

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

**BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 14TH OF DECEMBER, 2022

WRIT PETITION No. 20186 of 2021

Between :-

**SMT. SANGITA PALOD W/O SHRI
ASHOK PALOD OCCUPATION:
BUSINESS R/O E-1/31, ARERA
COLONY BHOPAL- 462016
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI KAPIL DUGGAL - ADVOCATE)

AND

- 1. AUTHORIZED OFFICER
UNION BANK OF INDIA R/O
REGIONAL OFFICER UNION
BANK BHAWAN FIRST FLOOR
1513/1/1, ARERA HILLS
BHOPAL M.P.**
- 2.a SMT. BRIJLATA
MAHESHWARI W/O LATE
PRAFULLA KUMAR
MAHESHWARI AGED ADULT
R/O E-3/22 ARERA COLONY
BHOPAL - 462016 (MADHYA
PRADESH)**

**2.b SANDEEP MAHESHWARI S/O
LATE PRAFULLA KUMAR
MAHESHWARI, AGED ADULT,
R/O E-3/22 ARERA COLONY
BHOPAL - 462016 (MADHYA
PRADESH)**

**2.c SANJEEV MAHESHWARI S/O
LATE PRAFULLA KUMAR
MAHESHWARI, AGED ADULT
E-3/22 ARERA COLONY
BHOPAL (MADHYA PRADESH)**

**2.d SUMIT MAHESHWARI S/O
LATE PRAFULLA KUMAR
MAHESHWARI E-3/22 ARERA
COLONY BHOPAL (MADHYA
PRADESH)**

.....RESPONDENTS

***SHRI SIDDHARTH SHARMA – ADVOCATE FOR THE RESPONDENT
NO.1.***

***(SHRI RAJESH MAINDIRETTA – ADVOCATE FOR RESPONDENTS
NO. 2(a) to 2(d)***

.....

*This petition coming on for final hearing this day, JUSTICE
SUJOY PAUL passed the following:*

ORDER

This petition filed under Article 227 of the Constitution of India takes exception to the order of Debts Recovery Tribunal (DRT) dated 17.07.2013 (Annexure P-3) passed in S.A. No. 65/2010 and also the order dated 23.09.2019 (Annexure P-5) passed by Debts Recovery Appellate

Tribunal (DRAT) whereby appeal of present petitioner was dismissed by giving stamp of approval to the order of DRT dated 17.07.2013.

2. Shorn off unnecessary details, the admitted facts are that an e-auction notice dated 01.04.2010 was published by respondent No.1 for auctioning the property in question. The petitioner submitted his bid and was declared as successful bidder in the e-auction on 03.05.2010. Petitioner paid Rs.61,11,111/- being an auction purchaser. On 10.05.2010, a sale certificate was executed in favour of the petitioner.

3. The mortgagor / private respondents herein filed S.A No. 65/2010 before the DRT challenging the auction proceedings. The present petitioner was put to notice. After hearing the parties, learned DRT by order dated 17.07.2013, set aside the auction proceedings and directed the Bank to refund the purchase price with interest to the petitioner.

4. Aggrieved, petitioner filed an appeal before DRAT. The other side was put to notice. After hearing the parties, by impugned order dated 23.09.2019 (Annexure P-5) the learned DRAT dismissed the appeal and affirmed the order of learned DRT.

5. The petitioner has filed this petition praying for setting aside of both the orders passed by DRT and DRAT respectively and in addition, prayed for setting aside the notice dated 19.07.2021 sent by the Bank with further direction to the Bank to reimburse the amount of Rs.68,48,906/- to the petitioner at FDR rate prevailing as on 10.05.2010. Lastly, petitioner has prayed for grant of compensation to the tune of Rs.1,00,000/- and cost of this litigation.

Contention of Petitioner :

6. Shri Kapil Duggal, learned counsel for the petitioner submits that a plain reading of order of learned DRT dated 17.07.2013 shows that the DRT interfered with auction proceedings on the following grounds -

- “(i) Possession notice and ‘sale notice’ were issued cumulatively or in a composite manner whereas as per opinion of the DRT both should have been separately issued.
- (ii) Bank did not produce valuation report on record.”

