IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14960 of 2019 (O&M)
Reserved on 25.05.2022
Date of Decision: 01.06.2022

MR. MEHINDER SHARMA ....*Petitioner*

V/s.

MUNICIPAL CORPORATION, GURUGRAM, SECTOR-34, GURUGRAM (HARYANA) THROUGH ITS EXECUTIVE OFFICER AND ANOTHER.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shailendra Bhatnagar, Advocate with
Mr. Atul Kaushik, Advocate
for the petitioner.

Mr. B.R. Mahajan, Senior Advocate assisted with]
Mr. Rakesh K. Sheoran, Advocate
for respondent No.1.

Mr. Rakesh Gupta, Advocate
for respondent No.2.

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M.S. RAMACHANDRA RAO, J.

Background facts

The Municipal Corporation, Gurugram (respondent No.1) on 08.12.2017 had issued a Public Notice in the Hindustan Times (English Newspaper Daily) proposing a Public auction of certain properties in exercise of its power under Section 130 of the Haryana Municipal Act, 1994 which permitted it to sell the immovable properties of the Property Tax defaulters. The sale was to be on "*where is and what is there is basis*"

In the said public notice, there was a property mentioned at Sr. No.52 i.e. LG-14, IF, Star Mall, Sector-30, Gurugram, of area 3005 Sq. Ft whose owner was M/s. PBJ Associates Pvt. Ltd. Reserve price was fixed at

₹16,45,745/-. The said public notice was subject to the following relevant terms and conditions:-

"1. All bidders should prior to the auction, satisfy themselves about the correctness of the title and description, measurements, etc. of the properties. No enquiries in this regard will be entertained at the time of auction. On the property being knocked down in favour of a bidder in the auction, he shall be held to have waived all objections to the title & description etc. of the property.

... ...

6. For further elaborate details & brochure/catalogue/terms and conditions covering the conduct of Auction, can be obtained from 08.12.2017 to 28.12.2017 between 11:00 AM to 05:00 PM. The same can also be obtained/downloaded from the departmental website www.mcg.gov.in under the menu "Referrals"

7. For any clarification, the following officers of Appropriate Authority may be contacted on telephone on any working days between 11:00 AM to 05:00 PM:

A...

B...

C. Zonal Taxation Officer-III, (9821395166, email id zto3@mcg.gov.in) for properties mentioned at Serial No.47 to 76."

The petitioner participated in the said auction, and became the highest bidder of the above property for ₹1,01,00,000/-.

He paid full amount and sale certificate dt.21.08.2018 (Annexure P5) was also executed in his favour.

Thus, the petitioner became the absolute owner of the property.

The said sale certificate contained a clause to the following effect:-

"That in case any liability occur against the property i.e. prior bank loan, maintenance charges, litigation etc. prior

sale or any kind of dispute, the purchaser will be liable for the same."

On 02.04.2018, an official attached to respondent No.2-Stressed Asset Management Branch affixed a notice on the above property stating that the physical possession of the said property was taken by respondent No.2 under the provisions of SARFAESI Act, 2002 (hereinafter referred to as "the Act").

Thereafter, respondent No.2 approached the District Magistrate, Gurugram under Section 14 of the Act and obtained an order dt. 12.03.2019 for physically taking possession of the subject property.

The petitioner approached the DRT-II, Chandigarh by filing SA No. 116 of 2019 contending that he had purchased the property in a public auction, and he had now come to know that respondent-Bank was going to take physical possession of the subject property as a secured creditor**;** since, he had no connection with the loan, and he is the absolute owner of the property, the Bank be restrained from taking physical possession, and an interim injunction be granted in his favour.

The said SA was adjourned to 13.05.2019 by ordering notice to the respondent-Bank.

Then the petitioner approached the DRAT, Delhi by filing Misc. Appeal No. 231 of 2019, and on 15.05.2019, and an order of *status quo* was passed.

In the instant Writ Petition, the petitioner seeks quashing of the auction conducted by respondent No.1 on 28.12.2017, and also refund of the entire sale consideration amount of ₹1,01,00,000/- along with stamp duty and registration fees with interest.

No relief is claimed against respondent No.2-Bank in this Writ Petition.

