

(2004) 07 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No. 8539 of 2002

Rajureshwar Associates

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Constitution of India, 1950 — Article 166, 167, 226
Maharashtra Government Rules of Business, 1975 — Rule 11, 11(2), 12, 8, 9
Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971 — Rule 15, 15(1), 15(2),

Citation : AIR 2004 SC 3770 : (2004) 5 ALLMR 1204 : (2004) 3 AWC 2281
Supp : (2004) 3 BC 437 : (2005) 1 BomCR 303 : (2004) 5 JT 249 : (2004) 4
MhLj 471 : (2004) 6 SCALE 118 : (2004) 6 SCC 362 : (2004) 2 SCR 915 Supp :
(2004) 2 UJ 1264

Hon'ble Judges : R. C. Lahoti, C.J.;Ashok Bhan, J

Bench : Division Bench

Advocate : R.F. Nariman, Sanjay V. Kharde, Ajit B. Kale and Chandan Ramamurthi, for the Appellant; Uday Umesh Lalit, Arpita Singh, Prasenjit Keswani, S.S. Shinde, Mukesh K. Giri and T. Mahipal, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This appeal is directed against the final judgment and order dated 24.4.2002 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 5219 of 2001. By the impugned order the High Court has dismissed the writ petition filed by the appellant.

2. Appellant is an Associate registered under the Indian Partnership Act for the purpose of carrying on the business of purchase and sale of agricultural land, to develop the lands and construct buildings by taking contracts under Government and of private parties. It also deals as commission agent in real estates.

3. Land admeasuring 48 acres 24 gunthas of Survey No. 55 was granted by the Revenue and Forest Department of the State Government to Aurangabad Zilla Sahakari Soot Ginini Ltd. ('Mill' for short) on conditions inter alia that the mill

shall not transfer the said land without prior permission of the Government and that the land and buildings thereon would be liable to be resumed in case of breach of any conditions. Some of the relevant terms and conditions of the grant were as under:

"v) That, the Sut Girni shall not transfer its rights in the land to anybody by sale lease, mortgage etc. without prior permission of Government. Farther, the land shall not be transferred by the Sut Girni to a foreigner except a foreigner domiciled in India, or a foreign firm established or trading in India, without the consent of Government which will have full discretion to refuse without assigning any reasons.

vi) That the land and the Sut Girni buildings to be constructed thereon shall be used for the purpose for which the grant is made and for no other purpose.

vii) That the Sut Girni buildings to be constructed shall comply with the provisions of Ribbon Development Rules in force.

viii) That the land and the building thereon shall be liable to be resumed to Government without payment of compensation for breach of any of the conditions."

4. In course of time, buildings were erected on 5 acres of land out of 48 acres and 24 gunthas and the mill started conducting its business. Out of the aforesaid land of 48 acres and 24 gunthas, 3 acres and 12 gunthas was withdrawn and given over to the Municipal Corporation for widening of the road. Two acres of land was withdrawn by the District Collector and kept tender Government account and recovered the non-agricultural land revenue by sale of the same leaving 43 acres and 12 gunthas with the mill.

5. Since the mill had violated the terms and conditions of grant in its favour, on 18.12.1997, 38 acres and 12 gunthas of land was attached and taken in possession by the Government leaving 5 acres of land on which buildings had been erected. On 22.7.1998, Co-operation & Textiles Department of the State Government proposed to sell 5 acres of land with buildings thereon.

6. The total liability had accumulated to around Rs. 14 crores and no funds were available with the Spinning Mill for clearing the said liabilities. Liquidator was appointed on the Spinning Mill under the Maharashtra Co-operative Societies Act. Spinning Mill through the Liquidator submitted a proposal to the Government through the Director of Handloom, Powerloom and Co-operative Textiles (hereinafter referred to as 'the respondent No. 2') for allowing the Spinning Mill to dispose of its building, plant, machinery and land. After obtaining permission from respondent No. 2, the Liquidator by publication dated 8.10.1998 invited tenders from the bidders for selling the property of the Spinning Mill situated in Survey No. 55 including the land. The Liquidator instead of inviting offers for 5 acres of land on which the buildings had been constructed, invited offers for sale of entire land of 43 acres 11 gunthas treating it to be the property of the mill.

