

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9751 OF 2022**

Vikas Ratnakar Deobhankar
Age: 55 years, Occ.: Business,
R/o: House No.1485, Galli No.2,
Navagrahi, Dhule, Dist. Nandurbar ..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Co-operation, Marketing and Textiles,
Mantralaya, Mumbai-32.
2. The Commissioner for Co-operation
and the Registrar of Co-operative Societies,
2nd Floor, New Central Building,
Ambedkar Wellesly Road,
Pune-411 001.
3. The District Deputy Registrar,
Co-operative Societies, Dhule,
Dist. Dhule.
4. The Deputy Registrar,
Co-operative Societies, Dhule,
Dist. Dhule.
5. The Special Recovery Officer,
Dhule District Co-operative Credit,
Banks, Dist. Co-operative Federation Ltd.
Dhule, Dist. Dhule.
6. Shree Samarth Sahakari Patpedhi Maryadit,
Dhule, Dist. Dhule (Under Liquidation)
Through its Liquidator,
Head Office-1199, Shree Samarth Bhavan,
Nagarpatti, Dhule, Taluka & Dist. Dhule.
7. Prakash Ratnakar Deobhankar,
Age: 57 years, Occ: Business.
8. Nita Prakash Deobhankar,
Age: 53 years, Occu: Household.

9. Smita Ratnakar Deobhankar,
Age: 47 years, Occ: Household.

10. 7 to 9 R/o: House No.1485,
Galli No.2, Navagrahi,
Dhule, Dist. Dhule. ..Respondents

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Mr. Amit S. Savale, Advocate for the Petitioner.

Mr. A. B. Chate, AGP for Respondents-State.

Mr. Pramod S. Gaikwad, Advocate for Respondent
No.6.

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CORAM : S. G. DIGE, J.

DATED : 29th SEPTEMBER, 2022.

JUDGMENT (Per: S. G. Dige, J.):-

1. Rule. Rule made returnable forthwith.
With the consent of the parties, matter is taken up
for final hearing at the admission stage.

2. The challenge in this petition is
legality, validity and correctness of the order
dated 20.06.2022 passed by the District Deputy
Registrar, Dhule fixing erroneous upset price of
the writ property of the petitioner under Rule
107(11) of the Maharashtra Cooperative Societies
Rules, 1961 (hereinafter referred to as 'the
Rules') without giving an opportunity of being
heard to the present petitioner.

3. Brief facts of the case are as under:

In the year 2005, the brother of the
petitioner obtained loan from respondent no.5-
Cooperative Bank. The present petitioner stood as

guarantor. The brother of the petitioner failed to repay the loan. Hence, recovery certificate was issued against the petitioner to the tune of Rs.8,10,643/-.

The Chief Executive Officer of respondent no.5-Bank made a proposal dated 02.02.2017 to the District Deputy Registrar for fixing upset price of the writ property i.e. Plot No.41 out of survey no.3/1A+1B i.e. CTS No.1485/2 admeasuring 30.06 sq.mtr situated at Dhule-2, District Dhule, which was fixed at Rs.84,76,000/-. The respondent no.5 Bank went into liquidation.

On 16.09.2018 another notice of auction was published in local newspaper according to which the upset price of writ property of the petitioner was again fixed at Rs.84,76,000/-.

On 11.12.2020 another valuation report came to be prepared by the another valuer of the same writ property. The Special Recovery Officer of respondent no.6-Bank approached respondent no.3 again with the proposal for the fixation of upset price of the property of the petitioner at Rs.41,39,000/-.

On 16.03.2021, respondent no.3 issued a notice calling upon the present petitioner and others to remain present for hearing for the purposes of fixation of the upset price.

On 26.03.2021, the petitioner caused his appearance through his Advocate. The Advocate for

the petitioner asked for the copy of the valuation report and the same was given to the Advocate of the petitioner. Thereafter, matter was fixed on 15.04.2021.

On 12.10.2021, the Advocate for the present petitioner had gone out of station. The respondent no.3 directed the present petitioner and other co-borrowers to place documents with respect to the upset price up till 20.10.2021 till 4 p.m. and the matter was closed for order. Thereafter, respondent no.3 did not pass any order for another 8 months and thereafter, the impugned order is passed fixing upset price at Rs.41,39,000/-. Against the said order, this Writ Petition.

4. It is contention of the learned counsel for the petitioner that, initially upset price of the writ property was fixed at Rs.84.76,000/-, but now by the impugned order it is fixed at Rs.41,39,000/-. No proper opportunity of hearing was given to the present petitioner while deciding the upset price. Hence, requested to allow the Writ Petition. He relied upon the following judgments:

1. **Uttar Pradesh Power Transmission Corporation Limited and Another Vs. CG Power and Industrial Solutions Limited and Another** reported in (2021) 6 Supreme Court Cases 15.
2. **Whirlpool Corporation Vs. Registrar of Trad Marks, Mumbai and Others** reported in AIR 1999 Supreme Court 22.

5. It is contention of the learned counsel for respondent no.6 that, the petitioner has alternate remedy. Hence, the writ petition of the petitioner is not maintainable. The learned counsel further submits that, on two occasions writ property was tried to be sold through auction, but it is failed. No one is ready to purchase the writ property due to the interference of the present petitioner. The upset price is fixed as per the valuation report and after giving proper opportunity to the present petitioner. Hence, requested to dismiss the Writ Petition.

6. I have heard both the learned counsel.

7. The issue involved in this writ petition is whether proper opportunity of hearing was given to the present petitioner or not. The petitioner has admitted that, he had received notice dated 16.03.2021 issued by respondent no.3 calling upon the present petitioner and others to remain present for hearing for the purposes of fixation of the upset price. Thereafter, the matter was adjourned on 26.03.2021. On that day the Advocate for the present petitioner asked for the copy of valuation report and other documents and the same was given to the Advocate of the petitioner. Thereafter, matter was adjourned to 15.04.2021. Thereafter, on 12.10.2021, respondent no.3 directed the present petitioner and other co-borrowers that they should place the documents with respect to the upset price

up till 20.10.2021 till 4 p.m. and the matter was closed for order. It shows that, proper opportunity of hearing was given to the present petitioner before deciding the upset price of the writ property. Delay of 8 months for passing the order does not mean that, no proper opportunity of hearing was given to the present petitioner.

8. I have gone through the case laws relied by the learned counsel for the petitioner. The facts of the cited cases and the case in hand are different, as in the present case, it appears from the record that proper opportunity of hearing was given to the petitioner.

9. In view of the above, Writ Petition is dismissed.

10. Rule is discharged.

(S. G. DIGE)
JUDGE