

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.174 of 1992

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Present: Mr. Justice Nazar Akbar

**Chaudhry Muhammad Nabi
and others Applicants : through Mr. Khalid Lateef, advocate.**

Mst. Battullan and others
Respondents : **through Mr.Shah Maqsood Ahmed,**
advocate (absent)

Date of hearing : 16.02.2016

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **31.5.1992** passed by IVth Additional District Judge, (South) Karachi in Civil Appeal No.391/1978, dismissing the appeal filed by the applicants against the judgment and decree dated **23.7.1978** in favour of respondents No.1 to 10 in suit No.1070/1996 passed by IVth Sr. Civil Judge, South, Karachi.

2. Briefly stated, the facts of this case are that the applicants before this court are auction purchaser of the property bearing Plot No.BR 2/2 known as Tikamdas Building situated at Newnham Road, Karachi. The auction was held by KMC. The Respondents had challenged the auction even before it could be finalized. However, KMC did not stop it and completed the auction proceeding whereby after realizing a sum of Rs.1,51,000/- issue even sale certificate dated **17.5.1967** in favour of the applicants. The Respondents No.1 to 10 in their suit have prayed as follows:-

a) That the Plaintiffs be declared the allottees of the building known as Tikamdass Building situated at New Neham Road Karachi to the extent of their respective share alongwith co-Defendants.

- b) That the auction of the said building on 28th June, 1966, by the Defendant No.1 to the Defendants No.2 to 11 be declared in operative, null and void in law.
- c) That the Defendant be restrained by permanent injunction not to interfere with the rights of Plaintiffs to the said building in respect of their shares.
- d) That any other relief which under circumstances of the case the court may deem fit kindly be granted to the Plaintiffs against the Defendants.

3. The basic objections by the respondents in their suit to the auction was that the property did not belong to KMC and they are the old transferee of as many as 19 different portions of the buildings from the Settlement Department as the property originally belong to the Settlement Department. It was also the claim of the Plaintiff that the building was provisionally transferred to the Defendants No.1 to 10 and co-Defendants by virtue of their claim as displaced persons. The building was purchased by the respondents in earlier auction in the sum of Rs.2,55,000/- and have major share in the building whereas the KMC has surreptitious auctioned the same for an amount of Rs.104,000/- less than its original purchase price and illegally. The respondents No.1 to 10 have also informed the then Chairman KMC about aforesaid position before the auction of the suit building. The KMC (Respondent No.19) had filed written statement and in para-1 admitted contents of the plaint that that Respondents No.1 to 10 on **26.8.1958** has purchased the said building from Settlement Department, Government of Pakistan and provisionally it was transferred to them. The trial court From the pleadings of the parties framed the following issues.

- i. Whether the suit and jurisdiction of this Hon'ble Court is barred by virtue of Section 4 & 9 CPC read with section 119 of the Municipal Administration Ordinance 1960 and Appeal Rules and Recovery Rules?
- ii. Whether the suit is not maintainable under section 56 of the Specific Relief Act?
- iii. Whether the Hon'ble Court has got no pecuniary jurisdiction to try the suits?
- iv. Whether the Plaintiff have undervalued the suit?

- v. Whether the suit as framed is not maintainable?
- vi. Whether the Plaintiffs are the provisional transferee of the disputed property?
- vii. Whether the ownership of the disputed property still vest in the control Govt. (Custodian)? If so, its effect?
- viii. Whether there is material irregularity in the auction proceedings?
- ix. Whether the Plaintiff managed to get the auction notices proclamation of sale returned undelivered by the postal department?
- x. To what relief the Plaintiffs are entitled?

4. All the issues were decided in favour of the applicants on the basis of evidence and KMC did not challenge the judgment and decree though KMC has auctioned the suit property. Only Auction Purchaser filed Civil Appeal No.391/1978 which was dismissed by judgment dated **31.5.1992**. The auction purchaser has preferred this revision against the concurrent findings. Only issue No.VIII above was concerning the auction purchaser.

5. Heard the learned counsel for the applicants, his only contention was that he was bonafide auction purchaser and he has made entire payment in terms of the auction proceeding within time. However, he had not contested that the findings of facts of the trial court were a result of any misreading and non-reading of evidence. I have gone through the findings of the trial court on the relevant issue regarding auction of the property. In the first place once the Respondent No.19 (KMC) who has auctioned the suit property admitted in written statement that the Respondent No.1 to 10 / Plaintiff and co-Defendants in August 1959 has purchased the suit property from the Settlement Department, Government of Pakistan and that it was provisionally transferred to them and how KMC has right to auction the suit property. Not only this the manner and method in which the auction proceeding were conducted has been discussed by the two courts below and ample evidence has come on record that auction proceedings was marred by irregularities which include

amongst other, the auction within 09 days from the date of publication of auction proclamation. It was material irregularly, therefore, the applicants/auction purchaser had not acquired any bonafide rights. Learned counsel for the applicant had no answered to the proposition that KMC by not challenging the findings on main issue then what rights was passed on to the applicant to challenged it. After all he claimed to have developed interest / right in the suit property through KMC.

6. The revision application was dismissed by short order dated 16.2.2016 with no order as to costs and these are reasons for the same.

JUDGE

Karachi
Dated:14.3.2016

SM