2025 INSC 1161

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11269 OF 2016

DELHI DEVELOPMENT AUTHORITY ... APPELLANT

Versus

CORPORATION BANK & ORS. ... RESPONDENTS

J U D G M E N T

ALOK ARADHE, J.

1. This appeal emanates from an order dated 11.08.2014 passed in Writ Petition (C) No. 5005 of 2014 by which High Court of Delhi has dismissed the writ petition preferred by the appellant.

The present appeal brings before this Court a contest not merely of rights but of duties - the duty of the lessee to honour the covenants of the lease, the duty of a bank to exercise due diligence before advancing public money and the duty of an instrumentality of the state, as trustee of public property, to guard against encroachment upon its title. It also brings before us the plight of an Auction

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Purchaser who entered the field in good faith only to find the ground beneath its feet unstable.

2. The relevant facts leading to filing of this appeal are as under:-

(i) FACTS: -

3. The Delhi Development Authority-the Appellant (hereinafter referred to as "DDA") on 01.10.2001 allotted Plot No. 25, Facility Centre-33 Kalindi Kunj Road, Jasola, New Delhi admeasuring 877.50 square metres (hereinafter referred to as "subject plot") to Respondent No. 2 namely, Sarita Vihar Club (hereinafter referred to as "the club") on leasehold basis. The subject plot was allotted to the club on a premium of Rs.62,96,664/- for construction of a recreational and sports club. The club was required to pay a provisional premium, in respect of subject plot, at the rate of Rs.2,90,40,000/- per acre with annual ground rent at the rate of Rs. 2.5 % per annum of the total premium. As per the letter of allotment dated 01.10.2001, the club, with previous consent in writing of the Lieutenant Governor of Delhi, could mortgage or charge the subject plot to such

person as may be approved by the Lieutenant Governor in his absolute discretion.

4. The club on 28.11.2001 deposited a sum of Rs.29,50,000/- to the DDA. It appears that the club applied for sanction of loan for a sum of Rs.35,00,000/- to Respondent No. 1 namely, the Corporation Bank (hereinafter referred to as the "Bank"). The Bank thereafter by a communication dated 07.02.2002 informed the club that the proposal of sanction of loan is being forwarded to the higher authorities for consideration and requested the club to seek a permission for mortgaging the subject plot from the DDA. The club vide communication dated 11.02.2002, sought the permission of the DDA for mortgaging the subject plot for arranging the balance payment. The DDA, by a communication dated 22.02.2002, granted NOC to the club for applying loan to the Bank for making payment to the DDA, on account of the premium of the plot subject to the condition that permission for mortgage of the plot shall be issued only after execution/registration of the lease deed. The Bank thereafter by a communication dated 22.03.2002 sought the permission of the DDA for mortgage of the subject plot

and to note lien of the Bank on the subject plot. The club on 12.04.2002 deposited an additional amount of Rs.2,05,000/- to the DDA which included the interest on the delayed payment as well. Thereupon DDA on 29.04.2002 issued a modified letter of allotment in favour of the club and the amount of initial premium of Rs.64,53,107/- was modified to Rs.64,54,126/-.

5. A perpetual lease deed in respect of subject plot was executed on 28.01.2005 between the DDA and the club. Clause 5(b) of the lease deed provided that previous consent in writing of Lieutenant Governor of Delhi for mortgage or charge of the subject plot was necessary. Clause (6) deals with DDA's right to recover an unearned increase and pre-emptive right to purchase the subject plot. The club was under an obligation to complete the construction within a period of two years.

6. It appears that the subject plot was mortgaged with the Bank and original registered perpetual lease deed was deposited with the Bank. The Bank thereupon by a communication dated 09.03.2005 informed the DDA that the club has mortgaged the subject plot with it and the DDA

was requested to take a note of mortgage of the subject plot with the Bank.

