(2023) 08 DEL CK 0080

In the Delhi High Court

Case No : Civil Writ Petition No. 2820 Of 2021, Civil Miscellaneous Application No. 25049, 25050, 25103 Of 2023

Cherry Bahl APPELLANT

Vs

Cooperative Store Ltd RESPONDENT

Date of Decision : 09-08-2023

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2023) 08 DEL CK 0080

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Harin P. Raval, Shreya Bansal, Ruchir Mishra, Sanjiv Kumar Saxena, Mukesh Kumar Tiwari, Poonam Shukla, Reba Jena Mishra

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM APPL. 25103/2023

1. This is an application filed by the Official Liquidator namely P.C. Pratihari for taking on record the amended memo of parties. The prayers made are:-

“In view of the above, this Hon”ble Court may graciously be pleased to:

(a) allow this application by taking on record amended memo of parties in WPC No.2820/2021 attached with this application and.

(b) Pass such other order(s) as this Hon”ble Court may deem fit in the present facts and circumstances of the case.”

2. For the reasons stated in the application, the prayer as made is granted.

3. The amended memo of parties is taken on record. The application is disposed of.

4. The present petition has been filed by the petitioner with the following prayers:

"1. Pass an order directing the Respondents to re-initiate the bidding process regarding shop no. 7 and 8, J Block, Main Market Saket, New Delhi and permit the Petitioner to deposit the remaining bid amount of Rs. (2,33,20,000/-) with this Hon'ble Court.

2. Direct the Respondents to restrain from taking any steps which adversely affects the Petitioner's possession of the shop no. 7 and 8, J Block, Main Market Saket, New Delhi. till final disposal of the present petition.

3. Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

5. Suffice to state that the prayers made in the petition are for reinitiating the bidding process in respect of Shop Nos.7 & 8, J-Block, Main Market, Saket, New Delhi.

6. It may be stated, the issue with regard to possession/eviction of the husband of the petitioner was a subject matter of an application filed by the Official Liquidator for M/s. Super Bazar, a Multi-State Cooperative Society, being I.A.No.181072/2019 in M.A. No. 677-678/2018 in M/s. Writers and Publishers Pvt. Ltd. & Ors. v. A. K. Mishri Official & Ors., SLP Civil Nos. 8398-8399/2005.

7. The said application was decided by the Hon'ble Supreme Court on September 25, 2020 and the Hon'ble Supreme Court has passed the detailed order, which shall be reproduced in the later paragraphs of this judgment.

8. Though the petitioner has in her oral submissions and also in the written submissions filed through Mr. Kunal Gosain, Adv. has detailed the facts, we find, the Hon'ble Supreme Court in the said order has in paragraphs 1 to 8 noted the facts and the submissions made by counsels in the following manner, which we reproduce:-

"1 This application has been filed by the Official Liquidator of Super Bazar Cooperative Store Limited, seeking the following relief:

"allow the present application by issuing appropriate directions for eviction of the shop No. 7 and 8, J Block, Saket, Malviya Nagar New Delhi in order to fulfill the obligations following from the order dated 29.03.2016 passed by this Hon'ble court in the abovementioned special leave petition"

2 The respondent, Sudhir Bahl, was an employee of Super Bazar. Super Bazar, which was a multi-state cooperative society, went into liquidation on 5 July 2002. The order of liquidation was challenged by the Employees" Unions before the Delhi High Court, which dismissed CWP Nos 85 and 1138 of 2003 on 19 December 2003. All the employees were retrenched with effect from 15 March 2003. The Official Liquidator has stated that out of 1943 employees, 913 had

opted for voluntary retirement. The Assistant Manager (Personnel), Super Bazar, transferred the respondent on 19 July 2003 from the establishment of Super Bazar at Yashwant Place to shop Nos 7 and 8, J Block, Malviya Nagar, New Delhi. The respondent has continued to remain in occupation of the shop since then.

3 On 13 October 2005, a notice was issued by the Official Liquidator to the respondent to hand over the keys and belongings of the shop to the department within three days of the receipt of the notice. On 17 October 2005, the respondent stated that he had been unable to attend the office for medical reasons. Another notice was issued on 7 April 2006.

