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CWP No. 26726 of 2018

DECIDED ON: OCTOBER 17, 2018

INDU JAIN

....PETITIONER

VERSUS

RESERVE BANK OF INDIA & OTHERS

.....RESPONDENTS

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. A.S. Narang, Advocate
for the petitioner.

AVNEESH JHINGAN, J

The present writ petition has been filed seeking directions to respondents No.2 and 3 to refund the entire purchase amount deposited by the petitioner alongwith interest @14.45% and also the stamp duty deposited by the petitioner.

2. The petitioner is an auction purchaser. Reserve Bank of India 6, Sansad Marg, New Delhi; Punjab National Bank, Plot No.4, Sector 10, Dwarka, New Delhi and Punjab National Bank, 13, Alipur Road, Civil Lines Branch, Delhi, have been arrayed as respondents No.1 to 3 in this writ petition.

3. Respondent No.3 published a sale notice dated 04.02.2013 in

Hindustan Times for sale of property described as “A-60, Ashoka Enclave Part-2, Sector 37, Faridabad, Haryana, measuring 527.77 Sq Yards.” The said property was put to auction in order to recover the dues payable by M/s Sanador International Hospitality Private Limited. The reserve price of the property was fixed as ₹2,58,00,000/-.

4. The petitioner was the successful bidder in the e-auction, which took place on 08.03.2013 and petitioner's bid of ₹2,58,00,000/- was accepted. She deposited the entire amount by 20.03.2013 and on the same date, sale certificate was issued. The physical possession of the property was given on 15.04.2013. Subsequently, the sale certificate was registered on 28.05.2013.

5. Thereafter, a dispute arose as M/s Greater Delhi Planners Pvt. Ltd. claimed the title of the said property. Petitioner got an FIR registered on 05.08.2013 at Police Station Sarai Khawaja, Faridabad. The allegations were that the aforesaid property was mortgaged with the respondent-Bank by way of forged and fabricated documents. She wrote an e-mail dated 20.08.2013 as well as a letter dated 12.09.2013 to the respondent-Bank, asking for the refund of entire bid amount alongwith interest and also the stamp duty paid.

6. The respondent-Bank vide its letter dated 08.10.2013, rejected the claim of the petitioner. It was stated that property was sold on '*as is where is basis*'. After the rejection of the claim of the petitioner regarding refund of bid amount alongwith interest and stamp duty paid, the petitioner filed a civil suit for declaration and permanent injunction at Faridabad. It would be pertinent to note here that in the said suit, no prayer for alternative relief for the refund of purchase amount was made. The said suit was dismissed vide order dated

27.07.2018.

7. Thereafter, The petitioner made another representation dated 29.08.2018 to the respondent-Bank for the refund of entire purchase amount as well as stamp duty alongwith interest. The said representation was also rejected by the respondent-Bank vide its letter dated 29.09.2018. Aggrieved of the same, present writ petition has been filed.

8. There are disputed questions of facts involved in the present writ petition. Moreover, the petitioner has an alternative remedy available to her. The Apex Court in ***Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2013) 357 ITR 357***, elaborately considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded in Paras 14 to 20 as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless

he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

16. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. (See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

17. In *Nivedita Sharma vs. Cellular Operators Assn. Of India*, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

12. In ***Thansingh Nathmal v. Supdt. of Taxes***, AIR 1964 SC 1419 this Court adverted to the rule of selfimposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In ***Titaghur Paper Mills Co. Ltd. v. State of Orissa***, (1983) 2 SCC 433 this Court observed: (SCC pp. 440- 41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by **Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486** in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to

*pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in **Neville v. London Express Newspapers Ltd., 1919 AC 368** and has been reaffirmed by the Privy Council in **Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC)** and **Secy. of State v. Mask and Co., AIR 1940 PC 105**. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”*

*14. In **Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536** B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)*

“77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies.

*It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: **G. Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192**; **CCE v. Dunlop India Ltd., (1985) 1 SCC 260**; **Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472**; **Shivgonda Anna Patil v. State of Maharashtra, (1999) 3 SCC 5**; **C.A. Abraham v. ITO, (1961) 2 SCR 765**; **Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433**; **H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp (2) SCC 312**; **Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1**; **Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272**; **Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209** and **Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569**)*

*18. In **Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC***

651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.”

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High

*Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In **Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267** this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee writ petitioner described the available alternate remedy under the Act as ineffectual and non-eficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.”*

9. In view of disputed questions of fact, which requires adducing of evidence and availability of alternative remedy available to the petitioner the present writ petition is dismissed with liberty to the petitioner to avail alternative remedy available to her in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

OCTOBER 17, 2018
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Whether speaking/reasoned:	Yes / No
Whether reportable :	Yes / No