

Gurbax Singh
2017.05.15 16:55

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 7405 of 2017
Date of decision: 08.05.2017**

M/s M.J Steel Sales

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Ms. Jagyasa Tanwar, Advocate and Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Rajinder Goyal, Addl.A.G.Punjab.

Mr. Mahesh Dheer, Advocate for respondent No.3.

Mr. Saurabh Goel, Sr. Standing Counsel for respondent No.4.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent No.2 to register the sale deed of the property i.e. land measuring 8 Bigha, 10 Biswa, Khata No. 28/56, Khasra No. 407(6-5), 410(6-5) i.e. 17/25th share of 12 Bigha, 10 Biswa land situated inside Village Kumbra, Tehsil Amloh, Mandi Gobindgarh, District Fatehgarh Sahib, in favour of petitioner as it has purchased the said property in the e-auction held on 28.02.2017 from the respondent-bank under Section 13(9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. A public sale notice dated 09.02.2017 was published in the newspaper "Rozana Spokesman" for the sale of the land of M/s Mata Multi Metals, Tehsil Amloh, District Fatehgarh Sahib as detailed above. The petitioner being interested to purchase the said land approached the bank respondent No.3 and sought information regarding the property being e-auctioned. The respondent bank gave the entire information regarding the land put on sale and assured the petitioner that the property was free from all types of encumbrances and charges. It was also intimated by the bank that the petitioner could participate in the e-auction which was going to be held on 28.02.2017 to purchase the property. It was further informed to the petitioner that sale deed of the land shall be registered in favour of the auction purchaser immediately after depositing the sale amount. The petitioner agreed to purchase the said property. It deposited the earnest money of ₹ 22,50,000/- on 23.02.2017 as per the terms and conditions of the e-auction. On 28.02.2017, the petitioner participated in the e-auction and purchased the property in question after giving highest bid of ₹ 2,25,25,000/-. The respondent bank issued the sale confirmation letter to the petitioner on 28.02.2017 and advised it to deposit 25 % amount immediately and remaining amount of sale amount as per the requisite terms and conditions. The petitioner immediately deposited 25 % i.e. ₹ 56,31,250/-. On 07.03.2017, the petitioner was further directed to deposit ₹ 1.08 lakhs as TDS @ 1% in respect of the land and building of ₹ 1.08 crore which was also deposited by the petitioner. After purchasing the property in question, it came to the knowledge of the petitioner from the office of Sub-Registrar that a sum of ₹ 5,79,000/- of the Excise and Taxation department was pending towards the previous owner of the property i.e. M/s Mata Multi Metals and entry in this regard was also

mentioned in the revenue record. It was further informed to the petitioner by the office of the respondent No.2 that the sale deed of the property could not be registered in its favour unless the entry mentioned in the jamabandi was not removed from the revenue record by depositing the payment of ₹ 5,79,000/- to the Excise and Taxation department. The petitioner immediately approached the respondent bank and informed regarding the said entry of recovery of Central Excise and Taxation department dues of previous owner. The authorized officer of the bank informed the petitioner that the property had been sold to it under the SARFAESI Act which was mortgaged with the bank and was free from all kinds of encumbrances and charges. The petitioner on the assurance of the respondent bank had deposited the entire sale consideration of ₹ 2,25,25,000/- with the bank. The respondent bank issued the sale certificate to the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 (in short, "the Rules") wherein it was specifically mentioned that the sale of the scheduled property was made free from all encumbrances known to the secured creditor. The petitioner purchased the e-stamp worth ₹ 9,72,000/- on 27.03.2017 for registration of sale deed from the treasure bank for the State of Punjab i.e. Canara Bank, Amloh Road, Mandi Gobindgarh and after getting the sale deed drafted, presented the same before the concerned Sub-Registrar who refused to register the sale deed in the favour of the petitioner until the entry of Central Excise and Taxation Department was deleted from the revenue record. According to the petitioner, there was no information in the public sale notice regarding the pending dues of Excise and Taxation department. At every stage it was informed to the petitioner by the bank that the property was free from all encumbrances and charges. Thus, there was no statutory obligation on the part of the petitioner to discharge liability of outstanding dues of the previous owner. Further, as per

Section 31B of the Recovery of Debts due to banks and Financial Institution Act, 1993 (in short, “1993 Act”), the rights of the secured creditor to realise the secured debts due and payable to them by sale of assets over which security interest was created shall have priority and shall be paid in priority over all other debts and Government dues including revenue taxes, cesses and rates due to the Central Government, State Government or Local Authority. The petitioner asserts that as per the law laid down by the Apex court, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government, unless there is a specific provision in the statute claiming first charge for the purchaser. It has been further held that once the property has been purchased in an auction held under the SARFAESI Act and the Rules, then the auction purchaser will hold the assets free from any encumbrances. In the present case, the action of respondent No.2 in not registering the sale deed is totally illegal, unjust arbitrary and against the principles of natural justice. Hence, the instant petition by the petitioner.