7. The club defaulted in payment of the loan taken by it from the Bank. Thereupon the Bank filed an original application under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [now known as Recovery of Debts and Bankruptcy Act, 1993 (for short "1993 Act"] before the Debts Recovery Tribunal-I, Delhi (hereinafter referred to as "DRT") for recovery of sum of Rs.86,46,790.37. The aforesaid application was allowed on 27.08.2010 by the DRT. The Recovery Officer, DRT on 02.02.2011 issued a notice, for drawing up the proclamation of sale and settling the terms thereof and informed the Bank to bring to its notice the encumbrances, charges, and claims of liabilities attached to the subject plot or any portion thereof. The DDA by a communication dated 24.02.2011 informed the Recovery Officer, DRT that the club has not sought the permission of the DDA to create a mortgage in favour of the Bank and therefore the mortgage of the subject plot in favour of the Bank is illegal and void. The DDA in the aforesaid communication stated that the

sale of the property be set aside and the proceeding to draw the proclamation of sale and settling the terms thereof be immediately stopped.

8. The DDA thereafter on 30.06.2011 filed an affidavit before the Recovery Officer, DRT objecting to the sale of the subject plot on the ground that the permission to mortgage the subject plot was never granted by the DDA and therefore the mortgage in favour of the Bank is illegal. The Bank thereupon by a communication dated 22.07.2011 requested the DDA to inform about the amount of unearned increase which is due and payable to it after the sale of the subject plot is effected.

9. The DDA thereupon again filed an affidavit before the Recovery Officer, DRT objecting to the sale *inter alia* on the grounds that under the lease deed it has the right to recover the unearned increase and has the pre-emptive right to purchase the subject plot. The Recovery Officer by an order dated 27.02.2012 rejected the objections raised by the DDA as contained in the affidavits dated 16.02.2012 and 30.06.2011.

10. The DDA filed an appeal before the DRT against the order of the Recovery Officer dated 27.02.2012. The aforesaid appeal was dismissed by an order dated 25.06.2012, by the DRT. The Recovery Officer of DRT by an order dated 21.09.2012 held that the subject plot shall be sold by an e-auction sale on 09.11.2012. Thereafter on 27.09.2012 e-auction sale notice and proclamation of sale published by DRT which recorded the terms and conditions of the e-auction notice.

11. The DDA sometime in October, 2012 filed an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against orders dated 27.02.2012 and 25.06.2012 passed by DRT.

12. The DDA on 03.11.2012 filed a Writ Petition (C) No. 6972 of 2012 before Delhi High Court seeking to quash and set aside the order dated 25.06.2012 passed by the DRT and to quash and set aside e-auction notice dated 27.09.2012 issued by Recovery Officer, DRT. In the said Writ Petition, the counsel for Bank on 05.11.2012 made a statement that auction will be subject to terms and conditions of the lease.

In view of the aforesaid statement made by the Bank, which was also recorded by the High Court in its order, the counsel for the DDA did not press the writ petition. The High Court thereupon by an order dated 05.11.2012 dismissed the writ petition as withdrawn. The DDA by a communication dated 06.11.2012 informed the Manager of the Bank and the Recovery Officer, DRT about the undertaking by the Bank recorded by the High Court in its order dated 05.11.2012.

13. The auction of the subject plot was held on 09.11.2012 wherein Respondent No. 6 -M/s Jay Bharat Commercial Enterprises Pvt. Ltd. (hereinafter referred to as "Auction Purchaser") was declared the highest bidder in respect of subject plot. The bid price of the Auction Purchaser of Rs.13.15 crores as against the reserve price Rs.8.85 crores was accepted. The Auction Purchaser deposited sale proceeds through various demand drafts in favour of Recovery Officer, DRT. The Recovery Officer, DRT by an order dated 08.07.2013 confirmed the sale in favour of the Auction Purchaser. A sale certificate dated 12.07.2013 was issued in favour of the Auction Purchaser, and on

17.07.2013, the possession of the subject plot was handed over to auction purchaser.

