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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

ON THE 18th OF MARCH, 2025

WRIT PETITION No. 17866 of 2017

SMT. BINDU AND ANOTHER

Versus

INDORE PARASPAR SAHAKARI BANK LIMITED AND OTHERS

Appearance:

Shri Akash Rathi- Advocate for the petitioners.

Shri Sanjay P. Joshi- Advocate for the respondent no. 1.

Ms. Aditi Mehta- Advocate for the respondent no. 3.

Reserved on : 21.02.2025

Passed on : 18.03.2025

ORDER

1] This petition has been filed by the petitioners under Article 226 of the Constitution of India, seeking the following reliefs:-

“7. I) To allow this petition by issuing an appropriate Writ, Direction or order.

II) To quash the impugned order of auction dated 17.06.2017, issued by respondent no.2 Revenue Board, by writ of certiorari or any other writ.

III) To direct the respondent to compensate the petitioners by giving the amount of the aforesaid building as market value after deducting the loan amount. The market value of the aforesaid building is more than one crore rupees and after deducting the loan amount the petitioner still have right to take and respondent no.1 is liable to pay the amount more than fifty lakhs rupees to the petitioners.

IV] To direct the respondents to give compensation for mental harassment for petitioner and his family.



2

VJ To pass such orders, Writ or direction in favour of the plaintiff, as the Hon'ble Court may deem fit in the interest of justice.

VIJ To direct the respondents to revert back the household articles of the petitioners."

2] The petitioners are aggrieved by the order dated 17.06.2017 (Annexure P/25), passed by the Board of Revenue, Indore in a Revision filed under Section 50 of the Land Revenue Code, 1959 (hereinafter referred to "the Code of 1959") whereby the order passed by the Additional Commissioner, Indore on 04.08.2011, has been affirmed. In the order dated 04.08.2011, the Additional Commissioner has also affirmed the order passed by the Additional Collector 08.06.2011 (Annexure P/23); whereas, the Additional Collector rejected the petitioners' application challenging the auction proceeding initiated under Rule 39 of Schedule I of the Code of 1959.

3] In brief, the facts of the case are that in the year 1998, two loans were obtained by the petitioner no.1/Smt.Bindu, W/o late Balakrishna Vyas and petitioner no.2/Vimal Kumar Vyas S/o late Balkrishna Vyas to the tune of Rs.10,00,000/- and 8,50,000/- respectively from the respondent No.1/Indore *Paraspar Shakari* Bank Limited, Indore for construction of their ancestral house. Admittedly, they defaulted in repayment of the said loan, which led to the auction of the said house for a throw away price by the respondent no.1 vide order dated 29.04.2010, which led the petitioner to file the petition being Writ Petition no.6378/2010, which was *disposed of*, by this Court on 15.07.2010, with a liberty to the petitioner to take appropriate action, in accordance with law, for challenging the auction proceeding, sale certificate and the consequential sale deed in the matter.

4] Subsequently, being aggrieved of the auction proceedings dated 11.3.2010, the petitioner filed a revision petition under Section 50 of the Code of 1959



3

before the Additional Collector but, it was dismissed on 08.06.2011.

According to the petitioners, the application was rejected by the Additional Collector on the ground that he has no jurisdiction to review the order dated 20.05.2010, which was passed by his counterpart, i.e., the Officer of the same rank, the earlier Additional Collector. The aforesaid order has been affirmed by the Board of Revenue vide its order dated 17.06.2017.

5] Shri Akash Rathi, learned counsel for the petitioners has vehemently argued before this Court that that if the Additional Collector was of the opinion that he had no jurisdiction to pass the order, then he could have sent the matter to some other authority, as objections were raised under Rule 39 of schedule I of the Act, 1959 (for auction of the property).

6] To support his submissions, Shri Rathi has relied on a decision rendered by the M.P. Board of Revenue in the case of ***Ramsaran vs. Mewala*** reported in ***1965 Vol 10 M.P.L.J. 290***.

7] Whereas, the prayer is vehemently opposed by Shri Sanjay P. Joshi, counsel for the respondent no.1 and it is submitted that the very ground which is argued by the counsel for the petitioner is not even raised in the Writ Petition, as also before the revenue authorities, and thus, it cannot be considered at this stage. It is also submitted that otherwise also, the petitioner has also not complied with the interim order passed by this Court in W.P. No.6378/2010, which is also reflected in the final order dated 15.07.2010, hence in such circumstances, no case for interference is made out.

8] Ms. Aditi Mehta, learned counsel for the respondent no.3/ the Auction Purchaser has also opposed the prayer and it is submitted that since sale deed has already been executed in favour of the auction purchaser, and the petitioner



4

has not deposited the amount, as directed by this Court in the interim order, no case for interference is made out.

09] Heard. Having heard the rival submissions and on perusal of the documents filed on record, this Court finds that so far as the order dated 15.07.2010, passed in the earlier round by this Court in W.P. No.6378/2020 is concerned, the same reads as under:-

“The petitioner before this Court has filed this petition being aggrieved by a notice dated 29.4.2010 as contained in Annexure P-19, page 48, by which the petitioner was informed that an action is going to take place in respect of sale of security and he was granted an opportunity to appear before the Additional Collector Indore, on 6.5.2010. The petitioner has raised various grounds in support of the petition. Learned counsel for the petitioner has brought to the notice of this Court an interim order dated 21.5.2010.

This court has carefully gone through the interim order dated 21.5.2010 and the said order reflects that the petitioner was directed to deposit Rs. Ten lakhs. The interim order further reveals that it was a conditional order and the subsequent proceeding before the Additional Collector was stayed, subject to petitioner’s depositing a sum of Rs. Ten lakhs.

Learned counsel appearing for the respondent-Bank has informed this Court that the petitioner has not complied with the interim order dated 21.5.2010 and the property in question was auctioned and a sale certificate was also issued on 20th of May, 2010. He has stated before this Court that the symbolical possession, as well as the vacant possession, has also been delivered to the successful purchaser and a sale deed has also been executed in the matter . His contention is that the present petition has become infructuous as a sale deed has also been executed in the matter.

Keeping in view the aforesaid, the present petition is disposed of with a liberty to the petitioner to take appropriate action, in accordance with law, for challenging the auction proceeding, as well as the sale certificate and the consequential sale deed in the matter.

With the aforesaid liberty, the present petition is disposed of No order as to costs.”

10] It is apparent from aforesaid order that as the petitioner did not comply with the interim order of depositing the amount of Rs.10 Lakhs, and although



5

the sale deed had already been executed, still the petitioner was granted liberty to challenge the sale in accordance with law.

11] At this juncture, it would be apt to refer to the challenge procedure as prescribed under Schedule I of the MPLRC. The relevant excerpts from Rules 40 to 47 of the same, which are under the heading of *sale of immovable property*, which read as under:-

Sale of immovable property

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40. (1) Where immovable property has been sold under this Code, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale may, at any time within thirty days from the date of sale, apply, to the Revenue Officer to have the sale set aside on his depositing-

(a) for payment to the purchaser, a sum equal to five per cent of the purchase money;

(b) for payment on account of the arrear, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may have been paid since the date of the sale on this account; and

(c) the cost of the sale.

(2) If such deposit is made within thirty days from the date of the sale the Revenue Officer shall pass an order setting aside the sale:

Provided that, if a person applies under Rule 41 to have such sale set aside, he shall not be entitled to make an application under this rule.

41. At any time within thirty days from the date of sale, any person whose interests are affected by such sale may apply to the Revenue Officer to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it, and the Revenue Officer may, after giving notice to the persons affected thereby, pass an order setting aside the sale and may order resale; but no sale shall be set aside on such grounds unless the applicant proves to the satisfaction of the Revenue Officer that he has sustained substantial injury by such irregularity or mistake.

42. Except in a case where land has been sold for arrears, which form a charge on the land, the purchaser may, at any time within thirty days from the date of sale, apply to the Revenue Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property



6

sold and the Revenue Officer shall, after due inquiry, pass such orders on such application as he deems fit.

43. No resale under Rule 41 shall be made until a fresh proclamation has been published as laid down in Rule 26.

44. On the expiry of thirty days from the date of sale, if no application has been made under Rule 40, 41 or 42 or if such application has been made and rejected, the Revenue Officer shall pass an order confirming the sale :

Provided that, if the Collector has reason to think that the sale ought to be set aside-(i)notwithstanding that no such application has been made; or

(ii)on grounds other than those alleged in any application which has been made and rejected; or

(iii)notwithstanding that a period of thirty days from the date of sale has expired; he may, after recording his reasons in writing, set aside the sale at any time before making an order confirming the sale.

45. (1) If no application under Rule 41 is made within the time allowed therefor, all claims on the grounds of irregularity or mistake shall be barred.

(2) Nothing in sub-rule (1) shall bar the institution of a suit in the Civil Court to set aside a sale on the ground of fraud or on the ground that the arrear for which the property is sold is not due or on the ground that the defaulter had no saleable interest in the property sold.

46. If the sale of any property is set aside under Rule 40, 41, 42 or 44 the amount of purchase money deposited by the purchaser shall be refunded to him

CERTIFICATE OF PURCHASE AND DELIVERY OF POSSESSION

47. If the sale of any immovable property has been confirmed, the Revenue Officer shall grant a certificate to the purchaser specifying the date on which the sale is confirmed, the property sold, and the name of the purchaser and shall put the purchaser in possession of such property.

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(emphasis supplied)

12] A perusal of the aforesaid provisions would clearly reveal that even after the property is sold, within thirty (30) days thereof, any person whose interests



7

are affected, may have the sale set aside firstly, on its depositing certain amount as prescribed under Rule 40 (1), and secondly, if a person desires to challenge the sale as provided under Rule 40, it can still challenge the same under Rule 41, within thirty days from the date of sale to have the sale set aside by filing an application before the Revenue Officer on the ground of material irregularity or mistake in publishing or conducting it. Whereas, under Rule 45(1), it is clearly provided that if any application under Rule 41 is not made within the time allowed therefore, all claims on the grounds of irregularity or mistake shall be barred. Whereas, under Rule 47, the certificate of purchase shall be issued by the Revenue Officer, by confirming the sale and possession delivered.

13] In the light of the aforesaid legal provisions, if this Court considers the chronology of the case, it is found that on 15.7.2010, when the final order was passed by this Court in Writ Petition No.6378/2010, admittedly, the sale had already been concluded and the sale certificate and the consequential sale deed had also been executed.

14] In such circumstances, although this Court had granted the liberty to the petitioner to challenge the same *in accordance with law* however, it certainly could not be challenged under Rule 40 or 41 of the Code, as by that time, much water had already flown as the sale deed had already been executed.

15] In such circumstances, even if a liberty had been granted to the petitioner by this Court in Writ Petition No.6378/2010 dated 15.07.2010, it was incumbent upon the petitioner to challenge the same in accordance with law, and the only option available/left to the petitioners was to file a civil suit as provided under **Rule 45(2) of the Schedule 1** of Code, thus the aforesaid application itself filed by the petitioner under Rule 41 was misconceived.



8

16] On perusal of the order passed by the Additional Collector, it is found that the Additional Collector has not only observed that the order has been passed by his counterpart but, has also held that since the sale deed had already been executed and has attained the finality, hence also the it had no jurisdiction to hear the objection in its revisional jurisdiction which order has also been affirmed by the Additional Commissioner vide its order dated 08.06.2011, and the Board of Revenue vide its impugned order dated 17.06.2017.

17] In the considered opinion of this Court, the aforesaid finding by the Additional Collector is in line with the law prescribed under the Code, in such circumstances, no case for interference is made out.

18] In view of the same, the petition being devoid of merit is hereby *dismissed*.

(SUBODH ABHYANKAR)
JUDGE

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