IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14337-2020 (O&M)
Date of decision: 8.10.2020

Sanjay Jain

... Petitioner (s)

Versus

Commissioner, Central Goods & Service Tax

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Vikas Bali, Advocate,
for the petitioner (s).

Mr. Sourabh Goel, Advocate,
for Union of India.

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KARAMJIT SINGH, J.

This writ petition has been filed by the petitioner with prayer to set aside e-auction notice (Annexure P-10) regarding auction of building/plot No.1202/9-10, Sardar Nagar, Rahon Road, Ludhiana, which is to be conducted at the instance of respondents No.1 and 2.

In the petition, it has been pleaded that respondent No.3-Harbhajan Singh (since deceased) was the owner of the property in question. Respondent No.3 took loan of ₹ 20 lakhs from the petitioner. Thereafter, he failed to repay the said loan. On 17.12.2018, respondent No.3-Harbhajan Singh executed agreement to sell the aforesaid property in favour of the petitioner in lieu of the aforesaid loan amount of ₹ 20 lakhs.

On the basis of the said agreement to sell, the petitioner filed suit for specific performance of the contract against Harbhajan Singh-

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respondent No.3. The suit was contested by said Harbhajan Singh. The Court of Civil Judge vide order dated 20.2.2020 restrained respondent No.3-Harbhajan Singh from alienating the said property to any third party, till the final disposal of the suit. Respondents No.1 and 2, i.e., Commissionerate of Central Goods and Services Tax, Ludhiana were having knowledge of the stay order. However, they are bent upon to auction the property in question alleging that Harbhajan Singh-respondent No.3 owed huge amount by way of penalty to the department. The petitioner has got no concern with the said penalty. The petitioner is the bonafide purchaser of the property in question, without notice and he had already paid the entire sale consideration to its owner at the time of execution of the agreement to sell (Annexure P-1). So, it is prayed that auction notice (Annexure P-10) issued by respondents No.1 and 2 be set aside.

Respondents No.1 and 2 filed short reply in which it was pleaded that respondent No.3-Harbhajan Singh being owner of M/s Royal Industries Limited, Ludhiana was systematically evading custom duty by diverting the imported goods into local market. Accordingly, the action was taken against him and penalty amounting to ₹ 1,44,55,230/- was imposed on him under Section 112 (b) of the Customs Act, 1962 by the competent authority in 2009. Harbhajan Singh-respondent No.3 failed to make payment of the said penalty till date. So, his property was put to auction. The petitioner, who has challenged the auction, is having no concern with the property in question. The department has got first charge over the property in question as per the provisions of Section 142A of the Customs Act, 1962. It is prayed that the writ petition deserves to be dismissed.

We have heard the counsel for the parties.

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Counsel for the petitioner while referring to agreement to sell (Annexure P-1), contended that the said agreement was executed by Harbhajan Singh-respondent No.3 with regard to the property in question in favour of the petitioner, to discharge his previous liability of ₹ 20 lakhs. It is further contended that the possession of the property in question was already with the petitioner. It has been further submitted that the petitioner, who has already paid the entire sale consideration, is the bonafide purchaser for valuable consideration, without notice of penalty (if any) imposed by the Customs Department on Harbhajan Singh-respondent No.3.

Counsel for the petitioner further contended that Harbhajan Singh-respondent No.3 failed to comply with the terms and conditions of the agreement to sell (Annexure P-1), on which, the petitioner filed suit for specific performance of the said agreement. The suit was contested by Harbhajan Singh-respondent No.3. The Civil Court vide order dated 20.2.2020 (Annexure P-8) restrained Harbhajan Singh-respondent No.3 from alienating the suit property to any third party till the disposal of the suit. The said stay order is still operative as the suit is pending till date. It is further contended that in these circumstances, when there is stay order in favour of the petitioner, e-auction notice (Annexure P-10) is liable to be set aside.

On the other hand, it is the plea of respondents No.1 and 2 that this petition has been filed by the petitioner in collusion with the legal heirs of Harbhajan Singh-respondent No.3, who has since died, in order to avoid the auction which was scheduled for 15.9.2020. It is also the case of respondents No.1 and 2 that the property of Harbhajan Singh was put to auction to recover the penalty which was imposed by the competent

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authority in 2009. The department has got first charge on the property.

We have considered the submissions made by the counsel for the parties.

It is not disputed that originally the property in question was owned by Harbhajan Singh-respondent No.3. It is the case of the petitioner that Harbhajan Singh-respondent No.3 took loan of ₹ 20 lakhs from him but failed to repay and finally, Harbhajan Singh-respondent No.3 executed agreement to sell (Annexure P-1) the property in question in favour of the petitioner, to discharge his liability. As per the petitioner, subsequently, he filed civil suit and got stay order (Annexure P-8) dated 20.2.2020 in his favour. The petitioner has sought cancellation of auction notice (Annexure P-10) on the basis of the said stay order while alleging that he is the bonafide purchaser of the property for consideration without notice. However, from the perusal of the documents which are placed on record by respondents No.1 and 2 along with their short reply, it appears that Harbhajan Singh-respondent No.3 being the owner of M/s Royal Industries Limited, Ludhiana evaded customs duty and penalty of ₹ 1,47,55,230/- was imposed on him under Customs Act in 2009 by the competent authority. He failed to pay the said penalty. The department started proceedings against him and his property, to recover the aforesaid penalty. The property in question was attached and finally, it was put on sale through auction scheduled for 15.9.2020. The aforesaid penalty of ₹ 1,47,55,230/- was prior in time to the agreement to sell (Annexure P-1) which was executed in 2018. So, the amount of penalty imposed by the department was first charge on the property in question as per Section 142A of the Customs Act.

Also, the property in question is a commercial building having

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3 storeys. It is situated in Ludhiana which is a commercial and industrial hub of Punjab. The property in question is measuring 414 square yards. So, its value must be in crores. However, as per agreement to sell (Annexure P-1), it was agreed to be sold for just ₹ 20 lakhs. This fact creates doubt regarding the genuineness of the said agreement to sell. So, the possibility of collusion between the petitioner and legal heirs of Harbhajan Singh-respondent No.3 to avoid the auction of the property in question, cannot be ruled out.

In the light of the above discussion, we are not inclined to interfere in the auction proceedings initiated by respondents No.1 and 2, to recover the penalty from the estate of Harbhajan Singh-respondent No.3. Accordingly, this writ petition is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

October 8, 2020
Paritosh Kumar

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

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