

GAHC010149402023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3947/2023

ABHINAV DUGAR
S/O SRI AMOLOK DUGAR, R/O J.B. ROAD, TEZPUR TOWN, P.O. AND P.S.-
TEZPUR, DIST-SONITPUR, ASSAM, PIN-784001

VERSUS

PUNJAB NATIONAL BANK, TEZPUR BRANCH AND 6 ORS
DIST-SONITPUR, ASSAM-784001

2:THE DEPUTY COMMISSIONER CUM DISTRICT MAGISTRATE
DIST-SONITPUR
ASSAM
TEZPUR-784001

3:THE SUPERINTENDENT OF POLICE
DIST-SONITPUR
ASSAM
TEZPUR-784001

4:THE CIRCLE OFFICER
TEZPUR REVENUE CIRCLE
DIST- SONITPUR
TEZPUR-784001

5:THE TEZPUR MUNICIPAL BOARD
REPRESENTED BY THE CHAIRMAN
DIST-SONITPUR
ASSAM
TEZPUR-784001

6:SMTI. RAKTIMA BARUAH @ RANJIMA BARUAH
W/O LATE SURJYA KAMAL BARUAH

BEHIND DHANUA PETROL PUMP
DHANUA NAGAR
P.O.-TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001. TO BE SERVED AT HER SONS WORKING PLACE AS UNDER-
SMTI RAKTIMA BARUAH @ RANJIMA BARUAH
W/O LATE SURJYA KAMAL BARUAH
M/S POHAR ENTERPRISES DISTRICT COURT CAMPUS
TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001

7:BIKRAM BARUAH @ BIKI
S/O LATE SURJYA KAMAL BARUAH
WORKING AT POHAR ENTERPRISES DISTRICT COURT CAMPUS
TEZPUR
DIST- SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. S K SINGH

Advocate for the Respondent : SC, PNB

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.07.2023

Heard Mr. S.K. Singh, learned senior counsel, assisted by Mr. B. Pushilal, learned counsel for the petitioner. Also heard Mr. A. Ganguly, learned counsel for the respondent no.1, and Mr. K. Gogol, learned Additional Senior Govt. Advocate appearing for respondent nos.2 to 4.

2. In view of the order proposed to be passed, issuance of notice on all the respondents is dispensed with.

3. The case of the petitioner is that he has purchased a plot of land

measuring 1 katha 10 lessa covered by Dag No. 541 of P.P. No. 43 of Tezpur Town Part-1, Mouza Mahabhairab in the district of Sonitpur together with a Assam Type house standing thereon, which is covered by Municipal Holding No. 5258 in an auction conducted by respondent no.1 by offering the highest bid of Rs.25,70,000/-. The possession of the land and house was handed over on 07.04.2017 along with a sale certificate in favour of the petitioner. The petitioner claims that he is doing lawful business from the said premises on the strength of a trade license. As the sale certificate and/or sale deed in respect of the said land has not been registered, the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India for a direction to the respondent no.1 to register the sale deed and for a direction to the respondent nos.2 to 4 to provide No Objection Certificate for the said registration.

4. One of the prayers of the writ petition is also to prohibit respondent nos.6 and 7 from disturbing the peaceful possession of the petitioner over the land and house. The said prayer is essentially a relief directed against a private citizens and therefore, a writ cannot be issued on a private citizen, who are not the State within the meaning of Article 12 of the Constitution of India and are not performing any public duties. Therefore, in connection with the said relief, the petitioner is at liberty to approach the appropriate Civil Court.

5. The learned counsel for the respondent no.1 has submitted that he has specific instruction that the respondent no.1 is ready to cooperate with the registration of the sale certificate or sale deed, whatever required, which can be done at the cost of the petitioner. He has submitted that the Judicial Department of the Govt. of Assam, by a communication dated 03.01.2023 has opined to the effect that registration of sale certificate as per section 17(2)(xii)

of the Registration Act is not mandatory for the completion of sale pursuant to public auction under the scheme of SARFAESI Act.

6. In that regard, the Court is of the considered opinion that although the Judicial Department is of the opinion that the registration of sale certificate is not mandatory, but if the petitioner is ready and willing to foot the cost for such registration, the petitioner cannot be denied the benefit of having a registered sale deed/sale certificate in his favour.

7. Accordingly, the Court is inclined to take note of the submissions made by the learned counsel for the respondent no.1 that they are ready and willing to cooperate with the registration of the said sale certificate/sale deed to be done at the cost of the petitioner and accordingly, the Court is inclined to close this writ petition by giving liberty to the petitioner to give advance information to the Authorized Officer of the respondent no.1 the date and time fixed for registration so as to enable the Authorized Officer of the Punjab National Bank to be present for registration of the sale certificate/sale deed, whichever the petitioner seeks to get registered.

8. Needless to say that when the petitioner and the respondent no.1 approach the office of the concerned Sub- Registrar for registration of the sale certificate/sale deed, the said authority would register the same without insisting on any No Objection Certificate or permission as the sale has been made pursuant to auction in a SARFAESI proceeding.

9. Accordingly, this writ petition stands partly allowed at the motion stage without issuance of notice on the respondents.

10. As the writ petition has been disposed of at the motion stage without issuance of notice, the respondents are at liberty to approach the Court for

modification of this order, if so advised.

11. The petitioner shall produce a certified copy of this order before the Sub-Registrar, Tezpur to enable the said authority to do the needful.

JUDGE

Comparing Assistant