7. The learned counsel for the petitioner strenuously contended that no doubt, possession notice was required to be issued as per Rule 8 of the **Security Interest (Enforcement) Rules, 2002 (2002 Rules)** whereas sale notice was required to be separately issued under Rule 9 of the said Rules and issuance of two separate notices may be a statutory requirement, the mortgagor who complained before the DRT that two separate notices were not issued and only one composite notice was issued, was required to plead and prove as to what prejudice is caused to him if a composite notice was issued and two separate statutory notices as envisaged in Rule 8 and Rule 9 were not issued. In absence thereof, the learned DRT has mechanically interfered with the auction proceedings which is bad in law.

8. The Appellate Tribunal has committed similar error and did not deal with the aforesaid aspect. In support of his submission, Shri Duggal, learned counsel for the petitioner placed reliance on the judgment of Supreme Court in **L & T Housing Finance Limited Vs. Trishul**

Developers and Anr. (2020) 10 SCC 659 (Annexure-P/10). It is contended that if a composite notice was issued, the minimum expectation from the mortgagor was to show what substantial prejudice is caused to him by such an action of auction by the Bank. Both the Tribunals have miserably failed to consider this aspect and therefore both the orders have become vulnerable and deserve to be interfered with. It is argued that alternative prayer is regarding refund of purchase price along with compensation, interest and cost.

9. To bolster this submission, the attention of this Court is drawn to the order of DRT wherein learned Tribunal directed to refund the purchase price with interest within a period of 30 days. It is urged that Bank understood this order in a very unique manner thereby opined that petitioner is entitled to get interest up to 30 days only from the date of passing of the order by learned DRT. This runs contrary to the order of DRT, affirmed by DRAT.

10. Shri Duggal has taken pains to take us to various representations/legal notices whereby petitioner prayed for refund of purchase price with interest etc. In support of this submission, he placed reliance on a judgment of Calcutta High Court in **M/s. Frieghtco India Ltd. & Anr. Vs. Bank of Baroda and Anr. (2016) SCC OnLine Cal 8544 (Annexure-P/11)**. In the light of this, it is urged that the petitioner is entitled to get interest till date. Moreso, when order of DRT and DRAT for payment of interest has not been interfered with by any appropriate forum.

Stand of Bank :

11. Shri Siddharth Sharma, learned counsel for the respondent No.1/Bank and Shri Rajesh Maindiretta, learned counsel for the private respondents/mortgagors urged that there is no illegality or infirmity in the impugned orders passed by learned DRT and DRAT which warrants interference by this Court under Article 227 of the constitution of India.

12. Shri Siddharth Sharma, learned counsel for the bank submits that once auction/sale is set aside by the DRT which was affirmed by DRAT, in all fairness, the petitioners should have returned the sale certificate to the Bank to enable the Bank to repay the amount of purchase price. A series of letters / notices were exchanged between the petitioner and the Bank but stand of the petitioner is to either pay the purchase price in advance or undertake the exercise of returning the sale certificate and the refund of purchase price simultaneously.

13. Shri Sharma submits that petitioner is not a *bona fide* litigant. On the one hand, he prayed for certain reliefs without making it clear about any 'alternative relief' and on the other hand he did not return the property and is still in possession of the property/land in question. Along with return, the Bank has filed Annexure- R1/2 which are photographs of the land in question which shows that crop is standing on the said land. The petitioner is taking benefit and earning profit from the said land and on the other hand asking for refund of purchase price with interest and compensation. It is urged that if petitioner would have returned the sale certificate and would have completed the formalities in 2013 itself, Bank certainly would have paid him back the purchase amount and interest etc.

In view of the aforesaid conduct of the petitioner, she is not entitled for interest and compensation.

Stand of private respondents :

14. Shri Rajesh Maindirecta, learned counsel for the private respondents borrowed the same argument regarding inconsistency in the relief clause of the petition and in addition, drew the attention of this Court on certain correspondences filed with the return. The reply given by the petitioner's counsel to the legal notice of the Bank dated 04.08.2021 (Annexure- P/9) is heavily relied upon to submit that it is a unique stand of petitioner whereby she has shown her readiness and willingness to return the original title deeds and other documents and is further ready to execute appropriate deed/agreement in sale of sale certificate as soon as outstanding amount is returned to the petitioner. Thus, it is common stand by both the counsel for the respondents that petitioner's conduct is peculiar and cannot be said to be *bonafide* in nature.