3. A written statement has been filed by respondent No.3 wherein it has been inter alia stated that the petitioner was clearly on notice as per the public notice dated 28.02.2017 that the auctioned property was being sold on “as is where is” and “ as is what is” and “ whatever there is basis”. It was further clarified in the same public notice that the bidders should make their own independent enquires regarding the encumbrances, title of property put on auction and claims/rights/dues affecting the property, prior to submitting their bid. It was also stated that the e-auction advertisement did not constitute and will not be deemed to constitute any commitment or any representation of the bank that the property was being sold with all the existing and future encumbrances whether known or unknown to the bank. Further, the petitioner had certified in the possession certificate that it had submitted the offer after

full satisfaction and after checking the relative revenue records. On these premises, prayer for dismissal of the petition qua respondent No.3 has been made.

4. A written statement has been filed by respondent No.4. It has been inter alia stated that as per Section 11 of the Central Excise Act 1994 (in short, “the 1994 Act”), the liability of outstanding dues towards the Excise Duty is recoverable from the sale proceeds of the property which belongs to M/s Mata Multi Metals. In addition to the amount of ₹ 5,79,430/- as duty default, interest under Section 11AA of the 1994 Act and penalty under Rule 8(3A) of the Central Excise Rules, 2002 are also recoverable from the previous owner.

5. We have heard learned counsel for the parties.

6. It is the admitted position that a public sale notice dated 09.02.2017 was published in the newspaper for the sale of the property in question. The petitioner being the highest bidder purchased the property in question in e-auction held on 28.02.2017 as per the terms and conditions of the e-auction. It deposited the entire requisite amount. Sale confirmation letter was also issued by the respondent bank under the Rules. After purchasing the property, the petitioner came to know from the office of Sub-Registrar that an amount of ₹ 5,79,000/- of the Central Excise department was pending towards the previous owner of the property i.e. M/s Mata Multi Metals. Thus, it was informed to the petitioner that the sale deed of the property could not be registered in its favour unless the entry in the revenue record regarding deposit of ₹ 5,79,000/- to the Central Excise department was deleted. The respondent bank after taking the entire sale consideration issued sale certificate to the petitioner under Rule 9(6) of the Rules wherein it was

mentioned that the sale of the scheduled property was made free from all encumbrances known to the secured creditor. Nothing was mentioned in the public sale notice that any dues were pending.

7. It would be advantageous to reproduce the relevant provision of Section 31B inserted in the SARFAESI Act by Section 41 of The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (Act 44 of 2016) with effect from 16.08.2016 which read thus:-

“31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local authority.”

8. A perusal of the above provision shows that the rights of the secured creditor to realise the secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and government dues including revenue taxes, cesses and rates due to the central, State Government or local authority. In other words, the revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority shall not have any precedence or preference to the dues of the secured creditor.

9. In *M/s Rana Girders Limited vs. Union of India and others*, (2013) 10 SCC 746, it was held by the Apex Court that the subsequent purchaser cannot be burdened with the liability relating to the dues of the Government unless there is a specific provision in the statute claiming first charge for the purchaser. In the said case, since the appellant had not

purchased the entire unit as a business, as per the statutory framework, it was not liable for discharging the dues of the excise department. The court also referred to its earlier judgment in ***Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. and others***, 2000(2) RCR (Civil) 729 explaining the doctrine of priority to Crown Debts, thus:-

“What is the common law doctrine of priority or precedence of Crown debts/Halsbury, dealing with general rights of the Crown in relation to property, states that where the Crown’s right and that of a subject meet at one and the same time, that of the Crown is in general preferred, the rule being “*detur digniori* (Laws of England, 4th Edn. Vol.8, para 1076, at p.666). Herbert Broom states:

“*Quando jus domini regis et subditi concurrunt jus regis praegerri debet*- where the title of the king and the title of a subject concur, the king’s title must be preferred. In this case *detur digniori* is the rule..... where the titles of the king and of a subject concur, the king takes the whole.....where the king’s title and that of a subject concur, or are in conflict, the king’s title is to be preferred/ “(Legal maxims; 10th Edn., pp.35-36)

This common law doctrine of priority of State’s debts has been recognized by the High Courts of India as applicable in British India before 1950 and hence the doctrine has been treated as “law in force” within the meaning of Article 372(1) of Constitution.”

The relevant observation recorded by the Apex Court in ***M/s Rana Girders Limited's case*** (supra) read thus:-

"A harmonious reading of the judgments in *Macson* and *Sicom* would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the statute claiming "first charge for the purchaser". As far as Central Excise Act is

concerned, there was no such specific provision as noticed in SICOM as well. Proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is to applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal provision is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise department."

10. The above judgment is fully applicable to the facts of the present case. The petitioner in the present case purchased the property in e-auction under Section 13(9) of the SARFAESI Act being the highest bidder, believing that the property was free from all encumbrances and charges. Thus, there was no obligation on the part of the petitioner to discharge liability of the outstanding dues towards the previous owner. The judgment in ***Suburban PLY & Panels Private Limited Vs. ASST. COMMR. Of C.EX & CUS, BSR*** 2002 (144) E.L.T. 257 (Orissa) relied upon by the learned counsel for the respondent being based on individual fact situation involved therein does not come to the rescue of the respondents.

11. In view of the above, the writ petition is allowed and a direction is issued to respondent No.2 to register the sale deed in respect of the property in question in favour of the petitioner forthwith.

(Ajay Kumar Mittal)
Judge

May 08, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes