THE HON'BLE MR JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE MR JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 4219 of 2004

ORDER: *(Per the Hon'ble Mr.Justice A. Ramalingeswara Rao)*

The petitioner, M/s Kushal Polymers Private Limited, is the auction-purchaser of the property in question. The property originally belongs to one Sri S.V. Raghu, who committed default in payment of tax arrears to the extent of Rs.16,13,769/-. During the course of recovery proceedings, the process of sale of immovable property, belonging to the said defaulter, situated at Plot Nos.18, 19 and 20, Malani Cooperative Housing Society Limited, Bowenpally, was initiated by putting the same into auction on 28-03-2002, in accordance with the Rules of the Second Schedule, appended to the Income Tax Act, 1961 (for short 'the Act'). The petitioner became the highest bidder. At the time of participating in the auction proceedings, it paid an amount of Rs.10,000/-, and thereafter, paid an amount of Rs.6,92,500/-, on 01-04-2002, totalling to Rs,7,02,500/-. The balance amount of Rs.21,07,500/- together with 1% poundage of Rs.28,100/- was payable on or before 12-04-2002, but the petitioner committed default in payment of the said amount.

Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents.

In Sl.No.1 of the auction notice, containing further terms and conditions of sale by public auction, it was notified as follows:

> "If the balance 75% amount is not paid by due date i.e. on 12-4-2002, then out of the 25% of the amount paid, the costs of the auction will be deducted and the balance may be forfeited to the Govt. according to the discretion of the T.R.O".

The 2nd respondent issued notice to the petitioner on 26-04-2002 to show cause as to why the sale proceedings should not be cancelled, and the deposit of Rs.7,02,500/-, made by it, should not be forfeited. In response to the same, the petitioner addressed a letter to the 2nd respondent on 10-05-2002, stating that they are making the balance payment as per the details given in the said letter and requested for confirmation of the sale and delivery of the physical possession of the property. The said payment was made through demand drafts, after the due date. However, it came on record that the demand drafts dated 26-04-2002 were cancelled on the next date.

The petitioner addressed another letter to the 2nd respondent on 19-08-2002, stating that they have advertised in the newspaper on 29th, 30th and 31st of March, 2002, with a view to sell the property in time, by keeping some marginal profit, and that they came to know that the property was already leased out to APSFC for a period of eight years for an industry named A.P Packaging (P) Limited, and it was under lock and key by APSFC since 06-02-2002, as the said industry committed default in payment of loan arrears. Ultimately, they sought for refund of the advance amount of Rs.7,02,500/- with interest, in view of the pending litigation on the property.

The 2nd respondent passed orders on 11-09-2002, rejecting the request put forward by the petitioner, stating that, had the petitioner been paid the entire amount, it would have become the owner of the property, and vacating of the premises by M/s A.P Packaging (P) Ltd was not a problem. The 2nd respondent accordingly passed an order, forfeiting the amount (being 25% of the bid amount deposited), to the Government. As against the said order, the petitioner filed a revision before the 1st respondent.

The 1st respondent passed an order on 14-01-2004, upholding the order passed by the 2nd respondent dated 11-09-2002. It was observed that there was no charge created on the property in question and that the lessee is entitled to mortgage his lease-hold interest only in favour of Andhra Pradesh State Financial Corporation, who, in turn, has granted a loan to the lessor.
The lease agreement entered into was initially for a period of eight years from 01-10-1992. Thus, on the date of proclamation of sale by the 2nd respondent, the lease agreement stood null and void, as the lease expired, and that there was no renewal of the same. Further, as per the terms and conditions of sale by public auction of the property indicated that the property was sold based on the information available with the department, and it was not answerable for any error, mis-statement or omission in proclamation of the sale. The petitioner was not *bana fide* in purchasing the said property, and on the other hand, wanted to sell the said property to a third party, to gain some income. The balance amount was sought to be paid through demand drafts, obtained by M/s Padmini Pipes Limited, Cherlapally on 26-04-2002, and they were cancelled on the next date itself.

We have carefully perused the orders passed by the 2nd respondent as well as the 1st respondent. Under Rule 58 of the Second Schedule, appended to the Act, the 2nd respondent is competent to exercise his discretion in forfeiting the amount of initial deposit made by the petitioner, in case it fails to deposit the balance of the bid amount, within the stipulated period.

The 2nd respondent passed a cogent order, and the same was confirmed by the 1st respondent.

We see no error or improper exercise of power by the respondents 1 and 2, in passing the orders.

The writ petition is liable to be dismissed, and it is accordingly dismissed. There shall be no order as to costs.

DILIP B. BHOSALE, J.

A. RAMALINGESWARA RAO, J.

Dt. 05-02-2015.

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