THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION NO.8979 OF 2016

O R D E R
(*Per Sri Justice Sanjay Kumar)*

Challenge in this writ petition is to the e-auction sale held by the Andhra Bank, Main Branch, Bheemavaram, on 25.02.2016, whereupon the third respondent herein emerged as the highest bidder. This sale was conducted pursuant to the e-auction sale notice dated 19.01.2016 issued by the bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). The petitioner, being the guarantor, alleges that his property valued at Rs.4,000/- per square yard, as per Government valuation, was sold by the bank at a price of Rs.1,850/- per square yard to the third respondent, the sole bidder, by playing fraud and in collusion with him. A consequential direction was sought to set aside the sale in his favour, including issuance of a sale certificate.

Pleadings being complete, the matter is taken up for final disposal at the stage of admission. Heard Sri G.Vivekanand, learned counsel for the petitioner, Smt.V.Dyumani, learned counsel for the Andhra Bank, and Sri E.V.V.S.Ravi Kumar, learned counsel for the third respondent.

The petitioner stood as a guarantor for the loan availed by his wife and others from Andhra Bank, Bheemavaram Branch, for pisciculture operations. Owing to default in repayment of this loan, the bank initiated proceedings under the SARFAESI Act. Demand notice dated 11.10.2013 was issued under Section 13(2) of the

SARFAESI Act, followed by issuance of a possession notice on 01.03.2014 under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002').

The bank attempted to sell the property belonging to the petitioner, which was offered as a security interest, on 15.07.2014 under e-auction notice dated 05.06.2014, whereunder the property was divided into three items – (1) an extent of 45,946.20 square yards, comprising 171 house plots, in Sri Venkateswara Nagar Mega Township, Old Peddapuram Road, Peddapuram Municipality, East Godavari, (2) an extent of Ac.9.63 cents of land situated in Peddapuram Municipality, East Godavari, and (3) premises bearing D.No.8-3-14, Peddapuram Municipality, East Godavari.

S.A.No.143 of 2014 was thereupon filed by the petitioner before the Debts Recovery Tribunal, Visakhapatnam, assailing the said auction notice. Cause for his grievance was that the reserve price fixed for the first item was abnormally low as the market value was Rs.3,000/- per square yard. However, the auction sale held pursuant to the auction notice dated 05.06.2014 came to naught as there were no bidders in so far as item (1) was concerned. Items (2) and (3) were however sold in the auction held on 15.07.2014. We are informed that the bidders backed out thereafter and filed O.S.No.121 of 2015 before the District Court, Kakinada, for a declaration that the bank had no right to enforce forfeiture of part of the bid amount paid by them. While so, the bank issued e-auction sale notice dated 19.01.2016, whereunder item (1) of the property mentioned in the earlier auction sale notice was divided into four lots – (1) 41 house plots admeasuring 11,177.92 square yards (2) 37 house plots admeasuring 10,156.87 square yards (3) 26 house plots admeasuring 6,933.42 square yards and (4) 31 house plots admeasuring 8,387.26 square yards. All these plots, as stated earlier, are situated in Sri Venkateswara Nagar Mega Township, Old Peddapuram Road, Peddapuram Municipality, East Godavari.

The complaint of the petitioner is that the bank did not obtain a fresh valuation report and fixed the reserve price by grossly undervaluing the land rate at Rs.1,850/- per square yard, when the Government registration value itself stood at Rs.4,000/- per square yard. He further contends that the actual market value was between Rs.5,500/- and Rs.6,000/- per square yard at that time but despite the same, the reserve price was fixed at a much lower rate. In the auction held on 25.02.2016 pursuant to the aforestated sale notice, the third respondent was the sole bidder. According to the petitioner, the third respondent was a customer of Andhra Bank, having more than Rs.40.00 crore overdraft facilities, and he participated in the auction by colluding with the bank officials. The petitioner pointed out that he bid exactly the reserve price fixed for the items of property brought to sale and alleged that he paid the sale consideration from out of the OD account he had with Andhra Bank. The petitioner therefore asserted that fraud and collusion were writ large on the entire transaction. Ventilating these grievances, he filed this case.

