

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM

The Hon'ble Mr. Justice M.DURAISWAMY

W.P.No.23332 of 2014 &

M.P.Nos.1 & 2 of 2014

The Puducherry State Co-operative Bank Ltd.,
Airport Road,
Lawspet,
Puducherry - 605 008

... Petitioner

Vs.

1. The Asst. P.F. Commissioner (SR)
No.101, 100 Feet Road,
Sreevenni Commercial Complex,
Cholan Nagar,
Olendaikeerapalayam,
Puducherry - 605 004.
2. K.Kandasamy
3. The Bharathi Co-operative Consumer Stores Ltd.
Lawspet,
Puducherry - 605 008.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration, declaring the e-auction dated 19.03.2014 conducted by the first respondent for selling the property being vacant land of an extent of 2691 sq. ft. with a built up area of 1220 sq. ft. in Door No.53, (Old No.13), Karuvedikuppam Village, Oulgaret Municipality Main Road, Karuvedikuppam comprised in R.S. No.156/17 of 39 Cadasta No.493.7/8 and the consequent sale deed dated 27.05.2014 registered as Document No.2084 of 2014 with the SRO Oulgaret, Puduchery in favour of the second respondent as illegal and permit the fresh sale of the said property by fresh auction.

For Petitioners : Mr.V.Kuberan

For Respondents : Mr.Sathyanarayana Prasad - for R1

Mr.Omprakash
for M/s.Ramalingam Associates
- for R2
No appearance - for R3

ORDER

The above writ petition has been filed by the petitioner to issue a writ of declaration, declaring the e-auction dated 19.03.2014 conducted by the first respondent for selling the property being vacant land of an extent of 2691 sq. ft. with a built up area of 1220 sq. ft. in Door No.53, (Old No.13), Karuvedikuppam Village, Oulgaret Municipality Main Road, Karuvedikuppam comprised in R.S. No.156/17 of 39 Cadasta No.493.7/8 and the consequent sale deed dated 27.05.2014 registered as Document No.2084 of 2014 with the SRO Oulgaret, Puduchery in favour of the second respondent as illegal and permit the fresh sale of the said property by fresh auction.

2. Heard Mr.V.Kuberan, learned counsel appearing for the petitioner, Mr.Sathyanarayana Prasad, learned counsel appearing for the first respondent and Mr.Omprakash, learned counsel appearing for the second respondent. Though notice was served on the third respondent and their names have been printed in the cause list, none appeared on behalf of the third respondent.

3. It is the case of the petitioner bank that the third respondent executed a mortgage deed dated 6.2.2007 mortgaging the above said immovable property in favour of the bank and the original title documents pertaining to the said property was also deposited with their bank as security for the advances availed. Since the third respondent did not honour the repayment commitment properly, the petitioner-bank initiated recovery proceedings under the Puducherry Co-operative Societies Act and after giving sufficient opportunities, the Arbitrator being the Registrar of Co-operative Societies passed three awards under ARC Nos. 457 to 459 of 2010, dated 7.1.2011. In the mean while, the petitioner was given to understand that the first respondent was arranging for auction of the same property belonging to the third respondent for recovering certain dues payable to them. On 23.1.2011, the petitioner informed the first respondent about the mortgage and the details of the awards

obtained by them. By their reply dated 10.2.2014, the first respondent, pointed out that they will be entitled to sell even the mortgaged properties of secured creditors and they cannot be restrained from conducting the auction. They also pointed out that the E.P.F. Organization will have a priority over the other debts in case of liquidation/winding up of sick unit. The first respondent proceeded with the auction through the process of e-auction by retaining the services of M/s.MSTC Limited. By their letter dated 25.3.2014, the first respondent informed the petitioner that the said property was disposed of to the highest bidder and called upon the petitioner to furnish the photocopies of all the original documents. The second respondent had purchased the property in the e-auction conducted on 19.3.2014.

4. The learned counsel appearing for the petitioner submitted that the first respondent should have mentioned the mortgage executed by the third respondent and the awards passed by the Arbitrator in respect of the mortgage in the auction notice. Further, the learned counsel for the petitioner submitted that when the auction was conducted on 19.3.2014, only the second respondent had participated in the auction and that the property was sold for a sum of Rs.58,21,000/-. According to the petitioner, they would fetch more value than Rs.58,21,000/-.

5. The learned counsel for the first respondent submitted that the property was sold following the procedures and therefore, the petitioner has not made out a case for setting aside the auction.

6. The learned counsel for the second respondent also submitted that the second respondent had participated in the e-auction and was a successful bidder of the auction and the sale was also registered in favour of the second respondent on 27.5.2014 and therefore, the writ petition is liable to be dismissed.

7. Considering the submissions made by the learned counsel on either side, it could be seen that there is no dispute that the third respondent had mortgaged the property with the petitioner-bank and that the arbitrator had passed three awards in ARC Nos. 457 to 459 of 2010, dated 7.1.2011. Though the award was passed on 7.1.2011, for more than three years, the petitioner has not taken steps to execute the awards passed on 7.1.2011. When the first respondent E.P.F. Organization initiated proceedings to auction the property for the outstanding amount payable by the third respondent, the petitioner raised objections stating that the mortgage executed by the third respondent and the award passed in the arbitration proceedings should have been mentioned in the auction notice.

8. It is needless to say that the first respondent shall have a priority over the other debts in case of liquidation or winding up proceedings. Accordingly, the property was brought to sale by e-auction on 19.3.2015 and the second respondent was the only bidder on 19.3.2014 for a sum of Rs.58,21,000/-. As per the valuation report given by the approved valuer, the upset price was fixed at Rs.58,21,000/-. The sale was confirmed in favour of the second respondent on 16.5.2015 and the sale certificate was registered on 27.5.2014. After the registration of the sale certificate on 27.5.2015, the petitioner has come forward with the present writ petition in August 2014. When the petitioner-Bank knew about the auction to be conducted by the first respondent well in advance, they could have taken appropriate steps to include the awards passed in the Arbitration proceedings in the auction notice. But for the reasons best known to the petitioner-bank, they kept quiet till the completion of the sale and registration of the sale certificate and three months thereafter they filed the present writ petition.

9. Mere non-mentioning of the award passed in the arbitration proceedings in favour of the petitioner is not a ground to set aside the sale, that too, after registration of the sale certificate. It is needless to say that the sale conducted by the first respondent is governed by Schedule II to the Income Tax Rules.

10. It is not the case of the petitioner that the first respondent had violated any procedure in bringing the property for auction. When there is no irregularity pointed out by the petitioner-bank to set aside the auction conducted on 19.3.2014, I am of the view that the present writ petition filed by the petitioner challenging the auction is liable to be rejected, more so, when the sale certificate itself was registered in favour of the second respondent. The petitioner has not attributed any mala fide intention on the first respondent for auctioning the property. In these circumstances, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

The Asst. P.F. Commissioner (SR)
No.101, 100 Feet Road,
Sreevenni Commercial Complex,
Cholan Nagar,
Olendaikeerapalayam,
Puducherry - 605 004.

+2cc's to M/s.Ramalingam Associates, Advocate, S.R.No.16432
+1cc to M/s.Rank Associates, Advocate, S.R.No.16242
+1cc to Mr.Sathyanarayana Prasad, Advocate, S.R.No.16397

CTK (CO)
CA(31/03/2015)

W.P.No.23332 of 2014 &
M.P.Nos.1 & 2 of 2014



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