

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION (L) NO. 221 OF 2020

SREI Equipment Finance Ltd. .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Mayur Khandeparkar a/w. Mr. Vikramjit Garewal, Mr. Ativ Patel i/b
AVP Partners for the Petitioner.

Mr. Abhay Patki, AGP for Respondent Nos.1 to 3-State.

Mr. Simil Purohit a/w. Mr. Ashok Paranjpe, Mr. Tushar Kadam i/b MDP
& Partners for Respondent Nos.4 & 5.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 21st JANUARY, 2020.

P.C. :

1. Learned Counsel as above appears for Respondent Nos.1, 2 & 3.
2. Challenge in the Writ Petition is to the auction notice dated 06.01.2020 proposing an auction to be held on 22.01.2020. The property sought to be auctioned as per the notice is land comprised in CTS Nos.872, 872/1 to 12, 873, 873/1 to 8, N. S. Road, Mulund (West), Mumbai.
3. The admitted case is that the Collector is proceeding under the Maharashtra Realisation of Land Revenue Rule, 1967 and the

Maharashtra Land Revenue Code, 1966 to recover dues payable by 5th Respondent, a partnership firm of which the 4th Respondent is a partner, to the association of flat buyers impleaded as Respondent No.6.

4. The Petitioner claims to have advanced a credit to the 5th Respondent and the property sought to be auctioned is mortgaged to the Petitioner. Thus, the Petitioner claims a priority of interest over dues of the flat buyers because the Petitioner is the mortgagee of the property.

5. As per Section 218 of the Maharashtra Land Revenue Code read with Section 194(2) thereof, if the sale relates to an immovable property, the sale notice has to be as per Form No.7 and we find that the instant notice conforms to Form No.6 which relates to movable property.

6. There is vital difference in the information to be made available in the two forms. If the said relates to immovable property when the sale is to recover dues in the form of arrears of land revenue the proposed buyers have to be informed about lien of third party or the charge over the property.

7. Since the instant sale notice is conforming to Form No.6 and not Form No.7, said information has not been provided.

8. Further, if the sale is of immovable property, a 30 days prior notice of the date of the sale has to be given. Within this period, objection if any, have to be received and decided by the Collector.

9. In the instant case the notice is dated 06.01.2020. It is published on 09.01.2020. The date of the proposed auction is 22.01.2020. 30 days notice period is obviously lacking.

10. The Petitioner has filed objections before the Collector on 13.01.2020. Concededly the said objections have not been decided by the Collector.

11. It also resumes important to note that as per the auction notice the property has been valued at ₹ 40,25,05,500. The dues stated to be recovered are approximately ₹ 23.96 Crores. The Petitioner claims outstanding dues in sum of ₹ 168 Crores and thus as per the provisions of Order XXXIV of the Code of Civil Procedure, the priority of interest would require the sale proceeds to be first appropriated to clear the dues of the Petitioner and if there is any surplus to be paid over as per the order passed by the Competent Authority under the Real Estate Regulation and Development Act, 2016 to the flat buyers.

12. Under the circumstances, we dispose of the Petition quashing the impugned notice dated 06.01.2020 published on 09.01.2020.

13. The representation dated 13.01.2020 would be considered by the Collector to decide whether the Collector should proceed ahead with the sale of the property for the reason the value of the property is stated to be ₹ 40.25 Crores approximately and the dues of the Petitioner as

claimed are ₹ 168 Crores. Should the Collector find that the property has been mortgaged to the Petitioner and the dues of the Petitioner are ₹ 168 Crores, the Collector would then decide the effect thereof i.e. whether it would be advisable to proceed ahead with the attachment directed by the Competent Authority under the RERA or inform the authority that in view of the priority claim of the Petitioner, the Collector is prohibited by law to proceed with the sale of the property in question.

14. Needless to state if the decision is against the interest of the Petitioner, the Petitioner would be entitled to remedy as per law.

15. No costs.

16. Keeping in view the factual aspect of the issue we direct the Collector to grant a personal hearing to the representative of the Petitioner before passing any order.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

Digitally signed
by Arjun M.
Kadam
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2020.01.22
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