The Andhra Bank filed a counter through its Chief Manager, Bheemavaram Branch. It stated therein that before issuing the e-auction notice dated 05.06.2014, it obtained valuation report dated 01.04.2014 from an approved valuer, who put the value of the petitioner’s plots at Rs.1,350/- per square yard, totaling to Rs.6,20,27,000/-. This was the reserve price fixed in the auction notice dated 05.06.2014. As regards the later auction notice dated 19.01.2016, the bank stated that valuation report dated 05.12.2015 was obtained from K.Satyanarayana Murthy, approved valuer, who determined the realizable value of the plots at Rs.1,850/- per square yard. Another valuation report dated 05.12.2015 was obtained from A.Ram Mohan Rao, approved valuer, who also valued the realizable value of the plots at Rs.1,850/- per square yard. It was on the strength of these valuation reports that the reserve price was fixed at Rs.1,850/- per square yard. The bank stated that out of the total 171 plots mortgaged by the petitioner in the capacity of a guarantor, only 141 plots were brought to sale. The third respondent was declared as the highest bidder in respect of the four items of property brought to sale. After confirmation of the sale in his favour, the bank stated that it issued sale certificates dated 03.03.2016, which were also registered as Documents bearing Nos.753, 754, 755 and 756 of 2016 in relation to the four items sold. The bank stated that the sale was conducted on an e-auction platform which is more transparent, as there would be no scope for formation of a cartel. The bank pointed out that the petitioner's right of redemption under Section 13(8) of the SARFAESI Act was operative only till transfer of the property sold and as the sale certificates had already been issued to the third respondent and registered in his favour, it asserted that the petitioner no longer had the right of redemption. Possession of the plots was stated to have been delivered to the third respondent. The bank denied that it had sold the plots for a low price in collusion with the third respondent. The bank also denied that the third respondent had paid the sale price from and out of his OD account maintained with it and asserted that he had no OD account with its branch.

The third respondent filed a counter stating that he had participated in the e-auction pursuant to the notice dated 19.01.2016 and emerged as the highest bidder for a sum of Rs.6,88,12,619/- as against the reserve price of Rs.6,86,12,619/-. He stated that he deposited the sale consideration from his personal bank account and that he obtained registered sale deeds on 03.03.2016 from the bank, whereby he was put in possession of the properties. He denied the allegation that the bank had provided cash credit facilities to him and that he had used the said amount and purchased the properties.

In his reply to the counter affidavit filed by the bank, the petitioner stated that the third respondent had an account with the Andhra Bank, Main Branch, Kakinada, as was evident from the documents filed by the bank itself and that the same manifested that he had paid the sale consideration through the said account. He again raised the issue of undervaluation of the plots and pointed out that even as per the valuation reports relied upon by the bank, the market value/Government value was Rs.4,000/- per square yard when the property was put to sale. He pointed out the valuers also noted that these were plots were in an approved layout which had no disadvantages and were provided with an overhead water tank apart from a centrally located park. He asserted that the valuation could not be brought down for ulterior motives. He alleged that the third respondent had purchased his properties for a song though the actual valuation would be between Rs.5,500/- and Rs.6,000/- per square yard. He again asserted that the sale of his plots was liable to be set aside on the ground of collusion and fraud.

At the outset, it may be noted that a secured creditor stands in the position of a trustee when it brings the borrower's properties to sale under the provisions of the SARFAESI Act. In ***J.RAJIV SUBRAHMANIYAN V/s. M/s.PANDIYAS***[1], the Supreme Court observed that the provisions of the SARFAESI Act and the Rules of 2002 were enacted to ensure that a secured asset is not sold for a song and that banks which resort to extreme measures under the said Act and Rules for sale of secured assets should ensure that such a sale provides maximum benefit to the borrower. It was further observed that a secured creditor is expected to take *bonafide* measures to ensure that there is maximum yield from such secured assets for the borrower. The Andhra Bank therefore stood in a fiduciary capacity while bringing the petitioner's plots to sale.

Perusal of the valuation reports relied upon by the bank reflects that both the valuers noted that the actual rate for the plots obtained from the Registrar's office was Rs.4,000/- per square yard. They also noted that the land was well-plotted with a centrally located park with open space and with an overhead water tank. Both the valuation reports were furnished on the same day, i.e., 05.12.2015 and the value fixed under each of them was identical, i.e., Rs.1,850/- per square yard. No reason was however mentioned by either of the valuers as to why such a value was adopted when the Government value was Rs.4,000/- per square yard. Despite the valuers visiting the property on different dates, it is surprising to note that they adopted the same value of Rs.1850/-, though both of them noted that the prevailing market value was Rs.2,000/- per square yard against the Government rate of Rs.4,000/- per square yard. Fixation of the reserve price for the plots basing on such valuation is therefore suspect.

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[1] (2014) 5 SCC 651

That being one aspect of the matter, the material filed by the bank demonstrates that the third respondent submitted his bids for each of the items of property brought to sale at exactly the same figure as the reserve price. It may be noted that in terms of the e-auction notice, item (1) was to be auctioned between 10.00 A.M. and 11.00 A.M.; item (2) was to be auctioned between 11.30 A.M. and 12.30 P.M.; item (3) was to be auctioned from 1.00 P.M. to 2.00 P.M.; and item (4) was to be auctioned from 2.30 P.M. to 3.30 P.M. The minimum multiple of bids in terms of the notice was to be 1% of the upset price or Rs.50,000/-, whichever is lesser. Item (1) was therefore auctioned first and the third respondent, being the sole bidder, bid the reserve price of Rs.2,06,79,152/- at 10:01:28 A.M. It is significant to note that the second Proviso to Rule 9(2) of the Rules of 2002 provides that if the Authorized Officer of the secured creditor fails to obtain a price higher than a reserve price, he may, with the consent of the borrower and the secured creditor, effect the sale at such price. In terms of this statutory position, the Authorized Officer of the Andhra Bank could not therefore have sold item (1) to the third respondent, the sole bidder, at the reserve price quoted by him without obtaining the consent of the petitioner and the bank.

