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

Date of decision: 11th DECEMBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 9894/2021 & CM APPL. 30460/2021**

INDERJEET ARORA ..... Petitioner

Through: Mr. R.K. Handoo, Mr. Shailen Bhatia and Mr. Arnav Chatterjee, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for R-1.
Ms. Seema Gupta, Advocate for R-4.
Mr. P.V. Yogeswaran, Advocate for ED.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Aggrieved by the decision of the Respondent refusing to register the sale of the property bearing Plot No.39A, Kamla Nagar, Delhi, admeasuring 274.44 sq. yds. (*hereinafter referred to as 'property in question'*), the Petitioner, who is a bona fide auction purchaser, has approached this Court for a direction to the Respondents either to set aside the Order dated 05.03.2020 passed by the Respondent No.2 in OC No.1220/2019 or in the alternative for a direction to Respondent No.5/Sub Registrar to register Certificate of Sale Deed executed by Respondent No.4/Bank.

2. The facts, in brief, are that the Respondent No.5/Bank in execution of

a decree obtained by it under the Recovery of Debts and Bankruptcy Act, 1993 put the property in question to public auction in view of the provisions of SARFAESI Act. The auction was conducted on 18.03.2019 and the Petitioner herein being the highest bidder got the property in question and paid the entire consideration for the property for a sum of Rs.12,35,10,000/- on 20.03.2019. The possession of the property in question was handed over to the Petitioner on 14.05.2019 and the Sale Certificate was also executed by the Respondent No.4/Bank and was communicated to the Registrar of documents.

3. It is stated that before the Sale Certificate executed by Bank could be registered under the Registrations Act by the Registrar of documents, the Petitioner was informed by Respondent No.5/Sub Registrar that the title qua the property in question could not be registered without the clearance from Respondent No.3/ED. It is stated that the Petitioner later came to know that subsequent to the acquisition of the property in question by the Petitioner, a Provisional Attachment Order (PAO) bearing No.10/2019 qua the property in question has been passed on 07.10.2019 by the Respondent No.3/ED under Section 5 of the PMLA.

4. Material on record discloses that a letter dated 02.09.2019 was sent by the Respondent No.3/ED to the Respondent No.5/Sub Registrar seeking details as to whether the property in question is free from any charge and informing that no transfer of the title be allowed pending confirmation of this office. It is stated that based on the said communication, the Registrar of documents has not registered the Sale Certificate in respect of the property in question in favour of the Petitioner on 19.09.2019.

5. Learned Counsel for the Petitioner contends that refusal by the

Registrar of documents to register the Sale Certificate executed by the Respondent No.4/Bank is not in accordance with law for the reason that on the day when the property was put to public auction, there was no communication from the Respondent No.3/ED to the Registrar of documents regarding restraining of transfer of the property in question and in fact the Respondent No.4/Bank had not been informed regarding the same. He places reliance upon a Judgment passed by the Apex Court in OPTO Circuits (India) Ltd. vs. Axis Bank, **(2021) 6 SCC 707** wherein the Apex Court has held that if the procedure under the PMLA has not been followed, in such circumstances, the properties cannot be attached.

6. *Per contra*, learned Counsel appearing for the Respondents submits that the same issue is pending adjudication before the Tribunal and, therefore, this Court should relegate the Parties for adjudication before the Tribunal.

7. Learned Counsel for the Respondent No.4/Bank supports the case of the Petitioner in conforming that on the date when the Respondent No.4/Bank put the property in question on public auction, the Respondent No.4/Bank had not received any communication from the Respondent No.3/ED, and therefore, the bank had put the property in auction in execution of the decree obtained by it in OA No.519/2015.

8. Heard learned Counsel appearing for the Parties and perused the material on record.

9. The procedure for search and seizure of the properties under PMLA has been laid down under Section 17 of Chapter 5 of the PMLA, 2002

> *"**17. Search and seizure.**—(1) Where [the Director or any other officer not below the rank of Deputy Director*

authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, [or]

[(iv) is in possession of any property related to crime,]

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or [property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure [or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in

> *sub-section (1) shall be required for search under this sub-section.*
>
> ***[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.]"*** (emphasis supplied)

10. Admittedly, on the date when the property in question was put to public auction and on the date when the consideration amount was deposited by the Petitioner and on the date when the possession of the property in question was handed over to the Petitioner by the Respondent No.5/Bank, there was no communication from the Respondent No.3/ED to the Registering authority informing the Registrar of documents regarding the fact that the property could be tainted with the proceeds of crime.

11. Section 17 (4) of the PMLA mandates that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority. Admittedly, this procedure has also not been complied with by the authority.

12. The issue in the writ petition is no longer *res integra* as the same is squarely covered by the Apex Court in its judgment <u>OPTO Circuits (supra).</u>

Paragraph No.14 of the said Judgment reads as under:

> ***"14.*** *This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in* Chandra Kishore Jha *v.* Mahavir Prasad *[Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)*
>
> > *"17. … It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."*
>
> *Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."*

13. It is also well settled that a Sale Certificate which is issued to an Auction Purchaser by a bank in public auction is an evidence of title and the Auction Purchaser derives title on the confirmation of Sale in his favour [Refer: B. Arvind Kumar vs. Govt. of India and Others, **(2007) 5 SCC 745**].

14. The Apex Court in Esjaypee Impex Pvt. Ltd vs. Asst. General Manager and Authorised Officer, Canara Bank, **(2021) 11 SCC 537** has held as under:

> *"16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the Sarfaesi Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."*

15. In view of the above, this Court does not find any impediment for the Registrar of documents to proceed ahead and register the Sale Certificate in favour of the Petitioner.

16. The only contention raised by learned Counsel for the Respondent was that since the matter is pending before the Tribunal under the PMLA, this Court should not exercise its jurisdiction under Article 226 of the Constitution of India. In the facts of the present case, this Court is not inclined to accept the said suggestion.

17. It is trite law that availability of an alternate remedy alone is not an absolute bar for a High Court to refuse to entertain a petition under Article 226 of the Constitution of India.

18. The Apex Court in Maharashtra Chess Association v. Union of India & Ors., **(2020) 13 SCC 285**, has held that the existence of an alternate

remedy does not alter the fundamentally discretionary nature of the writ jurisdiction of the High Court and, therefore, does not create an absolute legal bar on the exercise of the writ jurisdiction of the High Court. The decision whether or not to entertain an action under the writ jurisdiction is a decision to be taken by the High Court on examination of the facts and circumstances of a particular case.

19. In the present case, the property in question had been sold in auction to the Petitioner herein before the steps under Section 17 of the PMLA were initiated, and, therefore, this Court in the facts of the present case is inclined to exercise its jurisdiction under Article 226 of the Constitution of India even though the matter is pending before the Tribunal.

20. Resultantly, the writ petition is allowed. Pending applications, if any, stand disposed of.

21. Needless to state that it is always open for the Enforcement Directorate to approach the Tribunal and obtain such Orders regarding retention of the property's worth as proceeds of crime after giving notice to Respondent No.4/Bank which according to learned Counsel for the Respondent No.4/Bank that the bank has already appropriated the money.

SUBRAMONIUM PRASAD, J

DECEMBER 11, 2023
S. Zakir