14. The auction purchaser on 29.07.2013 filed an application before the Recovery Officer DRT for exonerating itself from paying the liabilities and claims over the subject plot which was sold in a public auction. The notice of the said application was issued to the DDA to disclose the amount of unearned increase. The DDA however, sought an adjournment in the aforesaid proceedings. The Recovery Officer, DRT, on 18.09.2013 directed the DDA to file an affidavit, in respect of rules of calculation of unearned increase as well as details of institutional land/sold/allotted/leases in recent time by the DDA so as to enable it to know the present rates for institutional lease hold property.

15. The DDA filed a Special Leave Petition against the order dated 05.11.2012 passed by the High Court. The aforesaid Special Leave Petition was dismissed on 25.10.2013 on the ground of delay. The DDA on 07.11.2013 informed the Recovery Officer of DRT about the dismissal of SLP preferred by it and therefore sought time for compliance

with the directions issued by DRT. The DDA on 10.12.2013 filed an affidavit of compliance before the Recovery Officer with regard to calculation of the amount of unearned increase. The Recovery Officer vide order dated 22.01.2014 recorded that DDA is not ready to redeem the property at the cost of Rs.27.73 crores which was being demanded approximately. The DDA filed an application under Section 22 of the 1993 Act before the Recovery Officer stating that even if the sale is considered to be valid, the Auction Purchaser would only have the status of a lessee.

16. The DDA filed another writ petition namely, Writ Petition (C) No. 5005 of 2014 before the High Court seeking to set aside the e-auction conducted by the Recovery Officer on 09.11.2012 in pursuance of e-auction notice dated 27.09.2012 and to set aside the acts and omissions of the Bank and the club with respect to the subject plot. The High Court by an order dated 11.08.2014 held that it is open to the DDA to challenge the order dated 12.03.2014 passed by the DRAT in accordance with law. The High Court further *inter alia* held that issues raised in the instant petition by the DDA and in the Writ Petition (C) No. 6972 of 2012,

which was dismissed as withdrawn on 05.11.2012 and the subsequent writ petition are same. It was further held that aforesaid order dated 05.11.2012 in Writ Petition (C) No. 6972 of 2012 has attained finality and the same issues cannot be raised once again. It was further held that principles analogous to Section 11 of the Code of Civil Procedure, 1908 would apply. Accordingly, the petition was dismissed. In the aforesaid background this appeal arises for consideration.

17. During the pendency of this appeal the DRT on an application filed by the Auction Purchaser, by an order dated 01.12.2014, has released the amount of Rs.12,26,42,478/- in favour of the Auction Purchaser *inter alia* on the ground that at this stage the sale cannot be set aside/cancelled and at the most amount lying in FDRs can be returned to the Auction Purchaser till the Special Leave Petition preferred by DDA pending before this Court is decided.

(ii) <u>SUBMISSIONS BY DDA</u>: -

18. Learned Senior counsel for the DDA submitted that the terms of the lease deed, specifically stipulated that a

mortgage or charge has to be created in respect of subject plot only with prior consent in writing, of the Lieutenant Governor. It is further submitted that no consent in writing of the Lieutenant Governor before creation of mortgage in favour of the Bank was taken and the DDA is entitled for its statutory dues. It is pointed out that DDA by a communication dated 22.07.2011 informed the Bank about the amount of unearned increase, which was to be deposited. It is further pointed out that the DDA had filed a detailed affidavit before the Recovery Officer regarding its statutory claims including the ground rent due and the amount due and payable to it on account of unearned increase. It is contended that the subject plot was sold in contravention of the statement made before the High Court in Writ Petition (C) No. 6972 of 2012, which was recorded in the order dated 05.11.2012 passed by the High Court.

19. It is argued that the Bank has committed multiple illegalities, from the stage of application for grant of loan till sale of land. It is urged that the Bank has disbursed the loan to the club without intimating the DDA and ought to have appreciated that DDA had granted, no objection only,

to apply for a loan to the extent of 35 lakhs only. However, the bank sanctioned a loan of Rs.60 lakhs. It is contended that the Bank had the knowledge that the property was not a freehold property and DDA is entitled for statutory dues. It is further contended that the sale is therefore liable to be set aside and the subject plot be restored to the DDA permitting it to claim its statutory dues from the Bank.

(iii) <u>SUBMISSIONS BY BANK</u>: -

20. Learned counsel for the Bank submitted that the Bank vide communication dated 09.03.2005 had informed the DDA that the club had mortgaged, the subject plot with the Bank and had deposited perpetual lease deed dated 28.01.2005, however, the DDA maintained a stoic silence till 25.02.2011 i.e. the first appearance before the Recovery Officer, DRT. It is contended that by an auction notice dated 27.09.2012, the subject plot was sold on "as is where is basis" and therefore the DDA could have exercised its pre-emptive right to purchase the subject plot through auction and recover its dues. It is further contended that for the reasons, best known to the DDA, the said option to

purchase the subject plot, was not exercised. It is urged that, in principle, NOC was granted by the DDA vide letter dated 22.02.2002 and DDA was aware of the lien of the bank on the subject plot. It is submitted that this appeal amounts to an abuse of process of law. It is further submitted that principle of estoppel applies to facts of the case and appeal is liable to be dismissed.

(iv) SUBMISSIONS OF AUCTION PURCHASER: -

21. Learned Senior counsel for Auction Purchaser submits that Section 29 of the 1993 Act makes the provision of Second and Third Schedule to the Income Tax Act, 1961 (hereinafter referred to as "1961 Act") and Income Tax (Certificate Proceedings) Rules, 1962 (hereinafter referred to as "the Rules, 1962") applicable to sales of immovable property under the 1993 Act. It is further submitted that under Rule 16 of the Rules, 1962, it was incumbent on the Recovery Officer as well as parties before the DRT to have determined and conclude all issues that materially affect, the value of the property or fixation of the reserve price under Rule 18, prior to issue of proclamation of sale. It is contended that the sale has been held in violation of Second

and Third Schedule to the 1961 Act and, therefore, the auction sale is liable to be set aside. It is further contended that neither the sale proclamation disclosed any quantified claim of the DDA nor the reserve price reflected the market value, that DDA claims. It is submitted that DDA cannot foist its right to claim an amount of unearned increase over and above the auction price on the Auction Purchaser. It is therefore submitted that e-auction conducted on 09.11.2012 by the Recovery Officer, DRT be set aside and the Bank be directed to refund the Auction Purchaser an amount of Rs.1,68,28,488/- retained by it along with interest at the rate of 15% being the rate charged by it which is evident from the sale proclamation.

(v) CONSIDERATION : -

22. We have considered the rival submissions made on both sides and have perused the records, as well as the written submissions filed on behalf of DDA, Bank and the Auction Purchaser. Before proceeding further, it is apposite to take note of relevant statutory provisions.

23. Section 29 of the 1993 Act deals with application of certain provisions of Income-tax Act. It provides that provisions of

Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall as far as possible, apply with necessary modifications as if the said provisions and the Rules referred to the amount of debt due under this Act instead of to the Income-tax. The Second Schedule provides for procedure of recovery of tax, whereas the Third Schedule deals with procedure for distraint by Assessing Officer or Tax Recovery Officer. Rule 53 of Second Schedule to 1961 Act deals with contents of proclamation. It provides that a proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible: -

> "(a)The property to be sold;
>
> (b)The revenue, if any, assessed upon the property or any part thereof;
>
> (c)The amount for the recovery of which the sale is ordered
>
> (d)Any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property."

24. Thus, Rule 53 mandates the Recovery Officer to mention in the proclamation of sale any other thing which he considers material for purchaser to know in order to judge the nature and value of the property.

25. In exercise of powers under Section 295(1) of the 1961 Act and Rules 91 and 92 of the Second Schedule of the 1961 Act, the Central Board of Revenue has made the Rules namely, the Income Tax (Certificate Proceedings), Rules 1962. Rule 16 of the Rules empowers the Recovery Officer to summon any person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the proclamation and require him to produce any document in his possession or power relating thereto.

26. In the backdrop of aforesaid relevant statutory provisions, we advert to the facts of the case in hand. Sometimes in the year 2008, the Bank filed an application under Section 19 of 1993 Act for recovery of the dues against the club. It is pertinent to note that under Clause 5(a) and 5(b) of the lease deed, executed between the lessee and the Club, the DDA had the right of pre-emption. The fact that the subject plot had been allotted on lease to the Club by the

DDA was within the knowledge of the Bank. However, DDA was not impleaded as a party in the said proceedings under Section 19 of the 1993 Act. In pursuance of Recovery Certificate dated 27.08.2010 issued by DRT, for recovery of sum of Rs.86,46,790.37, the Recovery Officer on 02.02.2011 issued notice for drawing up the proclamation of sale and settling the terms thereof and informed, the Bank to bring to its notice, the encumbrances, charges, claims of liabilities attached to the said property. The DDA filed an objection before the Recovery Officer on the ground that no permission was granted by it to mortgage subject plot to the Bank. However, the aforesaid objection was rejected on 27.02.2012 by the Recovery Officer. The Recovery Officer without directing the DDA to quantify its claim on account of unearned increase in relation to the subject plot and without ascertaining the same, directed, that sale proclamation be issued.

27. An e-auction notice was issued on 27.09.2012. In the said e-auction notice, sale price was fixed at Rs.8.85 crores. However, the fact that DDA has an encumbrance i.e. the

claim for an amount of unearned increase in respect of subject plot was not disclosed in the e-auction. The Bank also failed to disclose the terms and conditions of the lease executed between the DDA and the Club, to the Recovery Officer which, it was under an obligation to do so in view of the statement made by it before the High Court, as recorded in the order dated 05.11.2012 pass in W.P. (C) No. 6972 of 2012. Thus, it is evident that e-auction notice was issued in violation of Rule 53 of the Second Schedule to the 1961 Act as well as Rule 16 of the Rules, 1962. Therefore, no sanctity can be attached to the e-auction sale notice and proclamation of sale dated 27.09.2012 as well as confirmation of sale and sale certificate dated 08.07.2013 and 12.07.2013 respectively issued in favour of the Auction Purchaser.

28. A Constitution Bench of this Court in **Daryao & Ors.** v. **State of U.P. and Ors.**[1] dealt with the question of applicability of principle of *Res Judicata* in writ proceedings, and has summarised its conclusion in para 26 of its judgement. The aforesaid paragraph was

[1] 1961 SCC OnLine SC 21 : (1962) 1 SCR 574 : AIR 1961 SC 1457

extracted by another Constitution Bench of this Court in **Gulabchand Chhotalal Parikh** v. **State of Gujarat**[2] in para 53 as follows :-

> "53. In *Daryao* Case this Court had again dealt with the question of the applicability of the principle of res judicata in writ proceedings. The matter was going through very exhaustively and the final conclusions are to be found at p. 592. We may summarise them thus :
>
> > 1. If a petition under Article 226 is considered on the merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution.
> >
> > 2. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.
> >
> > 3. If the petition under Article 226 in a High Court is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative

[2] 1964 SCC OnLineSC 99 : (1965) 2 SCR 547 : AIR 1965 SC 1153

> remedy available to it, the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32.
>
> 4. Such a dismissal may however constitute a bar to a subsequent application under Article 32 where and if the facts thus found by the High Court be themselves relevant even under Article 32."

29. Thus, the doctrine of *Res Judicata*, salutary as it is, rests upon foundation that a matter once heard and finally decided between the parties cannot be reopened. In light of the aforesaid well settled legal propositions, the facts of the case in hand may be noticed. The earlier writ petition i.e. Writ Petition (C) No. 6972 of 2012 filed by the DDA was withdrawn in view of the undertaking furnished by the bank that the auction shall take place in accordance with terms and conditions of the lease. The earlier writ petition was not decided on merits. In view of undertaking furnished by the bank, as recorded by that High Court in its order dated 05.11.2012, the DDA had a right to insist that auction is held in accordance with terms and conditions of the lease. The auction was held in violation

of terms of the lease on 09.11.2012. Therefore, the DDA had a fresh cause of action to approach the Court. Thus, principles analogous to Section 11 of Civil Procedure Code, 1908 did not apply to obtaining factual matrix of the case. The High Court without adverting to the validity of the auction which was *per se* illegal as the same was conducted in violation of the terms and conditions of the lease deed and the provisions of the 1961 Act and 1962 Rules, erred in dismissing the Writ Petition on the ground that the same was barred by the principles analogous to Section 11 of the CPC.

30. We now address the position of the Auction Purchaser. In **Fibrosa Spolka Akcyjna** v. **Fairbairn Lawson Combe Barbour Ltd.**[3]**,** it was held that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generally different from remedies in contract or in tort, and

[3] 1943 AC 32 : (1942) 2 All ER 122 (HL)

are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution. The aforesaid legal proposition was referred to with approval by a Two Judge Bench of this Court in **Nagpur Golden Transport Company** v. **Nath Traders & Ors.**[4] The restitution therefore becomes not merely a legal device but a moral imperative. The principle of restitution flows from the very heart of justice that no one shall unjustly enrich himself at the instance of another and that those who suffered without fault should, so far as money can achieve, be restored to the position they once occupied. The jurisdiction to make restitution is inherent in every court and will be exercised wherever the justice of the case demands.

31. In the facts of the present case, the Auction Purchaser has been caught in the undertow of circumstances, not of its making. Among all the actors in this legal drama, it alone stands innocent. The Auction Purchaser entered the auction in good faith, placed its bid and deposited its hard-earned money in the belief that the law clothed the auction

[4] (2012) 1 SCC 555

with legitimacy. The Auction Purchaser neither breached the covenant nor failed in diligence and did not seek to profit from the illegality. The restitution therefore becomes not merely a legal device but a moral imperative. It is this principle which in the facts of the case must guide the relief to the Auction Purchaser. The Bank having advanced the money of an illegal mortgage and having chosen to auction what it never lawfully possessed, bears the responsibility for the consequences.

(vi) CONCLUSION: -

32. In the result, impugned order dated 11.08.2014 passed by the High Court in Writ Petition (C) No. 5005 of 2014, the e-auction notice dated 27.09.2012 as well as the e-auction conducted by the Recovery Officer, DRT on 09.11.2012, the confirmation of sale and sale certificate dated 08.07.2013 and12.07.2013 respectively issued in favour of the Auction Purchaser are quashed and set aside. We direct the bank to refund the entire amount lying in deposit to the Auction Purchaser. The Auction Purchaser has been deprived of the use of its money for a considerable time, the money which would have earned

value elsewhere. Therefore, the Auction Purchaser is entitled to interest on the balance amount which is lying in the deposit of the Bank. We, therefore, direct that the balance amount deposited by the Auction Purchaser which is with the bank be returned to the Auction Purchaser with an interest at the rate of 9% per annum within a month to be reckoned from the date of deposit till repayment.

33. The appeal is accordingly allowed in the aforesaid terms.

.....J.
[SANJAY KUMAR]

.....J.
[ALOK ARADHE]

NEW DELHI,
SEPTEMBER 25, 2025.