

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.25924 of 2014
and
M.P.Nos.1 and 2 of 2014

M/s.Rajbai Anusuya Devi Gulecha
Memorial Charitable Trust,
represented by its Managing Trustee,
Mr.Nalin Gulechha,
33/2, Gangau Street, Kalakshetra Colony,
Besant Nagar Extension,
Chennai-600 090.

Petitioner

Vs.

- 1.The Recovery Officer,
Debts Recovery Tribunal-1,
Chennai
6th Floor, Dewa Towers, No.770-A,
Anna Salai, Chennai-600 002.
- 2.Housing and Urban Development Corporation Limited,
5th Floor, CMDA Tower I,
1,Gandhi Irwin Road, Egmore,
Chennai-600 008.
- 3.Sri Krishna Trust,
rep by Trustee Mr.N.Ranjit,
No.8, Ponni Amman Koil Street,
Hasthinapuram, Chennai-600 054.
(R-3 impleaded as per court order dated 11.11.2014
in M.P.No.3 of 2014)

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to quash the E-auction sale notice dated 21.8.2014 in DRC No.37 of 2012 issued by the first respondent published in The Daily Telegrams.

For Petitioner : Mr.N.V.Srinivasan
for M/s.N.V.S. & Associates

For Respondents : Mr.K.S.Sundar for R-2
Mr.Jayesh B. Dolia for
M/s.Aiyar & Dolia for R-3
R-1 Tribunal

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Challenge in this petition is to the sale notice dated 21.8.2014, whereunder the property in question, i.e., S.No.1/134 admeasuring 8.00 Hectares of land or thereabouts, situated at Brookshabed Village under Port Blair Tehsil and Andaman District, Andaman and Nicobar Islands together with the superstructures, fixtures and furnitures and fixed assets of the Blair International School constructed thereon, was put on sale by public e-Auction to be held on 30.9.2014 for recovery of a sum of Rs.7,76,11,942/- by the Recovery Officer, Debts Recovery Tribunal-I, Chennai.

2. This Court, recording the statement of the learned counsel for the petitioner that the petitioner was not in position to pay any amount, observed that the petitioner despite making an offer to pay a sum of Rs.2,50,000/- every month in the reply dated 12.02.2014 to the show cause notice, had failed to deposit a single penny. The petitioner was given further opportunity, while staying the confirmation of auction sale for making part payment. Till date, the petitioner had not taken any steps to show his bonafide by making any payment towards the dues outstanding against him. The petitioner reiterates his offer again today, ignoring the fact that the matter has been pending since 23.09.2014 affording opportunity to the petitioner to make the payment.

3. The learned counsel for the other side submits that due is outstanding for a long period. The petitioner, being a borrower, had an opportunity to discharge the liability right from the date when the notice under Section 13(2) was issued long back. The petitioner was further given an opportunity at every stage of the proceedings. Ultimately, a notice was issued under Section 25 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 on 18.12.2013 and again a show cause notice was issued on 12.2.2014. The petitioner has not come forward with any payment and at this stage, the petitioner may not be granted any further time to make payment.

4. We have examined the facts in its entirety. A loan was granted during the period 2004 and 2006. After taking legal proceedings, a recovery case being O.A.No.208 of 2010 was filed on

the file of the Debts Recovery Tribunal-I, Chennai. The recovery case was decreed by order dated 28.6.2012. As a sequel, DRC 37 of 2012 was also issued for a sum of Rs.6,40,09,690/- as due and payable as on 29.10.2012. Thereafter, a demand notice dated 05.11.2012 was issued, which was again reiterated on 7.12.2012. The petitioner has not shown any inclination to make the payment. In the auction held on 30.9.2014, the bid of the third respondent was accepted as against the reserve price of Rs.7.50 Crores. Thereafter, this court had also granted sufficient time to the petitioner to show his bonafide by making payment.

5. Reliance of the petitioner on a decision of the Supreme Court in Ram Kishun and Ors Vs. State of U.P.¹ to contend that the reserve price was not fixed properly, cannot be examined at this stage. The Supreme Court's observation that the financial institutions cannot be permitted to behave like property dealers for recovery of their loans in any unreasonable or arbitrary manner, is misplaced. In the case on hand, the petitioner was given sufficient opportunity to discharge his liability, which the petitioner has miserably failed.

6. In view of the foregoing, we are of the view that the petitioner does not deserve any indulgence. We do not find any merit in the case. Resultantly, the writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Recovery Officer,
Debts Recovery Tribunal-1,
Chennai
6th Floor, Dewa Towers, No.770-A,
Anna Salai, Chennai-600 002.
- 2.Housing and Urban Development Corporation Limited,
5th Floor, CMDA Tower I,
1,Gandhi Irwin Road, Egmore,
Chennai-600 008.

1 cc to Mr.K.S.Sundar ,Advocate, SR.No.2745

1 cc to Mr.M/s.Aiyar & Dolia ,Advocate, SR.No.2326

W.P.No.25924 of 2014

ad(co)pmk.6.4.2015