7. M/s. Rajureshwar Associates - appellants herein, in response to the proclamation issued by the Liquidator, submitted the tender quoting the price of Rs. 781.33 lacs along with demand draft of Rs. 25 lacs as earnest money. Five others also submitted their tenders. Liquidator forwarded the offers to the Textile Ministry, The tender submitted by the appellant was accepted by respondent No. 2 and was forwarded to the Government on 29.1.1999 for further action. The Principal Secretary, Co-operative & Textile Department called for a meeting on 26.4.2000 to consider the steps taken for liquidating the Spinning Mill. In the said meeting, the Principal Secretary instructed that the tenders submitted by the appellant be accepted and sent the same to the Government for its acceptance with its recommendations. The State Government by communication dated 23.10.2000 informed respondent No. 2 that the Government had accorded sanction for finalising action of sale of the Spinning Mill. It was however pointed out that before finalising the action of sale, the following aspects be taken into consideration :-

"The cost of land should be drawn as on the date of accepting the tender for sale of the mill. The amount which has been deposited by the mill towards the lease, should be deducted and after deducting the said the remaining 50 per cent should be taken by the Textile Mill and the remaining 50 per cent should be deposited with the Government (Collector, Aurangabad) and the possession of the land along with the building should be taken from the Collector."

8. Further, it was also informed that the tender submitted by the appellant should be finalised and the said mill along with the land should be sold to them.

9. In view of the aforesaid communication, respondent No. 2 issued further communication dated 2.11.2000 directing the Liquidator that in view of the sanction accorded by the Government, the Liquidator should execute the agreement of sale in favour of the appellant. The Liquidator by his communication dated 4.11.2000 informed the appellant that sanction had been received from the Government for the purpose of final sale of property of the Spinning Mill and accordingly the appellant should deposit 25% of the bid amount and get the agreement of sale executed. In response to the said communication, appellant paid Rs. 1,95,33,250/- to the Liquidator and the Liquidator in turn executed agreement of sale dated 20.11.2000 in favour of the appellant of the property of the Spinning Mill. The Appellant further deposited a sum of Rs. 293 lacs with the Liquidator and requested him to execute the sale deed in its favour. Liquidator vide his letter dated 23.1.2001 acknowledged the receipt of Rs. 4,88,33,250/-. However, he informed the appellant that some legal action was yet to be completed by the Revenue Department and unless the possession was received from the Collector, Aurangabad, no action could be taken for handing over the possession, of the Spinning Mill to the appellant.

10. In view of the decision taken by the Co-operation Department and the Revenue and Forest Department to sell the property of the Spinning Mill, the Desk Officer (Revenue & Forest Department) by communication dated 24.1.2001

requested the Collector, Aurangabad (respondent No. 4 herein) to get the price of land Survey No. 55 fixed as on 27.1.1999 from the Assistant Director, Town Planning and the Liquidator be informed of the same. Collector informed the Revenue authorities that the land admeasuring 32 acres and 12 gunthas was owned by the Government of which possession was taken by it and, therefore, the same could not be sold by anyone including the Liquidator. He further stated that he was unable to accept the request for making valuation of Survey No. 55. In view of the said letter by the Collector, the Liquidator by his letter dated 12.2.2001 informed the appellant that unless the permission is granted by the State Government, no action could be taken in respect of the execution of the sale-deed and requested the appellant not to enter into any further correspondence. The appellant on 23.4.2001 deposited the remaining amount of Rs. 1,95,33,250/- with the Liquidator and as such the total amount due towards the consideration was paid by the appellant to the Liquidator.

11. The appellant thereafter made several representations, oral as well as written, to the concerned authorities requesting them to execute the sale-deed and hand over the possession of the property. These representations are dated 18.5.2001, 7.1.2001 and 12.6.2001. In these representations, it was pointed out that the appellant had paid the amount to the Liquidator after borrowing from a Bank on payment of heavy interest on the said amount. A legal notice was also issued. As no action was taken, the appellant filed Writ Petition No. 5219 of 2001 on 12.12.2001 challenging the inaction of the Government authorities and sought for following substantial reliefs :-

"(a) To direct the Respondent No. 3 to execute the sale deed as per the agreement dated 18.11.2000 (Exhibit-G), by issuing writ of mandamus or any other appropriate writ, order or directions as the case may be.

(b) To direct the Respondent No. 4 to implement the decision of the Government dated 23.10.2000 and letter dated 24.1.2001 and 12.7.2001, by issuing writ of mandamus or any other appropriate writ, order or directions by way of interim relief, in addition to an order of injunction from creating a third party interest, directions have been sought to hand over the possession of Survey No. 55 at Garkheda as per agreement dated 18.11.2000 and to implement the letter dated 24.1.2001 against Respondent No. 4"

12. After filing of the writ petition, the Liquidator in his reply disclosed that the State Government by its communication dated 26/28th December 2001 had taken a decision to cancel the agreement executed in favour of the appellant for the reason that the land under sale is situated in the heart of city of Aurangabad and the price offered by the appellant was less than the actual price. The appellant thereafter amended its writ petition and challenged the aforesaid order and consequently, an additional prayer (C-1) came to be incorporated reading as under :-

"(C-1) Quash and set aside the decision dated 28.12.2001 and the

communication dated 4.1.2002 issued by the Respondent No. 2 to the Respondent No. 3 and the communication dated 8.2.2002 issued by the Respondent No. 3 and for that purpose issue necessary writs and orders."

13. All the parties to the writ petition filed their replies in which the tenor of the reply was that due to inadequate price, the agreement of sale executed in favour of the appellant had been cancelled and that there was no approval by the Government for the sale of the land or the building of the Mill. In the absence of proper sanction, the sale could not be effected in favour of the appellant.

14. The High Court rejected the first prayer made in the writ petition by observing :-

".....For execution of the terms of agreement normally a civil remedy is available to the parties and this Court would be slow in entertaining a writ petition for execution of the contractual terms. In the case of Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, , it has been held that a remedy under Article 226 in the absence of a statutory right cannot be availed for enforcement of contractual obligations even if it is sought to be enforced against the State and we, therefore, do not find it permissible to entertain this petition for directing the Respondent No. 3 to execute the sale deed as per the agreement dated 18.11.2000."

15. The High Court then proceeded to consider the remaining two prayers. The Court directed for the production of the records from the Collector's Office, Aurangabad as well as from the Revenue and Forest Department and Co-operation of Textile Department of Government of Maharashtra. The Court also directed the concerned officers who had communicated the decision of the Government regarding the approval of the tender and sale of the property in favour of the appellant to file their affidavits. The said two officers filed their affidavits in which they stated that the Government had taken the decision for the sale of the said property. The High Court after perusal of the summoned record, writ petition, replies filed by the respondents and affidavits by the two officers, who had communicated the decision of the Government regarding the approval of the tender and sale of the property held :-

"On assessing the entire record placed before us and after considering the arguments advanced by the respective parties, we are satisfied that the State Government did not, at any time, give approval for the sale or disposal of the subject land, as was claimed by the communication dated 23.10.2000 and the land could not be sold to the petitioner without such an approval. There is no case made out to entertain the petition for directions or relief as sought for and hence we reject the same summarily."

16. The High Court also took note of the fact that the land in question is situated in the heart of the city of Aurangabad having valuation of more than Rs. 24-25 crores and, therefore, the price quoted by the appellant and accepted by the Government was too low. The High Court directed respondent No. 2 and the

Liquidator to refund the amount deposited by the appellant with simple interest at the rate of 11% per annum.

17. This Court also sent for the original record, which was produced. Relevant extracts of the record along with its translations were handed over to us during the course of hearing.

18. Mr. R.F. Nariman, learned Senior Counsel appearing for the appellants forcefully contended that the agreement dated 18.11.2000 was executed in favour of the appellant after receipt of due permission from the concerned departments and, therefore, the State Government was estopped from going back from its promise of selling the property to the appellant, specially when it had already accepted the total amount of consideration of Rs. 781.33 lacs. The High Court erred in holding that the approval accorded for the sale of the property in favour of the appellant was not that of the Government as the same had not been put up and approved by the Cabinet. According to him, the matter was not required to be taken to the Cabinet as the Cabinet had taken the decision not to submit the proposal of sale/liquidation of the mills before the Cabinet and the concerned Ministry was to take a decision on the same. This decision of the Cabinet was conveyed by the Chief Minister which was noted by the Textile Secretary in one of the communications. The High Court was not justified in accepting the contention of the respondents that the price offered by the appellant was inadequate or that the property was required for Sports Complex when the Government had already taken a decision for establishing the Sports Complex at Garware Stadium.

19. As against this, Mr. Umesh Lalit, learned counsel appearing for the respondents contended that the matter was required to be placed before the Cabinet that there was no proper decision by the Government to sell the property in favour of the appellant. The procedure followed was not in accordance with law and the rules of business and the price offered by the appellant was grossly inadequate.

20. The question to be determined in this appeal is based on facts and the record. We have perused the record with the help of the learned counsel for the parties.

21. It would be necessary to advert to the record and the , Government files in detail to determine the controversy between the parties. From the record we find that on 18.12.1997, the Collector Aurangabad had attached 38 acres 12 gunthas of land out of 43 acres 12 gunthas as the Mill had violated terms and conditions of grant in his favour leaving 5 acres of land on which buildings had been erected with the mill. On 22.7.1998, the Co-operation and Textile Department of the State Government proposed to sell 5 acres of land with buildings thereon. In October 1998, the Liquidator instead of inviting bids for 5 acres of land, invited offers for the sale of the entire land of 43 acres 11 gunthas. On 4.2.1999, remaining land of 5 acres with buildings was also taken over by the Collector

Aurangabad. The appellant's offer was forwarded by the Liquidator to the Textile Ministry in January 1999.