15. The parties confined their arguments to the extent indicated above.

16. We have bestowed out anxious consideration on rival contentions and perused the record.

The order of DRT and 'prejudice' -

17. Pertinently, it is not the stand of Shri Kapil Duggal, learned counsel for the petitioner that there is no statutory requirement of issuance of two separate notices for possession and sale as per Rule-8 and 9 of Rules of 2002. His bone of contention is that although a composite notice of

possession and sale was issued, in absence of pleadings showing prejudice, the DRT should not have interfered with the matter. Thus, it is to be seen whether there exists any pleading in this regard in the SA filed by the private respondents/mortgagors before the DRT.

18. In SA No. 65/2010 the applicants therein averred as under:-

“20. For, that the respondent Bank is deliberately trying to sell the aforesaid properties on a throw away price so that it could lay its hands over the other secured assets available to them;

21. For, that the entire action of the respondent Bank is contrary to the provisions as contained under the Act of 2002 and the Rules framed thereunder;

22. For, that the respondent Bank has simultaneously taken the measure under Section 13(4) of the Act of 2002 and also along with it has put the secured assets to auction thereby depriving the applicant his valuable right to approach the Hon’ble Tribunal against the measures taken under Section 13(4) of the Act as has been provided under Section 17 of the Act of 2002.”

(Emphasis Supplied)

19. A conjoint reading of these paragraphs, makes it clear that the applicants therein not only have assailed the illegal action of the Bank in issuing the composite notice, they pleaded in specific regarding the ‘prejudice’ being caused to them. Thus, we are unable to hold that there existed no pleading/foundation regarding ‘prejudice’ before the Tribunal. Thus, no fault can be found in the order of DRT on this count.

DRAT's Order :

20. The DRAT's order is called in question on the ground that learned Appellate Tribunal failed to see the element of existence of 'prejudice' and failed to interfere with the order of DRT. On a specific query from the Bench whether there exists any such pleading in the appeal memo filed by petitioner before the DRAT, Shri Duggal submits that its a pure question of law which can be raised for the first time before this Court. In addition, he drew attention of this court on the following grounds from the appeal memo filed before DRAT:

D. Because the Tribunal below has incorrectly held that a single notice of possession cum sale without publishing a notice under rule 8(2) after taking possession of the property is mandatory.

E. Because the Tribunal below has incorrectly held that a separate auction notice should have been published by the Bank.

F. Because the Tribunal below has incorrectly held that no valuation report has been filed/produced by the Bank to so that the property properly valued.

G. Because the Tribunal below has incorrectly set aside the possession and auction notice.

H. Because the Tribunal below has erred in law in not guarantying the refund of the money by the auction amount deposited the appellant along with the stamp duty and other expenses incurred by the appellant in executing the sale deed."

(Emphasis Supplied)

21. A microscopic reading of these grounds makes it clear that petitioner has not raised the question of existence of 'substantial

prejudice' at all. Indeed, the petitioner has challenged the order of DRT by contending that it was incorrectly held by it that separate auction and sale notices were required to be issued. In our opinion, there is no iota of pleading in the appeal memo to throw light regarding absence of substantial prejudice before the DRT. As noticed above, in our opinion, the applicants/borrowers before the DRT raised necessary pleadings, regarding illegality in issuing composite notice and also prejudice being caused to them. Thus, we find no infirmity in the impugned order of DRAT whereby order of learned DRT was affirmed. Since mortgagor categorically pleaded regarding violation of statutory provisions and impact of such violation on him, in our view, he has shown 'substantial prejudice' with sufficient details before the DRT. Thus, the judgment of **M/s. Frieghtco India Ltd. (Supra)** is of no assistance to the petitioner.

Claim of Compensation-

22. The learned DRAT by impugned order dated 17.03.2013 Annexure- P/3 only directed refund of sale price with interest. No compensation was directed to be paid. On a question being asked, Shri Kapil Duggal, learned counsel for the petitioner drew attention of this court on the relief claimed before the DRAT. The relief clause reads as under-

- “1. The entire record in respect of the S.A.No.65/2010 – Prafulla Kumar Maheshwari vs. Authorized Officer, Union Bank of India and another before Presiding Officer, DRT, Jabalpur be summoned;
2. The impugned judgment dated 17/07/2013 passed by Presiding Officer, Debts Recovery

Tribunal, Jabalpur in S.A. No.65/2010 – Prafulla Kumar Maheshwari vs. Authorized Officer Union Bank of India and Another be set aside.

3. Award cost of the appeal to the appellant.

4. Any other direction or order in addition to and/or in substitution of what has been prayed above as may be found expedient in the facts and circumstances of the case.”

(Emphasis Supplied)

23. The petitioner has not prayed for grant of any compensation in the relief clause before the DRAT. We are unable to persuade ourselves with the line of argument of Shri Duggal, Advocate that if the relief clause 6(4) is read with other grounds it leads to a claim of compensation. The compensation in our view cannot be granted on mere asking. In absence of any specific prayer for grant of compensation before learned DRT, there was no occasion for the DRAT to examine the claim for compensation. Hence, no fault can be found in the impugned order of DRAT.

24. Interestingly, the petitioner even did not pray for grant of compensation before DRAT. Grant of compensation depends of various factors. Thus, a claim relating to compensation must be set out with accuracy and precision in the pleadings and must be followed by a specific relief claimed in the relief clause. In absence thereof, the question of grant of compensation does not arise. In **2013(5) SCC 470 (Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond & Gem Development Corporation Limited and Anr.)** it was held that :

“22. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous.”

(Emphasis Supplied)

The *ratio* of this judgment is equally applicable for DRAT as well.

Refund of purchase price and interest :

25. The next question is regarding refund of purchase price and the interest on delayed payment. Indisputably, learned DRT directed to refund the said amount along with interest to the petitioner within a period of one month. The petitioner assailed the order of learned DRT before the learned appellate forum. In between, as seen above, there was series of exchange of legal notices and responses between the petitioner and the Bank. One such final notice sent by the petitioner dated 18.03.2021 is filed as Annexure P/6. The Bank, in turn, sent another notice dated 19.07.2021 Annexure P/8 to the petitioner. Petitioner sent his response through his Advocate on 04.08.2021. In paragraph 11 of this reply, it is averred as under:-

“11. It is clarified that as soon as the outstanding amount is returned to my client by the Bank (as ordered by the Hon’ble DRT & DRAT), my client is ready and willing to return the original title deed and other documents forthwith, and shall be ready and

willing to execute appropriate deed / agreement for cancellation of the sale certificate (without prejudice to her rights to challenge the orders of Hon'ble DRT and DRAT) if so required by the Bank.”

(Emphasis supplied)

26. As noticed above, petitioner and the Bank are at loggerheads on the question of refund of purchase price and interest. The stand of Bank is that once the auction/ sale is set-aside, petitioner in all fairness should have returned the sale certificate to the Bank to enable the Bank to refund the purchase price whereas the stand of the petitioner is that Bank should first refund the amount to enable the petitioner to return the sale certificate. To this extent, in our opinion, it is an avoidable piece of litigation. We find substance in the argument of leaned counsel for the Bank that once the auction is set aside, the petitioner in order to show his *bonafides* should have returned the sale certificate to the Bank to enable the Bank to refund the purchase price. Had it been done by the petitioner within 30 days from the order of DRAT, even under protest, the Bank would have refunded the purchase price and would have paid interest arising thereto.

27. In paragraphs Nos. 7 and 8 of the return dated 25.11.2021, the respondent-Bank has categorically pleaded that petitioner is taking commercial advantage of subject property and in support thereof filed photographs (Annexure R-1/2). There is no categorical denial of this pleading in the rejoinder filed by petitioner. On the contrary in the rejoinder it is pleaded in paragraph-11 that Bank has failed to point out

how it is aggrieved by the alleged enjoyment of fruits/ usufructs out of the said property.

28. In this view of the matter, the twin questions needs to be answered are :

- (1) Whether the petitioner is entitled to get refund of the purchase price ?
- (2) whether the petitioner is entitled to get interest whereupon ?

As to question No. 1.

29. The order of DRT and DRAT have not been interfered with by us. In the light of said orders and when the auction proceeding is set-aside, the Bank cannot shirk from its liability to repay the purchase price to the petitioner. However, for this, the petitioner must return the sale certificate and other relevant documents to the Bank. Petitioner is also required to handover the possession of the property in question to the Bank. We are only inclined to observe that if the petitioner undertakes aforesaid exercise, it will be lawful for the Bank to return purchase price to the petitioner within 30 days from the date of completion of said exercise.

