IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8249 of 2018
Decided on : 20.11.2018

Deepak Kumar ...... Petitioner

Versus

State of Punjab and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Jai Vir Yadav, Advocate
for the petitioner.

Mr. P.S.Bajwa, Addl. AG, Punjab.

Mr. Rakesh Gupta, Advocate
for respondent No.4.

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Manjari Nehru Kaul, J.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus, wherein the prayer of the petitioner is for issuance of a direction to respondent No.2 to register the Sale Certificate issued by respondent No.4 – State Bank of India regarding immovable property i.e single storey commercial land & building at VPO Kangar Tehsil Phul District Bathinda which had been purchased by him in an e-auction held on 04.10.2016 from the respondent-bank under Securitisation and Reconstruction of Financial Assets and Enforcment of Security Interest Act, 2002 (for brevity 'the Act'). It was submitted on behalf of the petitioner that at the time of the e-auction the property was stated to be free from all encumbrances as per the information provided by the respondent-bank.

2. Brief facts, which would be relevant for the decision of the

present controversy as noticed in the petition are that a public notice for auction of various properties including the present one in question was published in the newspaper 'The Tribune' dated 27.08.2016. The petitioner evinced interest to purchase the said property and approached the respondent-bank seeking information regarding the property being put to e-auction. The respondent-bank provided the petitioner complete information regarding the property in question, which had been put on sale by them with an added assurance to the petitioner that the property was free from all encumbrances and charges. The bank also intimated the petitioner that he could participate in the e-auction, which was to be held on 04.10.2016 to purchase the property in question. The petitioner was duly informed by the respondent-bank that the sale deed of the property shall be registered in favour of the auction purchaser immediately on deposit of the sale amount. It was only then that the petitioner agreed to purchase the said property for a sale consideration of ₹ 50.20 lakhs since he came out as the highest bidder in the e-auction. The respondent-bank, thereafter, issued the Sale Certificate dated 01.11.2016 in favour of the petitioner. On receipt of the same, the petitioner approached respondent No.2 – Tehsildar, Rampura Phul, Bathinda for registration of the Sale Certificate under Section 17 of the Indian Registration Act, 1908. However, respondent No.2 refused to register the sale certificate on the ground that the property in question stood attached vide rapat No.356 dated 29.05.2013. The petitioner approached the bank and duly informed them regarding the refusal of the registeration by respondent No.2 – Tehsildar on the ground that the said property stood attached. The petitioner further pleaded that the dispute regarding apportionment of the sale amount, if any, was between respondent No.1 on the one side and respondent No.4 on the other. Hence, respondent No.2 could not have refused the registration of the sale certificate simply on the ground of attachment of the said property.

3. In the reply filed by respondents No.1 and 2, it has been inter alia stated that the answering respondents were duty bound to comply with the orders of the Civil Courts as well as of the Government, as reflected in the revenue record.

4. Respondents No.4 to 6 have also filed their separate reply stating therein that they had auctioned the property on "As is, where is basis" and thus, are not liable for any eventuality and hence, have prayed for dismissal of the instant petition.

5. Heard learned counsel for the parties and perused the paper book with their assistance.

6. It is not disputed that a public sale notice dated 27.08.2016 was published in the newspaper for the sale of the property in question. Admittedly, the petitioner was the highest bidder and hence purchased the property in the e-auction held on 04.10.2016 as per the terms and conditions of the e-auction. The petitioner deposited the entire sale consideration and it was only thereafter that the Sale Certificate dated 01.11.2016 was issued by the respondent-bank under the rules. It was at the time of registration of the sale certificate that the petitioner learnt from the office of Sub Registrar, Rampura Phul, District Bathinda that the property in question was under attachment vide Rapat No.356 dated 29.05.2013 against some dues payable to the Punjab Government, which were pending against the previous owner of the said property. On this ground, the registration of the sale certificate was refused by respondent No.2. The petitioner was thus, informed that the

sale certificate could not be registered in his favour as long as the property stood attached. The respondent-bank issued the sale certificate to the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 only after receiving the entire sale consideration wherein it was clearly mentioned that the sale of the scheduled property was made free from all encumbrances. There was no mention at all in the public sale notice regarding any dues, which may have been pending or any encumbrances which may have existed.

7. Section 31B of the Act as amended w.e.f. 16.08.2016 reads as under:

> *"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 leaves no manner of doubt that the rights of a secured creditor to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall have to 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.

9. Hence it clearly emerges that the revenues, taxes, cesses and rates due to the Central Government, State Government or a Local Authority shall not have precedence or preference over the dues recoverable

by a secured creditor by sale of secured asset. Moreover, it is an admitted fact herein that the respondent-bank had auctioned the property in question under the Act being a secured asset, duly mortgaged in their favour by the previous owner, to secure the credit facilities allowed by the respondent-bank.

10. The Apex Court in ***Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. and others, 2000(2) RCR (Civil) 729*** explained 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:*
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> > *"Quando jus domini regis et subditi concurrunt jus regis praegerri debat- where the title of the kind 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 kind 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).*
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> > *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."*

11. In ***M/s Rana Girders Limited vs. Union of India and others, (2013) 10 SCC 746***, the Apex Court held that the subsequent purchaser could not be burdened with the liability relating to the dues of the Government until and unless there is a specific provision in the statute mandating first charge for the purchaser. In the said case, since the appellant had not purchased the entire unit, as per the statutory framework, it was not liable for discharging the dues of the excise department.

12. 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."*

13. The aforesaid pronouncement fully applies to the instant dispute. In the case in hand, the petitioner had purchased the property in e-auction being the highest bidder, believing that the property was free from all encumbrances and charges. Thus, the petitioner was under no obligation

to discharge the liability of the outstanding dues against the previous owner.

14. In view of the aforementioned, the writ petition is allowed with a direction to respondent No.2 to register the sale deed in respect of the property in question in favour of the petitioner forthwith.

(MANJARI NEHRU KAUL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

20.11.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No