22. On 13/14th of February 1999, a proclamation was issued by the Collector, Aurangabad that the entire land in question i.e. 43 acres 12 gunthas belonged to the Government and that nobody should enter into any transaction with respect thereto. In spite of that on 30.6.1999, a note was prepared by the Textile Department for sale of property of the Mill indicating that it had received 5 offers. In this note, it was specifically stated that no valuation of the land was done and that the matter be placed before the Cabinet. On 6.7.1999, Revenue Department gave its sanction for sale of 5 acres of land by public notice by the Collector. This noting with marking '(A)' was submitted for approval and the noting of the Dy. Secretary to the Chief Minister stated "Show to Finance Department". In the note prepared by the Finance Department dated 28.9.1999 to which the matter had been referred, it was stated that there was no objection to the sale of 5 acres of land and buildings.

23. On 29th December 1999 in a meeting chaired by the Minister of Textile, it was decided to sell the entire land of the mill. The matter was then, sent back to the Revenue Department, which considered the matter afresh, in its note dated 17.1.2000, it disagreed with the Textile Department and reiterated that the land was not of the Mill but of the Government. It agreed to the sale of the entire land subject to the conditions that - (a) upset price of the land of 43 acres 12 gunthas be fixed, (b) notice be published for public auction, (c) entire amount be deposited with the Revenue Department and (d) those who had given their offers earlier, be allowed to participate in the auction. After discussion with the Principal Secretary (Revenue), the Revenue Department modified the aforesaid conditions and stated that - (a) upset price of the land of 43 acres 12 gunthas be fixed, (b) thereafter the land be sold by public auction and (c) the difference between the upset price and the amount received from auction would go to the account of the Mill, this proposal was accepted by the Revenue Minister by putting his signatures on 19.2.2000. In its further note dated 23.2.2000, the Revenue Department set out the first part of the revised proposal as approved by the Revenue Minister as under :-

"(I) 43 acres 12 gunthas land of the Mill has been kept in the Government Account, The cost of this land should be worked out on the basis of the existing market rate of land and this cost should be fixed as upset price and public auction should be held. The Government (Revenue Department) will have the right on the amount received from the auction calculated on the basis of the existing market rate and after deduction of the cost of land worked on the basis of existing market rate from the amount received by auction, then whatever balance will remain, on that amount the Spinning Mill have the right on it (This should be returned to the Mill).

This proposal to sell 5 acres land and building on it of District Cotton Producers Co-operative Spinning Mill kept on Government Account for recovery of

Government dues has already been approved by Finance Department vide note dated 28/12/99 - pages 22-23/N. However, certain changes are made in the proposal, the Finance Department may be approached to give approval to the revised proposal."

24. The matter thereafter reached the Finance Department for approval, which by its communication dated 22.3.2000 called for the remarks of Textile Department and asked that the file be resubmitted with the remarks of Textile Department. The Textile Department, in turn, in its noting dated 14.4.2000 stated that in accordance with the decision taken in the meeting chaired by the Textile Minister on 29.12.1999, the tenders were invited and finalised and there was no need to auction the land again. It, therefore, requested the Revenue and Finance Departments to accept the proposal of the Textile Department. This note of the Textile Department led to further response from the Revenue Department which in para 4 of the note again reiterated four points set out earlier. It was stated that if the land is sold by public auction in the manner suggested, Government may get better price. To that extent it disagreed with the view of the Textile Industry. On 26.4.2000, a meeting was held in respect of the mills under liquidation which was presided over by the Principal Secretary (Textiles). The minutes recorded that the offer of the appellant be accepted and the proposal be submitted to the Revenue and Forest Department for approval and sanction. Revenue Department on 2.5.2000 again reiterated its earlier view. The Finance Ministry on 17.5.2000 proposed that action be taken in terms of the portion marked 'A' which is reproduced here :-

"Hence the market cost of land of 48 acres 24 gunthas kept under Government Account, should be got fixed from Town Planning and Valuation Department and Public Tenders may be called for sale of land. In this deal the Government must get the cost at the existing market rate. In case the tender cost is more than the market cost of the land, then the balance amount may be given to the liquidator of the Spinning Mill to defray the liability of the mill amounting to Rs. 1412.44 lacs and the accumulated loss of Rs. 571.00 lacs. Similarly there may not be any objection for this Department to give concurrence to Sr. No. 2, 3 and 4 at 'B' on page No. 47/N."

