
(2006) 05 MP CK 0084
In the Madhya Pradesh High Court
Case No : (sic) No. 1423 of 2005

Central Bank of India

APPELLANT

Vs

Tehsildar (Nazul) and Others

RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 2, 3, 4(2)(b)

Citation : (2007) 1 MPJR 304

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; Anand Pathak, Govt. Advocate for respondents No. 1 and 6, Mr. S.R. Saraf, Advocate for respondent No. 3 and Mr. A. Bagadiya, Advocate, for the Respondent

Judgement

N.K. Mody, J.

In the present petition, prayer of the petitioner is that entire proceedings recorded by respondents and the consequential action of the respondent No. 1 relating to finalization of auction in favour of respondent No.4 on the instance of Respondent No.3 with respect of House No.47, Agrawal Nager, (Purani Bhoomi), Indore in RRC Case No. 74/76/03-04 be quashed.

Short facts of the case are that respondent No.5 is proprietor of respondent No. 2. Loan upto the limit of Rs. 50 lacs was sanctioned by the petitioner to respondent No. 2 on 19-8-1999. In compliance of this, an equitable mortgage was created by respondent No.5 of the property which is under dispute in the present petition on 7-9-1999 for due payment of loan with interest advanced to respondent No. 2. On 27-8-2004 there was a publication in the newspaper relating to auction of the property which was to take place on 27-9-2004. It was also mentioned in the said Advertisement that the property has been attached on 21-8-2004. Further case of the petitioner is that since publication was made by respondent No. 1, therefore the objections were filed by the petitioner on

28-9-2004 before respondent No. 1 and also before respondent No.5 on the same day. Further case of the petitioner is that since no hearing was given to the petitioner, therefore, petitioner approached respondent No.6 who vide letter Annexure-P-10 informed respondent No. 1 that complaint is made by the petitioner regarding illegal sale of the property in question. It was further directed that the application/ objections filed by the petitioner be disposed of in accordance with law. Thereafter, petitioner also lodged a FIR on 18-10-2004 against respondent No.5 as he had taken the loan fraudulently from number of Banks. Further case of the petitioner is that when the petitioner was not heard, therefore, petitioner filed Writ Petition before this Court which was numbered as WP No. 621/2005 and was disposed of on 26-4-2005 with the following directions: "In the facts and circumstances of the case, this petition is disposed of with a direction that before taking any action in the matter, the respondent No. 1 first shall dispose of the objections made by the petitioner relating to the mortgage created by Shri Mahavir Prasad Garg, in favour of the petitioner bank after giving an opportunity of hearing to Shri Mahavir Garg, proprietor of respondent No. 2 and also respondent No. 2 and till the objections are decided, the sale proceeds if any deposited by respondent No.4 shall remain with respondent No. 1. With the aforesaid observations, petition stands disposed of."

Further case of the petitioner is that inspite of this the objections raised by the petitioner were not taken into consideration by respondent No. 1, the sale was confirmed by the respondent No. 1 for a sum of Rs. 18,39,252/-vide order dated 5-4-2005 and the sale certificate was also issued and the actual possession of the property was given on 8-4-2005 to Respondent No.4. Further case of the petitioner is that objections which were raised by the petitioner were disposed of by respondent No. 1 vide order dated 17-5-2005, where in it is mentioned that the objections of the petitioner have already disposed of on 1-10-2004 and 9-11-2004. All these action is under challenge in the present petition.

Learned counsel for the respondents No. 1 and 6, Shri Anand Pathak submits that RRC was issued on the instance of respondent No.3 and property has been sold by respondent No. 1 in accordance with law.

Shri S.R. Saraf, learned counsel for the respondent No.3 submits that present petition is not maintainable. It is submitted that the petitioner has filed the suit before DRT, Jabalpur for realization of Rs. 43,46,638/- and in that suit description of the property which has been auctioned has been given. In the said suit it is also mentioned that IDBI is trying to sale this property for their recovery and RRC is pending before Tehsildar, Indore. It was also alleged that action of IDBI and Tehsildar, Indore is illegal. It is submitted that since petitioner has availed the alternative remedy, therefore, present petition is not maintainable.

Further case of the respondent No.3 is that the property was purchased by respondent No.5 vide sale deed 2-1-1986 and at that time property was in shape of plot. Thereafter one storied house was constructed and terrace was sold by respondent No.5 to one Mahesh Prasad vide sale deed dated 25-4-1990. Further

case of respondent No.3 is that at that time to create mortgage it was only plot which was mortgaged with the petitioner Bank by way of deposit of tile deed. Therefore, no illegality has been committed by the Tehsildar Respondent No. 1 herein, in proceeding upon the instance of respondent No. 3.

Learned counsel further submits that respondent No. 1 has initiated the proceedings on the instance of respondent No.3 under the provision of MP Lok Dhan (Shodhya Rahiyon ki Vasuli) Adhiniyam, 1987, which shall be referred hereinafter as Lokdhan Act. It is submitted that respondent No.3, Banking Company has denied under sub-section (b) of Section 2 of the Act and the recovery can be made through Tehsildar u/s 3 of the Act. It is further submitted that no action has been taken by the petitioner against the attachment, in accordance with law. Learned counsel further submits that u/s 4 (2) (b) of the Lok Dhan Act, property of a borrower can be sold and the same is rightly been sold by the respondent No. 1.

Shri A. Bagadiya, learned counsel for respondent No.4 submits that respondent No.4 is a bonafide purchaser who has paid the full consideration. Apart from this it is submitted that if any amount is outstanding then petitioner can recover the same by auctioning other properties of which description is made in the original loan application. Learned counsel submits that the property was purchased by respondent No.4 for a sum of Rs. 18,39,282/-. After adjusting bank dues of Respondent No. 3, an amount of Rs. 8 lacs is in surplus which can be adjusted by the petitioner towards the loan which is outstanding against respondents No. 2 and 5.

From perusal of loan application dated 19-8-1999 (Annexure-P-2) of respondent No.5 as Proprietor of Respondent No. 2 before the petitioner at the time of taking of loan, it is evident that there are some shops situated at Dava Bazar, Indore shown as property of Respondent No.5 from where the amount of the petitioner is outstanding can be recovered.

From perusal of the record it is evident that the attachment took place on 21-8-2004. Advertisement for auction was published on 27-8-2004 and the auction was to take place on 27-9-2004. Objections were filed by the petitioner on 28-8-2004 before the Revenue Authorities and also before the respondent No. 6 on 1-10-2004. The complaint of the petitioner is that respondent No. 1 has not given any hearing to the petitioner, therefore, complaint was made by the petitioner to the respondent No.6. The letter Annexure-P-10, it is specifically mentioned by respondent No.6 that the complaint of the petitioner is that property is mortgaged with the petitioner and the auction of the respondent No. 1 is seriously challenged by the petitioner. Hence, it was directed to consider the application/objection filed by the petitioner and to decide the same. Further from perusal of the record it is evident that petitioner approached this court and vide order dated 26-4-2005 in WP No. 621/05 it was directed that the respondent No. 1 first shall dispose of the objections made by the petitioner relating to the mortgage created by respondent No.5 in favour of petitioner Bank, after giving

an opportunity of hearing to Shri Mahavir Garg proprietor of respondent No. 2 and also respondent No. 2 and till the objections are decided, the sale proceeds if any deposited by respondent No.4 shall remain with respondent no. 1.

First of all this is to be examined whether any alternative remedy was available to the petitioner.

From perusal of the fact is it evident that suit was filed by the petitioner on 4-3-2005 before the DRT at Jabalpur. In that suit respondents No. 1,3,4 and 6 are not the parties. Apart from this, in that suit the scope of DRT is limited and the action of the Tehsildar for auctioning the property on the instance of Respondent No.3 is not under challenge before DRT. From perusal of the record it is evident that the objection which was raised by the petitioner to the effect that property was mortgaged with the petitioner bank and cannot be attached on instance of respondent No.3 was directed by respondent No. 6 to be taken into consideration vide letter dated 1-10-2004. This objection has been disposed of by the respondent No. 1 vide letter dated 17-5-2005, wherein it is mentioned that the objections raised by the petitioner bank has already been decided vide letter dated 1-10-2004 and vide order dated 9-11-2004. It is further mentioned that no action has been taken by the petitioner Bank on the order passed against the petitioner on those days. Thus, from perusal of this order, it is evident that according to the respondent No. 1, objections were decided by respondent No. 1 on 1-10-2004 and 9-11-2004. In the order sheet dated 1-10-2004 nothing has been mentioned regarding the objections raised by the petitioner. Similarly, in the order dated 9-11-2004 also there is nothing about the objections raised by the petitioner. Objection has been disposed of by merely mentioning that the objections has already been decided. Learned counsel for the respondent No.3 submits that objections are required to be filed as per Rule 24 of Schedule-1 of MR Land Revenue Code, 1959 which reads as under :

If any claim is set up by a third person to the property attached or proceeded against under the provisions of this Code, the Revenue Officer shall enquire into the claim and may admit or reject it.

Learned counsel submits that since no objection has been filed by the petitioner against the attachment, therefore, no illegality has been committed by respondent No. 1, even if it is assumed that no order has been passed by respondent No. 1. Learned counsel further submits that procedure is laid down under Rule 40 of Schedule 1 of the rules, wherein the action of respondent No. 1 can be challenged. It is submitted that since no action has been taken by the petitioner, therefore, the present petition is not maintainable.

From perusal of the facts of the case it is evident that safety of the petitioner which is Nationalized Bank was not considered at any point of time. It is wrongly mentioned in the order that the objections were taken into consideration on 1-10-2004 and 9-11-2004, while passing the order on 15-10-2005. Elementary principle of law is that, "Once a mortgage is always a mortgage" was not taken

into consideration by respondent No. 1. In the circumstances, this petition is allowed. Action of the respondent No. 1, regarding the auction of property situated at 47 Agrawal Nagar, (Pursani Bhoomi), Indore is quashed with a further direction that objections shall be decided by respondent No. 6 and it shall also be looked by respondent No. 6 that whether RRC can be initiated on the instance of Respondent No. 3 under the provisions of MP Lok Dhan (Shodhya Rahiyon Ki Vasuli) Adhiniyam, 1987. Respondent No. 1 shall return the entire amount to respondent No. 4. Since, respondent No. 4 is bonafide purchaser with consideration, therefore, amount which was forfeited should also be paid to the respondent No. 4 alongwith interest, if any earned on the amount of auction sale.

With the aforesaid observations, petition stands disposed of. c.c. as per rules.