As to question No. 2.

30. Learned DRT directed to pay the interest within a period of 30 days. On this basis, it was contended before us by Shri Duggal, learned counsel for the petitioner that petitioner is entitled to get interest till date. Technically speaking, there is no flaw in this argument. However, the factual backdrop of this matter shows that after having lost the matter

before the DRAT, the petitioner sent a legal notice to the Bank requesting refund of purchase amount. In turn, Bank by communication dated 16.08.2013 (mentioned in para-05 of Annexure P-8) directed the petitioner to return the sale certificate to enable the bank to refund the amount. The petitioner ought to have returned the said sale certificate to show his *bonafides*. Petitioner not only declined to do so and took an unreasonable stand that first purchase amount should be refunded back to him then only he will return the sale certificate. In addition, petitioner did not handover possession of land and continued to reap the benefits from the land in question which is evident from finding given in para-27 of this order. Thus, in our opinion, the claim of interest till date is not justifiable. The petitioner cannot claim benefit based on his own wrong. Reference may be made to **2011(6) SCC 125 (Humanity and another Vs. State of West Bengal and others)** where the Court held that :

“It is axiomatic that to achieve a *bona-fide* end the means must also justify the end. *Bona-fide* ends cannot be achieved by questionable means, specially when State is involved.” (Para-43).

31. The Apex Court in **2012 (9) SCC 310 (Bhartiya Seva Samaj Trust Through President and Anr. Vs. Yogesh Bhai Ambalal Patel and Anr)** opined as under:-

“28. A person alleging his own infamy cannot be heard at any forum, what to talk of a writ court, as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. (Vide G.S. Lamba v. Union of India [(1985) 2 SCC 604 : 1985

SCC (L&S) 491 : AIR 1985 SC 1019] , Narender Chadha v. Union of India [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] , Molly Joseph v. George Sebastian [(1996) 6 SCC 337 : AIR 1997 SC 109] , Jose v. Alice [(1996) 6 SCC 337 at 342 (connected case)] and T. Srinivasan v. T. Varalakshmi [(1998) 3 SCC 112] .) This concept is also explained by the legal maxims *commodum ex injuria sua non habere debet* and *nullus commodum capere potest de injuria sua propria*. (See also *Eureka Forbes Ltd. v. Allahabad Bank* [(2010) 6 SCC 193 : (2010) 2 SCC (Civ) 627] and *Inderjit Singh Grewal v. State of Punjab* [(2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614]”

(Emphasis Supplied)

32. The legal maxim *allegans suam turpitudinem non est audiendus* and judgment of **Bhartiya Seva Samaj (Supra)** were again considered by the Supreme Court in **2014(1) SCC 648 (Oil and Natural Gas Corporation Ltd. VS. Modern Construction and Company)**. It was ruled as under :-

“21. Thus, the respondent cannot take the benefit of its own mistake. The respondent instituted the suit in the civil court at Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint in view of the provisions of Order 7 Rule 10 CPC. Thus, the respondent presented the plaint before the civil court at Surat on 3-2-1999.”

(Emphasis Supplied)

33. In view of *ratio decidendi* of these judgments, in our considered opinion, the petitioner is not entitled to enjoy the benefit of interest from the date Bank expressed its willingness to refund the purchase price by communication dated 16.08.2013 but petitioner did not agree to return the sale certificate. In other words, petitioner shall be entitled to get interest only till 16.08.2013, the date when Bank directed him to return the sale certificate / documents. To this extent only petitioner deserves to succeed. So far as judgment of Calcutta High Court in **M/s. Frieghtco India Ltd. (Supra)** is concerned, suffice it to say that the *bona fide* of petitioner therein was not in question. Thus, the said judgment cannot be pressed into service.

34. In view of foregoing analysis, the impugned order of DRT and DRAT are affirmed. If petitioner fulfills the direction as contained in para-29 of this order, the bank shall refund the purchase price along with interest to the extent and up to the date indicated hereinabove.

35. Petition is **partly allowed**.

(SUJOY PAUL)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE