

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 16241 of 2018

BETWEEN:-

**KAILASH S/O SHRI RAMRATAN, AGED ABOUT 61
YEARS, OCCUPATION: AGRICULTURE VILLAGE
DATANA, TEH. AND DISTT. UJJAIN (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI RAGHAV SHRIVASTAVA-ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH COLLECTOR
INDORE (MADHYA PRADESH)**
- 2. SUB DIVISIONAL OFFICER, THE STATE OF
MADHYA PRADESH UJJAIN (MADHYA PRADESH)**
- 3. TEHSILDAR THE STATE OF MADHYA PRADESH
UJJAIN (MADHYA PRADESH)**
- 4. REGISTRAR OFFICE OF THE COLLECTOR,
COLLECTORATE , UJJAIN (MADHYA PRADESH)**
- 5. MANAGER STATE BANK OF INDIA BRANCH
NARWAR, TEHSIL AND DISTRICT UJJAIN
(MADHYA PRADESH)**
- 6. SHRI RADHESHYAM YADAV S/O SHRI
MOOLCHAND YADAV OCCUPATION: NOT KNOWN
TOTLA NAGAR, INDORE (MADHYA PRADESH)**
- 7. SHRI SUNIL PATEL S/O NOT KNOWN
OCCUPATION: TEHSILDAR PRESENT POSTING
NOT KNOWN (HENCE THROUGH COLLECTOR,
UJJAIN) (MADHYA PRADESH)**

.....RESPONDENTS

(SBY SHRI SUDARSHAN JOSHI- GOVERNMENT ADVOCATE)

(BY RAMESH CHANDRA SINHAL-ADVOCATE/SBI)

This petition coming on for orders this day, the court passed the following:

Heard and reserved on : 21.08.2023
Order pronounced on : 08.09.2023

ORDER

Preliminary

The petitioner has filed the present petition challenging the sale of his land by way of auction proceedings conducted by respondent No.7 in favour of respondent No.6 at the instance of respondent No.5. The petitioner is also seeking cancellation of the sale certificate as well as demanding disciplinary action against the respondent No.7 for sale of his land illegally by way of auction.

The petitioner's case

2- The petitioner is the owner of land bearing survey No.58, 59/1,60/2, 430/1, 431, 609/1, area 2.780, 2.510,0.020, 0.780, 0.840, 0.0920, 0.920, total Keeta 7, total area 6.410 hectare situated at Village Datana, Tehsil a District Ujjain. Out of the aforesaid lands, the petitioner mortgaged the land measuring area 0.150 hectare of survey No.59/1 and 0.780 hectare of survey No.58, total Keeta 2 total 0.930 Hectare with the State Bank of India as a security to get term loan. The term loan Rs. 3,50,000/- was sanctioned by the State Bank of India. Apart from the said term loan, the petitioner also availed the Kisan Credit Card Facility from the State Bank of India amounting Rs.2,00,000/-.

3- Since there was some default/ delay in repayment of EMI, respondent No.5 approached the Tehsildar under the provision of the Madhya Pradesh Lokdhan (Shodhya Rashiyon Ki Wasuli) Adhiniyam,

1987 for recovery of Rs.6,42,000/- with interest. At the time relevant point of time, respondent No.7 was posted as Tehsildar Ujjain. He issued a demand notice to the petitioner on 05.01.2011. The petitioner appeared before the Tehsildar and also deposited the amount of Rs.50,000/- in the loan account and requested further time to deposit the remaining balance amount. The Tehsildar did not stay the proceedings and invited bidders by publishing a notice in the local news dated 28.01.2011 for auctioning the mortgaged land.

4- Respondent No.6 participated in the auction with a cheque of Rs. 9,90,000/- and the sale was knocked down in his favour on 28.02.2011 and the same was confirmed on 31.03.2011. Thereafter, the Sub Divisional Officer vide order dated 02.04.2011 confirmed the sale in favour of respondent No.6.

5- The petitioner paid the balance amount to the State Bank of India on 04.04.2011 and the bank closed the account on 07.04.2011. The certificate issued by the bank is annexed as Annexure P/4 in this petition. The petitioner immediately approached the Tehsildar on 08.04.2011 and submitted the aforesaid certificate i.e. Annexure P/4. Thereafter petitioner filed the Writ Petition No.3606/2011 and the same was disposed of to avail alternate remedy before the Sub Divisional Officer by way of appeal. On 05.05.2011, the petitioner preferred an appeal in which the Sub Divisional Officer passed an interim order directing all the parties including respondent No.7 to maintain the status quo, despite the aforesaid order, he continued with the proceedings and finally closed on 04.06.2011.

6- The appeal filed by the petitioner was allowed vide order dated 30.03.2012 by the Sub Divisional Officer by setting aside the sale of the land with direction to the petitioner to deposit Rs.60,650/-. The petitioner

deposited the said amount vide demand draft dated 04.01.2012. Therefore the liability of the petitioner towards the State Bank of India was satisfied and he was free from debt and liability.

7- Against the cancellation of the sale by the Sub Divisional Officer, respondent No.6 did not prefer any appeal but on the contrary respondent No.7/Tehsildar filed a revision before the Commissioner, Division Indore in a personal capacity. The revision was dismissed on 13.04.2013 for want of prosecution.

8- The petitioner came to know that the Special Police Establishment (Lokayukt) Ujjain also registered a case against respondent No.7 as well as respondent No.6 but no action has been taken to date. The petitioner also approached the Civil Court by way of the suit in order to protect the possession, but the suit was dismissed under Order 7 Rule 11 of C.P.C. on 02.09.2015, thereafter First Appeal was also dismissed vide order dated 16.05.2018. The petitioner specifically submitted that so called sale consideration of Rs. 9,90,000/- which was given in pursuant to the auction sale by respondent No. 6 to respondent No. 7 had never been credited in the bank account. Despite that neither the Tehsildar nor the State Bank of India took steps to cancel the sale deed in favour of respondent No.6, and return the land of the petitioner, hence this petition before this Court.

Reply by the State of M.P.

9- Respondent No.1 to 3 filed a reply by submitting that the petitioner appeared before the Tehsildar on 10.01.2011 and sought time to file a receipt of Rs.50,000/-. The time was given on 17.01.2011, Since the amount was not deposited therefore attachment Warrant was issued. When the entire loan amount was not cleared therefore order dated 02.04.2011 was passed. Respondent No.7 approached the Commissioner and after

dismissal of the revision, he approached the Board of Revenue by revision No.2589/2013 in which the notice was issued on 05.05.2014. The Civil Suit has also been dismissed as not maintainable. Revision is pending, therefore, the Writ Petition is liable to be dismissed.

Reply by State Bank of India

10- The Respondent No.5 bank has also filed a reply brushing aside this matter. It is submitted that against the total dues of Rs.6,65,988/- against the petitioner he had deposited only Rs.6,05,338/- as such the RRC was sent to the Tehsildar to auction a part of the mortgaged land of the petitioner to recover the balance amount who confirmed the sale on 02.04.2011 in favour of the respondent No.6. The petitioner had latter on deposited Rs.60,650/- vide demand draft dated 04.05.2012 and after such deposit, there is no dues against the petitioner. The bank is not concerned with the RRC proceeding undertaken by respondent No.7, since the amount of the bank had already been recovered. The State Bank of India submitted that the amount of Rs.9,90,000/- was given by respondent No.6 to respondent No. 7 . It means it was not received by the bank.

Reply by respondent No.6

11- Respondent no.6 auction/purchaser submitted that the sale was finalized on 02.04.2011 and thereafter the sale deed was executed on 21.04.2011, his name had been mutated in the revenue record and Rin Pustika has been issued to him. He is bonafide purchaser and obtained the possession of the land. He purchased the land at market price, therefore, an auction sale is not illegal. The Civil Suit had been dismissed, thereafter First Appeal had also also dismissed. He was not made party before the Sub Divisional Officer, therefore order dated 30.03.2012 is not binding upon him. The Sub Divisional Officer granted a stay on 05.05.2011 but

before that, the sale had already been finalized on 02.04.2011. He deposited the entire sale consideration of Rs.9,90,000/-by way of cheque with respondent No. 7.

No Reply by respondent No.7

12- Respondent No.7 has not filed any reply till today to controvert the specific allegations against him.

Appreciations & Conclusion

13- None of the respondents disclosed what had happened to the cheque of Rs.9,90,000/- given by respondent No.6 in the auction proceedings. The State Government is not supposed to keep that amount because an auction was undertaken for recovery of the loan amount for the State Bank of India. If the petitioner had deposited the entire loan amount to the bank then Rs.9,90,000/- it ought to have been paid to the petitioner as he had already cleared all the due of the State Bank of India. In compliance of the order dated 19.07.2023, the Bank has submitted a photocopy of the entire loan documents which reveals that the entire loan amount had been paid by the petitioner which was accepted by the State Bank of India. The account had already been closed long back but there is no document to show that amount of Rs.9,90,000/- was given to the Bank by respondent No.7. The State Government was also directed to produce the original record pertaining to the auction proceedings. The Government has filed the certified copy of the document received from Shri Basant Shrivastava the Special Police Establishment (Lokayukt) , Ujjain. It appears that the Special Police Establishment called the entire record in this , after in the year 2011 but till date no enquiry has been conducted.

14- The order passed by the Sub Divisional Officer had attained finality whereby the sale in favour of respondent No.6 was set aside. Respondent

No.6 has not challenged the aforesaid order till date. Respondent No.7 had no locus as well as authority to challenge the order passed by the Sub Divisional Officer by way of Revision or Appeal. The sale in favour of respondent No.6 had already been set aside, therefore sale deed is liable to be declared void. Respondent No.6 has also not filed any document to show that cheque No.281610 dated 28.02.2011(**name of bank is not disclosed**) given by him of Rs.9,90,000/- was credited from his account, therefore there is no such record to establish that Rs.9,90,000/- was paid by the respondent No.6. *Prima facie*, it appears that there was collusion between respondent No.6 and 7 and auction proceedings were finalized hurriedly. This entire matter is liable to be investigated by the Special Police Establishment, hence, Mr. Basant Shrivastav, Inspector, Lokayukt Ujjain is directed to complete the investigation and proceed in accordance with the law within a period of 60 days from the date of service of this order.

15- The sale deed executed in favour of respondent No.6 is declared void as the order passed by the Tehsildar had already been set aside by the Sub Divisional Officer. The conduct of the State Bank of India is not appreciable. For recovery of Rs.60,650/-, that too the petitioner was ready and willing, to deposit the entire land of the petitioner was put to auction. It was not recovery of heavy loan amounts from industrialists and business houses, the petitioner is an agriculturist. The entire loan amount was received, the State Bank of India ought to have been informed and requested the Tehsildar to stop the execution proceeding or should not have given the original document of mortgaged land to respondent No. 7.

16- Writ Petition is allowed with a cost of Rs.50,000/- payable by the respondents jointly severally to the petitioner. The Collector Ujjain is also

directed to conduct the enquiry in respect of the conduct of respondent No.7 and also investigate as to where the amount of Rs.9,90,000/- has gone. The Collector, Ujjain as well as the Special Police Establishment, Ujjain both directed to submit a compliance report before this Court within a period of 60 days from today.

(VIVEK RUSIA)
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