

(2001) 09 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No. 18880 of 2001 c/w W.P. No. 18498 of 2001

Samrat Ashok Exports Ltd.

APPELLANT

Vs

Asst. Provident Fund Commissioner and Recovery Officer and
Others

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 B

Citation : AIR 2002 Kar 61

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Ravi B. Naik and U. Abdul Khader, for the Appellant; Ashok Haranahalli, C.G.S.C. for Respondent No. 1, D.L.N. Rao and Anuradha and Ashok Haranahalli, C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—M/s. Samrat Ashok Exports Ltd., is before this Court challenging the Auction proceedings dated 28-3-2001 at Annexure "C" on the following facts.

2. The petitioner M/s. Samrat Ashok Exports Ltd., is the owner of land bearing Sy. No. 70 measuring 1 acres 20 guntas situated at Jaranganahalli, Uttarahalli, Hobli, Bangalore South, Taluk in terms of Sale Deeds. M/s. Ashok Exports was taken over by M/s. Samrat Ashok Exports Ltd. An Enforcement Officer attached to the Employees . Provident Fund Office filed a complaint against the petitioner Company and its Directors in various complaints in the matter of offence punishable u/s 14AB of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The petitioner, according to the complaint is due to the extent of Rs. 95,44,940/- towards Provident Fund arrears. Cases are still pending. In the meanwhile, recovery proceedings were initiated and in terms of the Recovery Certificate, they sought to attach the land bearing Sy. No. 70 measuring 1 acres and 20 guntas towards Recovery of the Principal amount of

the Provident Fund. The property was attached. The Recovery Officer passed an order ordering the auction of the property towards realisation of the PF dues in terms of an order dated 5-2-2001. The said order was intimated to the petitioner. The petitioner states that the property in terms of the valuation is more than 3 crores. According to him, the property is being sold at a throw away price which cannot be done. The petitioner also states that a case is registered in a Registration case No. 61/2000 in the matter of rehabilitation, The petitioner challenges this order on various grounds.

3. Notice was ordered pursuant to which the respondents have entered appearance and have filed their statement of objections.

4. In the statement of objection, the contesting respondents state that the petitioner has no right to challenge the auction proceedings in this petition. According to the averments in the objection statement, the petitioner himself agreed for sale of the property. The petitioner was aware that it would not fetch more than the Principal amount, due to the respondents. The Sub Registrar's value is roughly about 1.3 crores. If the property is worth more than the amount for which it was sold, the petitioner would not have agreed for sale of the entire property. Nothing prevented the petitioner from challenging the sale by depositing the amount and by way of objection, in teams of Schedule II to the Income Tax Act. The respondent further states that the 2nd respondent is bona fide purchaser of the property. The petitioner owes 1.3 crores to the PF Department. The auction notice was published in the newspaper. The contesting respondent was present on the day of auction and there were two other contenders along with the contesting respondent. The bidding commenced with minimum reserve price of Rs. 1 crore and after stiff bidding by all the three contenders in terms of Annexure-"C", the 2nd respondent was declared as the purchaser of the property for Rs. 1.50 crores. On the same day, the respondent paid a sum of Rs. 37,50,000/- being that 25% of the purchase money and paid the balance bid amount by two cheques dated 30-3-2001 and 20-4-2001 for a total sum of Rs. 1,12,50,000/-. The PF Department has encashed these cheques towards adjustment. The respondent further states that a Recovery Certificate dated 16-4-1998, was issued to the petitioner. A Notice for setting the Sale Proclamation was issued to the petitioner and objection was called for. Date was fixed on 13-9-2000 for drawing up of the proclamation of sale. The petitioner never field any objections. However, the three other persons filed objections and after hearing the objectors on 5-2-2001, a detailed order was passed and a Sale Proclamation was issued in the matter. In fact, the auction was postponed to facilitate a better price. It is in these circumstances, the respondent justifies the auction. The contesting respondent PF Office has also filed objection. They say in their objection that the petitioner is a defaulter and the proceedings were initiated against him. In fact, wide publicity was given to the newspaper and certain persons including State Bank of Travancore filed their statement to the attachment of the property. They were summoned and personal hearing was given. Thereafter, a detailed order was passed on 5-2-2001 by the Recovery

Officer in terms of Annexure R-1.

5. W.P. No. 18498/2001 is again filed by the State Bank of Travancore challenging the auction sale conducted by Rule 1 on 28-3-2001 in terms of Annexure "C". The Bank states that Samrat Ashok Exports Ltd., Rule 2 in this petition and, the petitioner in W.P. No. 18880/2001, obtained certain loans from the Bank resulting in Recovery proceedings in O.A. No. 521/1999. A case is pending for recovery of Rs. 30,81,09,931.11/-. An equitable mortgage of the said property was created in favour of the Bank. The petitioner Bank according to them has a first charge over the immovable properties and has a right to bring the same for sale in the event of DRT allowing the application. The Bank refers to the auction sale. They also question the auction sale conducted on the ground of an inadequate sale consideration, since both these petitions are filed against the same order.

6. I have heard the Counsel for the parties at great length.

7. The petitioner in W.P. No. 18880/ 2001 is represented by Shri Ravi B. Naik, learned Counsel, Shri. D.L.N. Rao and Smt. Anuradha, learned Counsels appear for the 2nd respondent. Shri Ashok Haranahalli, learned Counsel, represents the Provident Authority.

8. In W.P. No. 18498/2001, Sri. U. Abdul Khader, learned Counsel, appears for the petitioner and Sri. Ashok Haranahalli, CGSC appears for Provident Authority. Sri. Sheelavanth, learned Counsel and Sri. D.L.N. Rao, learned Counsel, appear for R2 and R3 respectively.

9. The Counsel are heard at great length. Sri. Sheelavanth, learned Counsel reiterates the facts. He contends that the impugned order requires my interference. He says that valued property is sold for a sundry amount in this case on hand. According to him, the sale is bad in law. He also states that matters are pending before the authorities.

10. Sri. Rao, learned Counsel for the other hand, reiterates and traces the history of the case and contends that he has paid a substantial sum in terms of the auction sale. He refers to the proceedings and contends that the matter requires rejection. The Counsel for the Bank also submits that the auction sale has to be set aside. In fact, the Bank Counsel admits that the Bank did file objections to the sale on the ground of pendency of proceedings before DRT. They also admit of the publication of the sale proceedings, as I see from the narration of the facts in the petition.

11. Sri Ashok Haranahalli, learned Counsel refers to the pleadings and states that no case is made out in the case on hand.

12. After hearing the learned Counsel to the parties, the following order is passed.

13. The petitioner in W.P. No. 18880/ 2001 is an employer defaulter in terms of

the EPF Act and the rules framed thereunder. The petitioner in W.P. No. 18498/2001 is the Bank. It is an admitted fact that the employer is due towards PF arrears. The material placed before this Court evidence that Certificate bearing No. KN/PF/ENF IV/ BD XXI dated 16-4-1998 is issued by the authorised officer in the matter of recovery of a sum of Rs. 95,44,940/- from M/s. Samrat Ashok Exports Ltd. In terms of Section 8C(2) of the Act. It is also stated that the said sum of recovered together with interest in accordance with Section 7Q of the Act. The petitioner in the light of these documents is a defaulter in the payment of Provident Fund dues to the respondents. The material facts reveal that he is due to pay of sum of Rs. 95,44,940/- being the PF arrears for the period Sept. 1996 to Sept. 1997. The lands belonging to the petitioner was attached and a notice for setting of sale proclamation was issued on 28-3-2001 in terms of the recovery notice dated 24-7-2000. It is also on record that the same is published in the local newspapers. The material placed before this Court further reveal that in the light of the publications that some individual/ Institutions have submitted the objections with regard to the sale of the property in the matter. A personal hearing has been granted on 19-10-2000 at 10.30 a.m. The State Bank of Trivancore, M/s. Ranjit Constructions, and Sri K.S. Rao objected to the sale notice. The Recovery Officer, after hearing them has passed an order in the light of the various case laws that there exists no merit in the submissions and claims made by the parties. He rejected their claim petition. It is interesting to know that this order is not challenged initially by the State Bank of Trivancore or Sri. K.S. Rao or the developer. This order is not challenged even by the petitioner. Subsequently, the proclamation of sale was issued on 8-2-2001. It is also on record that auction was to be held on 13-3-2001. On 12-3-2001, the Bank filed one more application seeking for stay of the same. The auction could not take place on 13-3-2001, as there was only one bidder, as I see from the materials placed before this Court. In these circumstances, the auction was postponed by another 15 days and a notice was issued fixing the auction on 28-3-2001. One developer was also present on the said date. He accepted the auction for a sum of Rs. 1.5 crores, after 43 calls. This again is challenged by the State Bank of Travancore which has been rejected in terms of Annexure R-3 dated 24-4-2001 by a detailed order. This order is also not challenged by the petitioner In the light of these materials, it is clear to me that the petitioner cannot challenge only Annexure "C" namely the proceedings of auction without challenging the earlier two orders. In fact, the same representations have been made and the same has been rejected by a detailed order. In these circumstances, I am not inclined to set aside the auction sale at the instance of a defaulter. The Department has given several opportunities to the petitioner to clear the arrears. Property had been attached and that has not been challenged. Sale auction was fixed that is not challenged. Objections were overruled by a detailed order. That again is not challenged. In these circumstances, according to me, this petition is filed only to avoid payment in the matter.

14. The petitioner however, contends before me that the property is worth more than Rs. 3 crores. For the same, the petitioner relies on the market valuation slip. Nothing prevented the petitioner to bring a better offer to the authorities. He has failed to bring any better offer. Even before this Court, he is not prepared to either deposit or bring any better offer in the pleadings or in the course of the arguments. In these circumstances, and in the absence of any better offer, it cannot be said that any error is committed in accepting the offer of the contesting respondent. Moreover, the contesting respondent has already deposited the entire payment and he should not suffer for no fault of his. He is only an auction purchaser having participated in the public auction by the Department. In these circumstances, I do not find any bonafides on the part of the petitioners in challenging the auction, which according to me has been held after providing all opportunities to all the parties concerned. The auction notice was notified, published and the objections have been considered and thereafter the auction is confirmed. The objectors namely M/s. G.R. Developers have not chosen to challenge the same. In these circumstances, I do not think that at the instance of the petitioner, the auction can be set aside in the case on hand.

15. I would be failing in my duty, if I do not refer to a classic Judgment of the Supreme Court in the matter of auction sale in the case of *Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh*, . In the said case, the Supreme Court, after noticing this earlier Judgment, has ruled as under at pages 3471 -3472 of AIR SCW :

"In *Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others*, the sale proclamation was settled after notice to the parties and after several adjournments. The respondent adopted dilatory tactics to obstruct the sale. Therefore, the valuation in the report submitted in that behalf was accepted and the properties were sold. This Court held that if there was any material irregularities in the conduct of sale and if it causes sufficient injury to the Judgment debtor the same could be set aside where the Court mechanically conducts the sale not bothering to see that the offer is too low and the better price could have been obtained. If, in fact, the price is substantially inadequate there is both material irregularity and injury. At the same time the Court should not go on adjourning the sale till a good price is got as otherwise the decree holder would never get the property of the judgment debtor sold. This Court further held that there is always considerable difference between the Court sale price and the market price. The Court sale is a forced sale and notwithstanding the competitive element of a public auction, the best price is not always forthcoming. The valuer's report though good as a basis, is not as good as an actual offer and there are bound to be variations within limits between such an estimate, however, careful, and the real bid's by the seasoned businessman. Mere inadequacy of the price cannot demolish a Court sale. Further, if the Court sale are too frequently adjourned with a view to obtaining a still higher price, prospective bidders will lose faith in the actual sale taking place and may not attend the auction. What is expected of the Court is to make a realistic appraisal

of the factors in a pragmatic way and if satisfied that in the given circumstances the bid acceptable it should conclude the sale. The Court may consider the fair value of the property, the general economic trend, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation and several other factors depending of facts of each case. If the Court has fairly applied its mind to the relevant considerations while accepting the final bid, it is not necessary to give a speaking order nor can its order be examined meticulously. In that case the judgment-debtor himself was adopting dilatory tactics and the property was sold after considerable delay and postponements. The sale was upheld."

16. In the light of the judgment of the Supreme Court, a mere inadequacy of price by itself cannot be a ground to set aside the auction sale held in accordance with law by this Court in a writ Petition.

17. The Bank in W.P. No. 18498/2001 has challenged the auction sale dated 28-3-2001. In this petition, the Bank has only challenged the auction sale without challenging the earlier proceedings in the matter. The contentions raised in this petition, with regard to inadequacy of price and the improper conduct of the auction sale has been rejected by me, while considering the connected Writ Petition No. 18880/2001. The same holds good in this case, as well. No other arguments are advanced before me. In my view, the findings given by me in the connected writ petition is as well applicable to this case as well.

18. In these circumstances, these petitions fail and they are dismissed. Parties to bear their/respective costs.