



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

% Judgment reserved on: 23.09.2024
Judgment delivered on: 05.11.2024

+ W.P.(C) 10554/2019

MRS RENU JAIN

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr. Manav Gupta, Mr. Sahil Garg,
Mr. Samitosha Jain and Mr. Abhinav
Jain, Advocates.

For the Respondents :

Mr. Ravi Prakash, CGSC for UOI/R-1.
Mr. Ashim Vachher and Mr. Kunal Lakra,
Advocates for R-2 & 3.
Mr. Ajay Shanker, Advocate for R-4/PNB.
Mr. Nishant Awana, Ms. Nitya Sharma and
Ms. Parul Yadav, Advocates for Bank of
Maharashtra.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Articles 226 & 227 of the Constitution of India, 1950 seeking setting aside of the order dated 23rd August, 2019 passed by the learned Debt Recovery Appellate Tribunal (DRAT) in Appeal No.194/2019 confirming the sale of the subject property bearing Plot No.12, Block No. C-7, Krishna Nagar (Northern Portion), Village Ghondli, Illaqa Shahdara, Delhi (*'subject property'*) in favor of respondent nos.2 and 3.

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2. The facts germane to the issue at hand and culled out from the petition are as under:-

(i) On 10th January, 2018, the Recovery Officer issued a Sale Proclamation Notice *qua* the subject property for Rs. 4,11,96,698/-. The public e-auction for the said property was scheduled on 28th February, 2018 and the Reserve Price was fixed at Rs. 3.61 Crores.

(ii) It is the case of the petitioner that on becoming aware of the e-auction, the petitioner got interested in bidding and approached respondent no.4/Bank for making enquiries. It is claimed that the petitioner was informed by the bank officials that the subject property was not worth bidding for, as various litigations/disputes were going on *qua* the said subject property. Petitioner claims that believing the representation and advice advanced by the officials of respondent no.4/Bank, petitioner, although interested in bidding for the said property, did not participate in the e-auction on 28th February, 2018.

(iii) Thereafter, in the last week of March, 2018, it came to the knowledge of the petitioner that the representations advanced by respondent no.4/Bank were all false and untrue, made solely to restrict potential bidders from participating in the auction process. Thus, the petitioner filed her application/objections on 4th April, 2018 before the Recovery Officer, Debt Recovery Tribunal (DRT) bringing to light the true facts and expressing her continuous desire to purchase the subject property and in order to show her *bona fide*, had given an offer of Rs. 3.80 Crores as the purchase price for the same.

(iv) Petitioner claims that the Recovery Officer, on 4th May, 2018 advised her to increase her bid by more than 20-25% of the bid amount. Accordingly, *vide* application dated 10th May, 2018, the petitioner increased the bid amount to Rs. 4.33 Crores from Rs. 3.80



Crores as made earlier by her. However, the Recovery Officer, DRT passed an order on 4th May, 2018 itself thereby rejecting the objections filed by the petitioner and confirming the sale of the subject property in favor of respondent nos.2 & 3/auction purchasers. It is the case of the petitioner that thereafter, the entire process of obtaining the actual possession of the said property and the sale was carried out in a hurried manner and the Sale Certificate dated 8th May, 2018 was executed in favour of respondent nos.2 & 3/auction purchasers.

(v) Thereafter, the petitioner filed an appeal before the Presiding Officer, DRT-II and claimed to have deposited the total sum of Rs. 4.33 Crores to show her *bona fide*. After hearing the parties, *vide* order dated 25th March, 2019, the Presiding Officer reversed the order dated 4th May, 2018, and directed the Recovery Officer to fix a date for conducting *inter se* bidding between the petitioner and respondent nos.2 & 3/auction purchasers.

(vi) Aggrieved by the order dated 25th March, 2019, respondent nos.2 & 3/auction purchasers filed an appeal before the learned DRAT, being Appeal No. 194/2019, which was allowed *vide* impugned order dated 23rd August, 2019, thus confirming the sale of the subject property in favour of respondent nos.2 & 3.

