* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 10 March 2022**
Judgment pronounced on: 16 March 2022

\+ W.P.(C) 7047/2014 and CM No. 16542/2014 (stay)

M/S VIPUL LOGISTIC & WAREHOUSING PVT. LTD.
..... Petitioner

Through: Mr. Rohan Jaitley, Ms. Bhumika Kapoor, Ms. Surbhi Sardana and Mr. Dev Pratap Shahi, Advs.

versus

DSIIDC & ORS. ..... Respondents

Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Abhishek Singh Pundir, Mr. Bankim Garg and Mr. Chaitanya Bansal, Advs. for DSIIDC.
Mr. A.K. Tewari and Mr. Tushar Upreti, Advs. for R-2 /Custodian.
Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Parvinder Chauhan, Adv. for R-3.

\+ W.P.(C) 10059/2020 and CM Nos. 32002/2020 (stay), 32004/2020 (permission)

M/S RAVEN SERVICES AND ENGINEERS PVT LTD.
..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Parvinder Chauhan, Adv.

versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD AND ORS.
..... Respondents

Through: Ms. Firdouse Qutb Wani, Md. Zaryab Jamal Rizvi and Mr. Musheer Zaidi, Advs. for DSIIDC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

JUDGMENT

1. These writ petitions have been preferred with the petitioners' asserting competing rights and interests in property bearing No. 217/B, Okhla Industrial Estate, Phase- III, New Delhi. Vipul Logistic claims rights over the said property by virtue of being the successful auction purchaser in proceedings which were conducted by the custodian under the Provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992[1]. Raven Services, the petitioner in the connected matter, claims rights on the basis of an asserted sale made in its favour by Killick Nixon, the judgment debtor on 26 October 2003.

2. In order to evaluate and adjudge the rights of the respective petitioners which are claimed in these two writ petitions, it would be appropriate to briefly advert to the following background facts. On 14 July 1980, the Commissioner of Industries, Delhi is stated to have leased the said property to M/s Lalita Dolls, a partnership firm. The original allottee is stated to have executed an agreement to sell in favour of one M/s Killick Nixon on or about September 1990. The respondent Corporation, which is the successor entity of the Commissioner of Industries, asserts that the said

[1] 1992 Act

transfer was in violation of clause 5(a) of the lease deed. It is contended that clause 5 clearly injuncted the lessee from transferring, selling, assigning or otherwise parting with the possession of the whole of or any part of the industrial plot except with the previous consent of the lessor. The record further reflects that since no such consent had been obtained by the original lessee, the lease deed came to be determined by an order of 2 March 1993. Killick Nixon to whom the property had been conveyed by the original lessee is stated to have preferred an appeal before the Lt. Governor. The aforesaid appeal was dismissed on 27 August 1998. Despite the cancellation of the lease, the respondent Corporation did not obtain possession of the leased premises.

3. From the facts placed on the record by the Custodian, it further transpires that one M/s Dhanraj Mills Pvt. Ltd. was declared as a notified party under the provisions of the 1992 Act on 5 August 1992. Consequent thereto all the properties of that notified party came to be attached in pursuance of the provisions made in Section 3 of the 1992 Act. Killick Nixon was recognised as the judgment debtor of M/s Dhanraj Mills Pvt. Ltd. Post attachment of the property in question under Section 3 of the 1992 Act, the Special Court proceeded to take steps for the auction of the attached properties. The sale of the attached properties of the judgment debtor which included the leased premises in question was notified for sale by way of a public notice which came to be published on 17 November 2005. Vipul Logistics participated in the auction proceedings and emerged as the highest bidder. Its bid which stood at Rs. 3.55 crores came to be

accepted by the Special Court in terms of its order of 21 December 2005. From the proceedings of that date, it further transpires that Raven Services also filed objections. This appears to have been prompted in light of the transfer of the leased premises by M/s Killick Nixon in its favour on 26 August 2003. While noticing the objection which had been preferred at its behest, the Special Court proceeded to pass the following order:-

> "IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS OF SECURITIES ACT 1992) AT BOMBAY
> REPORT NO. 63 OF 2005
>
> REPORT OF THE CUSTODIAN DATED 14.12.2005 FOR SALE OF LEASE HOLD RIGHTS IN PERPETUITY OF INDUSTRIAL LAND AND STRUCTURE SITUATED AT 217-B OKHLA INDUSTRIAL ESTATE. PHASE -III. NEW DELHI 110 020 - BELONGING TO M/S KILLICK NIXON LTD.. JUDGMENT DEBTORS OF M/S DHANRAJ MILLS PVT. LTD AN ENTITY NOTIFIED UNDER THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT. 1992.
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> Mr. G.R. Joshi i/b M/s P.M.S. Slithi & co. for the Custodian.
> Mr. Shekhar Sherya with Mr. N. D. Kapadia for Judgment Debtor present.
> Mr. R.M. Kadam for the intervenor.
> Mr. Rajiv Agarwal for Ways Infotechnologies Pvt. Ltd. -Bidder present.
> Mr. Surinder Kumar Garg, Vipul Logistics Pvt. Ltd. - Highest bidder present.
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> CORAM : D.K. DESHMUKH J.
> DATED 21st DECEMBER, 2005
>
> P.C.:-
>
> 1. The property is a leasehold rights in perpetuity of Industrial land and structure situated at 217-B, Okhla Industrial Estate, Phase III, New Delhi 110 020. As per the report the highest offer was given by Vipul Logistic & Warehousing Pvt. Ltd. of Rs.2,60,00,000/- (Rupees Two crores Sixty lakhs only). The second highest bidder was Ways Infotechnologies Pvt. Ltd. Both the bidders are present in the Court. I permitted the bidders to better their bids. The highest bid is given in the Court by Vipul Logistic &

> Warehousing Pvt. Ltd. for Rs.3,55,00,000/- (Rupees Three crores fifty five lakhs only). Perused the valuation report. The highest bid given by the bidder Vipul Logistic & Warehousing Pvt. Ltd. of Rs.3,55,00,000/- is way above the value of the land and building given in the valuation report.
>
> 2. There is an objection raised to the sale by one Raven Services & Engineers Pvt. Ltd. It appears that the judgment debtor - M/s Killick Nixon Ltd. to whom the property belongs had entered into some arrangement with Raven Services & Engineers Pvt. Ltd. after this Court passed an order of injunction restraining M/s Killick Nixon Ltd. from transferring the property. Subject to any rights that may or may not have been transferred by the judgment debtor to said Raven Services & Engineers Pvt. Ltd., the highest bid given by the bidder viz. Vipul Logistic & Warehousing Pvt. Ltd. is directed to be accepted. The Custodian to proceed further. The report is disposed of.
>
> Seal of Special Court, Bombay"

4. The confirmation of sale however did not consummate in a final transfer being made in favour of Vipul Logistic since it appears to have failed to pay the entire bid amount within the stipulated time. On the record are communications exchanged between the office of the Custodian as well as Vipul Logistic which evidence the fact that it had failed to pay the entire bid amount by 3 February 2006 as was mandated under the terms of the auction. However, the Special Court proceeded to condone the delay as well as the default and called upon Vipul Logistic to pay the balance bid amount along with interest. Upon compliance being affected, the office of the Custodian in terms of its letter of 29 March 2006 confirmed the finalization of the auction, the payment of full consideration amount and left it open to Vipul Logistic to get the property registered in its name by the competent authority.

5. Raven Services aggrieved by the rejection of the objection by the Special Court approached the Supreme Court by way of Special Leave to Appeal (C) 2684/2006. That Special Leave Petition came to be dismissed summarily on 13 February 2006. Vipul Logistic pursuant to the confirmation of the sale then approached the respondent Corporation praying for being inducted in possession of the leased premises. Since the Corporation did not accede to its request, it instituted W.P.(C) 10413/2006 before this Court in which an interim order was passed on 19 June 2006 restraining the respondents from executing any orders of allotment or creating third party rights. In those proceedings, the respondent Corporation appeared and disclosed to the Court that the Special Court had not been apprised of the fact that the lease of the original allottee had already been cancelled and the said order of cancellation had attained finality consequent to the rejection of the appeal taken by Killick Nixon before the Lt. Governor. Parallelly the respondent Corporation appears to have moved the Special Court by way of a review petition seeking recall of the order of 21 December 2005 in terms of which the sale in favour of Vipul Logistic had come to be confirmed. The review petition preferred by the respondents came to be dismissed by the Special Court by its order of 11 April 2007. It would be apposite to extract that order which read thus:-

> "1. This review petition is moved by the Commissioner of Industries, Government of National Capital Territory of Delhi for review of the order passed by this court selling the property i.e. Leasehold right in perpetuity of Industrial land and structure situated at 217-B, Okhla Industrial Estate, Phase III, New Delhi-110020. That property was sold as the property of the judgment debtor by name M/s. Killick Nixon Ltd. M/s. Killick Nixon Ltd.

> was the judgment debtor of the notified party M/S Dhanraj Mills. The case of the review petitioner is that the review petitioner is the owner of the property. The property was given on lease by lease deed dated 14.07.1980 in favour of M/s. Lalita Dolls through its sole proprietor Mrs. Lalita Dixit. In terms of the lease deed she was not entitled to transfer or assign the lease without prior permission of the review petitioner. According to the review petitioner, the lease of the lease Mrs. Lalita was determined by order dated 2.3.1993 and the proceedings were taken up against her for possession of the property under the Public Premises Act. According to the review petitioner, therefore, the property does not belong to M/s Killick Nixon Ltd- the judgment debtor, and therefore, it could not have been sold by this Court as the property of the judgment debtor, and therefore, the order sanctioning the sale in favour of the respondent no. 8 should be reviewed.
>
> 2. Now it is clear that in the notice calling offers published by the Custodian, it was made clear that the property is being sold on "as is where is" basis. The respondent no. 8 who is represented by the Advocate has stated that it is clearly understood by the purchaser that in the notice inviting bids it was specifically stated that the property is being sold on "as is where is" basis. As the property was sold as the property of M/s Killick Nixon Ltd. the respondent no. 8 purchaser will get all the rights that M/s Killick Nixon Ltd. had, and neither this Court nor the Custodian can transfer to the purchaser better title than what M/s Killick Nixon Ltd. had. Therefore, there is no question of review of the order. In spite of this clear position, the review petitioner which is a Government organisation has approached the Court unnecessarily and therefore, in my opinion, exemplary costs are to be imposed on the review petitioner, specially because due to filing of this review petition by the review petitioner, the auction purchaser who is based in Delhi has to come here from Delhi. The review petition is disposed of.
>
> 3. The Review petitioner is directed to pay cost of this review petition Rs. 15,000/- to the Custodian as also Rs. 15,000/- to the respondent no. 8."

6. Assailing that order the Corporation thereafter approached the Supreme Court by way of C.A No. 1655-57 of 2008, diary No. 20524/2007. That petition came to be dismissed on 25 February 2008. The writ petition preferred by Vipul Logistic ultimately came to be disposed of as withdrawn by a learned Judge of the Court on 27 October 2009. The review petition

preferred against the said order also came to be dismissed. Those orders were challenged by Vipul Logistic in a Letters Patent Appeal which was disposed of on 22 February 2010 with the Bench observing that while it would be open for Vipul Logistic to approach the Bombay High Court or any other appropriate forum in Mumbai, in case those Courts come to the conclusion that they lacked territorial jurisdiction, it would have the liberty to approach the Delhi High Court yet again.

7. Vipul Logistic proceeded to petition the Bombay High Court accordingly. However, the aforesaid writ petition came to be dismissed on 30 March 2011. It thereafter sought revival of its original writ petition. While W.P.(C) 10413/2006 came to be revived by an order of the Court of 4 May 2011, during the pendency thereof Vipul Logistic made yet another representation to the respondent Corporation to induct it into possession. That representation came to be rejected by an order of 6 June 2014. It is that order which Vipul Logistic impugns in its writ petition.

8. Raven Services which admittedly claimed rights in the subject property pursuant to an agreement to sell executed by M/s Killick Nixon ultimately faced proceedings for eviction drawn by the Corporation under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971[2]. The Estate Officer proceeded to frame an order of eviction against them on 19 September 2019. That order was affirmed by the District Judge in appeal on 24 September 2020. Those orders came to be challenged by Raven

[2] 1971 Act

Services in the connected writ petition. When the writ petition was initially entertained, a learned Judge of the Court noticed the submissions addressed on its behalf to the effect that it essentially sought restoration of the lease notwithstanding the transfer having been made without the prior consent and approval of the Corporation. The aforesaid prayer was stated to have been made in light of the policy for regularisation and restoration of lease hold rights as famed and adopted by the Corporation. Taking note of the aforesaid contentions, the Court on 9 December 2020 passed the following order:-

> "W.P.(C) 10059/2020, CM APPL. 32002/2020 & CM APPL. 32004/2020
>
> 3 The petitioner seeks restoration of the lease deed in terms of the policy for Transfer/Regularisation/Restoration of leasehold rights in respect of Industrial Plots/sheds under jurisdiction of DSIIDC (except those under Relocation Scheme).
>
> 4 The original allottee lost the appeal for restoration of lease deed. The petitioner is the second subsequent purchaser. Clause 2.4 of the said policy reads as under:

Sr. No.	*Particulars*	*Rates Recommended by Board in meeting dt. 29.06.2020*	*Revised rates proposed for consideration*
2.	*Rates for Restoration of lease (% of market value of plot)*		
2.4	*Where the appeal for restoration of lease deed filed by the ex-allottee/ subsequent purchaser has been rejected/pending and restoration has been sought in favour of subsequent GPA and Agreement to Sell holders/purchaser.* *If the GPA and Agreement to sell is*		

	executed prior to cancellation of lease deed. *If the GPA and Agreement to sell is executed on date subsequent to cancellation of lease*	*25%* *50%*	*10%* *20%*

5 The petitioner has already filed an application for restoration of the lease deed, in terms of the said policy.

6 Issue notice.

7 The learned counsel named above accepts notice on behalf of R-1.

8 Reply be filed in four weeks. Rejoinder, if any, be filed in four weeks thereafter.

9 List on 10.05.2021."

Pursuant to notices having been issued, parties have exchanged affidavits and have thereafter been heard on merits by the Court.

9. Vipul Logistic on whose behalf submissions were addressed by Mr. Jaitley, learned counsel, essentially asserts that it was a bona fide purchaser for value in an auction which was conducted by a competent statutory authority. Mr. Jaitley contends that the petitioner was never informed of the existing encumbrances which burdened the property which was auctioned. It was submitted that Vipul Logistic despite due diligence had no means to ascertain or discover the fundamental defects with respect to the title and validity of the Custodian to proceed against the property in question. It was submitted that Vipul Logistic had paid valuable consideration for the property and therefore it cannot now be deprived of its right to obtain possession of the same.

10. Mr. Jaitley would submit that the mistake on the part of the Custodian to have noticed the fact that the lease interest of the original allottee stood cancelled cannot be made a basis for depriving the petitioner of the right to obtain possession. Learned counsel laid great emphasis on the fact that the auction itself was one which was conducted by the Custodian and which had also been confirmed by the Special Court. It was submitted that Raven Services which claimed rights only through Killick Nixon cannot possibly be recognised as being entitled in law to continue to occupy the subject land despite a valid auction sale having been made in its favour. It was also urged that once the challenge of Raven Services to the order of the Special Court confirming the sale in favour of Vipul Logistic came to be negatived by the Supreme Court, it could not possibly assert any right over the property in question.

11. Questioning the assertion of Vipul Logistic being a bona fide purchaser, Mr. Nandrajog, learned Senior Counsel appearing for Raven Services would contend as follows. Mr. Nandrajog has firstly drawn the attention of the Court to the disclosures made on behalf of Killick Nixon before the Special Court and as comprised in the affidavit of 13 February 2003. The attention of the Court was specifically drawn to the qualified disclosures as made with respect to the subject property where Killick Nixon specifically disclosed that title in its respect was disputed. This is evident from the list of immovable properties which has been set out at page 40 of the paper book. Learned Senior Counsel then submitted that the public notice itself made specific reference to the proceedings taken before

the Special Court and more particularly its order of 6 April 2005. Mr. Nandrajog submits that the property in question being possibly encumbered or suffering from material defects fell for notice before the Special Court itself as would be evident from its order passed on that date, the relevant extracts whereof are reproduced hereinbelow: -

