

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

WRIT PETITION NO.9455 OF 2021

1. Rameshwar s/o Tukaram Raut
Age : 53 years, Occu: Agri,
R/o. Harshi, Tq. Paithan, Dist. Aurangabad.
2. Kadubai w/o Rameshwar Raut
Age : 48 years, Occu: Household,
R/o. Harshi, Tq. Paithan, Dist. Aurangabad. **... PETITIONERS**

VERSUS

1. The State of Maharashtra,
through the Divisional Joint Registrar,
Cooperative Societies Aurangabad,
Near Kranti Chowk Adalat Road, Aurangabad.
2. The Special Recovery Officer,
Shivaji Nagar Sahakari Bank Ltd. Paithan,
Tq. Paithan, Dist. Aurangabad.
3. Mhatarba s/o Tulshiram Toge
Age : Major, Occu: Agri
4. Shivaji s/o Laxman Wagh
Age : Major, Occu : Agri,
Both Respondent Nos.3 and 4
R/o. Harshi, Tq. Paithan,
Dist. Aurangabad. **... RESPONDENTS**

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Advocate for Petitioners : Mr. B.R. Kedar
AGP for Respondents/State : Mr. P.N. Kutti
Advocate for respondent No.2 : Mr. S.S. Thombre

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CORAM : MANGESH S. PATIL, J.
Reserved on : 26.11.2021
Pronounced on : 30.11.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP waives service for the respondent No.1. The learned advocate Mr. Thombre waives service for respondent No.2.

2. The petitioners are taking exception to the order passed by the District Deputy Registrar fixing upset price for their properties sought to be sold pursuant to a recovery certificate issued in favour of the respondent No.2 under Section 101 of the Maharashtra Cooperative Societies Act, 1961 and the rules framed thereunder (hereinafter the Acts and the Rules). They are also aggrieved by rejection of their revision by the respondent No.1 preferred under Section 154 of the Act.

3. The learned advocate Mr. Kedar for the petitioners submits that an amount of Rs.5,25,577/- was due from the petitioners. By misusing the cheques tendered as a security for repayment of the loan, the respondent No.2 Society has also prosecuted the petitioners under Section 138 of the Negotiable Instruments Act and simultaneously proceeded to obtain the recovery certificate. He would submit that the whole process that has been undertaken for fixing upset price is flawed and biased. Though the lands of the petitioners are irrigated one and a canal passes through it, valuation has been done treating those to be dry lands. The market value of the lands is at least 200% more than the upset price. A land in the vicinity of the petitioners land has been acquired by the Government and a huge compensation of more than Rs.3 crore has been awarded for a 19 Are

portion. Even there is a sale deed in respect of the agricultural land from the same village which has been sold for an amount of Rs.10 lakh for one Acre. The petitioners had tendered their own valuation duly certified by an approved valuer certifying the valuation to be more than Rs.37 lakhs. The Government Valuer whose report has been referred to has also valued the petitioners properties at more than Rs.19 lakhs. There is absolutely no reason assigned by the authorities for fixing the upset price less than such valuation certificate of Mr. N.G. Karkhane. Without their being sufficient and cogent material and overlooking the material that was placed by the petitioners before them, the upset price has been fixed at a grossly low rate of barely Rs.15 lakhs and odd. The orders are perverse and arbitrary and may be quashed and set aside.

4. The learned AGP and the learned advocate for the respondent No.2 submit that there is no error in fixing the upset price. They would refer to the provision of Rule 107 of the Rules to point out that the upset price has been duly fixed by resorting to the provisions.

5. I have considered the rival submissions and perused the papers including the impugned order. At the outset, it is necessary to reiterate that the petitioners are seeking to invoke writ jurisdiction of this Court, the scope of which is circumscribed by well settled norms. In exercise of such jurisdiction, this Court cannot enter into the realm of disputed questions of facts nor can it sit in appeal to examine legality or otherwise of the orders under challenge.

6. This is what seems to be happening in the matter in hand. The petitioners are calling upon this Court to enter into the factual dispute as to the valuation of their properties under distress. True it is that they seem to possess a report of a valuer, a sale deed of one land from the same village and some other material. However, it was for them to have produced such record before the upset price was fixed by the District Deputy Registrar and also before the respondent No.1 to whom they had preferred a revision under Section 154. No plausible explanation is coming forth as to why and how such sale deed that was available with them was not produced before the authorities.

7. True it is that the valuation certificate obtained by them privately was produced before the District Deputy Registrar, however, the District Deputy Registrar has refuted it by holding that it does not take into consideration the distress value. The reasoning given by him in discarding the report cannot be said to be wholly perverse or arbitrary.

8. If such is the state of affairs, when it is a matter of a judgment to be reached on the basis of the material that was available before the authorities and both of them have taken a plausible view based on the material available before them, I find no perversity or arbitrariness in their fixing the upset price which may not be palatable to the petitioners.

9. True it is that the impugned orders do not fix the upset price according to the Government Valuer Mr. N.G. Karkhane, and there is no sufficient ground given by the District Deputy Registrar as to why the upset

price could not be fixed as per such valuation. At the most, therefore, to this extent, the petitioners are entitled to succeed in fixing the upset price as per the valuation certificate of Mr. N.G. Karkhane which values the suit properties at Rs.19,35,000/-.

10. Though an attempt is made to demonstrate that some land from the village has been acquired by the Government, no such evidence was produced before the authorities below and none is produced even in the present petition. In view of the above state of affairs, in my considered view, the petitioners in substance fail and are not entitled to get any relief except that the upset price can be directed to be fixed at Rs.19,35,000/-.

11. The Writ petition is partly allowed. The upset price of the petitioners properties is fixed at Rs.19,35,000/-. The impugned orders are modified by fixing the upset price of the petitioners' properties at Rs.19,35,000/-.

12. The Rule is made absolute in the above terms.

(MANGESH S. PATIL, J.)