
(1990) 08 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : O.M.P. No. 242 of 1990 in Ex. Petition No. 35 of 1986

Smt. Satya Devi and Another

APPELLANT

Vs

United Commercial Bank

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54(3), Order 21 Rule 90, 151

Citation : (1991) 1 ShimLC 103

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; G.D. Verma and Bhupinder Gupta, for the Respondent

Judgement

D.P. Sood, J.—The objectors are the judgment-debtors. They have approached this Court through this application under Order-21, Rule 90 read with Section 151, Code of Civil Procedure for setting aside the sale and thereafter to hold the auction afresh of the land in dispute.

2. The land in question measuring 30 bighas 10 biswas is a revenue paying land and forms part of Khasra No. 304 located at Mauja Sua, Tehsil Arki, District Solan. The judgment-debtors had consented to the sale of 31 bighas 16 biswas of land standing in the name of Smt.Satya Devi in the revenue record. The major portion thereof is classified as "barani doem". About 13 bighas of land is "gbasani". There is "gair-mumkin-abadi" to the extent of 1 bigha 6 biswas whereupon the residential house of the judgment-debtor is standing. The quinquennial sale price statement as placed on the record indicated the rate as Rs. 639 per bigha. Thus, in that view of the matter and keeping in view the trend of the latest price, the upset price of the land referred to above had been quantified in the sum of Rs. 50,000. Consequent to the issuance of proclamation, the sale was effected on May 16, 1990 at the spot.

3. A bare perusal of the auction pursuant to the warrants of sale qua the immovable property referred to above shows that the highest bid was given by

Karan Singh for consideration of Rs. 1,14,000. He was required to deposit a sum of Rs. 28,500 being 1/4th share of the bid money. As per the report, he failed to deposit the said sum and the concerned revenue official put the property to auction again and then the highest bid as recorded was given by Vipin Singh for a consideration of Rs. 60,000. The auction-purchaser having deposited the remaining balance amount, prays for the confirmation of the sale.

4. I have heard the learned Counsel for the parties at length and I am firmly of the view that this application seeking setting aside of the sale must be allowed. In order to show that there has been a material irregularity in this case, the learned Counsel for the judgment-debtors-applicants drew my attention to (i) that no sufficient publicity was done in regard to the sale in question; and (ii) that the revenue official concerned conducted the sale in a great hurry with the result that a number of prospective bidders could not make their bid and the property in question did not fetch adequate price.

Sub-rule (3) of Rule 54, Order 21, CPC envisages that:

The order shall be proclaimed at same place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court house, and also, where the property is situate in a village, in the office of the Collector of the district in which the land is situate and also, where the property is situate within cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer, concerned, and where the property is situate in a village also in the office of the Gram Panchayat if any, having jurisdiction over that village.

(Emphasis mines).

5. The first point that falls for answer in this case is whether the revenue official did give sufficient publicity to the auction sale with the result that the land in dispute did not fetch adequate price. To my mind, this contention has much substance in it.

6. The record shows that the warrants of sale of immovable property of judgment-debtors were sent to the Collector, Solan to get the sale effected. He, in turn, directed the Naib Tehsildar, Arki to conduct the sale according to the time schedule and in accordance with law. The record does not show that the publicity was done by affixing a copy of the proclamation or sale in the office of the Gram Panchayat in which village Sua is located. Apart from it, the record also does not show whether the bidders who were present at the initial auction were or were not present in the second auction conducted by the auctioning authority i.e. Naib Tehsildar, Arki consequent to the failure of Karan Singh to deposit 1/4th of the auction price. The record further does not clarify whether wide publicity by issuance of hand bills was or was not given as per the order of the Registrar (Vigilance) which is reflected from his forwarding letter dated May 28/29, 1990 addressed to the Collector, Solan. Even the proclamation of sale bearing the

report of the process-server on its reverse does not indicate the compliance of the aforesaid order. Rather, the learned Counsel on the opposite side has stated at the bar that the auction sale in question has not properly been conducted in the first instance.

7. The next point advanced for assailing the sale is that Naib Tehsildar, Arki had conducted the second sale in a great hurry and in connivance with the auction-purchaser. Apart from it, he having arrived in village Sua at about 4:15 p.m. whereafter auction proceedings were started. According to the time schedule the sale was to be conducted on May 16, 1990 and it was to start at 10 a.m. The report does not state at what time the first auction started and when it was concluded. Nor does it show the timing with respect to the conducting of the second sale. Apart from it, the report by itself shows that only 4 persons took part in the second sale and they were S/Shri Ghanshyam Sharma, Vipin Singh, Mahesh. Chopra and Prem Kumar. The close perusal of the first sale shows that Prem Kumar, aforesaid, did not take part in the first auction. The remaining three persons had given bid with respect to the property in question at a much higher price as shown in the table below;

Sr. No.	Name of the bidder	First auction with	Second auction with	Sr. No. in the report.
1.	Ghanshyam Sharma	Rs. 52,000	Rs. 52,000	1.
6.	Vipin Singh	Rs. 57,000	Rs. 56,500	2.
8.	Mahesh Chopra	Rs. 58,500	Rs. 59,000	3.
11.	Prem Kumar	Rs. 61,000	Rs. 55,000	4.
16.		Rs. 63,000		
17.		Rs. 72,000		
23.		Rs. 81,000		
27.		Rs. 93,000		
32.		Rs. 1,00,000		
34.		Rs. 1,02,000		
36.		Rs. 1,04,000		
41.		Rs. 1,09,000		
44.		Rs. 1,12,000		
47.		Rs. 1,13,000		
48.		Rs. 1,13,000		

8. It is clear from the aforesaid comparative statement that there is a huge difference in the auction price as a result of the bids given by one and the same person at two occasions. The highest amount of bid given in the second bid is Rs. 60,000 given by Vipin Singh. Vipin Singh was ready to purchase the disputed land for Rs. 1,13,000 at the time of first bid. How and under what circumstances, the Naib Tehsildar, Arki had agreed to Rs. 60,000 as highest bid remains a mystery for the reason best known to the persons referred to above. The manner in which both the auction proceedings one after another had been conducted also do not inspire confidence.

9. Thus, without going into the question of connivance in between the auctioning authority and the bidders in the second auction, to my mind, the application is liable to be allowed. I order accordingly. Consequently the auction sale conducted on May 29, 1990 is set aside. Fresh proclamation of sale be drawn in the presence of the parties or through their Counsel in accordance with law. As a sequel, warrants of sale be issued and the highest bid money already deposited be released to the auction-purchaser. Announced.