

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 2045 OF 2024

RVS Global Solutions Pvt. Ltd.

...Petitioner

*Versus*

Union Of India Thr. The Ministry Of Finance ...Respondents  
New Delhi & Ors.

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Mr. Subhash Jha a/w Mr. Ghanshyam Upadhyay, Samir Vaidya, Siddharth Jha, Apeksha Sharma, Neha Balani, Sumeet Upadhyay, Deepesh Shahani, Rajlaxmi Bagwe i/b Law Global Advocates, for the Petitioner.  
Mr. Nitin Thakkar, Sr. Advocate a/w Savita Nangare, Vinod Nagula & Nilesh Bamne i/b M/s. A. R. Bamne & Co., Advocates for the Respondent No.3.

CORAM: G. S. KULKARNI &  
SOMASEKHAR SUNDARESAN, JJ.

DATE 06 SEPTEMBER 2024

P.C.

1. We have heard learned counsel for the parties on the backdrop of the earlier orders passed by the Court.
2. From the record of the proceedings, it appears to be quite clear that due to certain issues / difficulties faced by respondent No.3 – Bank of Baroda (for short “**the Bank**”) , it is not possible for the Bank to convey a clear title of the property subject matter of the e-auction, in favour of the petitioner, who was a

successful bidder in such e-auction. The property being commercial premises situated at Vashi, Navi Mumbai.

3. The petitioner in such circumstances has approached this Court in the present proceedings contending that the petitioner would no more be interested to take the property in question, as there is also a likelihood that the petitioner would get involved in unwarranted litigation. This more particularly in view of the fact that there is a pending litigation in regard to this property, which has come to the knowledge of the bank subsequent to the auction. The litigation is before this Court as also before the Debt Recovery Tribunal (DRT). The petitioner hence has *interalia* prayed for refund of the amounts deposited by it with the Bank under the E-auction. This is the primary prayer of the petitioner although there are other prayers. Mr Jha learned counsel for the petitioner has also confined the petitioner's case to such extent.

4. Mr. Thakkar, learned senior counsel for respondent No.3, has opposed this petition contending that the petition ought not to be entertained as already there are proceedings which are pending against the borrower of respondent-Bank before the DRT at Mumbai, from whom the Bank had obtained the property in question as a collateral security, and on default of such borrower the said property was put to e-auction in which the petitioner had participated. It is hence his submission, that anything to do with such property certainly

would fall within the jurisdiction of the DRT. It is thus submitted that it is not proper for the petitioner to invoke the extraordinary jurisdiction of this court and the petitioner needs to be relegated to the alternate remedy as provided by law.

5. Mr. Jha, learned counsel for the petitioner has contested such objections as raised on behalf of the Bank by Mr. Thakkar. Mr. Jha would submit that there is no warrant for the petitioner to approach the DRT, in as much as the rights of the petitioner stands independent of any pending proceedings which the bank has initiated against the borrower or any other proceedings concerning the property in question. He submitted that the petitioner being a third party to the proceedings before the DRT is in a situation of *fait accompli* that there is no possibility of the property being conveyed to the petitioner in the absence of the Bank having a clear title to such property as auctioned and being taken by the petitioner. It is hence his submission that, thus there is no disputed question of fact for this Court to grant to the petitioner the relief of return of the money. His submission is also that in these circumstances having participated in an e-auction, which was leading the petitioner to a dead sale, for the petitioner has parted with the substantial amounts that are being illegally retained by the Bank. It is submitted that such action of the bank amounts to valuable rights of the petitioner guaranteed under Articles 14, 19(1)(g) and 300A of the Constitution of India being infringed. Hence, according to Mr. Jha

not only the petition is maintainable but the petitioner is entitled for the reliefs for return of the amounts. It is also Mr. Jha's submission that there is no disputed question of fact whatsoever which would prevent this Court from exercising its writ jurisdiction and more particularly, when such rights of the petitioner stand ex-facie breached. It is also his submission that in any e-auction which is being undertaken, respondent No.3 ought to have taken utmost care and caution so as to make the auction fruitful in real terms which, according to him, has not been done by the Bank in relation to the E-auction.

6. Having heard learned counsel for the parties, although there is an opposition to the maintainability of this petition, we are not impressed with the contention as urged by Mr. Thakkar. Considering the facts of the case in our opinion, the petitioner cannot be relegated to an alternate remedy of approaching the DRT. The petitioner was a participant in the e-auction as conducted by respondent No.3 and was a successful bidder who had a legitimate expectation of the property being conveyed to it by the bank, after receiving substantial consideration as per the terms and conditions of the auction. This more particularly when the auction in question is undertaken by respondent No.3 which is a "State" within the meaning of Article 12 of the Constitution.

7. On a query as made to Mr. Thakkar, it has been fairly stated that there is a litigation in respect of the property which was revealed to the bank subsequent to the e-auction. He has also not disputed the pendency of the proceedings of Writ Petition No.2730 of 2016 as filed by the original allottee—namely “*Arunachal Pradesh Industrial and Financial Development Corporation Limited Vs. The City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) and Ors*”. to which we have made a reference in the earlier order. Mr. Thakkar would also be fair in informing the Court, that certainly there are orders passed in such proceedings and they would have a material bearing on the e-auction in question and certainly the sale in question would depend on the outcome of the said proceedings. It is also not being disputed that such information was not disclosed or informed to the prospective bidders who participated in the e-auction.

