



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1503 OF 2021

Prabhat Multi State Co-operative
Credit Society Ltd., Latur,
Through its Chief Executive Officer,
Hanumant s/o Ramdas Khose,
Age: 50 years, Occu.: CEO,
R/o. Shop No.48 and 49,
Near Dayanand Gate,
Barshi Road, Latur.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Co-operation and Textile Department,
Mantralaya, Mumbai-32.
2. The Commissioner & Registrar
Co-operative Societies,
Maharashtra State, Pune.
3. The Joint Registrar,
Co-operative Societies,
Latur Division, Latur.
4. The Liquidator,
Osmanabad District Co-operative
Agriculture Rural Multipurpose
Development Bank Ltd. Osmanabad
and District Deputy Registrar,
Co-operative Societies,
Osmanabad.

.. RESPONDENTS

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Mr. N. L. Jadhav, Advocate for the petitioner.
Mr. N. S. Tekale, AGP for respondent Nos.1 to 3 – State.
Mr. A. N. Irpatgire, Advocate for respondent No.4.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

RESERVED ON : 26th MARCH, 2024.
PRONOUNCED ON : 3rd APRIL, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. Present petition was originally filed to challenge the action of respondent Nos.3 and 4 cancelling the E-tender process and cancelling the selection of the petitioner as the highest bidder of a property at Omerga by communication dated 09.09.2020 and 15.09.2020 respectively. The petitioner had prayed for direction to the respondents to complete the process of transfer of property in its favour in view of selection letter dated 03.03.2020 within a period of two months. Then by way of amendment, the petitioner challenges the policy decision i.e. Government Resolution dated 09.11.2022 issued by respondent No.1 as arbitrary and unreasonable and not binding on the petitioner to the extent of properties at Omerga.

3. Learned Advocate Mr. N. L. Jadhav appearing for the petitioner Society submits that the petitioner Society is a Multi State Co-operative Credit Society. The area of operation of society is confined to Latur, Osmanabad, Nanded, Parbhani etc. Respondent No.4 the Liquidator has issued advertisement calling tender to dispose/sell

out open plot in Ward No.13, House No.8, admeasuring 3600 square feet in Daily Sangharsh and Daily Punyanagari newspaper dated 03.02.2020. Date of opening the tender was given as 24.02.2020, which was thereafter extended by corrigendum up to 29.02.2020. The tender was in respect of three properties at Osmanabad, Omerga and Lohara. As regards the tender for properties at Omerga, the petitioner participated and offered highest bid of Rs.1,26,39,600/-. He has paid the necessary fees/charges at the time of submitting the bid. After the tender was opened on 29.02.2020, when he was declared as successful bidder, he was waiting for further directions to deposit the security deposit and process of transferring property at Omerga in his favour. Respondent No.4 by communication dated 15.09.2020, informed that the E-process to sold out the land of the Osmanabad District Cooperative Agriculture and Rural Multi purpose Development Bank is cancelled and the new process would be started. It was stated that the Joint Registrar, Co-operative Societies, Latur has not given approval, which was mandatory in view of condition No.25 and, therefore, the earnest money that was deposited by the petitioner i.e. Rs.15,00,000/- was transferred to the account of the petitioner by R.T.G.S. After obtaining documents under R.T.I., the petitioner came to know that a complaint was made by one Smt. Chandrakala Kisanrao Patil and two other persons. Respondent No.4 gave report to Joint Registrar, Cooperative Societies, Latur. The complainant could not

remain present for the hearing and could not submit the document. But ultimately final hearing took place on 03.09.2020 resulting in directions for fresh process to sell out the property of the bank. However, as regards the property at Omerga is concerned, it was specifically stated by those complainants that they have no objection in respect of said property at Omerga. Those persons, who had taken objection before the Joint Registrar claiming that they have not been heard before the property was put to auction and, in fact, the property is of much more value than it has been quoted and the upset price that has been quoted, so also their salaries are due from months together, thereupon it appears that the said action has been taken. Thereafter in the meantime during the pendency of the writ petition, the Government of Maharashtra by resolution dated 09.11.2022 expressed that the State will not go ahead with the recovery of the loan amount of the farmers, thereby waiving the loan amount. The Government has then vested in all 55 properties of the Apex Land Development and District Land Development Bank's properties. When the Joint Registrar had every opportunity to know that the dispute is not in respect of the Omerga Property, the further action taken including the Government Resolution dated 09.11.2022 is illegal. No *mala fides* were attributed to the transaction to be entered into between respondent No.4 and the petitioner and, therefore, the petitioner's interest ought to have been protected.

4. Learned Advocate for the petitioner relies on the decision in **Satwati Deswal Vs. State of Haryana and Ors., [2009 DGLS (SC) 1409]**, wherein it has been held that :-

“In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question.”