What happened thereafter is rather peculiar and significant. Despite being the only bidder, the third respondent thought it fit to enhance his bid at 10:50:03 A.M. to Rs.2,07,29,152/-. He therefore increased his bid by the minimum multiple of Rs.50,000/- so that he would offer more than the reserve price, thereby taking the transaction out of the ambit of the second Proviso to Rule 9(2) of the Rules of 2002 as referred to *supra*. Auction of item (2) was held between 11.30 A.M. and 12.30 P.M. The third respondent's bid at

11:31:33 A.M. was exactly the same as the reserve price of Rs.1,87,90,209/-. Having wisened up to the fact that he needed to offer more than the reserve price, he immediately upped his bid at 11:35:08 A.M. by the minimum multiple of Rs.50,000/- to Rs.1,88,40,209/-. What is to be noted is that the third respondent raised his bid for item (1) nearly 49 minutes after his initial bid, whereas he did so within four minutes for item (2). Similar details for item (3) have not been furnished but again the details relating to item (4) are on the same lines. This auction was conducted between 2.30 P.M. and 3.30 P.M. and the third respondent's bid at 2:32:27 P.M. was exactly the same as the reserve price of Rs.1,55,16,431/-. Within one minute thereafter, at 2:33:52 P.M, he increased his bid to Rs.1,55,66,431/- by adding the minimum multiple of Rs.50,000/-.

To begin with, when the third respondent was the only bidder, the question of his competing with himself and raising the bid further is perplexing. The sequence in which this increase of bids took place starting with item (1) clearly brings out the fact that he seems to have been informed that he could not be declared the successful bidder at the reserve price without the consent of the bank and the petitioner. This process of making him aware seems to have taken some time leading to the bid being increased by him nearly 50 minutes later, in so far as item (1) was concerned. However, once he was made aware of this fact, he took steps immediately when the other items were brought to sale during the later hours of the day.

As already stated *supra*, the question of the third respondent outbidding himself is itself incongruous and incomprehensible. When there was only one bid, the bank necessarily had to consider the same in accordance with the due procedure and the question of allowing the sole bidder to outbid himself did not arise. The Authorized Officer of the Andhra Bank, being the Chief Manager of its Bheemavaram Branch, however permitted him to do so.

No reasonable explanation is forthcoming from the bank as to why the plots were valued at a rate far lesser than the Government value. All the more so, when the valuers also noted that the plots were well developed. Significantly, valuation of this land at the time of sanction of the loan in the year 2012 was at Rs.1,200/- per square yard. Adopting the rate of just Rs.1,850/- per square yard after half a decade when the Government value itself stood at Rs.4,000/- therefore seems to be unrealistic, given normal inflationary real estate trends. No justification is offered by either the valuers or the bank as to why the value was pegged at less than half the Government value. This aspect is sufficient in itself to reflect adversely upon the manner in which the bank conducted the sale, forgetting its fiduciary relationship with the petitioner. To compound this, the bank allowed the sole bidder who had quoted just the reserve price for all four items to increase his bids and the manner in which the same was done clearly indicates that he was advised to do so to get over the legal hurdle, which required consent of the petitioner being obtained. The entire sale transaction therefore stands shrouded in suspicion and doubt. The same is more than adequate to hold that the bank failed to discharge its duty as a trustee of the petitioner's plots while bringing the same to sale.

We therefore have no hesitation in holding that the sale of petitioner's plots by the bank was tainted with illegality as they were sold without transparency and seemingly for a song.

The writ petition is accordingly allowed setting aside the sale conducted by the bank on 25.02.2016 in favour of the third respondent. There shall be a direction to the Sub-Registrar, Peddapuram, to cancel the registered documents bearing Nos.753, 754, 755 and 756 of 2016, all dated 03.03.2016. As the third respondent was not a *bonafide* purchaser in the light of his actions referred to *supra*, he cannot be benefited by award of a higher rate of interest for return of his monies. The bank shall therefore refund the sale consideration paid by him with interest at 6% per annum.

The Registry shall forward a certified copy of this order to the Sub-Registrar, Peddapuram, for taking necessary action.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

GUDISEVA SHYAM PRASAD,J

4th AUGUST, 2017

PGS