BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.08.2018
CORAM :
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal(MD) No.1169 of 2014
and
M.P(MD)No.1 of 2014

Thangarajan ... Appellant

Vs.

1.The Managing Director,
Tamil Nadu Industrial Investment Corporation,
Anna Salai, Nandhanam,
Chennai 35.

2.The Branch Manager,
Tamil Nadu Industrial Investment Corporation,
No.37, Cap Road,
Nagercoil, Kanyakumari District.

3.S.Arul ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.09.2014 made in W.P.(MD)No.14878 of 2010.

Prayer in WP(MD). 14878/ 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or Order or a Direction particularly in the nature of Writ of Certiorarified Mandamus calling for the records in connection with the Impugned auction cum Sale notice as published in Daily Thanthi on 12.1.2010 and subsequent sale on dated 05.03.2010 quash the entire proceedings and consequently direct to the respondents permit the petitioner to pay the dues to the second respondent with regard to the Sreeja Auditorium.

For Appellant : Mr.K.Govindarajan
for Mr.M.Sureshkumar

For Respondents 1&2 : Mr.S.Suresh
Standing Counsel

For 3rd Respondent : No appearance

JUDGMENT
(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J)

The appellant is the borrower of loan from the respondents. He had raised a loan of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand Only) agreeing to repay the same in equal instalments. The loan was borrowed for the construction of the building which was to be used as a marriage hall. Admittedly, there has been a default in the payment of instalments. Therefore, the respondents had taken steps to bring the properties secured for sale by way of public auction. It is stated that the appellant had repaid a sum of Rs.77,806/- as on 16.02.2004. Due to the default, the property was brought to auction and the auction notice was issued on 07.11.2005 and the property was also brought to sale. It is stated that earlier, there were no takers in the auction for more than 15 times and only on the 16th attempt, the third respondent offered to purchase the property. It is further stated that the sale amount was fixed at Rs.30 lakhs only by means of a private negotiation and the sale was confirmed in favour of the third respondent and possesion was also handed over to him. It is, at this stage, the appellant has come up with the writ petition challenging the auction held on 05.03.2010 and the subsequent proceedings in favour of the third respondent.

2.The auction is challenged on four grounds. The first ground is that no upset price was fixed before the property was brought to sale. It is contended that based on the guideline value even before the auction is fixed, the authorities ought to have determined the upset price after evaluating the property. Admittedly, the property was valued at Rs.47 lakhs. However, the same is sold only Rs.30 lakhs. Therefore, the appellant contended that the sale is vitiated and if the same is allowed to continue, it would result in irreparable loss and serious prejudice would be caused to him.

3.It is admitted by the learned Standing Counsel for the Corporation that upset price is normally not fixed in any of the auction sale conducted by them. Admittedly, after the auction was confirmed in favour of the third respondent, there was a negotiation with him by the Branch Settlement Committee and the amount was increased from Rs.27 lakhs to 30 lakhs. Thereafter, the sale was executed in favour of the third respondent and the same was registered on 07.06.2010 and possession was given to him.

4.It is the contention of the learned counsel for the appellant that the value of the property had increased considerably and the Corporation having valued the same at Rs.47 lakhs ought to have fixed the upset price and then conducted the auction. Having failed to fix the upset price and sold the property far below the market value or the value assessed by the authorised valuer, the sale is vitiated. Even, it is also not clear whether the auction purchaser made initial deposit and deposited the balance sale consideration within the time stipulated.

5.The third respondent was said to be the highest bidder for a sum of Rs.26,25,000/- and thereafter, on 13.02.2010, he appeared before the Settlement Committee for negogiation and enhanced the bid to Rs.30 lakhs. If that is so, at least, before the Settlement Committee, the owner of the property, namely, the appellant could have given an opportunity and the sold property for a better price. The negogiated amount paid by the third respondent was only on 07.04.2010 which is beyond the date of confirmation.

Therefore, it could be easily stated that the Corporation has acted unreasonably to the appellant and the sale could be set aside.

6.So far as the second ground is concerned, the learned counsel for the appellant pointed out the discrepancy in the description to the property in the auction notice and in the sale deed. The building in the property consist of ground floor and two floors whereas in the sale advertisement, the building was shown as ground floor and first floor alone. Surprisingly, in the sale deed, the schedule of the property was shown as ground floor and two floors. Even if the description of the property is not proper, it makes the sale illegal. It is pointed out by the learned counsel for the appellant that even in the sale deed executed by the respondents 1 and 2, the built up area is shown as ground floor, first floor and second floor whereas in the auction notice, it is stated only as ground floor - 350 sq mt - RCC roof, and first floor - 350 sq mt – RCC roof and not mentioned about the second floor. As the description of the property in the auction notice is not clear, the sale is vitiated.