4 During the pendency of the proceedings before this Court arising out of the order for liquidation, an effort was made to revive Super Bazar resulting initially in an order dated 26 February 2009. M/s Writers and Publishers as the agency nominated for revival took charge of the management of Super Bazar on 14 July 2009. In the meantime, on 16 October 2010, the respondent stated again that due to his persistent health problems, he had been unable to attend the office. M/s Writers and Publishers did not complete the terms of their obligations under the rehabilitation scheme and were eventually relieved by an order dated 29 March 2016. On 10 May 2016 and 25 May 2016, the Official Liquidator called upon the respondent to hand over possession. Subsequently, IA Nos 98-99 of 2016 were moved before this Court seeking vacant possession of the premises from the respondent. By an order dated 21 November 2016, liberty was granted to the Official Liquidator to move the appropriate court.

5 The Official Liquidator published a sale notice on 4 January 2017 for conducting an e-auction of the shops in question, being shop Nos 7 and 8, on 28 January 2017. The respondent represented that he was interested in purchasing the shops and his spouse participated in the auction process. Two bids were received. The highest bid was of Shri Rajiv Kumar Gupta in the amount of Rs 2.55 crores. The second highest bid was submitted by the spouse of the respondent, Ms Cherry Bahl in the amount of Rs 2.51 crores. The highest bidder did not pursue the bidding process, as a result of which the Official Liquidator filed IA Nos 102 & 103 of 2017. The occasion for filing the interlocutory applications was that the respondent had made a representation that the highest bid of Rs 2.55 cores would be matched by the second highest bidder, who was his spouse. In the interlocutory applications by the Official Liquidator, the following averments were placed before this Court:

"One of the property namely shops No. 7 & 8 Saket, J Block, New Delhi is under the encroachment of one Mrs Cherry Bahl and Mr. Sudhir Bahl. The property was also placed for e-auction on 28.01.2017. One Shri Rajeev Gupta and Smt. Cherry Bahal participated in e-auction of the above shops. Shri Rajeev Gupta has quoted the highest price of Rs 2,55,00,000/- and Mrs Cherry Bahal quoted the price of Rs 2,51,00,000/- . Thereafter, Mrs Cherry Bahl has requested that she is ready to match the bid by offering Rs 2,56,00,000/- as she could not enhance the bid due to technical problem in their computer. As stated above this shop is encroached by Mrs. Cherry Bahl and M r Sudhir Bahal, ex-employee of Super bazar and in case a suit for possession or eviction is filed before the appropriate court, it will take considerable time for the finalization of the case. Thus in the interest of the society, the request of Mrs. Cherry Bahl is placed for consideration of this Hon'ble court."

6 On 27 April 2017, an order was passed, allowing the interlocutory applications. Despite the opportunity that was granted, the highest bid was not matched. After the expiry of the term of the earlier Official Liquidator, the present Official Liquidator took charge on 18 June 2018. On 28 August 2018, a notice for handing over possession of the shops was issued to the respondent together with a demand of Rs 86,28,276, being the rent payable from 19 July 2003 until date. This was followed by reminders dated 27 September 2018 and 26 October 2018. Since the respondent has not vacated the premises of shop Nos 7 and 8, the present interlocutory application has been moved before this Court.

7 The respondent has entered appearance in pursuance of the notice issued by this Court and filed a response. Mr Bimal Roy Jad, learned counsel appearing on behalf of the respondent has relied on the order dated 21 November 2016 passed by this Court, by which the earlier interlocutory applications were dismissed with liberty to the applicant to move the appropriate court for reliefs. That apart, it has been submitted that a petition was filed before the High Court of Delhi, being Writ Petition No 6990 of 2013, in which the Cooperative Store Limited, Super Bazar was the petitioner seeking possession of the two shops. The writ petition was dismissed as withdrawn by an order dated 13 November 2013. Moreover, it has been submitted that on 26 September 2017, the then Official Liquidator, A K Mishra, made a statement before the ACMM (South) before whom a criminal complaint (Case No 462988/2016) had been instituted, that the Official Liquidator did not wish to prosecute the case any further. Mr Jad has submitted that the respondent has an outstanding claim for his unpaid dues as an employee of Super Bazar. Moreover, he has submitted that if an opportunity is granted, the respondent and his spouse, who had submitted a bid in pursuance of the eauction, would be ready and willing to pay the balance consideration of the bid which admittedly has not been paid.

8 Mr Harin P Raval, learned senior counsel appearing on behalf of the Official Liquidator has submitted that the respondent has no right, title or interest to remain in possession. It has been urged that the order of this Court dated 21 November 2016, was passed at a stage when the respondent was continuing in occupation in his capacity as an employee of Super Bazar. Subsequently, it was at the behest of the respondent that his wife who had emerged as the second highest bidder in the e-auction, was allowed to match the highest bid of Rs 2.55 crores. Mr Raval submitted that ten per cent of the earnest money was required to be and was deposited. However, no payment has been made thereafter and despite the lapse of over three years, the bid amount has not been deposited. Hence, it has been urged that there has been a material change of circumstances

after the earlier order dated 21 November 2016. Mr Raval has drawn the attention of the Court to Annexure R-2 to the reply filed by the respondent, which is a letter written by the former Official Liquidator, A K Mishra, who, it is stated, is facing an enquiry by the CBI. The letter which is purportedly dated 15 May 2018 was stated to have been addressed by the Official Liquidator on the date of his demitting the office. The letter to the respondent is in response to a letter of the same date purportedly written by the respondent and states that any mediation/negotiation regarding the fair and reasonable price for the shops can be determined in the course of proceedings before this Court. Mr Raval has submitted that the letter indicates a clear complicity between the respondent and the earlier Official Liquidator which is also clear from the interpolation in hand in the date appearing at the top of the letter."

9. Having noted the facts and prayers made in this petition, we may note the submissions made by Mr. Harin P. Raval, Sr. Adv., who appeared for the Official Liquidator. According to him, the present writ petition involves the issue of Shop Nos.7 and 8, J-Block, Malviya Nagar, Saket, New Delhi, which are the absolute and exclusive property of the Cooperative Stores Ltd. and all grounds urged herein in this petition with regard to the auction of the shop as well as on the aspect of readiness to pay the outstanding amount and the claim of the petitioner as wife of the former employee were urged specifically before the Hon'ble Supreme Court, despite which, no relief was granted.

10. He stated that this petition is not maintainable and that the petitioner's prayer, inter-alia for re-initiating the bidding process with respect to the said shops has already been completed. He also stated that, the petitioner's claim for adverse possession of the shops under Specific Relief Act, 1963, cannot be adjudicated before this Court under the writ jurisdiction of Article 226 of the Constitution of India. He also stated that the petitioner's husband, who had been assigned to work in the shops at the time when all employees of M/s. Super Bazar were retrenched in view of the liquidation process, had illegally encroached the shops under the aegis of the then Official Liquidator.

11. According to Mr. Raval, the directions from the Hon'ble Supreme Court for revival of Super Bazar, M/s. Writers and Publishers Private Limited ('M/s. WPL', for short) took charge of the management of M/s. Super Bazar, and a letter dated January 04, 2011 was written to the SHO, Saket, for providing police protection to the representative of M/s. WPL as the shops in illegal possession of the petitioner's husband were to be made operational as part of the revival process. Eventually, the revival process did not materialise and M/s. WPL was no longer in charge of the management of M/s. Super Bazar, thus, the Hon'ble Supreme Court vide its order dated March 29, 2016 directed the then Official Liquidator to assess the value of properties in order to dispose of the same, subsequent to which, another notice dated May 25, 2016, was issued to the petitioner's husband. However, the petitioner's husband did not vacate the shops and remained in illegal occupation of the shops without any legal right or title.

12. He stated that, it can be inferred that the petitioner's husband with oblique motive of illegally taking the possession of the shops never returned / handed over the keys or the belongings in spite of being issued notices after notices. Therefore, the then Official Liquidator was constrained to file an application before the Hon'ble Supreme Court whereby the Court gave liberty to move for relief before appropriate court.

13. He further stated that, thereafter, e-auction of the shops were initiated. The petitioner expressed her interest in the e-auction and participated in the bidding process. The highest bidder had quoted the amount of ☐ 2,55,00,000/- whereas the petitioner quoted ☐ 2,51,00,000/-. As the highest bidder eventually withdrew his bid, in view of the illegal encroachment by the petitioner's husband, on the representation of the petitioner, another application was moved by Official Liquidator before the Hon'ble Supreme Court for permitting the petitioner to match the amount of the highest bidder, which was allowed, vide order dated April 27, 2017.

14. He stated that, as per the terms and conditions of the e-auction, the petitioner was required to match the highest bidder and deposit the amount, however, the petitioner failed to deposit money and thus, the auction process never concluded, and the petitioner stood disqualified, and the earnest money forfeited. Thereafter, another notice dated August 28, 2018 was issued to the petitioner's husband by the new Official Liquidator, followed by reminder letters/ notices dated September 28, 2019 and October 26, 2018.

15. Furthermore, as the shops were still not vacated, the then Official Liquidator, filed an application I.A.No.181072/2019 in M.A. No. 677-678/2018 in M/s. Writers and Publishers Pvt. Ltd. & Ors. (supra) before the Hon'ble Supreme Court for eviction and compliance of order dated March 29, 2016 whereby the Court vide its judgment dated September 25, 2020, directed the petitioner to handover the shops and permitted M/s. Super Bazar to take the assistance from the police, if needed.

16. Mr. Raval stated that, inspite of the directions dated September 25, 2020 by the Hon'ble Supreme Court after considering all the facts of the case, the petitioner has filed the present writ petition before this Court seeking re-initiation of the bidding process which stands closed and cannot be re-opened. Furthermore, as the Hon'ble Supreme Court has already considered the issue of re-initiation of auction, therefore, nothing survives for adjudication.

17. According to Mr. Raval, one cannot circumvent the bidding conditions. A bidding process involves certain terms and conditions that needs to be duly complied with. The petitioner now cannot turn around and seek re-initiation of the bidding process when the failure was on the part of the petitioner. Further, he also stated that the shops belong to M/s. Super Bazar and thus, the petitioner has no right or title in the same. The petitioner has not even raised claim with respect to the title in the said shops in the present writ petition.

18. Furthermore, Mr. Raval stated that this petition is an abuse of the process of law inasmuch as it seeks to agitate and re-agitate the very same issue which were urged and decided by the Hon'ble Supreme Court and thus the present petition is barred on the principle of 'Issue of Estoppel", ?Res-Judicata" and 'Constructive Res-Judicata". In support of his submission, Mr. Raval has relied upon the following judgments:

(i) Hope Plantations Ltd. v. Taluk Land Board (1999) 5 SCC 590;

(ii) Daryao v. State of U.P. (1962) 1 SCR 574; and

(iii) Palitana Sugar Mills (P) Ltd. v. State of Gujarat, (2004) 12 SCC 645.

19. Having heard the petitioner and Mr. Raval for the respondent and perused the submissions filed by parties, the issues which arise for consideration are whether the present petition is maintainable and the petitioner is entitled to the prayers made in the petition.

20. We may at the outset state that pursuant to the orders of the Hon'ble Supreme Court; the petitioner has handed over the shops to the Official Liquidator on February 03, 2021.

21. Having noted this fact, the answer to the issue (s) which falls for consideration has to be in negative in view of the order passed by the Hon'ble Supreme Court, more particularly in paragraph Nos. 10 and 11, which we reproduced as under:

"10 The respondent, admittedly, was an employee of a co-operative store, Super Bazar. Following the winding up of the cooperative store, the services of the employees were retrenched. The respondent was transferred from the Yashwant Place establishment to shops at Malviya Nagar, which admittedly were the properties of the Super Bazar. Neither in his capacity as an employee nor for that matter as the spouse of a prospective bidder, does the respondent have any right, title or interest to continue to remain in possession. The previous order of this court dated 21 November 2016 was before the auction took place. A bid was submitted at the auction by the spouse of the respondent. The spouse of the respondent offered to match the highest bid and at the behest of the respondent, the earlier OL agreed to grant her an opportunity to do so, which was allowed by the court. The respondent has not set up any claim of title or interest in the premises. He has not even a semblance of an interest. The OL can justifiably seek a direction from the court. The properties of the erstwhile cooperative society have to be realized to pay off the claims, including those of the workers, in accordance with the statutory order of priorities. The claim of the respondent in respect of his terminal dues has to be addressed to the Official Liquidator which would be dealt with in accordance with law. However, the respondent cannot claim to remain in occupation of the shops. He has absolutely no right, title and interest, nor does he even profess to do so. We are unimpressed by the submission of Mr Bimal Roy Jad, learned counsel for the respondent that the spouse of the respondent, who has submitted a bid in the course of the e-auction should be given a further opportunity to complete the bidding process. No such direction can be issued at a belated stage, after a lapse of three years for paying the balance of the bid price. No such relief can be granted in any event in the present interlocutory application in which possession has been sought by the Official Liquidator.

