R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3265 OF 2018

Krishna Gopal Biyani .. Petitioner

Versus

Union of India & Ors. .. Respondents

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- Mr. Vivek Kantawala a/w Mr. Amey Patil; Mr. Siddharth Bafna, Mr. Vivek M. Sharma, Mr. Shanay Bafna, Ms. Hetal Jobanputra and Mrr. Arpit Solanki i/by M/s. Vivek Kantawala & Co for the Petitioner
- Mr. Sham Walve for Respondent Nos. 2 and 3
- Mr. G.R. Mishtra for Respondent No. 4

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : FEBRUARY 22, 2019.

P.C.:

1. We have heard the learned counsel for the parties for final disposal of the petition.

2. The petition raises a short question namely of an auction purchaser of the properly put to auction by the Income Tax Department for unpaid tax dues of the assessee, not being able to enjoy the fruits of the sale confirmation in his favour.

3. Brief facts are as under:-

3.1 Petitioner is an individual. Respondent No. 5 one Ajit More had unpaid tax dues of the Income Tax Department. The Income Tax Department, therefore, proceeded to carry out coercive recoveries of such dues. In the process, the recovery officer initiated auction sale of immovable property in nature of flat of respondent No. 5. The auction was conducted on 20.12.2007. The reserve price fixed at Rs. 17.62 lacs. The petitioner was the highest bidder. He had offered sale consideration of Rs. 50 Lacs for said property. His offer was accepted. We are informed that all payments were made by 13.3.2008 and sale was confirmed. Sale certificate was issued.

3.2 Respondent No. 4 Sunita More is the wife of respondent No. 5. Firstly, she had filed a Writ Petition before this Court opposing attachment at a stage where the auction was not yet conducted. Such petition was dismissed by High Court on 14.1.2005, but she was permitted to raise objections before the Recovery Officer. It appears that her objections were not accepted. Be that as it may, after the auction was conducted, she approached the department on 18.2.2008 with a request to extend her occupation of the flat on the ground of H.S.C. examination of her daughter. The reply of the official respondent would indicate that such extension was also granted. Later, she filed a Short Cause Suit No. 2226 of 2008 before the City Civil Court, Bombay and challenged the auction of the Income Tax Department on various grounds including the ground that she was the real owner of the property and not her husband. According to her, the entire sale consideration had come from the source of her father. The City Civil Court granted interim injunction in her favour preventing her eviction from the property. The suit ultimately came to be dismissed by a judgment dated 3.5.2014. Consequently, interim injunction was also vacated. She filed First Appeal before the High Court on 18.6.2014. Admitted position, however, is that till date, neither the appeal is admitted nor any interim relief is granted in favour of the said respondent.

3.3 At that stage, the petitioner has filed this petition. Main prayer in this petition is for a direction to the Income

Tax Authorities to handover peaceful and vacant possession of the property in question namely Flat No. 201, A Wing, Gangotri Sadan Co-operative Housing Society, Bangur Nagar, Link Road, Goregaon (W), Mumbai. Initially, the petitioner had not joined either Ajit More or his wife Sunita More. They were added to the list of the respondents and were duly served. The petition was adjourned from time to time to complete the pleadings.

4. Having heard the learned counsel for the parties and having perused the documents on record, what clearly emerges is that the petitioner who is a successful bidder of the property in question, has become the owner of the property upon confirmation of sale and issuance of sale certificate by the Income Tax Authorities. The petitioner has paid a sum of Rs. 50 Lacs sometime by 13.3.2008. Till date, the petitioner is not put in possession of the property as the Income Tax Department could not evict the occupants thereof. Respondent No. 5 has not actively participated in the present proceedings. His wife who has appeared through lawyer contends that she does not have cordial relations with her husband and that she had nothing to do with the dues of her husband towards Income Tax Department. The property in question belongs to her and not to her husband.

5. Initially, the Income Tax Department accepted her request for not evicting for a period of six months in view of the ensuring HSC examination of her daughter. Further, the City Civil Court protected her against eviction by granting injunction. Such injunction also stood vacated on 3.5.2014. Respondent No. 4 cannot take shelter of merely having filed the appeal before the High Court against the judgment of the City Civil Court, that too, for a period of close to six years. She has to take steps to ensure that the appeal is heard for admission hearing at an early date and the Court considers her request for interim relief. For nearly six years after filing the appeal and vacation of interim relief by the City Civil Court, she is without any protection from any Court. Mere filing of the appeal would not automatically operate as a stay. As a Government Authority, it was perhaps possible for the department to take a view that in view of filing of the appeal for reasonable period of time, the department would not precipitate the issue and make the appeal proceedings infructuous by evicting the appellant from the property in question. However, for over 5 and 1/2 years, as no interim relief is granted to the appellant, the petitioner cannot be asked to wait indefinitely to be put in possession of the property in question. We do not find fault with the Department in being cautious in view of the fact that the appeal was pending before the High Court. However, in our view, sufficiently long time has passed since respondent No. 4 filed appeal before the High Court. A successful bidder and auction purchaser cannot be asked to wait indefinitely for the legal proceedings to be completed. Under the circumstances, we direct the Income Tax Authorities to proceed further in accordance with law to give vacant and peaceful possession of the property in question to the petitioner.

6. Nothing stated in this oder would come in a way of respondent No. 4 in pursuing her appeal before the High Court. With this direction, the petition is disposed of.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**