

SUPREME COURT OF INDIA

Yogesh Mehta

Vs.

Custodian Appointed Under the Special Court

C.A.No.4513 of 2006

(S.B. Sinha and Markandey Katju JJ.)

04.01.2007

JUDGMENT

S.B.Sinha, J:

1. Introduction :

2. Application of terms and conditions of sale of properties in terms of the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short, 'the Act') is in question in these appeals which arise out of the judgments and orders dated 22.06.2006, 31.07.2006 and 23.06.2006 passed by the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay in Intervention Application No.131 of 2006 filed in Misc. Petition No. 4 of 2001, Report No. 12 of 2006 in Misc. Application No.131 of 2006; and Misc. Petition No.41 of 1999 respectively. Before advertent to the questions as also the fact involved in each of these matters, we may at the outset notice that one Harshad Mehta was a person notified under the Act. The private respondents herein being his relatives were also notified (hereinafter referred to as 'the notified parties').

3. Apart from late Harshad S. Mehta, the Custodian had notified 29 entities in terms of Section 3 of the said Act, inter alia, comprising three of his younger brothers, his wife, wives of two of his younger brothers.

4. In the proceedings initiated before the Special Court various applications were filed. Properties belonging to the said late Harshad S.

5. Mehta or other notified entities were put on auction. The auctioned properties comprised of commercial as also the residential ones. The residential properties, inter alia, were situate at Madhuli.

6. Order of this Court :

7. Notified parties questioned the validity and/or legality of the said auction sales. They ultimately came to this Court. Whereas auction sales in respect of the commercial properties were allowed to be completed by orders passed by this Court from time to time, the auction sale in respect of the residential properties was the subject-matter of the judgment of this Court in *Ashwin S. Mehta and Another v. Custodian and Others*¹ wherein, inter alia, it was directed :

"(viii) The learned Judge, Special Court shall allow the parties to make brief oral submissions which pointed reference to their written submissions. Such hearing in the peculiar facts and circumstances of this case should continue from day to day.

(ix) The learned Judge, Special Court while hearing the matter in terms of this order shall also consider as to whether the auction sale should be confirmed or not. It will also be open to the learned Judge, Special Court to pass an interim order or orders, as it may think fit and proper, in the event any occasion arises therefor.

(x) We would, however, request the learned Special Judge, Special Court to complete the hearings of the matter, keeping in view of the fact that auction sale in respect of the residential premises is being considered, as expeditiously as possible and not later than twelve weeks from the date of the receipt of the copy of this order. Save and except for sufficient or cogent reasons, the learned Judge shall not grant any adjournment to either of the parties.

(xi) The learned Judge, Special Court shall take up the matter relating to confirmation of the auction sale in respect of the commercial properties immediately and pass an appropriate order thereupon within four weeks from the date of receipt of copy of this order. If in the meanwhile, the orders of assessment are passed by the Income Tax Authorities, the Custodian shall be at liberty to bring the same to the notice of the learned Special Court which shall also be taken into consideration by the learned Judge, Special Court." Order of the Special Court : Pursuant to or in furtherance of the said directions, the question as to whether the auction sale should be confirmed or not came up for consideration before the learned Judge, Special Court. By reason of the impugned order dated 22.06.2006 passed in Intervention Application No. 131 of 2006 in Misc. Petition No. 4 of 2001, it was held that the as the auction purchaser had not deposited the balance amount within the period stipulated under the terms and conditions of the auction, the earnest money deposited by the bidder was to be forfeited. By reason of the impugned order dated 23.06.2006 passed in Misc. Petition No. 41 of 1999, with the consent of the Custodian and the notified parties, a fresh auction sale was directed to be held."

8. Terms and Conditions of Sales : In the aforementioned backdrop of events, we may notice the relevant terms and conditions of sale :

"3. The offers should be submitted in a sealed envelope superscribed with the words "Bid for sale in respect of Residential Flats/Office Premises (mention the name of the property)".

There shall be only one consolidated bid in respect of each of the following properties a) Maduli; b) Khar; c) Guru Krupa. In respect of other properties, single bid for a particular flat / property or combined bid for more than one flat / property is permitted; however, in such cases, the earnest money for consolidated bid would be 2% of the bid amount otherwise, the earnest money to be deposited for each property shall be as mentioned against respective property in the schedule.

Separate tender form and Agreement will have to be submitted for each bid property.

4. The offers should reach at the office of the Custodian at 10th floor, Nariman Bhawan, 227 Vinay K. Shah Marg, Nariman Point, Mumbai-400 021 by 2.00 p.m. on the dates specified for each property described in the schedule written hereunder along with Demand Draft / Banker's cheque / Pay Order of a Public Sector Bank in favour of the Custodian, the Special Court payable at Mumbai towards earnest money for participating in the said auction for purchase of Residential Flats / Office Premises as indicated in the schedule written hereunder. This amount of earnest money will not carry any interest whatsoever.

9. If any dispute arises as to the last or highest bidding, the said property shall be again put up for sale at the last undisputed bidding and be resold at the discretion of the Custodian subject to the confirmation by the Special Court.

10. The sale is subject to sanction of the Hon'ble Special Court at Mumbai in the above case. The Court reserves the right to accept or reject any or all offers without assigning any reasons. The Court shall not be responsible in any way for not accepting any or all the offers received by the Custodian.

Judgment Referred.

¹(2006) 2 SCC 0385