

2022 Livelaw (Del) 263

IN THE HIGH COURT OF DELHI AT NEW DELHI

VIPIN SANGHI; ACJ, NAVIN CHAWLA; J.

W.P.(CRL) 2383/2021; 25.03.2022

SH ANKUR GUPTA versus THE UNION OF INDIA AND ORS.

Summary: The High court imposed Rs. 1 lakh as cost on the litigant for filing a frivolous PIL with the objective of obstructing the sale of a property that was mortgaged by the borrowers (two private developers) with a financial institution to secure their loan. The Petitioner had sought action against the financial institution for allegedly sourcing huge amount of money to the illegal group of companies as financial favour. However, during the hearing, the Court noted that the petitioner questioned the manner in which the mortgaged asset was sold by the Financial Institution to recover the loan. A similar challenge to the auction sale of the mortgaged asset at the behest of the borrowers had already failed.

Petitioner Through: Mr. M. S. Khan and Ms. Affifa Atiq, Advocates.

Respondent Through: Mr. Ravi Prakash, CGSC with Ms. Shruti Shivkumar, Advocate for respondent/ UOI. Mr. Amit Mahajan, CGSC. Mr. Amit Mahajan, CGSC with Mr. Kritagya Kumar Kait, Advocate for respondent/ ED. Mr. Amit Singh Chadha, Senior Advocate with Ms. Sonakshi, Advocate for respondent R-13/ IIFL. Mr. Ruchir Bhatia and Mr. Shlok Chandra, Advocates for respondent/ IT Department. Mr. Karunesh Tandon and Mr. Rahul Chauhan, Advocate for respondent Nos. 16 & 17. Mr. Anil Kumar, Junior Assistant, O/o Sub-Registrar IV-B, Vivek Vihar.

ORDER

1. The present petition has been preferred to seek the following reliefs:-

“(i) ISSUE WRIT IN THE NATURE OF MANDAMUS WITH COMMANDS TO THE RESPONDENTS NO. 1 to 7; TO TAKE NECESSARY LEGAL STEPS / ACTION AGAINST THE FINANCIAL INSTITUTION / COMPANIES FOR SOURCING HUGE AMOUNT OF MONEY TO THE ILLEGAL GROUP OF COMPANIES AS FINANCIAL FAVOUR.

(ii) ISSUE WRIT IN THE NATURE OF MANDAMUS WITH APPROPRIATE DIRECTIONS TO RESPONDENT NO.1 TO 7 TO TAKE ACTION AGAINST THE ILLEGAL GROUP OF COMPANIES / INDIVIDUALS i.e. RESPONDENT NO. 8 TO 19 WHO HAVE SIPHONED OFF AND SWINDLED HUGE AMOUNT OF MONEY OR ARE ACCESSORY IN SWINDLING OF THE MONEY BY ILLEGAL MEANS.

(iii) APPROPRIATE WRIT WITH REQUIRED DIRECTIONS TO THE RESPONDENTS NO.1 TO 7 TO TAKE IMMEDIATE ACTION, AS CONTEMPLATED UNDER LAW, AGAINST ERRING PERSONS / OFFICIALS / OFFICERS / PUBLIC SERVANTS ETC WHO CONNIVED IN THE ABOVE MENTIONED FRAUDULENT TRANSACTIONS.”

2. The aforesaid reliefs have been sought in relation to the advancement of loan by respondent No. 13/ Financial Institution, namely, India Infoline Finance Limited (IIFL) to M/s AVJ Developers (India) Private Limited and M/s Best View Properties Limited.

3. We may notice that these borrowers have not been made parties in these proceedings.
4. Though a perusal of the prayers made in the writ petition gives the impression that the petitioner, in public interest, is challenging the manner in which the loans were disbursed to the borrowers and seeks investigation of the said transactions, learned counsel for the petitioner – while arguing the present petition, has advanced his submissions questioning the manner in which the mortgaged asset was sold under the SARFAESI Act by the Financial Institution.
5. Mr. Chadha– who appears for the Financial Institution, has drawn our attention to the order dated 09.01.2020 passed by the Debts Recovery Tribunal – II, Delhi in S. A. No. 175/2018 . The challenge to the same auction sale of the mortgaged asset at the behest of the borrowers has already failed.
6. Firstly, we fail to appreciate as to how the petitioner can raise any grievance in relation to the said sale transaction, which has been undertaken through a public sale. The petitioner’s submission that the property was sold at a price lower than the market price, cannot be accepted since the sale was a public sale through a public auction. In any event, that is a matter which does not concern the petitioner, and the borrowers have already challenged and lost the said challenge. Moreover, we are informed that the sale has already been confirmed.
7. Mr. Chadha has also pointed out that in relation to the outstanding loan amount, the petitioner has already filed its claim before the NCLT, since the borrower company is facing insolvency proceedings.
8. In our view, this petition is nothing but a motivated exercise undertaken by the petitioner at the behest of the borrowers after they have failed to obstruct the sale of the property. It appears that the petitioner has now been set up by them. Though the prayers made in the writ petition seek to assail the loan transaction by which loans were advanced to the said borrowers, the submissions of the petitioner relate to the manner in which the Financial Institution has sought to make recovery of a part of the loaned amount by publicly auctioning the asset of the borrowers which was mortgaged to secure the loan.
9. After advancement of his submissions, the petitioner sought leave to withdraw the writ petition, but we have not acceded to this request since we find that this petition is wholly motivated.
10. We, therefore, dismiss this petition with costs quantified at Rs. 1 Lakh to be deposited by the petitioner within 2 weeks with the Delhi State Legal Services Authority.
11. We may notice that the petitioner has preferred another writ petition being W.P.(C) No. 1793/2020 which is also listed today. The petitioner shall ensure that the receipt of deposit of costs is placed on the record of the said writ petition before the next date.