(vii) Aggrieved by the said impugned judgement of learned DRAT dismissing her appeal, the petitioner preferred the present petition.

CONTENTIONS OF THE PETITIONER:-

3. Mr. Manav Gupta, learned counsel appearing for the petitioner at the outset submitted that the process of auction was premised on fraud played upon the petitioner by the respondent no.4/bank officials in collusion with the respondent nos. 2 & 3/auction purchasers. He thus stated that fraud vitiates all, ecclesiastical, ministerial or administrative. He stated that the



petitioner was misled by the bank officials into believing that the subject property was under multiple litigations and other encumbrances and it would be an unwise step to proceed with participating in such auction. He stated that believing the same, the petitioner refrained from participation. Subsequently, the petitioner realized that the bank officials have played fraud resulting in the petitioner not participating in the said e-auction process. Thus, according to him, the auction process is vitiated and should be recalled and the auction be reinitiated.

4. Learned counsel for the petitioner also emphasized that auction was held on 28th February, 2018 with a sole auction purchaser, that too at the Reserve Price subject to confirmation by the Recovery Officer. He stated that the whole auction process was conducted with a sole view to purely benefit respondent nos. 2 & 3/auction purchasers. He submitted that the same being concluded at the Reserve Price without the fall of hammer is in itself suspicious and doubtful and collusion is apparent. According to learned counsel for the petitioner, participation of more bidders is healthy and ensures that neither the bank nor the borrower suffers on account of under pricing.

5. Learned counsel for the petitioner vehemently contended that the sale confirmation by the Recovery Officer was done only on 4th May, 2018, whereas the petitioner had filed her objections to such auction sale already on 4th April, 2018. According to him, the petitioner being the intending auction purchaser, that too with a price which was 20% higher than the Reserve Price, ought to have been considered and the auction reinitiated at her instance. He forcefully argued that the petitioner had offered her bid at Rs.3.80 Crores even before the sale confirmation and subsequently, had increased her bid to Rs.4.33 Crores at the insistence of the Recovery Officer. He submitted that despite such high bid by the petitioner beyond



the Reserve Price, the Recovery Officer accepted the bid of Rs.3.61 Crores of the original bidders i.e., respondent nos. 2 & 3. This, according to him, is illegal and ought to be set aside by this Court. In support of this contention, he relied upon the judgement in *M/s Navalkha & Sons vs. Sri Ramanya Das & Ors., 1969 (3) SCC 537*.

6. Learned counsel for the petitioner also vehemently submitted that keeping in view the facts stated above, the Recovery Officer ought to have allowed *inter-se* bidding. He stated that in the appeal filed by the petitioner before the Presiding Officer, DRT, *vide* order dated 25th March, 2019, it was observed that since the petitioner had offered Rs.4.33 Crores as her bid for the subject property, no loss would be caused to the bank and at the same time, no prejudice would be caused to the Recovery Officer, and consequently, set aside the sale confirmation by the Recovery Officer. As per learned counsel for the petitioner, the order of Presiding Officer, DRT dated 25th March, 2019 was correct on facts and law too, in directing for an *inter se* bidding to be conducted between the petitioner and respondent nos.2 & 3/auction purchasers, in order to realize the highest market value of the subject property.

7. To substantiate his arguments, learned counsel for the petitioner relied upon the judgement of the Supreme Court in *M/s Navalkha & Sons (supra)* to submit that maximum market value of a property is to be utilized during the auction process and it is the duty of the Court to satisfy itself that the property is not being sold at inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of the sale.

8. Learned counsel for the petitioner further relied upon the judgement of the Supreme Court in *State of Jharkhand & Ors vs. CWE-SOMA Consortium, (2016) 14 SCC 172* to submit that it is the settled position of law that if only a single bid has been received in auction and that too, at the



minimum price, i.e. the Reserve Price, a fresh auction ought to have been conducted, not only to ensure a fair competition but also to ensure that the best available market price is offered for the auctioned property. On this basis too, learned counsel for the petitioner prayed that the present petition be allowed.

CONTENTIONS OF RESPONDENT NOS. 2 & 3:-

9. Mr. Ashim Vachher, learned counsel for the respondent nos. 2 & 3/auction purchasers submitted that the case of the petitioner is false and frivolous. He submitted that the allegation that there existed a collusion between respondent no.4/Bank's officials and respondent nos.2 & 3/auction purchasers is unsubstantiated and *de hors* any evidence. He submitted that except for a bald statement, the petitioner has failed to demonstrate any collusion at all. He vehemently contended that there being no demonstrable collusion at all, the case of the petitioner ought to fail. He relied upon the reasoning in the impugned judgement passed by the learned DRAT to support his stand.

10. Further, he vehemently contended that the petitioner appears to be a bystander to the whole process. He staunchly projected that the petitioner did not follow the mandate of Rules 60 and 61 of the Second Schedule of the Income Tax Act, 1961. According to him, if a party fails to file objections to the auction sale within thirty (30) days of such sale, it loses all rights in law to interdict the said auction. He submitted that any right of the petitioner to agitate against such auction sale is completely extinguished. He stated that the petitioner failed to file her objections within thirty (30) days from 28th February, 2018, as mandated by the above Rules. He also questioned the locus of the petitioner to file any application at all, much less any objections to the sale, being a stranger to the whole auction process. In support of his contention, he relied upon the judgment of the



High Court of Bombay in ***Hotel Paras Garden & Anr. vs. Central Bank of India & Ors., 2015 SCC OnLine Bom 3398.***

11. Mr. Vachher, learned counsel for the respondent nos.2 & 3 also contended that apart from violating Rules 60 and 61 as aforementioned, no application seeking condonation of delay was filed by the petitioner. Though, according to him, the Recovery Officer, in any case, did not have any power or authority to condone the delay even if such an application was preferred. He relied upon the judgements of the Supreme Court in ***International Asset Reconstruction Company of India Limited vs. Official Liquidator & Ors., (2017) 16 SCC 137*** and ***Mohan Lal v. Hari Prasad Yadav, (1994) 4 SCC 177.***

12. Learned counsel for the respondent nos.2 & 3/auction purchasers also stated that the judgement in ***M/s Navalkha & Sons (supra)***, relied upon by the petitioner, was given a clear interpretation by the Supreme Court in ***Vedica Procon Private Limited vs. Balleshwar Greens Private Limited & Ors., (2015) 10 SCC 94***, whereby it was held that once the Court is satisfied as to the adequacy of the price offered, even a subsequent higher bid cannot constitute a valid ground for refusing confirmation of the sale or offer already received. He stated that once the Recovery Officer was satisfied about the price, the same could not be interdicted by the petitioner. As such, learned counsel submits that the petitioner being an outsider to the auction process cannot now come with a higher bid to claim a re-auction.

13. He forcefully contended that the petitioner has not alleged that there is some fault or irregularity in the auction process itself, to vitiate the same. According to him, in the absence of such challenge, the auction process must be deemed to have been fair, transparent and in accordance with the Rules. He contended that in such a situation, the present petition must necessarily fail. He also contended that merely on the ground of the



petitioner, a third party, offering a higher price subsequently would not by itself vitiate the auction which was held fairly and in accordance with the Rules. For the said proposition, he relied upon the judgements in *Vedica Procon Private Limited (supra)*, *Singh & Ors. vs. State of U.P. & Ors*, *AIR 2003 All 375* and *Babusha International vs. Canara Bank, W.P.(C) 19842/2005*.

14. Learned counsel for the respondent nos. 2 & 3/auction purchasers stated that the petitioner never deposited the sum of Rs.3,39,50,000/- with the Recovery Officer as contended. In fact, the petitioner had encashed the said sum on the pretext of having lost the Demand Draft. He submitted that once no deposit was actually made, the embargo under Rule 60 of the Second Schedule of the Income Tax Act, 1961 would bar the petitioner agitating the issue any further. He invited attention of this Court to the reply/counter affidavit of the respondent no.4/Bank, specifically to paras (xx) and (xxi) in support of the above contentions on facts. It was submitted that infact, it is the petitioner who played fraud with the DRT by obtaining a stay order in the garb of depositing a Demand Draft with the Recovery Officer which was already encashed by the petitioner.

15. Moreover, learned counsel for respondent nos. 2 & 3/auction purchasers stated that after a huge investment was made, a building was constructed on the subject property which was further sold to third parties. He stated that the said fact may also be kept in mind while considering the submissions made by the parties. He prayed that the writ petition be dismissed with costs.

ANALYSIS AND CONCLUSIONS :-

16. This Court has heard the arguments of learned counsel for the parties, examined the records and considered the judgements relied upon by them.

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17. Though learned counsel for the petitioner laid great emphasis on the purported fraud having been played upon her by the respondent no.4/bank in collusion with respondent nos.2 & 3/auction purchasers, yet, this Court is of the considered opinion that it would be incumbent to first examine the applicable rules. Undoubtedly, Rules 60 and 61 of the Second Schedule of the Income Tax Act, 1961 are applicable to instances of auction of a secured property. This case is no different. For the said purposes, Rules 60 and 61 are extracted hereunder:

“60. Application to set aside sale of immovable property on deposit.—(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

- (a) *** the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of [one and one-fourth per cent for every month or part of a month], calculated from the date of the proclamation of sale to the date when the deposit is made; and*
- (b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.*

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.—Where immovable property has been sold in execution of a certificate, [such Income-tax Officer as may be authorised by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.



(emphasis supplied)

18. The golden rule of interpretation is plain, simple and harmonious reading of a provision. It is apparent that the aforesaid Rules, read together, govern situations where the sale of an immovable property could be interdicted. Rule 60 covers a situation where any person whose interests have been affected by the sale, applies for setting aside of such sale, and for such purpose, has to mandatorily deposit the amount specified in the proclamation of sale. Rule 61, on the other hand, governs situations where any person whose interests have been affected, applies for setting aside of such sale on the grounds of non-service of notice or irregularity. The proviso to Rule 61 assumes great significance, inasmuch as it stipulates that no sale shall be set aside on any such ground unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and such an applicant pre-deposits the amount recoverable. Both the provisos are in the nature of a negative covenant, i.e., restrictive. Besides, the common thread underscoring both the Rules is the time limit of thirty (30) days from the date of sale, specified therein coupled with the mandatory pre-deposit of the amount specified in the proclamation of sale. Both the Rules appear to be mandatory in nature. The reasons are not far to see. The legislature in its wisdom engrafted such rules to ensure that the recoveries of banks and other financial institutions are not delayed and any person, as specified in the aforesaid Rules, also does not prolong and interdict the recovery of monies by process of auction. The said Rules are aligned with the commercial health of the banks and financial institutions and thus, cannot be undermined. Thus, submission of application/objections within thirty (30) days of the date of sale and simultaneous deposit of the amount specified in the proclamation of sale,



both are held to be mandatory. That apart, the petitioner being an outsider to the auction process, having not participated at all, cannot claim to have sustained any injury, much less any substantial injury by such confirmation of sale in favour of respondent nos.2 & 3/auction purchasers, who had diligently participated in the auction process and had deposited the sale price within the given time schedule. It is an admitted case of the petitioner that she knew all along about the sale proclamation, yet, for some fanciful reason, chose not to participate.

19. In somewhat similar situation, the Division Bench of the Bombay High Court in ***Usha Offset Printers Pvt. Ltd. vs. Bank of Maharashtra and Ors.***, 2016 SCC OnLine Bom 1488 held as under:-

“25. The provisions of rules 60 and 61 are clear and unambiguous. In a nutshell, these rules provide that a defaulter is not allowed to challenge the sale of the immovable property sold in execution of a Recovery Certificate unless an application for setting aside the sale is preferred before the Recovery Officer and the amount sought to be recovered under the Recovery Certificate is deposited with the Recovery Officer. In the facts of the present case, as mentioned earlier, no such application was ever preferred by the Petitioners and no deposit has been made. The reason for the same is not far to see. It is because the Petitioners were aware that before their application to set aside the sale could be entertained by the Recovery Officer, they would be required to deposit the decretal amount. Since they had no intention to deposit the decretal amount, the Petitioners preferred not to challenge the sale of the mortgaged property but instead only made an application for deferment of the confirmation of sale. Having chosen this course of action all throughout, we cannot permit the Petitioners to place reliance on rule 15 and in an indirect fashion challenge the sale and give a complete go-by to the mandatory provisions of rules 60 and 61 of the Second Schedule to the Income Tax Act, 1961. If we were to accept the submissions of the Petitioners, it would effectively mean that the Petitioners are now allowed to challenge the sale of the mortgaged property without complying with the mandatory provisions of rules 60 and 61 and which sale was never challenged till the filing of this Writ Petition...”

20. It would also be beneficial to extract the relevant paragraphs of the judgement of the High Court of Bombay in ***Hotel Paras Garden*** (*supra*), which held as under:-



“35. In this case, the petitioners did not move any application within time of thirty days though they could have done so. They have approached this Court in its extraordinary jurisdiction directly, that too without making any deposit. In prayer clause of the petition, they seek time to deposit, but till date have not chosen to deposit a single naya paisa. Period for which such an extension was sought is also not clearly spelt out. Pleadings in petition show that petitioners were always having knowledge of the public notices for sell or of proclamations of sale or of reserved price fixed therein. They do not prove that they became aware for the first time in February or March, 2012. They never raised objections either to fixation of the reserved prices or public notices/proclamations for sale. Scheme of Second Schedule as modified by the DRT Act reveal legislative intent to give the defaulter as much latitude as possible till end. He can, under Rule 60, without assigning any cause but after depositing the sum as mentioned therein within the stipulated time, avoid auction and protect his property. Process becomes difficult and he is asked to meet the ingredients of Rule 61 only thereafter. Thus after stage of Rule 60 is over, right of petitioners/borrowers get diluted and primacy is given to the creditor Bank and interest of the auction purchaser like respondent No. 3 herein. Legislature has till Rule 60 shown some inclination to lean in favour of the borrower who wants to save his property or business. But then it has envisaged an equilibrium and defaulting borrower cannot thereafter lightly unsettle the auction. It is apparent that after this stage also if any favour is shown to the borrower, the creditors like respondent No. 1 Bank may not get the bidders and persons desirous of participating in auction process will be discouraged. Lending Institutes may stop releasing the loan without rigorous securities and sureties. This may affect other genuine innocent borrowers. Any intervention by this Court not fore-seen in the scheme of DRT Act and Second Schedule may create difficulties in future advances and recoveries. Hence, while approaching this Court directly under Art. 226 of the Constitution of India, it is axiomatic that the petitioners will have to make out an exceptional case. They will have to plead and prove their diligence and also steps taken to warn the bidders of their grievances or of status of subject property. They must see that irregularity, if any, is cured at the earliest and cannot indulge in fence-sitting or wait till the proceedings are over and then jump in, in an attempt to unsettle it or to frighten the bidders away. When they want financial institutes like the respondent No. 1 Bank to give loan to them, they also owe an obligation to it and public to see that in the unfortunate event of forced recovery, it is not unnecessarily obstructed. They must raise objections at the earliest possible opportunity and cannot take recourse to any roving tactics to indefinitely delay recovery forcing the buyer to back out. Here, the petitioners have revealed same attitude which is unbecoming on their part. Moreover, their conduct and act of securing another loan from Mahavir Urban Co-operative Bank on the basis of same property disentitles them to any relief in extraordinary jurisdiction under Art. 226 of the Constitution of India. There is no justification to warrant dispensing with the fetters employed in the



scheme of Rule 61 of the Second Schedule of the Income Tax Act. The intervention by this Court under Art. 226 is neither possible nor desirable in this matter.”

21. It is clear that the application under the aforesaid Rules has to be filed within thirty (30) days of the sale of the immovable property coupled with the deposit of the amount specified in the proclamation of sale.

22. Adverting to the facts of the present case, this Court finds that certain dates of relevant events, undisputed, need to be noted. For the purpose of clarity and preciseness, the same are brought out in the form of a chart below:

Date of E-auction	28.02.2018
Date of Application of Auction Purchasers for confirmation of sale and issuance of Sale Certificate in their favor	26.03.2018
Date of Application/Objections filed by the petitioner giving an offer of Rs. 3.80 Crores as the bid amount alongwith a Demand Draft for an amount of Rs. 93.50 Lacs as upfront amount towards the said offer.	04.04.2018
Date of the Order of Recovery Officer rejecting the objections of Petitioner and confirming the sale in favor of Respondent Nos.2 & 3.	04.05.2018
Date of Order of Presiding Officer, DRT	25.03.2019
Date of Order of Chairman, DRAT	23.08.2019

23. From the above, two things are apparent. One, that the application/objections on behalf of the petitioner was filed on 4th April, 2018 which was way beyond 30 days statutory period from the date of sale, i.e., 28th February, 2018 and; second, other than making an offer of Rs.3.80 crores, which was claimed to be 20% higher than the Reserve Price of Rs.3.61 Crores, only a sum of Rs.93,50,000/- in the form of a Demand Draft is claimed to have been deposited alongwith such



application/objections. If one were to apply the aforesaid interpretation of Rules 60 & 61, then the application filed suffers from the vice of not only being time barred but also the non compliance of the mandatory condition of deposit of the Reserve Price is writ large. Ergo, the application is barred by delay and laches as also not maintainable on lack of mandatory deposit as per the scheme of Rules 60 and 61 of the Second Schedule to the Income Tax Act, 1961.

24. Apart from the above, the locus of the petitioner to even file any such application or objection is doubtful, given the fact situation obtaining in the present case. The Supreme Court in ***K. Kumara Gupta vs. Sri Markandeya and Sri Omkareswara Swamy Temple & Ors, AIR 2022 SC 1220***, held in para 8.2, that an auction sale cannot be set aside on the basis of some offer made by third parties subsequently and that too, when they did not participate in the auction proceedings and/or made an offer only for the sake of making it without any serious intent. In the present case too, the petitioner appears to be a third party who did not participate in the auction process and subsequently gave her offer and yet, did not deposit the whole amount. The ratio squarely applies upon the facts of the present case compelling us to hold that the petitioner did not have any locus too.

25. Much was argued on the basis of the order dated 25th March, 2019 passed by the Presiding Officer, DRT on an application by the petitioner, whereby the order dated 4th May, 2018 of the Recovery Officer was set aside and a direction for *inter se* bidding was passed. It is apparent that the Presiding Officer, DRT overlooked the settled position of law regarding the effect of Rules 60 and 61 above and had passed the directions of *inter se* bidding. The PO, DRT also further failed to consider whether the petitioner had any locus at all, in the first place, to file such an objection/application. Evidently, the order is in violation and in the teeth of the settled law and is



held to be bad in law. Moreover, once the edifice, that is the application/objections of the petitioner have been held to be barred by limitation and non maintainable on account of non-deposit of amount specified in the proclamation of sale, any outcome in subsequent proceedings, would pale into insignificance.

