28.09.2020
Item No.o3
Court No.11
Krishnendu

A.S.T. No. 16 of 2020
With
C.A.N. No. 1 of 2020
And
C.A.N. No. 2 of 2020
(Via Video Conference)

In re: Nibedita Housing Pvt. Ltd. & Anr.
- Versus –
The State of West Bengal & Ors.

Mr. Soumya Majumder
Mr. Dhiman Sengupta
Mr. Madan Mohan Roy
For the Petitioners
Mr. Billwadal Bhattacharya
Mr. Anish Kumar Mukherjee
For the Co-operative Bank

The writ petition was preferred challenging, *inter alia*, a proclamation of sale notice dated 6th March, 2020. The matter came up for hearing before this Court on 20th March, 2020. Upon considering the arguments advanced by the learned advocate appearing for the petitioners, the learned Court observed that the concerned property is an encumbered one and that the valuation of the property cannot be accepted as Rs. 8.4 crores, as claimed by the petitioners. The interim order as prayed for was, accordingly, refused at that stage. Subsequent thereto, by a notice, published in a newspaper on 23rd March, 2020, the sale officer was pleased to postpone the auction scheduled on 25th March, 2020 until further notification. Thereafter, a sale proclamation notice was again issued on 10th September, 2020 and the date of sale had been scheduled on 30th September, 2020. Incorporating such facts, the petitioners have filed an application, being C.A.N. No. 1 of 2020, challenging the impugned sale notice dated 10th September, 2020, published in the newspaper on 14th September, 2020. A further application, being C.A.N. No. 2 of 2020, has also been filed for early hearing of the entire matter. Considering the averments made, both the applications, being C.A.N. No. 1 of 2020 and C.A.N. 2 of 2020, are allowed and the writ petition is taken up for hearing.

Placing reliance upon a valuation report annexed at page 66 of the writ petition, Mr. Majumder, learned advocate appearing for the petitioners submits that the sale officer could not have fixed the reserve price as Rs.4 crores when the value of the land and the building have been determined by a competent valuer to be Rs.8,48,72,000/-. The said valuation has been arrived at placing reliance upon the *e*-assessment slip filed by one Mahitosh Pradhan.

Mr. Majumder further submits that the fixation of reserve price of Rs.4 crores is whimsical and the property has been undervalued with a *mala fide* intent and in view thereof, the entire proceeding needs to be set aside. In support of his contention, Mr. Majumder has drawn the attention of this Court to the provisions of Rules 191B, 191C and 191D of the West Bengal Co-operative Societies Rules, 2011.

Mr. Bhattacharya, learned advocate appearing for the Co-operative Bank has placed before this Court the relevant records relating to valuation of the concerned property. Copies of the said documents have been handed over to Mr. Majumder in Court today. Let the said documents, as placed, be kept on record.

Placing reliance upon the said documents, he submits that the valuation of the property has been determined upon considering *e-assessment* slip particulars as filed by the Bank and upon physical inspection of the property. The sale officer, by a memo dated 5th March, 2020, has certified that the property consisting of land and building would be of Rs.3,64,67,300/-.

As the necessary records pertaining to the sale had already been produced before this Court, there is no necessity to call for affidavits and the matter is taken up for final hearing.

In paragraph 8 of the application, being C.A.N. No.1 of 2020, it has, *inter alia*, been stated that *"the petitioners are not against the auction sale but only the reserve price of the said purported auction sale is abnormal and lesser than the actual market price of the property".* By the earlier notice dated 6th March, 2020 the sale was scheduled on 25th March, 2020. Prior thereto, the writ petition was preferred, however, the interim order, as prayed for, was refused by this Court on 20th March, 2020. The petitioners did not prefer any appeal against the said order dated 20th March, 2020. The sale was, however, deferred by a notice published on 23rd March, 2020 and a fresh date had been scheduled on 30th September, 2020 *vide* notice dated 10th September, 2020. In the said conspectus, the only issue which had arisen for consideration is as to whether the reserve price of the property had been appropriately fixed by the respondents.

From the memo dated 5th March, 2020 issued by the approved valuer of the concerned bank, as produced today, it appears that the valuer took into consideration the location of the concerned land and the value of the adjoining plots of land which have been recently sold. The building, which has been constructed upon the concerned land, was also inspected and valuation of the entire property was determined. No *mala fide* can be attributed to such action of the authorities and it cannot be said that the authorities have acted in a manner which would benefit any party at the cost of the authorities. The petitioners have also failed to establish any arbitrariness or unreasonableness.

In view thereof, the writ petition is dismissed.

There shall, however, be no order as to costs.

All concerned parties shall act in terms of the copy of the order downloaded from the official *website* of this Court.

(Tapabrata Chakraborty, J.)