7.The third ground on which the sale is sought to be set aside with respect to the bid amount which was Rs.26,25,000/-. Admittedly, there was only two bidders on the date fixed for the sale. The bid amount was raised to Rs.30 lakhs only by way of private negogiation with the Branch Settlement Committee not on the date of the sale but only subsequently. Therefore, the appellant contends that he was entitled for a notice of hearing and his presence before the Branch Settlement Committee made a difference in bringing a better price for the property. The last ground is that the amount was paid belatedly by the auction purchaser is in utter violation of the auction rules where the entire amount ought to be paid within 30 days.

8.The learned Standing Counsel for the respondents contended that the sale was conducted in the year 2010 during which period there were no guidelines in the matter of sale under Section 29 of the State Financial Corporation Act, 1951. It is only in the year 2011 in *Kerala Financial Corporation Vs.Vincent Paul 2011 (6) CTC 554 (SC)*, the Supreme Court had framed guidelines and issued directions to the State Financial Corporations for a sale of property.

9.Though the guidelines formulated by the Supreme Court are subsquent to the sale, the State Financial Corporation is expected to act with fairness. The respondents have acted in a high handed manner arbitrarily in violation of the mandatory conditions of the auction notification. The belated payment from the successful bidder was accepted by them without any justifiable reason. Merely because the guidelines were framed only subsequently, the Corporation is not given a free hand to act to their whims and fancies. The acceptance of the bid amount beyond the period of 30 days would certainly cause prejudice to the appellant and there is no acceptable reason furnished by the Corporation for accepting the price much lower than what has been fixed by the valuer. The reason that there were earlier 15 occasions in which the property was brought to sale and there were no takers will not deprive the legal entitlement of the appellant and also will not permit the Corporation to relax the rules to suit their convenience. The statutory powers vested with the respondent corporation must be exercised in a fair manner. The respondent corporation being the limb of a State is expected to discharge its duties honestly and in accordance with law but in the instant case, the respondent Corporation has not followed any of the basic rules which would only probablise the abuse of power. The intention of public auction is to ensure maximum public participation in the process of sale and take the best offer. The public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. Even assuming that after 15 attempts by the Corporation to sell the property only on the $16^{th}$ occasion, the third respondent emerged as a successful bidder, the obligation of the purchaser to deposit the purchase money within time is a mandatory requirement. Certainly, non compliance of the same renders the sale as nullity.

10.The learned counsel appearing for the appellant also placed his reliance on a judgment of this Court reported in 2011 (6) CTC 858 (Sri Anbalayam Textiles Private Limited Vs.The Chairman cum Managing Director, Tamil Nadu Industrial Investment Corporation Ltd., wherein a Division Bench of this Court had considered the above aspects in detail which is prior to the framing of guidelines by the Hon'ble Supreme Court in Kerala Financial Corporation's case (supra). Even by applying the said ratio laid down in the judgment stated supra, the act of the Corporation in bringing the property for sale is in utter violation of the basic rules and nullifies the sale and it is liable to be set aside.

10(a)Even assuming that there were several attempts made by the respondents to bring the property to sale earlier, the Corporation ought to have ensured that the property was sold for the appropriate price. There is a legal obligation on the part of the Corporation to ensure maximum sale price for the property. Though valuation report quoted a different price, the sale price is much lower than the same and the respondent has not offered any satisfactory explanation for it. If the value is fixed prior to auction, the auction has to commence from the said amount, taking it as a reserve price. As discussed earlier, the appellant was not even given notice or opportunity when the price was negotiated with the successful bidder. The auction purchaser also is obliged to deposit the sale consideration within time and cannot shirk his duty by stating that there were no guidelines prescribed by the Corporation. The failure of the same also renders the sale a nullity.

10(b)The third respondent is a stranger/auction purchaser and he neither derives title from the appellant nor from the Corporation. The sale is not through Court-auction but from the Corporation. Hence, he should be aware of the defeasibility of the title of the Corporation. Therefore, the doctrine of bona fide purchaser cannot be extended to him. As the sale is set aside, the interest of the third respondent has to be protected. The respondent Corporation to pay the sale amount received from the third respondent to him and take possession of the property. The Corporation is directed to auction the property following the guidelines and procedure laid down by the Hon'ble Supreme Court in *Kerala Financial Corporation Vs.Vincent Paul 2011 (6) CTC 554 (SC)* after obtaining a fresh valuation certificate and fixing a reserve price.



11.With the above observations, the writ appeal is disposed of. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/
Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar(CS-I)

To

1.The Managing Director,
Tamil Nadu Industrial Investment Corporation,
Anna Salai, Nandhanam,
Chennai 35.

2.The Branch Manager,
Tamil Nadu Industrial Investment Corporation,
No.37, Cap Road,
Nagercoil, Kanyakumari District.

+1cc to Mr.M.Sureshkumar, Advocate, SR.No. 80712

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and
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SMS
KK/SKN/SAR-1/24.09.2018/5P-4C