25. The Finance Secretary while approving the aforesaid note stated "no objection to the proposal to be submitted to the Cabinet with remarks of the Finance Department". This was further approved by the Principal Secretary (Finance) on 18.6.2000. The Principal Secretary (Revenue) on 27.6.2000 stated that action be taken as per remarks of the Principal Secretary (Finance). A note was thereafter prepared by the Textile Department and the notings of the Principal Secretary (Finance) who in the note approved by him had stated to get the price of the land fixed through Town Planning & Valuation Department and then issue notice for public tender. It was stated in para 18 that since the auction of the Mill had come to the final stage, it would not be proper to re-invite the tenders. Para 19 of the Note was to the following effect :-

"It is already mentioned earlier that this case may be submitted to Cabinet for consideration. But When a similar case of sale of Nanded Co-operative Spinning Mill, Nanded was submitted before the Cabinet, the Cabinet has taken the decision that Department should take action under the rules. However, informally the Hon'ble Chief Minister has instructed that there is no need to submit such cases before Cabinet."

26. The note finally stated that decision be taken - (1) As the sale process was in the final stage, the land should not be sold by public auction, (2) no need to call revised tenders, (3) after deducting cost of land calculated as on the acceptance of tender of the appellant, the balance be utilized by the Liquidator and (4) tender of the appellant be finalised and the land be sold to them.

27. The aforesaid note was signed by the Principal Secretary (Textiles) and the matter was then placed before the Chief Secretary. Chief Secretary however opined that no decision be taken at the Government level and the decision be taken as per rules. On 9.10.2000, after nearly 2 1/2 months, overriding the opinion of the Chief Secretary and the view of the Revenue and Finance Departments, the Minister of Textiles preferred the view of the Principal Secretary (Textile) and directed that action be taken as proposed by the Textile Department. In accordance with the aforesaid direction, intimation was sent by the Textile department that the Government had accorded sanction for finalising the sale in favour of the appellant. Accordingly on 18.11.2000 an agreement of sale was entered between the Liquidator and the appellant.

28. On 14.12.2000, an offer was received from one Mr. Moreshwar Save for Rs. 8.99 crores for the game property. The Chief Minister directed the Department to examine and consider the said offer.

29. Textile Department thereafter prepared a note which was signed by the Principal Secretary (Textiles) and the Minister of Textiles that the decision to sell the land and the building in favour of the appellant had already been taken at the Government level and if offer of Mr. Save was accepted, it may create problem, the Chief Minister on consideration of the entire matter stated :-

"Possibility of getting more price. Revised tenders be called."

30. Revenue Department on 24.1.2001 wrote to the Collector to get the price of the land valued. On 6.2.2001, the Collector informed respondent No. 2 that the land belonged to the Government and no auction for sale be taken. The appellant was accordingly informed that without permission of the Government, no action could be taken.

31. On 12.7.2001, the Revenue Department dispatched a communication to the Collector that a decision had been taken at the Government level by the Textile Department with the consent of the Revenue Department to sell the land. The matter was thereafter referred to the Law Department for its opinion. The Law Department opined that it would be desirable on the part of the Government not

to cancel the agreement of sale.

32. In the meantime, the Divisional Commissioner, Aurangabad, wrote a letter to the Government that the land in question be sold and the same be given to the Department for developing it as a Sports Complex. This suggestion of the Divisional Commissioner was later on turned down as a Sports Complex already existed in the city of Aurangabad.

33. Revenue Department after making preliminary estimate, valued the land at Rs. 24 - 25 crores. It was of the opinion that the sale of the land for Rs. 7.81 crores would occasion a heavy loss. The response of the Textile Department was also sought. Thereafter the matter was considered in a meeting held on 27.11.2001, which was attended by the Chief Minister, Chief Secretary, Secretary to the Chief Minister and other officials. It was felt that the amount of Rs. 7.81 crores was too low for the land situated in the prime area. It was further observed that the land was required for the Sports Complex. It was, therefore, decided that the amount deposited by the appellant be returned to him.

34. In the aforesaid circumstances, on 26.12.2001, the decision was communicated to the respondent No. 2 regarding cancellation of the agreement of sale and refund of the amount deposited by the appellant. Accordingly the Liquidator, on being informed, sent a communication to the appellant on 8.2.2002 informing them that the agreement of sale was cancelled.

35. First point to be determined in the case is as to the ownership of the mill in respect of the subject land. The subject land was transferred to the mill by the Government. The land belonged to the Revenue and Forest Department of the State Government and the land was handed over to the mill on payment of occupancy price subject to certain conditions including that if any of the terms of grant were violated the land could be resumed. The term 'occupancy price' has been defined in Rule 2(k-i) of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 and it means the price payable as consideration for the grant of the right to occupy and use the land. Rule 15 therein deals with the terms and conditions of grant. Rule 16 states that any land resumed under Sub-rule (2) of Rule 15 may be disposed of in accordance with the provisions of Rules in that part. It also states that if the grantee commits breach of any of the conditions specified in Sub-rule (1), the Collector can resume and take possession of the land granted to him and the grantee shall be liable to be evicted from the land.

36. The orders of resumption of the land were passed by the Collector, Aurangabad on 18.12.1997 and on 4.2.1999. The legality of the order dated 18.12.1997 is the subject matter of challenge in RCS No. 17 of 1998 and, therefore, the same issue could not be adjudicated in a petition filed under Article 226 of the Constitution of India as has rightly been held by the High Court. On 14.2.1999, a proclamation was issued by the Collector, Aurangabad that the entire land in question i.e. 43 acres 12 gunthas belonged to the

Government and that nobody should enter into any transaction with respect thereto. The terms of grant were specific and having regard to the provisions of the Maharashtra Land Revenue Code, 1966 it cannot be held that the subject land was the exclusive property of the mill and the society owning the mill had the right to dispose it of without the permission of the State Government. Condition No. (v) specifically provided that the mill should not transfer the right in the land to anybody by sale, lease, mortgage, etc. without prior permission of the Government. The Collector had resumed the land in exercise of his statutory powers on 18.12.1997. Since the land stood resumed, the mill had no power to dispose of the land without getting the order of attachment revoked. This observations is in addition to the view that the subject land was a government property at all times.

37. The initial proposal made by the Department of Textile on 22.7.1998 was for sale of only 5 acres of land and the approval granted by the Revenue Department on 6.7.1999 and by the Finance Department on 28.9.1999 was also for sale of 5 acres. However, the Liquidator on 18.10.1998 invited offers for the sale of the entire land of 43 acres and 12 gunthas. As on the date when the offers were invited, there was not even a proposal for sale of the entire land, leave alone prior permission of the Government Revenue Department in its note dated 17.1.2000 had agreed to the sale of the entire land subject to the condition that the upset price of the subject land be fixed and a notice be published for public auction and those who had given their offers earlier be allowed to participate in the auction. The entire sale amount be deposited with the Revenue Department and the difference between the upset price and the amount received from auction shall go to the mill. It is evident from the reading of the entire record that the idea was that the upset price of the land must be fixed first and then the land be sold. The Finance Department in its note dated 17.5.2000 and 13.6.2000 also concurred with the conditions proposed by the Revenue Department. Thereafter, the Textile Department proposed that the tenders invited earlier be finalised and there was no need for re-auction of the land. The matter was thereafter never put up before the Cabinet and a decision, was conveyed to the Collector that the Government had agreed for the sale of the entire land in favour of the appellant. At the time when the offer of the appellant was received, no valuation of the, land was got done.

38. Prayer made in the writ petition is for issuance of a writ for implementation of the decision dated 23.10.2000 and the letters dated 24.1.2001 and 12.7.2001. It would be necessary to examine from the record whether the decision dated 23.10.2000 in pursuance to which the agreement to sale dated 18.11.2000 was executed was the Government decision. The Governor of Maharashtra, under the powers conferred by Clause (2) and (3) of Article 166 of the Constitution, has made the Rules of Business which are called the Maharashtra Government Rules of Business. Rules 8, 9, 11 & 12 of the Rules of Business, which are relevant for our consideration read as under :-

"8. The Council shall be collectively responsible for all advice tendered to the Governor whether by an individual Minister on a matter appertaining his portfolio or as the result of discussion at a meeting of the Council or howsoever otherwise.

9. " All cases referred to in the Second Schedule shall be brought before the Council -

(i) by the direction of the Governor under Clause (r) of Article 167;

(ii) by the direction of -

(a) the Chief Minister; or

(b) the Minister-in-Charge of the case with the consent of the Chief Minister.

Provided that, no case in regard to which the Finance Department is required to be consulted under Rule 11 shall, save in exceptional circumstances under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had opportunity for its consideration.

10. xxx xxx xxx 11. (1) No Department shall without previous consultation with the Finance Department authorise any order (other than orders pursuant to any general delegation made by the Finance Department) which -

(a) either immediately or by their repercussion, will affect the finance of the State, or which, in particular -

(i) involve any grant of land or assignment of revenue or concession, grant lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession; or

(ii) in any way involve any relinquishment of revenue;

(b) relate to the number or grading or cadre of post or the employments or other conditions of service or posts.

(2) No proposal which requires the previous consultation of the Finance Department under Sub-rule (1) but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.

(3) xxx xxx xxx (4) xxx xxx xxx (5) xxx xxx xxx 12. All orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made by or by order of or executed in the name of the Governor."

39. In Second Schedule under Rule 9, entries at 15 and 17 read as under :-

"15. Any proposal which affects the finance of the State which has not the consent of the Finance Minister.

17. Proposals involving the alienation either temporary or permanent by way of

sale, grant or lease of Government property exceeding Rs. 50,000/- in value of the abandonment or reduction of a recurring revenue exceeding that amount or the abandonment or reduction of an non-recurring revenue exceeding rupees Five Lacs except when such alienation sale, grant or lease of Government property is in accordance with the rules or with a general scheme already approved by the Council."

40. The Liquidator had invited tenders for the entire property of the mill, namely, the plant and machinery, building and the land which was in possession of the Collector, Aurangabad. The building, plant and machinery and other store items undisputedly are owned by the mill and the same could be disposed of by the Liquidator with the prior permission of the Director (Handloom, Powerloom and Textile Department) - respondent No. 2. The land belonged to the Government and in any case the same had been resumed as the mill had violated the terms of the grant.

41. Rule 9 provides that all cases referred to in the Second Schedule shall be brought before the Council of Ministers. Entry 15 in the Second Schedule provides that any proposal which affects the finance of the State which does not have the consent of the Finance Minister has to be placed before the Cabinet. Similarly, entry 17 provides that proposal involving alienation either temporary or permanent by way of sale, grant or lease of Government property exceeding Rs. 50,000/-in value of the abandonment or reduction of a recurring revenue exceeding. That amount or the abandonment or revenue exceeding Rs. 5 lacs except when such alienation, sale, grant or lease of Government property is in accordance with the rules or with a general scheme already approved by the Council. It is evident that requirement of these rules was not complied with at the time when decision dated 23.10.2000 was taken by the Textile Minister to sell the entire land in favour of the appellant. The matter was required to be placed before the Council of Ministers as the alienation of the property exceeded Rs. 5 lacs as per Rule 11 of the Rules of Business secondly since the Finance Department had not concurred with the Textile Department the matter was requited to be placed before the Cabinet in terms of Sub-rule (2) of Rule 11 of the Rules of Business. The conclusion which flows from the record is to the effect that the Government had not given sanction/approval for the sale of subject land when the Cooperation of Textile Department approached it for the same. The Government as per Rules of Business had not given any sanction/approval for the sale of land. The communication dated 23.10.2000 is not a Government decision as is obvious from the record and the subsequent communications dated 24.1.2001 and 12.7.2001 which were issued without verifying the record and ran contrary to the record did not convey a proper sanction.

42. In the note dated 30.6.1999 prepared by the Textile Department it was rightly stated in para 16 that the matter be placed before the Cabinet. The Departments of Revenue and Finance having given their consent for sale of 5 acres, the matter had to be placed before the Cabinet. At this stage, the Textile

Department insisted on the sale of the entire land and the matter was considered afresh. In the revised proposal made by the Revenue Department, sanction for the sale of entire land was given subject to four conditions as is clear from the note dated 17.1.2000 and the approval by the Revenue Minister on 19.2.2000. (These conditions have been spelt out in the earlier portion of this judgment)

43. The idea was that the upset price of the land must be fixed first and then the land be sold. Further noting is with regard as to whether it should be sold by auction or tender and how the sale proceeds should be shared by the Government and the mill. But the basic condition that the upset price be fixed and thereafter land be sold is abundantly clear. The notings of the Finance Department dated 17.5.2000 and 13.6.2000 also show its concurrence to these conditions proposed by the Revenue Department. It would, therefore, be incorrect to say that the proposal of the Textile Department was accepted by the Revenue and the Finance Departments.

44. It was only on 14.4.2000 that the Textile Department proposed that the tenders invited earlier be finalised and that there was no need to re-auction the land. The Revenue Department expressed its disagreement in its note dated 20.4.2000 and reiterated its earlier proposal that the land be disposed of after fixing the upset price. The notings of the Finance Department dated 17.5.2000 and 13.6.2000 shows its concurrence with the view of the Revenue Department. Apart from any other requirement, there being disagreement between Textile Department on the one hand and the Revenue and Finance Department on the other, the matter had to be placed/should have been placed before the Cabinet as per Sub-rule (2) of Rule 11 of the Rules of Business.