5. He submits that though the subject matter in the case was different, yet it was held by the Hon’ble Apex Court that merely because there is alternate remedy available, the aggrieved person cannot be asked to approach or exhaust the said remedy. He further relied on the decision in **The Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and Another Vs. Shishir Realty Private Limited and Ors., [2022 (1) ALL MR 405 (S.C.)]**, wherein it has been held :-

“Fairness and the good faith standard ingrained in the contracts entered into by public authorities mandates such public authorities to conduct themselves in a non arbitrary

manner during the performance of their contractual obligations.”

6. Learned Advocate for the petitioner, after taking us through all the documents on record, submits that the petitioner had participated in the tender process and as per the procedure he was declared eligible to get the contract. Accordingly, communication was issued on 03.03.2020. No doubt, there was a stipulation about the proper permission of the Joint Registrar to the transaction, yet perusal of the complaint and the report filed by respondent No.5 shows that nobody had objected to the E-tender process completed in respect of Omerga property. The complaint which was made was in respect of other two properties as their valuation was shown very less. On the contrary, the offer given by the petitioner for Omerga property was much higher than the upset price. Acquisition of the other properties might be justified, but when the petitioner was the successful bidder, his bid and the entire process could not have been cancelled without granting an opportunity of hearing to the petitioner.

7. Per contra, learned AGP and learned Advocate Mr. A. N. Irpatgire for respondent No.4 have taken us through the affidavits-in-reply on behalf of them. As aforesaid, much facts are not in dispute, however, with the subsequent events, the learned AGP says that now nothing survives in the issue. The properties have been seized. The State has taken a unique step. The loan worth Rs.5.55 Crores approximately has

been given to Osmanabad District Agricultural Rural Multi Purpose Development Bank. The purpose for which the respondent – State has taken such action was to protect the properties of the members of the Society, who had taken loan.

8. The simple point involved in the matter is whether petitioner can be said to be having any fundamental right of getting the contract executed in its favour, as of right. If we consider the tender conditions, the condition No.25 reads as under :-

“25. [“The Liquidator” is free to accept or reject any offer without assigning any reason. The Liquidator of “The Liquidator” will submit comparative statement of received tenders to the Government of Maharashtra for final approval sale confirmation the decision of government in respect of finalization of the tender shall be binding on the tenderer.]

9. Therefore, when the bid is submitted and then accepted, respondent No.4 was duty bound to report all the details by comparative statement for the final approval of sale, confirmation, division etc. Though the petitioner appears to have been declared as successful bidder, yet as on the date of the petition, he was not asked to take any further step in pursuant to the contract. Now, the reason as to why the Joint Registrar had not given approval appears to be in the complaint filed by Chandrakala Kisanrao Patil and two other persons. Perusal of the the complaint would show that they had no

objection in respect of Omerga property valuation quoted and the amount that was presented to the respondent authority. We need not go into the details of these facts, as subsequently the things have changed. By way of a policy decision, Government Resolution dated 09.11.2022 came to be issued which makes a provision for granting exemption to the loan of the members of the bank. Even the property that stood in the name of said bank was directed to be vested in the Government. The purpose for which the action of notification was resorted is also required to be considered. When in such case it was a policy decision to waive the loan amounts of the members against whom the outstanding amount was due, but then in view of exemption that too before the final approval came to be passed, we are of the firm opinion that there was no right in favour of the petitioner to seek relief under the constitutional powers of this Court. It is also to be noted that respondent – Liquidator by way of communication dated 15.09.2020 informed the petitioner that E-tender process has been cancelled and whatever amount has been paid/deposited towards the sale transaction has been returned to the petitioner by RTGS mode. However, the present petitioner intends to say that since he has been declared as highest bidder, he should be awarded the contract.

10. We need not go into the aspect as to whether there is alternate efficacious remedy available to the petitioner in view of the fact that

the petitioner has not received any fundamental right to get the sale deed executed in its favour. Only in certain conditions/situations, the Court would interfere in the tender process, the rider is that if such action causes prejudices to a party. At the cost of repetition, when the condition itself stipulates that the transaction would be entered into with the prior approval of the higher authorities only and it was never approved and before any further step could be taken in view of the Government Resolution, the entire process itself is cancelled. The petitioner cannot insist only on the ground that the original complainant had no objection if the State would have gone ahead with the E-tender process in respect of Omerga property. The properties as a whole have been considered and the earnest amounts which was prayed by the petitioner has been refunded. The reliance on the decisions of the above-said authorities by the petitioner is misconceived. The facts of the present case do not show any right created in favour of the petitioner and even if the alternative efficacious remedy is then still available, unless it is shown that the fundamental rights of the petitioner are jeopardized, this Court will not interfere. A higher public money is now given to those banks for protecting the interest of the public itself and thereafter those properties have been vested in the Government.

We have made a query with the learned AGP as to for what purpose the property at Omerga is being utilized. He submits

that in the said property, in the structure available, the Government runs its office of Sub Registrar. When a public office is also running at the said place, then this Court will not interfere in the policy decision of the Government. We do not find this to be a fit case where we should exercise our constitutional powers. The petition is devoid of merits. It deserves to be dismissed. Accordingly, the writ petition stands dismissed.

11. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm