(2012) 12 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 37277 of 2009 (GM-DRT)

Sri M. Nagaraj	APPELLANT
Vs	
Syndicate Bank and Others	RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : (2013) 2 AKR 448 : (2013) 2 KCCR 1244

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : K.D. Harish for P.M. Vasudev and Co, for the Appellant; M.R. Shashidhar for Respondent-1, Sri V.N. Murthy for V.N. Murthy Associates for Respondent-2 and Sri Basavaraj K. Soodi, Central Government Standing Counsel for Respondent-3, for the Respondent

Judgement

S.N. Satyanarayana, J.—Petitioner herein is impugning the order of Debt Recovery Tribunal, Bangalore, dated 22.6.2009 in AOR. No. 17/2008. Brief facts leading to this petition are as under:

First respondent bank in OA. No. 22/1999 initiated proceedings for recovery of certain debts due to it by one Y.R. Narayana Reddy and others before the Debt Recovery Tribunal (''DRT'' for short). It is stated that said application of first respondent-bank came to be allowed by the DRT on 22.9.2000. Pursuant to which recovery proceedings is initiated before the Recovery Officer of DRT in DCP. No. 1954 in OA. No. 22/1999. In the said proceedings the property bearing Sy. No. 79/1 of Yadavanahalli village, Anekal Taluk, Bangalore Urban District measuring to an extent of 23 guntas was brought to sale. In that behalf, after giving vide publicity, auction was conducted on 30.3.2007, while conducting auction sale, the first respondent-bank and third respondent-recovery officer of DRT had clearly indicated that first respondent-bank had saleable interest in the property put up for auction. Believing the representation of first and third respondents the petitioner herein participated in the said auction and he being the highest bidder for the said property purchased the same for valuable consideration of Rs. 16,00,000/-, which is not in dispute. Pursuant to the terms of auction, petitioner deposited the entire sale consideration on or before 30.4.2007 i.e., within one month from the date of auction sale. Pursuant to which sale in his favour was confirmed. Thereafter, sale certificate was also issued in his favour on 7.5.2007.

2. It is seen that on 25.6.2007 the said sale certificate was presented by the petitioner before the jurisdictional Sub-Registrar for registration of the same. However, on such presentation, registration of said document was refused on the ground that the property is already registered in favour of second respondent-Karnataka Housing Board (KHB for short). On verification by the petitioner it is seen that on 11.11.2005 Y.R. Narayan Reddy had already sold the property in question in favour of KHB for formation of its layout in an extent of about 600 to 700 acres of land consisting of hundreds of residential sites. It is stated that the land in question is merged in the layout and upon which sites are already formed and KHB is in the process of allotting the same in favour of its various applicants from whom it has received applications for allotment.

3. When the matter stood thus, the petitioner approached the Recovery Officer by filing application in DCP No. 1954 in OA. No. 22/1999 seeking cancellation of the sale certificate issued in favour of petitioner, for the reason that said land is not in existence and it is merged in the layout which is formed by the second respondent-KHB, which application came to be dismissed by order dated 3.10.2008 vide Annexure-K. Against which an appeal in AOR No. 17/2008 in DCP. No. 1954 in OA. No. 22/1999 was filed by the petitioner. The said appeal also came to be dismissed vide order dated 22.6.2009 vide Annexure-N, which are impugned in this writ petition.

4. In this writ petition first respondent bank which is duly served entered appearance and filed its statement of objections contending that the proceedings initiated against Y.R. Narayana Reddy was in the year 1999. In the said proceedings, the property which is subject matter was already attached by the bank and pursuant to which the notice for recovery was issued for sale of the said property, which was given vide publicity in publishing it in newspaper on 16.1.2005. Therefore, when once the property is already attached, question of the debtor selling the same either in favour of KHB or to any others does not arise. Even if such sale is made, it is contrary to the rule and illegal, such sale will not bind the bank in whose favour there is already order of attachment. In that view of matter, the property is already vested in the bank and therefore, as on the date of public auction the bank had valid legal title to the property which was put up for auction, which is duly sold in favour of petitioner and in confirmation of the same, sale certificate is also issued. In that view of matter, question of setting aside the sale and to refund the amount paid for purchase of the said property does not arise. It is also contended that the application which was filed by the petitioner is rightly rejected by the Recovery Officer and confirmed by the Appellate Authority vide Annexures-K and N to the writ petition.

5. In this proceedings the second respondent-KHB which has entered appearance supported the case of petitioner contending that as on the date of sale deed executed by Y.R. Narayana Reddy in favour of KHB i.e., on 11.11.2005 there was no order regarding attachment of said property in favour of the Bank. It is also brought to the notice of this Court that the second respondent did correspond with the first respondent bank from 14.11.2005 to ascertain whether the bank has got any interest in the property for which the first respondent bank has not given any reply nor staked any claim. In that view of matter, the second respondent, contends that the property which is purchased by KHB from Y.R. Narayana Reddy is its absolute property. Further it is contended that in addition to corresponding with first respondent bank the second respondent taken all precautions i.e., to give vide publicity through paper publication on 12.10.2005 in Samyuktha Karnataka news paper before the aforesaid property was purchased by it from debtor-Y.R. Narayana Reddy. It is also contended that since second respondent made several attempts to ascertain whether the property in question is subjected to any kind of attachment and the first respondent did not respond to the public notice and also to the correspondence which was made directly by the second respondent with first respondent to ascertain whether the said bank has any charge over the property, the sale of aforesaid property in favour of second respondent is valid and the title of said property is already conveyed to the second respondent on which it has also formed layout. It is also contended that in the developed layout of 2nd respondent aforesaid property cannot be identified as it has merged among hundreds of sites which are formed using several other lands measuring to an extent of 600 to 700 acres. In this proceedings third respondent also filed statement of objections, supporting first respondent Bank.

6. Heard the learned Counsel for the parties. Perused the orders impugned with reference to the grounds of writ petition and objections statement along with the material available on record.

7. As could be seen from paragraph 10 at page 3 of the objections statement filed by 3rd respondent the property was attached on 23.11.2005. This clearly supports the case of petitioner and as well as second respondent that when the property in question was sold by debtor in favour of second respondent-KHB, the said property was not under any charge in favour of first respondent. In that view of matter, the sale executed by debtor in favour of second respondent-KHB is free from charges. In the aforesaid facts and circumstances, the stand taken by third respondent in rejecting the application filed by petitioner seeking to set aside the sale certificate vide Annexure-K, which is confirmed in appeal vide Annexure-N does not stand to reason and it runs contrary to the statement made in their objections statement dated 22.2.2011. Therefore, the said order dated 3.10.2008, vide Annexure-K and also the order dated 22.6.2009, vide Annexure-N impugned in this writ petition does not stand to reason. This obviously indicates that as on the date when auction of the said property took place first respondent-bank did not have salable interest in the same. In that view of

matter, the writ petition filed is required to be allowed, consequently, the orders at Annexure-K passed by the Recovery Officer in DCP. No. 1954 in OA. No. 22/1999 dated 3.10.2008, which is confirmed in AOR. No. 17/2008 in DCP. No. 1954 in OA. No. 22/1999 dated 22.6.2009 are required to be set aside. So also the sale certificate dated 7.5.2007 issued pursuant to confirmation of sale dated 30.4.2007 are required to be set aside. While doing so, a specific direction is required to be issued to the first respondent to repay a sum of Rs. 16,00,000/- received by the first respondent for sale of the aforesaid property along with interest at 15% p.a.

8. It is necessary to observe here in the writ petition that petitioner has sought for refund of the amount with interest, but does not specify the percentage of interest. Considering the fact that this is commercial transaction regarding purchase of immovable property the amount if it is otherwise invested by the petitioner either to purchase other property or in any securities it would have earned much more than 15% interest to him. In that view of matter, this Court feel awarding of interest at 15% appears to be just and proper. With the aforesaid observations and directions, writ petition is allowed, the impugned orders at Annexure-K and N and also the sale certificate and confirmation of sale are set aside. While doing so, the first respondent is directed to repay the sum of Rs. 16,00,000/- along with interest at 15% p.a., payable from 1.5.2007 i.e., the day on or before which date entire sale consideration was paid, till date of deposit of entire amount. It is also made clear that first respondent bank shall repay the entire amount along with interest within 30 days from the date of receipt of certified copy of this order.