IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2975 OF 2019
WITH
CIVIL APPLICATION (CAW) NO.55 OF 2022
WITH
CIVIL APPLICATION (CAO) NO.53 OF 2022
IN
MISC. CIVIL APPLICATION ST. NO.9662 OF 2021
IN
WRIT PETITION NO.2975 OF 2019

Jitendra N. Jain
Aged about 50 yrs.
Occ. Civil Engineer and
Government Contractor,
R/o Chaitanyawadi Shahu Nagar,
Near Raut Mangal Karyalaya,
Buldhana 443 001 (M.S) … Petitioner

-vs-

1. State of Maharashtra
through its Secretary,
Department of Co-operation, Marketing
and Textile, Mantralaya, Mumbai 32.

1A. Under Secretary and Joint Registrar,
Government of Maharashtra,
Department of Co-operation, Marketing
and Textile, Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032

2. The Commissioner,
Co-operation and Registrar,
Co-Operative Societies, Maharashtra State,
2nd Floor, New Central Building,
Ambedkar Wellesly Rd, Pune,
Maharashtra 411001

3. Buldhana District Co-operative Agricultural
Rural Multipurpose Development Bank Ltd.
Buldhana Bank through Liquidator and
District Deputy Registrar, Co-operative
Societies, Buldhana

4. Swastik Shops & Flat Owners Co-operative
   Housing Society Ltd., Registration No.379,
   Gurukunj Housing Society,
   Malkapur Road, Buldhana, Through its President … Respondents

WITH
WRIT PETITION NO.7513 OF 2019

Dwarka Bahuuddeshiya Gramin
Vikas Foundation, Buldhana
through its President Dhrupatrao Bhagwan
Sawale, Aged about 64 years,
Occupation Agriculturist & Social Worker,
R/o Chaitanyawadi, Near Aided High School,
Buldhana … Petitioner

-vs-

1. State of Maharashtra
   through its Secretary,
   Department of Co-operation, Marketing
   and Textile, Mantralaya, Mumbai 32.

2. The Commissioner,
   Co-operation and Registrar,
   Co-Operative Societies, Maharashtra State,
   2nd Floor, Near Central Building,
   Ambedkar Wellesly Rd, Pune,
   Maharashtra 411001

3. Buldhana District Co-operative Agricultural
   Rural Multipurpose Development Bank Ltd.
   Buldhana Bank through Liquidator and
   District Deputy Registrar, Co-operative
   Society, Buldhana

4. Swastik Shops and Flat Owners Co-operative
   Housing Society Ltd., Registration No.379,
   Gurukunj Housing Society,
   Malkapur Road, Buldhana,
   Through its President … Respondents

Shri R. M. Sharma, Advocate for petitioner in WP No.2975/2019.
Shri A. Madiwale, AGP for respondent Nos.1 to 3 in WP No.2975/2019 and for respondent Nos.1 to 3 in WP No.7513/2019.
Shri A. Parchure, Advocate for respondent No.4 in both Writ Petitions.

Shri R. J. Kankale, Advocate for Intervenor in WP No.2975/2021.
Shri S. A. Mohta, Advocate for applicant in WP No.2975/2021 with MCA St.9662/2021.
Shri A. M. Ghare, Advocate and Shri A. A. Kathane, Advocate for petitioner in WP 7513/2019.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATE : January 21, 2022

Common Judgment (Per A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

The question that arises for consideration in these writ petitions is whether it is open for the tendering authority to unilaterally reduce the upset price quoted in the tender notice ?

