

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment:02.05.2012.*

+ CM(M) 492/2012 CM Nos.7463-64/2012

SHIVRAJ KRISHAN GUPTA Petitioner
Through Mr. Rajeev Mehra, Sr. Advocate
with Ms. Sangeeta Jain, Adv.

Versus

CHANDER KRISHAN GUPTA & ORS Respondents
Through Mr. Suhail Dutt, Sr. Advocate
with Mr. N.K. Kantawala, Adv.
for R-2 to R-4.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 27.02.2012 vide which the application filed by the petitioner under Section XLVII of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking a review of the order dated 24.11.2011 had been dismissed. On 24.11.2011, the averments made by the petitioner that the reserve price

of the suit premises (property No. 38-A, Amrita Shergill Marg) (which had been fixed by the Court on 26.03.2008 in the sum of Rs.1.40 crores) in view of the intervening long period of time and property prices having escalated in this period requiring a revision in the reserve price had been declined.

2 Record shows that a preliminary decree of partition qua the aforenoted suit property had been passed on 08.08.1980; 25% of the share in the suit property devolved upon the present petitioner; this was a dispute inter-se four branches of the same family. On 08.04.2002, a single Judge of the High Court had ordered the sale of the aforenoted property against which an appeal was filed by the present petitioner and dismissed on 22.07.2005. In 2006, this suit which was pending in the High Court, because of change of the pecuniary jurisdiction was transferred to the District Court. In the proceedings before the District Court, the present petitioner filed an application seeking permission of the Court to relinquish his rights in the other family properties in case the share in those properties could be adjusted in the present suit property; this application was dismissed on 02.12.2006. On 24.08.2007, another application was filed by the petitioner seeking permission of the

Court to convert this property from lease-hold into free-hold which was dismissed on 25.10.2007. This order was the subject matter of a petition under Article 227 of the Constitution of India which was dismissed by this Court on 30.11.2007. Thereafter the parties were granted opportunity to file the documents for the purpose of evaluation of the reserve price of the property; during the course of these proceedings, an SLP was preferred by the petitioner praying for a stay of the auction; this SLP was dismissed on 21.01.2008. Further submission of the petitioner that no auction can be conducted on a preliminary decree was dismissed by the trial Court on 26.03.2008 on which date the reserve prices of Rs.1.40 crores had been fixed by the trial Court. Attention has been drawn to the aforementioned order; contention of the petitioner is that even on 26.03.2008, a judicial notice had been taken of the prices in the vicinity and although the submission of the present petitioner was that the suit property is valued at more than Rs.150-160 crores, the counter submission of the non-applicant was that a reserve price should be fixed between Rs.110-120/- crores; the Court had taken judicial notice and fixed the reserve prices at Rs.1.40 crores. Advanced submission on this count being that as on date, this Court can also take judicial notice of the

escalation in property prices from 26.03.2008 (which was the date when reserve price of Rs.1.40/- was fixed) and after taking judicial notice of the aforementioned price-rise, a reserve price should be re-fixed.

3 Record further shows that the modalities of the auction were fixed on 14.08.2008. Learned counsel for the respondent has drawn attention of this Court the said order; the trial Court in this order of 14.08.2008 had specifically noted the fact that the reserve price of the property has been fixed at Rs.1.40 cores; thereafter it had proceeded to fix the modalities of sale. This order of 14.08.2008 was the subject matter of a petition under Article 227 of the Constitution of India which was dismissed by this Court vide its order dated 16.10.2008. This Court had again noted that the reserve price of the property had been fixed at Rs.1.40 crores; the other modalities of sale fixed by the trial Court had also been adverted to; the High Court did not think it to be a fit case to interfere with the order of the trial Court; the High Court at this point of time had also noted inter-alia as under:-

“Since the amount of reserve price involved in the case in the auction of the property is Rs.140 crores, no bidder would come forward unless he is assured of vacant possession of the property.”

4 It is also an admitted fact that the petitioner is in possession of the

suit premises.

5 The SLP preferred against the order of the High Court dated 16.10.2008 was dismissed on 11.08.2001. The question of law posed before the Apex Court (as is evident from the grounds contained therein) were again on the terms and conditions of the contract of auction and sale; contention of the petitioner being that this order of the High Court and Apex Court although has become final, yet it relates to the modalities of sale which had been fixed vide order dated 14.08.2008 and it is in no manner related to the reserve price which had been fixed by an earlier order of 26.03.2008. In fact the entire crux of the arguments of the learned counsel for the petitioner is based on this submission.

6 This submission of the learned counsel for the petitioner is wholly mis-directed. It appears to be malafide. The malafides can be seen from the fact that the petitioner has admittedly been in possession of the suit property over a long period of time. Record further shows that on one pretext or the other effort is being made by the petitioner as a delaying tactic to delay the progress of the case; he is not allowing the sale of the property which was ordered as way back as on 08.04.2002 (by an order of the High Court) to culminate. The impugned order which has

dismissed the review petition on 27.02.2012 has also noted these delaying tactics on the part of the petitioner; it is not in dispute that the order of the High Court dated 16.10.2008 has been finally been set to rest by the dismissal of the SLP on 11.08.2011; this order clearly evidences that the modalities of the sale fixed by the trial Court on 14.08.2008 have not been interfered with; it was implicit in these modalities of sale that the reserve price of the suit property had been fixed at Rs.1.40 crores. This has clearly and categorically been noted in the order dated 14.08.2008. Thus the submission of the petitioner that the reserve price fixed at Rs.1.40 cores vide order dated 26.03.2008 was not the subject matter of appeal either before the High Court or before the Supreme Court is clearly a mis-conceived submission; this submission appears to be one more last ditch effort on the part of the petitioner to delay the progress of the case.

7 The alternate submission of the learned counsel for the petitioner is that in case the reserve price is permitted to be modified which was fixed more than 3- ½ years ago, neither of the parties would suffer as a time schedule can be fixed by this Court and the new valuer appointed can give his valuation on the prevailing price within the said time

schedule; submission being that Rs.1.40 cores fixed in March, 2008 is very much on the lower side; to substantiate this submission documents had been placed on record; submission being that in Defence Colony a property for which a reserve price at Rs.1.90 crores had been fixed in April, 2008 had been sold at a Court auction in 2012 for Rs. 35 crores. Admittedly this was the actual price which had been fetched of the aforementioned property. Further submission on this count being that family of Shanti Bhushan had also bought a property in the same locality i.e. Amrita Shergil Marg in the year 2006 for Rs.1.37 cores and to substantiate this submission a newspaper cutting has been placed on record. The reserve price which has been fixed of the suit property at Rs.1.40 crores is not the final price which the property will fetch; at the time of fixing this reserve price, the Court had also taken into account the prevailing circle rates; even presuming that property prices have escalated from March, 2008, reserve price is only the minimum price which has to be bid by the bidder in an auction; it is not the final purchase price. Reserve price is in fact the smallest price on which the seller is willing to purchase a good or a server; this is a term commonly used in auctions; it is not the highest price that the buyer is willing to

pay.

8 Submissions of the petitioner are wholly without any merit.

Petition is misconceived any merit. Dismissed.

INDERMEET KAUR, J

MAY 02, 2012
A