadequate. In case of **Divya Manufacturing** (supra), the price was increased by five times. In the present case the subsequent offer of Rs. 13.71 corers is not even double the accepted offer of Rs. 12.06 corers, therefore, this judgment is not applicable to the present case.

30. In the case of **Union Bank of India** (Supra), the facts were different. In the said matter, valuation report was kept secret as confidential document and it was not disclosed to the Bank and therefore, the Bank was not in position to raise any objection. In the said case also, it was observed that in the price offered at the first instance and the price offered subsequently, there was

vast difference, and therefore, looking to the irregularities, the Hon'ble Supreme Court allowed the appeal. In present case the facts are different, therefore, the said judgment is not applicable to this case.

31. In case of **Allahabad Bank**(Supra) again the valuation report was not disclosed and in comparison with the valuation of Rs.6,22,16,875/- it was noticed that the market value of the said property was three times more than the offer made and thus on the ground of inadequate price, non disclosure of valuation report and for non fixing the reserved price, the Hon'ble Supreme Court allowed the appeal. However, Such irregularities or lacunas are not there in the present matter, therefore, the said judgment is not applicable to the facts of the present case.

32. As far as case of **Aurangabad Zilha Krishi and Auddhyogik Bahuuddeshiya – Sarva Seva Sahakari Sansthacha Sahakari Sangh Maryadit** (supra), is concerned, the same is also distinguishable in view of the facts of the said case particularly the facts that the amount offered was Rs.73 lakhs whereas the property could have fetched minimum

Rs.1.51 corers which is double the price offered in the said matter.

33. After careful consideration of judgments cited by both the parties referred supra, broadly the principles or the safeguards for confirmation of sale of property under liquidation, which are emerged and to be checked, are as follows:

(a) Whether the auctioning authority gave adequate publicity of the auction in well known (at least in two) newspapers (one English and one vernacular) having wide circulation.

(b) Whether the valuation report of the property put to auction, was disclosed to the concerned company/ bank/ society etc., under liquidation.

(c) Whether the adequacy of Upset price having regard to the market value of the property, prevalent on the date of auction, was considered.

(d) Whether the offer is reasonable and adequate having regard to the valuation of the property after making realistic appraisal of the necessary factors.

(e) Whether any fraud committed in auction process or there was any collusion between the auctioning authorities and highest bidders

34. In view of law laid down in the case of **Vedica Procon Private Ltd.** (Supra) and above referred principles and safeguards emerged from various judgments, we have no hesitation to hold that If all the said principles and safeguards are satisfied and if there is nothing to suggest any collusion or fraud, the auction proceeding may not be reopened only on the ground that subsequent to the finalization of the auction slightly higher offer is received, than the auctioned price to the sale of the property in liquidation. Thus, in view of the fact that except allegation of fraud and collusion, no evidence in that regard brought on record by any of the petitioners, we are of the considered view that this is not a fit case to reopen the auction proceeding only because slightly higher offer is made by one of the petitioners than the auctioned price.

35. Next point in respect of the change of condition relating to negotiation is concerned, it is clear from the facts that the objection was raised to the said condition. Accordingly the said condition was modified in view of Circular of the Central Vigilance Commission, dated 25.10.2005 which envisages that “there should not

be any negotiations. Negotiation if at all shall be an exception and only in the case of proprietary items or in case of items with limited source or supply. Negotiations shall be held with L-1 only. Counter offers tantamount to negotiations and should be treated at par with negotiations". Hence, we do not find any illegality in modification of condition of negotiation to the effect that to hold negotiation only with the highest bidder instead of with all the bidders.

36. On modification of said condition of negotiation, the time period was extended upto 24.05.2019 from 17.5.2019. It is also clear from the facts that the petitioners in writ petition No.7784/2019, submitted his offer on 24.05.2019. Thus on the date of submission of offer, the petitioner was aware of modified condition and inspite of the same he did not raise any demure to modified condition and participated in auction.

37. It is now well settled law that the conditions of tenders cannot be challenged once participated. In the cases of **Montecarlo Ltd., M/s Michigan Rubber Ltd, D.G. Road Safety Pvt. Ltd.** and **Saj Enterprises** (supra) the Hon'ble Supreme Court has held that the tender conditions

cannot be allowed to challenge once participated. In the given facts and circumstances of present case the said well recognised principle is squarely applicable to the present case. Thus we hold that it is not open for the petitioner in Writ Petition No. 7784/2019 to challenge the conditions of auction in question, particularly when he participated in auction process without any demur.

38. As far as the place of auction is concerned, it was submitted by the learned counsel for the respondent-Liquidator that Head office of the Bank is at Parbhani and the auction was held at the Head Office. Earlier message/notice of place of auction was subsequently corrected and the auction was held at the head office at Parbhani. In that regard the petitioners have not pointed out what prejudice has been caused to them because of alleged change of place of auction or because of holding of auction at the head office of the Bank at Parbhani. In absence of any pleadings to that effect we find no merit in the said contention of the petitioner hence the same is rejected.

39. Further the contention of the petitioners that the Joint Registrar was not present at the time of auction,

therefore, the auction vitiates, the said contention cannot be accepted in absence of any such mandatory condition brought to the notice of this Court by the petitioners.

40. As far as contentions of the petitioner in Writ Petition No. 9064/2019, that the auction was held behind their back, is concerned, the same needs to be rejected for the simple reason that notice of auction was published in two well known English as well as Marathi language newspapers having wide circulation in the area of operation of the Bank. Thus, it is difficult to accept that none of the petitioners were aware about the auction. Hence the said contention is rejected.

41. In the above backdrop of discussions made above, we are of the considered view that the petitioners are miserably failed to establish and substantiate any of the points raised before this Court. This Court has, therefore, reached to the conclusion that no illegality has been committed by respondent authorities in the auction process assailed by way of present writ petitions, as such, the writ petitions are deserved to be dismissed and accordingly the same are dismissed with no order as to

costs.

42. The order dated 27.06.2019, granting ad-interim relief, stands vacated in view of dismissal of writ petitions.

43. Rule stands discharged.

(ANIL S. KILOR, J.) (S.V.GANGAPURWALA, J.)

JPC

44. At this stage, learned counsel for the petitioners prayed for stay to the present judgment for a period of four weeks. Learned counsel for the respondents opposed the said request.

45. In view of the request made by the petitioners, the effect of the present judgment is stayed for two weeks from today. Needless to mention that on an expiry of period of two weeks, the stay would stand automatically vacated.

(ANIL S. KILOR, J.) (S.V.GANGAPURWALA, J.)

JPC