The facts giving rise to the aforesaid question are that the Buldhana District Co-operative Agricultural Rural Multipurpose Development Bank Ltd. (for short, the Bank) which is a Society registered under the Maharashtra Co-operative Societies Act, 1960 owns property admeasuring approximately 30000 square feet with construction thereon situated at Plot No.7/2, Chaitanyawadi, Buldhana. The Bank is under liquidation and the District Deputy Registrar, Co-operative Societies, Buldhana is functioning as the Liquidator. The Wardhman Urban Co-operative Credit Society Ltd. Buldhana (for short, the Society) is stated to be in possession of approximately 97.24 square meters of that land pursuant to an agreement dated 20/10/2012. The duration of that agreement is for the period from 01/08/2011 to 31/07/2014. In liquidation proceedings it was proposed to sell plot No.7/2. The Bank through the Liquidator issued a tender notice on 19/09/2017 inviting bids from persons interested in purchasing said land admeasuring about 30000 square feet alongwith construction thereon. The upset price fixed for the sale of aforesaid land was Rs.15,01,58,000/-. Since there was no response to this tender notice, the Liquidator issued another notice on 6-7/11/2017. The upset price as stated in the first tender notice was maintained. In absence of any response to this notice too, the Liquidator on 16/12/2017 issued a third tender notice proposing to sell the aforesaid land and quoted the same upset price. Swastik Shops & Shop Owners Co-operative Housing Society Ltd. Buldhana (for short, the Housing Society) indicated willingness to purchase the aforesaid property and accordingly submitted its bid for an amount of Rs.5,51,11,111/-. The bid submitted by the Housing Society was less than the upset price. Since no decision was being taken on the said bid submitted by the Housing Society, it had approached this Court in Writ Petition No.8450/2018. This Court on 21/01/2019 directed the State Co-operation Department to take a decision on the proposal submitted by the Liquidator in that regard. On 31/01/2019 the Joint Registrar, Cooperative Societies, Maharashtra State issued a communication to the Commissioner of Co-operation and Registrar, Co-operative Societies, Pune stating that the proposal submitted by the Bank was acceptable to the State Government and further decision in the matter to be taken in the light of the Government decision dated 24/07/2015. The Commissioner of Co-operation on 15/02/2019 directed the District Deputy Registrar to take further steps in the matter. Acting on this communication the Liquidator issued a communication to the Housing Society on 16/02/2019 stating therein that the offer made by it for purchasing the property in question for Rs.5,51,11,111/- was accepted subject to certain conditions.

The order dated 31/01/2019 passed by the Secretary, Cooperation Department is the subject matter of challenge by Dwarka Bahuddeshiya Gramin Vikas Foundation, Buldhana, a registered public trust (for short, the Trust) through its President in Writ Petition No.7513/2019 as it is also interested in purchasing the aforesaid property. The subsequent communication dated 16/02/2019 accepting the bid of the Housing Society is the subject matter of challenge in Writ Petition No.2975/2019 that has been preferred by the Chairman of the Society.

2. When Writ Petition No.2975/2019 was considered for admission, the statement made on behalf of the Chairman of the Society that the Society was prepared to hand over vacant possession of 3000 square feet land to the Bank was accepted as an undertaking to the Court. Thereafter this writ petition was directed to be heard along with Writ Petition No.7513/2019. During pendency of the proceedings two intervention applications were filed in Writ Petition No.2975/2019. The Chairman of the Society has subsequently filed Civil Application No.1453/2019 for modification of the order dated 29/04/2019 by stating that subject to vacating the premises, the Society be permitted to participate in the auction process. On instructions from the

petitioner in Writ Petition No.2975/2019 it is stated that the Society would hand over vacant possession of the premises with it within a period of three weeks from today. Civil Application No.1225/2019 has been preferred by two applicants who claim that they alongwith various other employees have to recover the amounts due to them from the Bank which is under liquidation towards arrears of salary and gratuity. Though this Civil Application was dismissed on 02/07/2021 by granting liberty to the applicants to lodge their claim with the Official Liquidator, MCA Stamp No.9662/2021 has been filed for review of that order. Civil Application No.55/2022 has been preferred by 34 applicants who claim that they have been deprived of their retiral benefits which were due and payable by the Bank to them.

3. The principal challenge raised in these writ petitions is that despite the fact that the upset price fixed for the sale of the property in question was indicated to be Rs.15,01,58,000/-, the offer made on behalf of the Housing Society for an amount of Rs.5,51,11,111/- came to be accepted. Such acceptance was not permissible since the amount offered was much less than the upset price quoted. The upset price had been fixed on the basis of the value of the property in question and therefore the property could not have been permitted to be sold at a price which was lower than its value. The grievance raised is that if the Liquidator intended to accept a bid lower than the upset price quoted in the tender notice, there ought to have been a notice

to the public at large to enable the property to be sold at a higher price through competitive bidding.

4. In the reply filed on behalf of the Liquidator it has been stated that though the tender notice mentioned the upset price to be 15,01,58,000/- it was subsequently found that this upset price was fixed on the basis of the incorrect value quoted in the ready reckoner. The Liquidator therefore undertook independent valuation of the property and it was found that the value of the property was actually Rs.5,36,00,000/-. It was thereafter valued by the Government approved Valuer for Rs.5,43,58,000/- and thus the bid of the Housing Society was entertained.

5. On behalf of the Housing Society it has been stated that the price quoted by it in its bid was much higher than the value of the property as per the ready recknor. The Housing Society had deposited the earnest amount of Rs.7,50,000/- initially. Further, acting upon the permission granted to the sale of the said property on 16/02/2019, on 21/02/2019 an amount of Rs.75,00,000/- was deposited and on 12/03/2019 the balance amount of Rs.4,68,61,111/- came to be deposited. It is urged that such deposit was made pursuant to the communication dated 31/01/2019 by the State Government and thereafter on 16/02/2019 by the District Deputy Registrar. Having invested such huge amount pursuant to the tender notice, it would not

be just and equitable to now interfere with the orders impugned in the writ petition.

6. The learned counsel for the intervenors submit that the applicants being employees of the Bank they are interested in recovering the amounts due and payable to them from the Bank which is under liquidation. Sale of the property in question at a lower rate than its market value would definitely prejudice the rights of various claimants and creditors.

7. We have heard the learned counsel for the parties and we have gone through all the relevant documents relied upon by them in the proceedings. After giving due consideration to the respective submissions, we are of the view that the entire exercise undertaken pursuant to issuance of the tender notice dated 16/12/2017 is liable to be set aside for more than one reason.

It is undisputed that land admeasuring 30000 square feet owned by the Bank under Liquidation was proposed to be sold by public auction. The Society is in occupation of about 97.24 square meters of land on the basis of an agreement, the validity of which has expired on 31/07/2014. In tender notices dated 19/09/2017, 6-7/11/2017 and 16/12/2017 the upset price of the property to be sold was quoted as Rs.15,01,58,000/-. Clause 22 of the tender notice reads thus :

22. Bids cannot be submitted by a consortium and Bids cannot be submitted *below base/upset price which is fixed for Rs.1501.58 lacs for the property at Buldana (i.e. land + building at Buldana).*

The record indicates that the Housing Society was the only bidder which had quoted an amount of Rs.5,51,11,111/- in response to the tender notice. It is obvious that the bid of the Housing Society was not a valid bid at all in view of the condition imposed by Clause 22 that no bid below the upset price could have been submitted. It is thus clear that pursuant to the third tender notice dated 16/12/2017 no valid bid quoting at least the upset price was received. The only course open was thus to issue a fresh tender notice. All further action taken after the bid of the Housing Society was submitted was unnecessary and not permissible in terms of the tender notice itself.

8. We may in this regard refer to the decision of the Honourable Supreme Court in ***Anil Kumar Srivastava vs. State of UP AIR 2004 SC 4299*** wherein the concept of valuation and upset price has been considered. In paragraphs 11 and 12 it has been held as under :

" 11. Before coming to the above challenge, we would like to examine the concepts of 'valuation' and 'upset/reserve price'. In the case of McManus v. Fortescue & another reported in (1907 Vol.II KB page 1) it has been held by Court of Appeal that in a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact, that the sale is subject to a reserve, that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that amount is equal to or higher than the reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the

> *upset/reserve price. That he could refuse the bid which is below the upset price".*
>
> *12. " The aforestated ruling explains the meaning of the term 'reserve price'. It indicates the object behind fixing the reserve price viz. to limit the authority of the auctioneer ……."*

It has been explained that the term "upset price" means the lowest selling price or the reserve price. The sale has to commence at the higher price and in the absence of bidders it has to be progressively brought down till it reaches the upset price. From the aforesaid it is clear that having indicated the lowest selling price in the tender notice, there was no occasion for the liquidator to have even considered the bid of the Housing Society ignoring Clause 22 of the tender notice.

9. The Liquidator has sought to justify the acceptance of the price of the land quoted by the Housing Society on the premise that the valuation of the property was incorrectly made and after correcting that mistake the bid of the Housing Society was found to be proper. It may be possible that the property proposed to be sold was incorrectly valued resulting in a higher upset price been fixed. However after obtaining the revised value of the property, a fresh auction notice ought to have been published indicating the reduced upset price than what was indicated in the earlier notices. This has admittedly not been done. Thus interested bidders who were dissuaded by the upset price quoted in the three tender notices did not have an opportunity to participate

in the auction in the absence of knowledge that the upset price would be subsequently reduced. The unilateral reduction of the upset price resulted in not granting any opportunity to such prospective bidders to submit their bids after reducing the upset price. The prejudice is too obvious to be stated.

If the upset price was to be modified after receipt of the bids, such stipulation ought to have been made in the tender notice which is conspicuously absent. Thus in absence of due public notice it was not permissible for the Liquidator to accept a bid which quoted a price much lower than the upset price. The impugned action permitting acceptance of the bid quoting a lower price for the property in question has also caused prejudice to the parties who are interested in recovering their claim from the Bank. Thus, acceptance of the bid of the Housing Society which quoted an amount that was approximately 1/3rd of the upset price is not sustainable in law.

10. We find that a somewhat similar issue was considered by learned Single Judge (Dr. D. Y. Chandrachud, J., as his Lordship then was) in ***Smita Janak Thacker vs. The Commissioner 2002 (2) MhLJ 44***. Here too, a bid quoting a price lower than the upset price came to be accepted. Noting this aspect it was observed in paragraph 15 as under :

> " *15. In the present case, at every stage, the process of auction has taken place in defiance of well established principles and procedures. The upset price which had initially been fixed at Rs.55.42 lakhs on 15^{th} October, 1997 had been reduced subsequently to Rs.51.12 lakhs. When the auction sale*

came to be conducted on 15th September, 1999, the upset price which had been fixed was Rs.51.12 lakhs. The bid which was submitted by the petitioner in the amount of Rs.37.01 lakhs, even if it was the highest bid, was lower than the upset price. Notwithstanding this, the bid which was submitted by the petitioner was accepted and on the basis of the bid submitted by the petitioner, a request was made by the Special Recovery Officer to the District Deputy Registrar to reduce the upset price from Rs.51.12 lakhs to Rs.37.01 lakhs. Such a procedure is ex-facie arbitrary. The upset or reserved price at an auction must be fixed and determined before the commencement of the auction process. Once the auction has been held on the basis of the upset price which is determined prior to the commencement of the auction, the process would be susceptible to grave public danger if the officers of the Co-operation Department were to be permitted to seek a reduction in the upset price thereafter because the highest bid did not measure upto the upset price. ….”

After finding the conduct of the respondents therein to be unsatisfactory it was further observed in paragraph 19 as under :

“19. ….. In conducting public auctions, it would be necessary for the Respondents to observe a greater degree of probity and regularity than has been demonstrated in the facts of the present case. For one thing, the Respondents must ensure in future that the upset price is determined prior to the auction and that once the upset price is fixed, a bid which does not measure upto the upset price is rejected. The procedure of accepting the highest bid if it is below the upset price and thereafter seeking the sanction of a higher authority for reduction in the upset price is arbitrary and illegal. Once a reserved or upset price is fixed, that price must necessarily be the governing price for the purposes of evaluating the bids which are received at the ensuing auction. ...”

We are in respectful agreement with the aforesaid observations.

11. For aforesaid reasons we are convinced that the order dated 31/01/2019 issued by the Joint Registrar, Co-operative Societies, Maharashtra State approving the sale of the land in question pursuant to the bid of the Housing Society as well as the consequential communication dated 16/02/2019 issued by the Liquidator to the Housing Society accepting its bid are liable to be set aside. Having found that the conduct of auction by the Liquidator was contrary to settled principles of law, the further course of action to be undertaken will have to be considered. The auction that was undertaken pursuant to the notice dated 16/12/2017 will have to be set aside. Fresh auction will now have to be held by the Liquidator. It is seen from the record that the Housing Society whose bid was accepted had paid the earnest amount of Rs.7,50,000/- on 21/02/2019. Thereafter, the balance amount was paid in two phases of Rs.75,00,000/- and Rs.4,68,61,111/- thus totalling Rs.5,51,11,111/-. This amount is lying with the Liquidator. While the earnest amount would have to be refunded in accordance with Clause 17 of the tender document, the balance amount of Rs.5,43,61,111/- will have to be returned to the Housing Society. The said deposit of this amount was pursuant to the orders dated 31/01/2019 and 16/02/2019 which have been found to be bad in law. In the facts of the case, the interests of justice would be met by directing refund of Rs.5,43,61,111/- with interest at the rate of 5% per annum to be paid by the Bank through the Liquidator. The directions proposed to be issued would protect the interests of the proposed intervenors and hence no

separate orders are required to be passed on their applications.

12. Accordingly the following order is passed :

(i) The order dated 31/01/2019 issued by the Joint Registrar, Co-operative Societies, Maharashtra State approving the sale of the land in question pursuant to the bid of the Housing Society impugned in Writ Petition No.7513/2019 as well as the consequential communication dated 16/02/2019 issued by the Liquidator/District Deputy Registrar Co-operative Societies, Buldhana to the Housing Society accepting its bid impugned in Writ Petition No.2975/2019 are set aside.

(ii) The District Deputy Registrar, Co-operative Societies, Buldhana shall first obtain the correct market value of the property to be auctioned. The Liquidator shall thereafter issue a fresh auction notice proposing to offer for sale such property owned by the Bank in accordance with law. The tender notice shall indicate the upset price based on such valuation.

(iii) Since the Housing Society has deposited an amount of Rs.5,51,11,111/- with the Liquidator pursuant to the order dated 16/02/2019, the Liquidator shall refund the amount of Rs.5,43,61,111/- to the Housing Society with interest at the rate of 5% per annum. The earnest amount of Rs.7,50,000/- shall be refunded in accordance with Clause 17 of the tender document.

(iv) The Wardhaman Urban Cooperative Credit Society Ltd., Budhana through its Chairman shall abide by the undertaking given to this Court in Writ Petition No.2975/2019 as has been recorded in the order dated 22/04/2019. The Society shall deliver possession of whatever land that is in its possession to the Liquidator within period of three weeks from today. It would be open for the said Society to participate in the auction to be held.

(v) Since the Intervenors seek expeditious steps to be taken for recovery of their dues/participate in the auction to be held, their interests are protected by the aforesaid order.

Rule in both the writ petitions are accordingly disposed of with aforesaid directions. All Civil Applications are also disposed of. There would be no order as to costs.

(Pushpa V. Ganediwala, J.) **(A. S. Chandurkar, J.)**

Asmita