

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.20596 of 2018
Decided on : 18.08.2018**

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State Bank of India, SARB, Jalandhar

Petitioner

Versus

Jalandhar Development Authority and others

Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Rakesh Gupta, Advocate
for the petitioner.

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AVNEESH JHINGAN, J.

The State Bank of India has filed this writ petition seeking quashing of order dated 25.06.2018 (Annexure P-9) vide which the respondent No.1 refused to issue No Objection Certificate (N.O.C.) for the property sold by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').

2. Jalandhar Development Authority through its Chief Administrator; Estate Officer, Jalandhar Development Authority and Borrower of the housing loan have been arrayed as respondent No.1-3, respectively in this writ petition.

3. The brief facts necessary for adjudicating the controversy involved in the writ petition are; that respondent No.3 took a housing loan to the tune of ₹14,00,000/- from the petitioner. The loan was

sanctioned in the year 2014. In order to secure the loan, respondent No.3 after seeking permission from respondent No.1, mortgaged House No.1109, Urban Estate, Phase-II, Jalandhar and created equitable mortgage in favour of the petitioner. The original conveyance deed dated 11.08.1988 was handed over to the petitioner.

4. The respondent No.3 defaulted in repayment of loan. The petitioner initiated proceedings under the Act by issuing notice dated 18.04.2016, under Section 13(2) of the Act. A possession notice under Section 13(4) of the Act was issued on 08.07.2016. After obtaining an order under Section 14 of the Act from the Addl. Deputy Commissioner, Jalandhar, physical possession of the mortgaged house was taken on 24.11.2017. The house was sold through e-auction held on 28.02.2018. The successful bidder was Ram Murti S/o Beli Ram. The bidder deposited the entire amount and the sale was confirmed in his favour.

5. In order to issue the sale certificate, the petitioner applied for N.O.C. Respondents vide communication dated 25.06.2018 refused to issue N.O.C. as an amount of ₹12,62,572/- was recoverable on account of extension fee in respect of the property sold in auction.

6. Aggrieved of the communication, the petitioner has filed the present writ petition.

7. The learned counsel for the petitioner contended that the respondents No.1 and 2 while granting permission to mortgage the property did not demanded extension fee. He argued that though the amount recovered from the sale of the mortgaged property is much

more than the amount outstanding from respondent No.3 but the petitioner of its own, cannot pay the amount demanded by the respondents no.1 and 2. It was submitted that in case there is any unauthorised construction in backyard of the house, the respondents can proceed against the auction purchaser as he would be the owner of the property.

8. The grievances raised by the petitioner against the communication dated 25.06.2018 are not well founded. The plot was allotted to the respondent No.3 vide conveyance deed dated 11.08.1988. As per the terms & conditions, the construction was to be completed within three years from the date of issuance of allotment letter. In case of failure, as per rules, the respondents No.1 and 2 were entitled to charge extension fee. The respondent No.3 failed to complete the construction within the period prescribed. In accordance with the terms & conditions and rules, an amount of ₹12,62,572/- has been calculated by the respondents No.1 and 2 as extension fee and enhanced price. No fault can be found in the action of respondents No.1 and 2 refusing to issue N.O.C. till the payment of ₹12,62,572/- is made. The respondents No.1 and 2 are only demanding the dues which are outstanding against the property.

9. The petitioner has pleaded that it has already received excess amount and the said dues can be paid from the excess amount received. In case the amount is paid by the petitioner, the respondents would issue No Objection Certificate, subject to fulfillment of other requirements of law.

10. It is clarified that so far as the deficiency in the construction

is concerned, respondents No.1 and 2 would be at liberty to proceed against the auction purchaser in accordance with law.

11. The writ petition is disposed of, accordingly.

12. Needless to add that anything said above would not preclude respondent No.3 to have his remedy against order dated 25.06.2018 (Annexure P-9).

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

18.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No