Contentions of Counsel for the petitioner

Counsel for the petitioner contended that no information was given to him by respondent No.1 regarding the property being mortgaged at any time during the sale, and there was misrepresentation on the part of respondent No.1 that it was conferring clear title on him. He also contended that since the property was already mortgaged, there was no clear title to it, and respondent No.1 was not authorized to sell it.

According to him, to recover property tax arrears of ₹16,45,745/-, the subject property was sold to the petitioner for ₹1,01,00,000/- and excess amount of ₹84,54,255/- was retained by respondent No.1, and a defective title was passed on to the petitioner ; this amounts to cheating by respondent No.1 and respondent No.1 had *mala fide* intention to extort money from bidders like the petitioner from mortgaged properties like the subject property, and so the auction ought to be declared as null and void.

Contentions of the respondent No.1

Learned Advocate General, Haryana, appearing on behalf of respondent No.1, has contended that the sale itself was on **"***where is and what is there is basis***"** and it contained a clause that '*the bidders should, prior to auction, themselves confirm about the correctness of the title'* and no enquiries in that regard would be entertained at the time of auction**;** *on* *the property being knocked down in favour of the bidder, he shall be deemed to have waived all objections to the title* and description etc. of the property.

He contended that in view of the said condition, once the property was knocked down in favour of the petitioner, he had no right to seek refund of the amount on the ground that the property was mortgaged with the Bank and the title to the property was defective.

He also pointed out that even in the sale certificate, there was a clause which stated that *in case any liability occurs against the property such as prior bank loan*, maintenance charges, litigation etc., prior sale or *any kind of dispute, the purchaser will be liable for the same';* and this clause also disentitles the petitioner from seeking any refund as the petitioner had accepted the liability occurring against the property even from a prior bank loan.

Contentions of respondent No.2

Respondent No.2-Bank contended that the property had been mortgaged to it by a borrower i.e. M/s South Asian Hospitality Services Pvt. Ltd. and original title deeds were deposited with it by it's owner M/s PBJ Associates Pvt. Ltd.

It contended that the borrower's loan had became a Non Performing Asset, and was classified as such on 10.03.2016, and proceedings under the SARFAESI Act,2006 were initiated by serving notice under Section 13(2) of the Act on 02.08.2016 and possession notice under Section 13(4) of the Act was served on 05.10.2016. It also stated that it approached the District Magistrate, Gurugram, and secured an order on

14.03.2019 under Section 14 of the Act. It contended that since the property was mortgaged with it, nobody had any authority whatsoever to sell the property. It places reliance on Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 and Section 26E of the Act.

It has also alleged that the purchaser of the property in any sale conducted by respondent No.1 is bound by the mortgage in favour of respondent No.2, and dues of the defaulting borrower were ₹8,56,23,549/-. Certain allegations were also made against respondent No.1 but it is not necessary to go into the said aspect.

The Consideration by the Court

The point for consideration is:

“ **Whether the petitioner is entitled for refund of the sale consideration deposited by him for purchase of the subject property along with registration fee and stamp duty with interest or not?”**

We have already referred to the clause in the public auction which states that all bidders should, prior to the auction, satisfy themselves about the correctness of the title and description, measurements, etc. of the properties; and the respondent No.1 would not entertain any enquiries at the time of auction in this regard. The clause also stated that on the property being knocked down in favour of the bidder in the auction, he shall be held to waive all objections to the title & description etc. of the property.

This being the term of the auction, it would bind all bidders including the petitioner.

So even if there is any prior claim to the said property, such as the mortgage in favor of respondent No.2-Bank, the respondent No.1 is not liable.

The sale certificate (Annexure P-5) also contains a clause that in case any liability occurs against the respondent No.2, such as prior Bank loan, only the purchaser would be liable for the same.

This clause also binds the petitioner, and he cannot now contend that suppression of the mortgage in favour of respondent No.2 by respondent No.1 in the auction proceedings amounts to misrepresentation, and he is entitled to refund of the sale consideration as well registration and stamp duty paid by him for obtaining the sale certificate.

By signing the sale certificate, he accepted the said term and bound himself by the prior mortgage.

Therefore we do not find any merit in this Writ Petition and the same is dismissed as such. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

01.06.2022
Ess Kay

Whether speaking / reasoned	:	*Yes /No.*
Whether Reportable	:	*Yes/No*