IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4016-2023(O&M)
Date of Decision: 28.08.2023.

RAVI KANT ……. *Petitioner*

Vs.

JHANGI RAM AND ORS ……..*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present : Ms. Anupam Sharma, Advocate for the petitioner.

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GURBIR SINGH, J. (ORAL)

1. Challenge in this petition is to the order dated 31.05.2023 (Annexure P-7) passed by learned Civil Judge Senior Division, Fazilka whereby objections filed under Order 21 Rule 90 CPC by the petitioner were dismissed.

2. Learned counsel for the petitioner submits that the property of the petitioner was auctioned but auction was not conducted as per the rules. No notice was issued issued to judgment debtor (hereinafter called JD). Neither any munadi was conducted in village nor any publication was effected in the area. The Court directed the Collector, Fazilka to conduct the auction but the auction was conducted by the Naib Tehsildar, who never visited the village to conduct the fair auction. It is well known that collector rate fixed in the area is not the actual market rate. Had open and proper auction had been conducted, then rate of per acre would have exceeded Rs.25,00,000/-. Gurtej Singh of the village has sworn an affidavit

to that effect also. The learned Executing Court without any reason dismissed the objections.

3. I have heard the submissions of learned counsel for the petitioner, which does not support that the suit for recovery alongwith interest was decreed vide judgment and decree dated 01.04.2011. Execution petition was filed and property was attached. Finally the property was auctioned. Objections have been filed under Order 21 Rule 90 CPC which is as under:-

> "90.Application to set aside sale on ground of irregularity or fraud.-
>
> (*1) Where any immovable property has been sold in execution of a decree, the decree holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.*
>
> *(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.*
>
> *(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.*
>
> *Explanation : The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule."*

4. Under this rule, the auction can be challenged on the ground of material irregularity or fraud in publishing or conducting it. The auction can only be set aside, if it is found that there is substantial injury suffered by the applicant by reason of such irregularity or fraud. It is not in dispute that collector rate of the area was Rs.8,65,000/- per acre and property is auctioned at the rate of Rs. 8,70,000/- per acre. It is well known when a person purchases the property in an auction proceedings and property is

sold for recovery of the decreetal amount, then everyone knows that there is risk of litigation and in case litigation starts then he would have to wait for long period for actually getting fruit of such property. Since the property was sold for more than the collector rate, so it cannot be said that there was any fraud in conducting the auction. The objections raised by the petitioner regarding publications of notice are general in nature and cannot be said that there was any material irregularity. The Naib Tehsildar is a Revenue Officer. When warrant of sale is sent to the Collector, then he can definitely get the same executed from his subordinate officer by delegating its powers. Collector cannot do each and every auction personally. Other objection raised by the petitioner is that auction was required to be conducted by Court auctioneer. It is not necessary that auction should always be conducted by the Court auctioneer only. It is judicial discretion of Executing Court to get the auction conducted from Revenue Officer or Court auctioneer. But such discretion is required to be exercised bonafidely. It is not a case where such discretion is exercised malafidely.

5. Since, there is no material irregularity or fraud in conducting the auction and it can be said that the petitioner has sustained any substantial injury. So, I do not find any illegality and irregularity in the order of trial Court.

6. Dismissed.

(GURBIR SINGH)
JUDGE

28.08.2023.
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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I attest to the accuracy and
integrity of this document