> "2. In my opinion, taking overall view of the matter, it would be appropriate to set in motion the machinery for conducting sale of the properties listed at Sr. Nos. 1, 2 and 3 as also the properties at Sr. Nos. 7, 8 and 9 in the Chart at -2' at page no.2. some of the encumbrances on the properties which are to the knowledge of the Custodian, are mentioned in the Charg at "X-2". As per the sale procedure, public notices are required to be issued for selling the properties, therefore, if there are any more encumbrances, information about the same will be received after the public notice for sale is issued. The learned Counsel for the judgment debtors viz. Killick Nixon Ltd. and Khosa Investment submits that in view of the properties which are already available and order for sale of which are already available and order for sale of which has already been made, the sale of these properties would not be necessary. He also submits that the properties listed at Sr. Nos. 2 and 3 at page 2 of the Chart at "X-2" are not available for sale. In my opinion, as in relation to the other properties, the order for sale has already been made, obviously, these properties will come up for sale only after those properties are sold and if enough amount is recovered by sale of those properties, it will be possible for the judgment debtors to object to the sale of these properties at that stage.
>
> 3. So far as the objection in relation to the properties at Sr. Nos. 1, 2 and 3 is concerned, in my opinion, that objection can be raised by the persons who might have encumbrances on the properties at Sr. Nos. 1 to 3, after the public notice for sale is issued. The judgment debtors would also be free to raise the objection after the public notice for sale of properties is issued. As per the procedure, after all the bids are received, the matter is placed before the Court alongwith all objections that may be received, for appropriate orders, at that time all the objections can be considered by the court."

12. According to learned Senior Counsel these facts were clearly discernable from the disclosures carried in the public notice itself and in any case it was incumbent upon the petitioner to satisfy itself with respect to the title of the subject property as well as the right of Killick Nixon. Mr. Nandrajog further submits that Vipul Logistic cannot possibly claim to be a bona fide purchaser without notice since Raven Services had duly appeared before the Special Court and disclosed its claim over the subject property which was duly noticed and recorded in the order of 21 December 2005. It was highlighted that in the proceedings which were conducted by the Special Court on that date, Vipul Logistic was duly represented and therefore had full knowledge of the competing claim of Raven Services. It was further submitted that despite having full knowledge and notice of the defects and the encumbrances which burdened the property in question, Vipul Logistic chose to proceed further and continued to seek confirmation of the auction sale in its favour. On basic principles it was submitted that undisputedly the auction was conducted on an "As is where is" basis. In view of the settled position in law with respect to such auctions, Mr. Nandrajog submitted that Vipul Logistic cannot claim any rights superior to that of Raven Services having chosen to participate in the auction process with open eyes and being fully aware of the circumstances surrounding the inclusion of the property in the auction sale.

13. Insofar as the proceedings drawn under the 1971 Act are concerned, Mr. Nandrajog submits that notwithstanding the order of eviction as framed in those proceedings, the policy as framed by the respondent Corporation

itself confers a right on the petitioner to seek restoration of lease and for regularisation of its possession. The attention of the Court was specifically drawn to the policy titled "Policy for Transfer/Regularisation/Restoration of leasehold rights in respect of Industrial Plots/sheds under the jurisdiction of DSIIDC (except those under Relocation Scheme)". According to Mr. Nandrajog the case of Raven Services clearly falls within the ambit of clause 2.4 which reads as follows: -

Sr. No.	*Particulars*	*Rates Recommended by Board in meeting dt. 29.06.2020*	*Revised rates proposed for consideration*
2.	*Rates for Restoration of lease (% of market value of plot)*		
2.4	*Where the appeal for restoration of lease deed filed by the ex-allottee/ subsequent purchaser has been rejected/pending and restoration has been sought in favour of subsequent GPA and Agreement to Sell holders/purchaser.*		
	If the GPA and Agreement to sell is executed prior to cancellation of lease deed.	*25%*	*10%*
	If the GPA and Agreement to sell is executed on date subsequent to cancellation of lease	*50%*	*20%*

14. Learned Senior Counsel submits that since the Corporation has taken a decision to consider restoration and regularisation of infractions of the lease terms, the case of Raven Services is liable to be considered in accordance with the policy decision of the respondents themselves. It was further submitted that Raven Services is ready and willing to pay all sums

as may be due in terms of the policy as adopted by the respondent Corporation.