11 For the above reasons, we are of the view that the interlocutory application filed by the Official Liquidator would have to be allowed. The interlocutory application is allowed in terms of prayer clause (a) as extracted above, by directing the respondent to hand over peaceful and vacant possession of the shop Nos 7 and 8, J Block, Malviya Nagar, New Delhi, to the Official Liquidator forthwith. In the event that it becomes necessary for the Official Liquidator to do so, he shall take the assistance of the Deputy Commissioner of Police of the area concerned. The DCP shall render all required assistance to facilitate the execution of the order of this Court.

(emphasis supplied)

22. On a perusal of the above conclusion reached by the Hon’ble Supreme Court, the following two aspects are clear that:-

(i) The petitioner’s husband admittedly, was an employee of a Cooperative Store, M/s. Super Bazar and that neither in his capacity as an employee nor for that matter as a spouse of the prospective bidder, does he had any right, title or interest to the shops.

(ii) The case of the petitioner that she should be given another opportunity to complete the bidding process has been rejected by the Hon’ble Supreme Court by stating that, after a lapse of three years, no such directions can be issued for paying the balance of the bid process.

23. From the above, it is clear that the Hon’ble Supreme Court has rejected the prayer of the petitioner to re-initiate the bidding process. We agree with the submission of Mr. Raval that the re-initiation of the bidding process stands closed and cannot be re-opened, and the petitioner cannot plead ignorance of the order of the Hon’ble Supreme Court, more so when the very same prayers were sought by petitioner’s husband before the Hon’ble Supreme Court. The present petition is barred by the principle of Res-judicata and as such is not maintainable.

24. So it follows, the prayers as made by the petitioner are not maintainable as the issue has attained finality before the Hon’ble Supreme Court vide order dated September 25, 2020. Similarly, the plea as urged by the petitioner of adverse possession of the shops under Specific Relief Act of 1963, in her rejoinder, is also not sustainable, in view of the order of the Hon’ble Supreme Court.

25. The present petition is nothing but an abuse of process of law, whereby the petitioner’s attempt is to overreach the order passed by the Hon’ble Supreme Court. The petition is dismissed with cost of ☐ 10,000/- to be deposited in the

Delhi Legal Services Authority within four weeks.

CM APPLs. 25049/2023 & 25050/2023

26. These applications have been filed by the petitioner with the following prayers respectively:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(i) Allow this Application for amendment of the writ petition;

(ii) Pass any such other or further orders as may deem fit and proper."

xxx xxx xxx

"In these circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

i. Condone the delay of approx. 70 days in filling of the amendment application.

ii. Allow this Application for amendment of the writ petition.

iii. Pass such other and further order as this Hon'ble Court may be deem necessary."

27. In effect, the petitioner is seeking condonation of delay in filing the amendment application. The amendment application has been filed by the petitioner seeking amendment of the writ petition by adding certain paragraphs and prayers. The relevant prayers which are sought to be added are the following:

"That the prayer 2 of the Writ Petition may kindly be replaced with the following prayer:

2 Direct the Respondents to return the possession of the shop no. 7 and 8, J Block, Main Market Saket, New Delhi to the Petitioner.

2A Direct the Respondents to adjust the legitimate dues to be paid by the M/s Super Bazar to the Petitioner's Husband in the balance bid amount.

2B Direct the Respondents to accept the balanced bid amount from the Petitioner after adjusting the legitimate dues to be paid by the M/s Super Bazar to the Petitioner's Husband."

28. In view of our finding in paragraph 25 above, the prayers as made in the applications are not maintainable and the applications are dismissed.