

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

-
WRIT PETITION NO.29413 OF 2015

-
ORDER
(per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the e-auction sale made by the Punjab National Bank resulting in the registration of a sale certificate on 28.08.2015 by the Sub-Registrar, Balanagar.

Foundation for this challenge are the alleged irregularities in the e-auction sale notice dated 11.07.2015. The petitioner claims that he was one of the prospective bidders interested in the property put to auction, being an extent of 200 square yards of land. However, he admittedly did not participate in the auction. According to him, had it been made known in the sale notice that sale of the land was along with the constructions made thereon, he would have participated and would have offered a reasonably high bid. He asserted that the bank failed to mention the proper address of the property, which would have enabled the general public to locate and inspect the same. He further asserted that the plot of 200 square yards had newly constructed four single bed room portions along with two duplex portions in finishing stage, divided equally in two blocks, totaling to 7,200 square feet built up area, but these details were not forthcoming in the sale notice dated 11.07.2015. He contended that the sale notice gave one to understand that the reserve price of Rs.83.45 lakhs was for just the extent of 200 square yards, which was exorbitantly high and owing to this, members of the general public, like him, did not participate in the auction. He further stated that only one bidder participated and succeeded in the auction and this bidder was none other than the wife of one of the borrowers. He therefore alleged fraud and collusion between the bank officials and the successful bidder.

The respondent bank filed a counter-affidavit stating as under: The petitioner is a third party to the loan transaction and had never approached the bank or shown any interest in purchasing the auctioned property. The bank pointed out that there appeared to be some undisclosed comity between the petitioner and one of the borrowers/mortgagors as was evident from the fact

that the petitioner was able to produce material documents relating to the loan transaction between the bank and the borrowers/mortgagors. As regards the merits of the matter, the bank stated that a housing loan of Rs.24,00,000/- was sanctioned by it to one K.Sumanth Babu and one G.Rajani for purchase of the land admeasuring 200 square yards situated in Plot No.3 in Sy. No.67 of Hasmathpet Village, Kukatpally, Hyderabad. Another housing loan of Rs.43.50 lakhs, along with an overdraft facility of Rs.5,00,000/-, was also sanctioned to them. The borrowers thereupon purchased the land and mortgaged the same with the bank as security for the loans. As the said loan account was classified as a non-performing asset, proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act of 2002') to recover the outstanding dues. After following the due procedure, the respondent bank issued the sale auction notice on 11.07.2015 in accordance with the provisions of the Act of 2002. This sale auction notice was published in news papers on 12.07.2015 indicating a reserve price of Rs.83.45 lakhs, clearly mentioning that the property would be sold on an 'as is where is basis and as is what is basis and without recourse basis'. The bank stated that the reserve price was arrived at after getting the property valued by the bank's approved valuer. The e-auction was held on 18.08.2015 duly conforming to the stipulated 30 days minimum period as per rules. G.Deepa, wife of K.Sumanth Babu, was declared the successful bidder at Rs.83.65 lakhs. The bank pointed out that the borrowers never objected to the reserve price at that stage and asserted that it was not open to a stranger to take any objection thereto. The bank further stated that the constructions made on the subject land were not put to sale as such constructions were made without due permission. However, the value of the superstructures was also taken into account while fixing the reserve price. The bank therefore stated that the interests of the borrowers were not ignored in this regard.

During the pendency of the writ petition, K.Sumanth Babu and G. Rajani Bala, the borrowers, along with the highest bidder G.Deepa, wife of K. Sumanth Babu, were brought on record as respondents 4 to 6.

The aforestated facts would demonstrate that there seems to have been a fall out between K.Sumanth Babu and G. Rajani Bala, the borrowers. G.Rajani Bala, along with her husband, G. Venugopal, seems to have taken a

separate stand, while G.Deepa, wife of the other borrower, K. Sumanth Babu, participated in the e-auction and emerged as the successful bidder. Significantly, neither G.Rajani Bala nor K.Sumanth Babu has chosen to challenge before this Court any of the proceedings initiated by the bank under the Act of 2002. The attack now launched is by the petitioner, a third party, who did not even participate in the auction. As rightly pointed out by the respondent bank, his locus to maintain this writ petition is very much open to question. The only contention urged by him, worthy of consideration, is as to the validity of the e-auction sale notice dated 11.07.2015. Therein, Hasmathpet Village has been wrongly spelt as Hasamtpet Village. Further, Kukatpally is wrongly spelt as Kookatpally. However, we are of the opinion that these lapses do not lead to any scope for misunderstanding. The location of the land at Balanagar Mandal, Ranga Reddy District, is correctly mentioned. The plot area is mentioned along with boundaries but the name of the colony, Royal Enclave, is not mentioned. The details furnished were, in our opinion, sufficient for a layman to recognize and understand as to where the property sought to be auctioned was situated. That apart, the sale notice clearly spelt out that bidders could contact the authorized officer at the given mobile number and landline numbers to find out the detailed terms and conditions of the sale before submitting their bids. This being so, the petitioner, if he was really interested, could have taken recourse to contacting the bank officials if he entertained any doubt. He admittedly did not choose to do so.

As regards the second aspect of the matter, the bank explained as to why details of the construction were not mentioned in the sale notice. Notably, these constructions were not under mortgage with it. That apart, the bank stated that these constructions were made without requisite permission and therefore, only the value thereof was included in the reserve price but the same were not put to sale by it. We find no irregularity in the action of the bank in this regard. If there is any dispute amongst the unofficial respondents as regards the title and interest in the subject constructions, it is for them to work out their remedies before the appropriate forum in accordance with law. Sale of the mortgaged land by the bank, given the aforesaid facts, cannot be held to be irregular or wanting on the ground of procedural violations in terms of the Act of 2002 and the rules framed thereunder.

Further, even if the petitioner is held to have locus to maintain this writ petition, his endeavour thereby to unsettle the auction sale cannot be countenanced at this belated stage, after registration of the sale certificate. Even on merits, his allegations as regard the so called lapses on the part of the bank cannot be accepted. The omissions on the part of the bank in this regard were superficial at best and once interested bidders were given due opportunity to contact the authorized officer to clarify their doubts and for seeking details of the terms and condition of the sale, paltry mistakes on the part of the bank cannot be given primacy to the extent of invalidating the auction at this late stage.

On the aforestated analysis, we find no grounds made out for interference in this writ petition which is wholly lacking in merit and *bonafides*.

The writ petition is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

20th JUNE, 2016

Svv