26. Learned counsel for the petitioner has vehemently contended that fraud was committed upon the petitioner by the officials of the respondent no.4/bank in collusion with the respondent nos.2 & 3/auction purchasers. It is trite that fraud vitiates all acts, whether ecclesiastical, ministerial or administrative. (See *S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1*). It is trite that fraud has not only to be alleged but also proved by leading cogent evidence (See *Saheb Khan vs. Mohd. Yousufuddin & Ors., (2006) 4 SCC 476*). This Court has minutely examined the statements made by the petitioner in the application/objections dated 4th April, 2018. Apart from making bald and vague statements, the petitioner has not provided any material or proof in support of such alleged fraud. Neither the name of any bank official nor the date of receiving such alleged misinformation has been given. Infact, there are no material particulars in the said application filed by the petitioner. On a query, learned counsel for the petitioner very fairly admitted that apart from the statements in the application dated 4th April, 2018, there is no evidence in support thereof available with the petitioner. This Court too could not find any material on record to sustain such statements. Thus, the submission predicated on fraud also is untenable.

27. Admittedly, the petitioner was in the knowledge of the notice of auction, the date of auction as well as the Reserve Price. It was contended that due to purported misleading by some bank official, the petitioner did not submit her bid. The petitioner let the auction sale take place and waited



till respondent nos.2 & 3/auction purchasers submitted their application for confirmation of sale and issuance of Sale Certificate in their favour on 26th March, 2018. It was only on 4th April, 2018 that the petitioner filed her objections for the first time, that too without depositing at least the Reserve Price of Rs.3.61 Crores. Evidently, the petitioner let the auction sale and subsequent proceedings reach a mature stage. It appears that the petitioner woke up after a deep slumber and as an afterthought, filed the application/objections. The Recovery Officer *vide* order dated 4th May, 2018 rejected the objections on cogent grounds and simultaneously issued the Sale Certificate to the respondent nos.2 & 3/auction purchasers. Thus, even on facts, this Court does not find any reason to interfere with the impugned order or those passed by the Recovery Officer and the learned DRAT.

28. The petitioner relied upon the judgement of the Supreme Court in the case of *M/s Navalkha & Sons (supra)* to submit that till such time the Court has not accepted the auction price, any person with a higher bid can be considered as a successful bidder, especially in a case of a single bid, that too at reserve Price, the same can be a valid ground for refusing sale confirmation. Countering the same, learned counsel for respondent nos.2 & 3/auction purchasers relied upon the judgement of Supreme Court in *Vedica Procon (supra)* to submit that the Supreme Court had clarified the ratio laid down in *M/s Navalkha & Sons (supra)* to the extent that once a Court is satisfied as to the adequacy of the price offered, even a subsequent higher bid cannot constitute a valid ground for refusing confirmation of the sale or offer received. This Court need not dilate on this issue further since it is already held above that the application of the petitioner is violative of the mandate of Rules 60 and 61 of Second Schedule of the Income Tax Act, 1961. Besides, it is clear that the petitioner had no locus to file the



objections, the question of whether the petitioner had offered a higher price and whether it can be a ground to interdict the sale confirmation etc., is inconsequential and held untenable. Having miserably failed on that count, the petitioner cannot piggy ride on the ratio laid down in *M/s Navalkha & Sons (supra)*.

29. That apart, the affidavit of the respondent no.4/bank, evidences the fact that the petitioner claimed to have made a deposit of Rs.3,39,50,000/- by way of a Demand Draft dated 22nd June, 2018. This was, however subsequently reported lost and encashed by the petitioner and was used to mislead the Presiding Officer, DRT for obtaining a stay order. This too, propels this Court to reach an opinion that the petitioner was not a serious bidder or a *bona fide* intending purchaser.

30. Predicated on the above analysis and observations, this Court does not find any reason to interfere with the impugned judgement dated 23rd August 2019, passed by the learned DRAT.

31. Consequently, the present petition, alongwith pending applications, is dismissed being devoid of merits.

TUSHAR RAO GEDELA, J

CHIEF JUSTICE

NOVEMBER 5, 2024/rl