IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.14813 of 2021
and
W.M.P.Nos.15685 and 17379 of 2021

V.Archana .. Petitioner

Vs

1.Union of India,
rep. by its Secretary,
Government of India,
Ministry of Finance,
No.15, SAF Darjung Road,
New Delhi.

2.The Assistant General Manager (Loans),
Tamilnadu Mercantile Bank,
(Regional Office),
Block E, 45, Pulla Ave,
Bharathi Puram, Shenoy Nagar,
Chennai - 600 030.

3.The Branch Manager/Authorized Officer,
Tamilnadu Mercantile Bank Limited,
Porur Branch,Door No.67, Old No.63A,
Ground Floor, Kundrathur Main Road,
Porur, Chennai - 600 116. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that the sale notice dated 31.05.2021 issued by the third respondent and its consequent e-auction held on 30.06.2021 by the third respondent are illegal and arbitrary, and consequently direct the third respondent to conduct the re-auction sale in respect of the property situated at Plot No.16, 4th Street, Devi Seetharaman Nagar, Maduravoyal Village, Ambattur Taluk, Thiruvallur District, Chennai - 600 095 to the extent of 1800 sq. ft. with residential building (Front portion - GF - 517 sq. ft., FF - 517 sq. ft., and rear portion 660 sq. ft.) there at Old S.No.228, New S.No.228/1E.

For Petitioner : Mr.K.Balu

For Respondents : Mr.V.Chandrasekaran for respondent Nos.2 and 3

: Mr.Naresh Vassudhev for auction-purchaser (Petitioner in W.M.P.No.17379 of 2021)

R1 - deleted from the array of parties as per the order dated 26.07.2021

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petition is by a person who was unable to participate at the time that the auction sale was conducted, despite indicating his willingness and having deposited a sum of Rs.8 lakh in such regard in advance.

2. For reasons that are no longer necessary to be gone into, the petitioner could not log in at the time of the auction and immediately complained to the third respondent secured creditor, the Tamilnad Mercantile Bank, in such regard. The writ petition has been filed complaining of the complete failure on the part of the respondent bank to give any credence to the petitioner's grievance and to go through with the sale of the secured asset at a price which was considerably lower than what the petitioner was willing to offer therefor.

3. The sale was conducted on June 30, 2021 and, according to the bank, there were three bidders. One of the bidders logged in, but made no bid because of a death in the family. The highest bidder was one Senthil Kumar, who bid Rs.78,82,000/-, which was marginally over the reserve price and the reserve price was pegged close to the distress sale value of the property. The bank is quick to point out that two previous auction processes to sell the property had failed and it was at the third time that at least two bidders participated and the said Senthil Kumar succeeded.

4. Twenty-five per cent of the bid amount was, according to the bank, deposited by the highest bidder on the day of the bid and the balance due was Rs.51,17,776.72/-. According to the bank, the auction process was not conducted by the bank but was outsourced to some agency and the petitioner, rather than complaining to the relevant agency despite being advised in such

regard by the bank, complained to the bank that she could not get access to the system at the time of the auction.

5. The auction-purchaser was required to be issued notice and an application has also been filed by the auction-purchaser to be impleaded in the present proceedings. On one of the occasions, the auction-purchaser appeared in person and sought to make out a story that he had sold his car, family jewellery and even kitchen utensils to generate the funds necessary to pay the balance consideration amount.

6. An order was passed in these proceedings on July 27, 2021 recording the court's intention to conduct a bidding between the petitioner and the highest bidder, if only to get a better price for the property. The principle that weighed with the court was that secured creditors, who owe a duty to the mortgagors to get the best price for the secured properties, tend to sell the securities at a gross undervalue, thus even compromising their positions since, in most cases, the only realisation by the secured creditor is from the consideration of the sale of the securities.

7. The highest bidder at the auction of June 30, 2021 has subsequently been represented by Mr.Naresh Vassudhev. When the matter was last taken up on August 3, 2021, Mr.Vassudhev, on instructions, submitted that his client had stretched himself to the limit and he was in no place to offer any more for the property.

8. The court had, however, observed that if a genuinely higher bid of about Rs.85 lakh was obtained, the court would be minded to re-open the matter and conduct bidding between the highest bidder and the petitioner herein. Thankfully, Mr.Vassudhev indicates his client's consent and says that he is willing to match a bid of Rs.85 lakh if put in by the petitioner here.

9. At the same time, the petitioner has brought pay orders or demand drafts of total value of Rs.16 lakh by way of proposed earnest deposit to show her bonafides and the seriousness of the petition.

10. However, as was recorded in the order dated July 27, 2021, the highest bidder has been given the liberty to be out-bid on every occasion. Since the petitioner's bid of Rs.85 lakh for the property, for which the highest bid at the auction was Rs.78,82,000/-, has been matched by the highest bidder, it is for the petitioner to increase the bid. However, the petitioner seeks to increase the bid by Rs.10,000/- and upon the court seeking the initial bids to be increased by higher amounts, the petitioner rests.

11. Accordingly, the property is sold in favour of Senthil Kumar of Pallavan Nagar East, Maduravoyal, Chennai-600 095 and

is now confirmed at Rs.85 lakh. The balance consideration should be put in by Senthil Kumar within 90 days from today after depositing a total amount of twenty-five per cent of the sum of Rs.85 lakh by August 6, 2021 with the respondent bank. That would mean that the twenty-five per cent already deposited in respect of the bid of Rs.78,82,000/- has to be topped up to the extent of twenty-five per cent of Rs.85 lakh by August 6, 2021 and the balance of the amount may be paid within 90 days from today.

12. The sale is tentatively confirmed in favour of Senthil Kumar at such price. However, no document will be executed in favour of such person in such regard till the entire payment is discharged. Possession of the property will also not be made over to the purchaser till full payment is made.

13. Mr.K.Balu, appearing for the petitioner, will retain the demand draft of Rs.16 lakh brought by his client today and which is in Mr.K.Balu's possession as he has indicated to the court. The secured creditor will also retain the previous sum of Rs.8 lakh deposited by the petitioner herein. The relevant instruments or the monies pertaining to the initial deposit of Rs.8 lakh and the subsequent sum of Rs.16 lakh by the petitioner will be returned or refunded to the petitioner immediately upon the balance consideration being tendered by Senthil Kumar within 90 days from today. The instrument representing the further deposit of a sum of Rs.16 lakh should be made over by Mr.K.Balu to Mr.V.Chandrasekaran by August 6, 2021.

14. In the event Senthil Kumar is unable to pay the balance of the amount by November 4, 2021, the sale will stand confirmed in favour of the petitioner herein, V.Archana of Keelkattalai, at the price of Rs.85 lakh. In such event, the money already deposited by Senthil Kumar would stand forfeited to the extent of the expenses incurred by the bank, including for contesting the present proceedings, and the balance refunded to Senthil Kumar. In that event the petitioner will have 15 days from the date of receipt of a notice from the bank that the petitioner's bid had fallen into place, to make the balance payment.

W.P.No.14813 of 2021 and W.M.P.Nos.17379 and 15685 of 2021 are disposed of. There will be no order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Union of India
Rep by its Secretary
Government of India
Ministry of finance
No.15, SAF Darjung Road,
New Delhi.

2.The Assistant General Manager (Loans),
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(Regional Office),
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W.P.No.14813 of 2021

SR-II(CO)
SB(10/08/2021)