15. Learned counsel appearing for the Corporation in the Vipul Logistic petition, submitted that the lease of the property stood duly determined and thus it clearly stood reverted to it. According to learned counsel, once the cancellation of the lease attained finality, no right could be claimed by either of the parties. Learned counsel contends that the rights of the Corporation remained intact notwithstanding the auction of the subject property. The attention of the Court was specifically drawn to the qualified observations made by the Special Court which while rejecting the review petition preferred had observed that the auction was on an "as is where is" basis and that the auction purchaser would have acquired only those rights as could be claimed by Killick Nixon. Viewed in light of the above, learned counsel would submit that the auction as held cannot be understood as having effaced the right and title of the Corporation over the property.

16. Learned counsel appearing for the Corporation in the connected writ petition questioned the right of Raven Services to seek regularisation and restoration contending that once it had been held to be an unauthorised occupant, it could claim no rights in the subject property. Learned counsel also questioned the factum of a conveyance by Killick Nixon in its favour by submitting that no credible evidence in that regard had been placed on the record to substantiate a transfer having been made.

17. Learned Counsel Mr. Tewari appearing on behalf of the Custodian submitted that in order to pay the government liabilities of the notified party

- M/s Dhanraj Mills Pvt. Ltd., the property in question came to be attached under the purview of the 1992 Act. It was explained by him that as a result of the auction conducted by the Special Court the said property was sold to Vipul Logistic and as such the proceeds recovered were credited into the attached account of the Notified Party. It was further submitted that that the execution of the Agreement to Sell on 26 August 2003 by M/s Killick Nixon Ltd. in favour of Raven Services was in flagrant violation of the injunction dated 18.08.2001 passed by the Special Court. Further in response to the submissions of Raven Services, Mr. Tewari contended that with the sale of the property in question being upheld by the Special Court and the Supreme Court, the sale has thus become final. It was contended that the Special Court was fully justified in proceeding to place the property to auction and that in any case parties were clearly placed on notice of all encumbrances that attached to the subject property. It was lastly submitted that the 1992 Act does not envisage a Sale Certificate being issued by the Custodian and that in any case would not impact the validity of the sale conducted pursuant to the orders of the Special Court.

18. In order to adjudicate upon the rights of respective parties and the rival claims laid by the petitioners on the subject property, it would be apt to firstly consider the rights if any that Vipul Logistic can claim by virtue of the auction sale that was conducted by the Custodian. However before proceeding to do so, it would be apposite to briefly dwell upon the concept of an auction conducted on an "as is where is". An "as is where is" auction places an intending bidder on notice of the obligation to independently

undertake a due diligence exercise, make requisite enquiries and evaluate all factors that may have a bearing or impact on the value of the property put up for auction. The auctioneer in auctions of this genre is essentially required to make requisite disclosures on the basis of material which is in its possession and which may enable and assist intending bidders to assess and evaluate the viability of submitting a bid. The auctioneer proffers no warranties apart from being placed under the obligation of making a full and complete disclosure with respect to the property based on the material in its possession. While the auctioneer may be recognised in law to be placed under an obligation not to withhold or conceal information which may otherwise be in its possession and which may impede the decision of an intending bidder or cloud its judgment, that does not detract from the duty and responsibility of the intending bidder to independently assess and weigh all risks and factors attached to the subject of the auction.

19. This duty of the intending bidder assumes greater significance where the subject property comes to be put up for auction as a result of enforcement action that may be taken by statutory authorities. Undisputedly where properties are placed for auction as a result of adoption of coercive measures by statutory authorities or where they are intended to be disposed of in cases of default, it would be reasonable to presume that the intending bidder would move forward with due caution and prudence, inform itself of the background in which the property has been placed for auction as well as the past dues and encumbrances that may burden it. The intending bidder must therefore be recognised to be placed under the burden of diligently

weighing in balance all factors that may effect or influence the value of the property, the impediments that may impact its takeover before proceeding to submit a bid. While considering an assertion of a bidder of having been wronged, the Court must also bear in mind whether factors which are subsequently discovered to impair the value of the property were discoverable by a person from the material disclosures made or existing on the record. Ultimately such challenges would have to be adjudged by adopting the test of due enquiries having been made from the standpoint of a reasonable and prudent person.

20. The claim of Vipul Logistic may now be assessed based on the fundamental principles enunciated hereinabove. Starting from the public notice in terms of which bids were invited, the Court notes that it specifically referred to the order of the Special Court of 6 April 2005. That order clearly noticed that the property in question was encumbered and that issues may arise in the course of its sale by way of auction. However, the Special Court formed the opinion that the process of sale must be set in motion and any objections that may be received in its respect would be duly considered at an appropriate stage. The Court also takes note of the disclosure made before the Special Court by the representative of Killick Nixon where it described the subject property as *"Disputed DDA Title"*. This material existed on the record of the Special Court and was open for inspection by all intending bidders. Additionally, paragraph 4 of the public notice clearly stipulated that not only would the property be open for inspection in the presence of a representative of the Custodian, interested

parties could also address queries and seek appropriate clarifications from the office of the Custodian with regard to the property in question.

21. One may then proceed to notice the order of 21 December 2005 of the Special Court. In the proceedings that ensued on that date before the court, both Vipul Logistic as well as Raven Services were present and duly represented. The claim raised by Raven Services over the subject property and of the asserted transfer in its favour by Killick Nixon was duly noted. Vipul Logistic, however, chose to proceed further undeterred by the said disclosure. It neither voiced any reservations in proceeding further nor did it assert any right to withdraw its bid even at this stage. This led to the Special Court accepting the highest bid subject to whatever rights which may or may not have been transferred to Raven Services. It further transpires from the record that when Vipul Logistic failed to pay the entire bid amount, the Custodian proceeded to forfeit the earnest money deposit in terms of its communication of 14 February 2006. Aggrieved by that action, Vipul Logistic petitioned the Special Court for extension of time to make the requisite deposit. In fact, the Special Court in its order of 16 February 2006 recorded the submission of counsel for Vipul Logistic who submitted that it was ready and willing to deposit the entire bid amount together with interest @12 p.a. It was this offer which was duly accepted by the Special Court by its order passed on that date. For our purposes, the aforesaid order also attains significance in light of the Special Court in unambiguous terms recording that *"the property is encumbered and had fetched the value way above the value of the land and building given in the valuation report….."*.

There possibly could not have been a more categorical and candid disclosure with respect to the character of the property for which Vipul Logistic submitted its bid. On 29 March 2006, the office of the Custodian duly acknowledged that the entire consideration had been deposited by Vipul Logistic and thus closed all proceedings at its end. The communication of 29 March 2006, as was rightly pointed out by Mr. Nandrajog, cannot be construed to be akin to a sale certificate or one which may have vested title in Vipul Logistic by operation of law. This since the Custodian left it open to Vipul Logistic to take further steps to get the property registered in its name from the appropriate authority.

22. The merits of the contentions addressed by Mr. Jaitley may also be tested in light of the orders that were passed by the Special Court during the course of the auction proceedings. It would be apposite to recollect that the bid of Vipul Logistic was accepted by the Special Court in terms of its order of 21 December 2005 *"Subject to any rights that may or may not have been transferred by the judgment debtor to said Raven Services……."*. The Special Leave Petition which was preferred by Raven Services against that order came to be dismissed summarily without leave being granted. Similarly, while rejecting the review petition preferred by the Corporation on 11 April 2007, the Special Court pertinently observed that since the auction had been conducted on an "as is where is" basis, the auction purchaser would be entitled to claim only such rights as inhered in Killick Nixon and that its orders could not be construed as conferring on the auction purchaser rights that may have ranked superior to those

recognisable in law as vesting in Killick Nixon. There was thus no repudiation of the predominant claim raised by the Corporation in respect of the property. The Special Court also did not either overrule or negative the assertion of title by the Corporation over the subject property or its action of annulling the allotment. It becomes equally important to note that even this order was passed in the presence of representative for Vipul Logistic.

23. In the considered view of this Court, the Custodian as well as the Special Court correctly recognised the obvious position of the property having been disposed of by way of auction and leaving it open to the auction purchaser to take such further steps as may be warranted. In any case, the aforesaid recital of facts unerringly points towards Vipul Logistic being fully aware of the encumbrances which saddled the property, of the fact that the original allotment stood cancelled and of the rights claimed by Raven Services. The disclosure of these facts did not dissuade or discourage it from forging ahead and submitting a bid in the auction, seeking further time to pay the bid amount and ultimately bending forward to even pay interest on account of the delay caused in deposit of the bid amount. On an overall conspectus of the aforesaid facts noted hereinabove, the Court finds itself unable to sustain the contention that Vipul Logistic is liable to be recognised as a bona fide purchaser for value and for consequential directions being framed in its favour or for the Corporation being commanded to hand over possession of the land to it.

24. The Court then proceeds to consider the claim of Raven Services. Undisputedly, Raven Services has been declared to be an unauthorised occupant of the subject premises. This essentially rests on the indubitable fact that the original allotment in favour of Lalita Dolls had been cancelled and the appeal taken against that order by Killick Nixon rejected. Raven Services claims rights in the subject property based on an asserted conveyance made in its favour by Killick Nixon. The Corporation has rightly submitted that transfers or conveyances of the demised land without its permission or consent are in clear violation of the terms of the lease and it was these facts which led to the cancellation of the original allotment. However, the submission of Mr. Nandrajog, learned senior counsel, was that the policy of the Corporation far from rendering illegal or irregular transferees ineligible to seek regularisation of such infractions, conferred on them a clearly articulated right to apply for restoration. Clause 2.4 of the policy which was referred to clearly contemplates ex allotees as well as subsequent purchasers applying for regularisation and restoration of leases. It envisages consideration of cases even where appeals against cancellations may have been rejected. It also extends the facility of restoration and regularisation both where the transfer took place either prior to or after the cancellation of the original lease. In the facts of the present case, the transfer is shown to have been made after the cancellation of the lease on 2 March 1993 and after the rejection of the appeal on 27 August 1998. Its right of consideration would clearly warrant consideration in terms of the

provisions made in Clause 2.4 of the policy formulated and approved by the Board of the Corporation in its meeting held on 29 September 2020.

25. Learned counsel for the Corporation while refuting the aforesaid contentions addressed on behalf of Raven Services, did not question the applicability of the policy on principle. It was however submitted that it had failed to furnish any cogent evidence in support of the purported transfer by Killick Nixon in its favour. It was further submitted that Raven had failed to produce documents as demanded by the Corporation from time to time for consideration of its claim. The aforesaid submissions were refuted by learned counsel for the petitioner who drew the attention of the Court to the documents placed at pages 513 onwards of the paperbook to submit that the evidence in support of the purported transfer had been duly placed on the record.

26. Having noticed the content of the objection raised on behalf of the Corporation, this Court is of the considered view that the same would clearly not justify either a dismissal of the writ petition or rejection of the claim raised by Raven Services. This since it would always be open to the Corporation to duly verify the factum of transfer and call upon Raven Services to produce all relevant documents in that regard. Raven Services would obviously be obliged to produce the same for the purposes of consideration of its claim. It becomes pertinent to note that this Court has not examined the veracity of the documents that have been produced on behalf of Raven Services and this would also be an exercise which can be independently undertaken by the Corporation. The objection raised in any

case would not stand in the way of a direction being framed calling upon the Corporation to consider the claim of Raven Services in light of the policy.

27. Accordingly, and for all the aforesaid reasons, Writ Petition (Civil) No. 7047 of 2014 shall stand dismissed along with pending application.

28. Writ Petition (Civil) No. 10059 of 2020 shall stand allowed to the extent that the Corporation shall now be obliged to consider the claim of the petitioner for regularisation and restoration of the lease deed in question in accordance with the prevalent policy. The petitioner shall be obliged to furnish necessary documentation in support of its asserted stand of transfer of the leased premises in its favour. The Court also leaves it open to the Corporation to duly verify the same and thereafter proceed to attend to the prayer for regularisation in accordance with law.

YASHWANT VARMA, J.

MARCH 16, 2022
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