8. It is on such backdrop, we have considered the proceedings. In our opinion, the situation in hand is quite peculiar inasmuch as at the time the e-auction had taken place, the bank appears to have been under a bonafide belief to proceed with the e-auction, oblivious of what had transpired between the original allottee of the CIDCO, namely, the *Arunachal Pradesh Industrial and Financial Development Corporation Limited*, and the proceedings as initiated in that regard. It therefore appears to us that certainly, and much less immediately, it is not possible for respondent No.3 to convey the property to

the petitioner with a clear title so that e-auction attends finality in a manner it was contemplated. In this view of the matter, the bank could not be justified in retaining the amounts which were paid by the petitioner in participating in such e-auction which was with an intention to purchase the property in question. Also the petitioner is not interested to get entangled in any litigation in that regard. In fact no auction purchaser would intend to land up in any litigation. Thus, in our clear opinion, the Bank is not in a position to convey any lawful justification to retain such amounts accepted from the petitioner and not return the same to the petitioner. There is also much substance in the contention as urged on behalf of the petitioner, that the petitioner being a third party to any pending litigation, cannot be involved in any proceedings either before this Court, as initiated by the original allottee of the land from CIDCO namely *Arunachal Pradesh Industrial and Financial Development Corporation Limited*, as also in any proceedings which Respondent No.3 has initiated against the borrowers.

9. We may also observe that prior to the filing of this petition on 18 December 2023, the petitioner had approached the General Manager of the bank with a request to refund the amounts at which point of time, the petitioner did not claim any interest. The relevant contents of the petitioner's letter to the General Manager of the Bank, a copy of which was tendered by

Mr. Thakkar and taken on record, as it is not annexed to the petition, is required to be noted which reads thus:

“..... We have decided to withdraw ourselves from the auctioning process and as has been mentioned in our advocates earlier letters dated 8<sup>th</sup> December, 2023 and 9<sup>th</sup> December, 2023, **you are requested to forthwith refund the sum of Rs.5,03,42,000/- paid by us in pursuance of the e-auction held by the Bank on 11<sup>th</sup> September, 2023.**”

(emphasis supplied)

10. In a situation as in the present case, we are certainly guided by the decision of the Supreme Court in **Unitech Limited and Ors. Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors.**<sup>1</sup> which was a case where the allotment and transfer of the land in favour of the petitioner therein, made under a public auction could not be taken forward on the backdrop of certain pending litigation, as the result of the litigation nullified the rights of the Respondent to make any such allotment, in favour of the said petitioner. The Supreme Court in such context held that a Writ Petition under Article 226 of the Constitution would be maintainable, also referring to the decisions in **ABL International Limited Vs. Vs. Export Credit Guarantee Corpn. Of India Ltd.**<sup>2</sup> The following observations as made by the Supreme Court are required to be noted which reads thus:

“E.1 Maintainability of the writ petition under Article 226

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**1** (2021) 16 SCC 35

**2** (2004) 3 SCC 553

38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIC. As we have noted earlier, during the course of the hearing, the learned Senior Counsel appearing on behalf of the State of Telangana and TSIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. The learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out of a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two-Judge Bench of this Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [ABL International] analysed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the State, or its instrumentalities, as defined under Article 12 of the Indian Constitution.

39.1. Speaking through N. Santosh Hegde, J. the Court held: (*ABL International case*, SCC p. 572, para 27)

"27 the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State of an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

This exposition has been followed by this Court, and has been adopted by the three-Judge Bench decisions of this Court in *State of U.P. v. Sudhir Kumar Singh* and *Popatno Vyankatrao Patil v. State of Maharashtra*.

39.2. The decision in *ABL International*, cautions that the plenary power under Article 226 must be used with

circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.

39.3. Article 23.1 of the development agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.

39.4. If the State instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie. This principle was recognised in *ABL International*: (*ABL International case*, SCC p. 572, para 28)

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks*.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (emphasis supplied)

39.5. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority.

39.6. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the

contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does (sic not) oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

39.7. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh High Court in this case, when the foundational representation of the contract has failed. TSIC, a State instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.”

11. In the aforesaid decision, the Supreme Court held the petitioner to be entitled to the refund of the amounts as deposited by the with the respondent under the public auction in seeking allotment of the land, along with interest at the SBI-PLR. The facts of the present case are not different so as to apply the aforesaid principles of law on both the counts namely on maintainability of the writ petition as also on refund of the amounts to the petitioner. In this view of the matter, we are of the clear opinion that the petitioner needs to be refunded the amounts as deposited by the petitioner with respondent No.3 which is stated to be a total amount of Rs. 5,03,42,000/-.

12. At this stage, Mr. Jha, learned counsel for the petitioner would submit that the petitioner has also claimed interest in the prayer clause. Insofar as the award of the interest is concerned, he has fairly stated that the petitioner leaves it to the Court to pass appropriate orders. Although, Mr. Thakkar opposes this

submission made by learned counsel for the petitioner, in our opinion, it is in the interest of justice that the petitioner having taken a fair stand, a reasonable amount of interest would meet the ends of justice. In the light of the above discussion, we dispose of this petition by the following order:

**ORDER**

- i. Respondent No.3 shall grant refund of the amount of Rs.5,03,42,000/- to the petitioner alongwith interest at 10% per annum with effect from 1 January 2024 till the date of payment.
- ii. Let payment / refund be disbursed to the petitioner as expeditiously as possible and within a period of one week from today.

13. Needless to observe, in view of the aforesaid orders, the petitioner is not pressing for any other reliefs against respondent No.3, in relation to the auction in question, as fairly stated by Mr. Jha.

14. Disposed of in the aforesaid terms. No costs.

15. Parties to act on authenticated copy of this order.

**(SOMASEKHAR SUNDARESAN, J.)**

**(G. S. KULKARNI , J.)**