45. In the face of such dissent, the matter had to go to the Cabinet. In fact, this was the initial proposal of the Textile Department on 30.6.1999. However, in the note dated 15.7.2000 even after stating the views of the Revenue and the Finance Departments, in para 17 it was proposed that the tender submitted by the appellant be finalised and there was no need to call the revised tenders. Para 19 of the said note suggested that instead of placing the matter before the Cabinet, the decision could be taken at the department level as the Hon'ble Chief Minister had instructed that there was no need to submit such cases before the Cabinet. From the record we find that there is no decision taken by the Cabinet that such matters need not be placed before it. A note is appended by the Principal Secretary (Textile) while conveying the decision of the Cabinet in the case of Nanded Spinning Mills Ltd. under liquidation that

"During the discussion. Chief Minister feels that such case could not be placed before the Cabinet"

For information.

Sd/- Dated 16th June 2000"

46. Reliance on the case of Nanded Mill for coming to the conclusion that the

matter need not be placed before the Cabinet is totally misplaced. It was not the decision of the Cabinet that such matters should not be placed before it. Even assuming that the Chief Minister had informally directed as is stated in the noting of the Principal Secretary, the requirement under the Rules of Business could not be by passed by any individual functionary.

47. The note of the Chief Secretary sets out the correct approach that the action be taken in accordance with law. But the Minister for Textile went by the incorrect approach suggested by the Department of Textile. The decision so taken by the Minister for Textile and the consequent sanction dated 23.10.2000 is vitiated in law. The sanction . so granted cannot be termed in law as the grant of permission by the Government in accordance with the Rules and the Procedure prescribed.

48. In the circumstances, when the Chief Minister had an occasion to consider the matter when an offer was received from Mr. Save, he was right and justified in directing re-tender. Such direction was in keeping with the views expressed by the Departments of Revenue and Finance. The matter was considered further after the noting of the Chief Minister at various levels including the legal department and the final decision was taken on 27.11.2001. This decision, it appears from the file is on account of the Government's belief that the price of Rs. 7,81,33,000/- was an under valuation of the subject property which is a prime land located within the Corporation area. The Divisional Commissioner, Aurangabad vide his communication dated 8.8.2001 as well as 23.10.2001 brought to the attention of the State Government that the market value of the property was in the range of Rs. 24 - 25 crores. When the offer of the appellant was received, no valuation of the land had been got done. The Liquidator could not have invited tenders for the entire land as out of 43 acres 12 gunthas, 38 acres 12 gunthas had been attached by the Collector on 18.12.1997 and taken possession of by the government leaving only 5 acres of land on which buildings had been erected. Initial decision was to sell 5 acres of land along with the building and machinery standing thereon. The Revenue department as well as the Finance department had not agreed for the sale of the entire land. The decision was taken by the textile department including its Minister to sell the entire land and the matter was required to be placed before the Cabinet and in the absence of any proper sanction the government had the power to cancel the same especially when it was of the opinion that the price of Rs. 7,81,33,000/- offered by the appellant was under valuation of the property. The High Court was right in coming to the conclusion that the State Government did not, at any time, give approval for the sale or disposal of the subject land as was claimed by communication dated 23.10.2000.

49. It is true that the proposal sent by the Divisional Commissioner to set up sports complex in the subject land was not accepted by the government as a sports complex already existed in the city of Aurangabad and the learned counsel for the appellant has rightly contended that this could not be a valid reason for

cancellation of the agreement to sale made in favour of the appellant. Even if the reason that the land was required by the government for setting up a sports complex is ruled out of consideration, the final decision taken by the Government to cancel the agreement of sale dated 27.11.2001 cannot be invalidated in the fact of our finding that there was no proper approval/sanction of the Government for the sale of the subject land.

50. The High Court has taken care to give adequate compensation to the appellant for any hardship or prejudice occasioned to the appellant. The High Court has ordered the refund of the amount with simple interest @ 11% p.a.. The appellant had deposited Rs. 781.33 lacs on different dates. As per order of the High Court the amount of Rs. 781.33 lacs was refunded to the appellant on three different dates. This Court in its order dated 16.12.2002 directed that the draft given by the respondents to the appellant after the decision of the High Court be returned by the appellant to the respondents and the respondents were directed to keep the amount in the interest bearing account. In order to iron out any dispute as to the repayment of the amount and the interest thereon it is directed that the Government would be liable to refund the amount to the appellant along with simple interest @ 11% per annum for the period during which the amount remained with it within a period of four months from the date of this judgment.

51. For the reasons stated above, we do not find any merit in the instant appeal and dismiss it accordingly. No order as to costs.