IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

EFA-7 of 2011 (O&M)
Date of decision: 11.09.2019

Punjab State Industrial Development Corporation
.......Appellant

versus

Vijender Kumar Garg and another
......Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vikas Mohan Gupta, Advocate, for the appellant.
Mr. R.S. Guron, Advocate, for respondent No.1.

RAMENDRA JAIN, J. (ORAL)

Appellant-Corporation has filed this appeal against order dated 08.03.2011 of the executing Court, accepting third-party-objections of respondent No.1, whereby SCO Nos.173-174, Sector 17-C, Chandigarh, in which respondent No.1 is owner to the extent of 20%, was released from attachment in execution filed by the appellant.

Briefly, in the year 2003, appellant-Corporation commenced arbitration proceedings against judgment-debtor-respondent No.2 under Section 21 of the Arbitration and Conciliation Act, 1996. Pursuant thereto, arbitrator passed award dated 29.03.2005, awarding a sum of ₹270.06 lakh with interest at the rate of 18% per annum from the date of filing of the claim petition till realization to the appellant-Corporation. During the pendency of execution filed by appellant-Corporation, it got attached SCO Nos.173-174, Sector 17-C, Chandigarh.

Respondent No.1 filed objections to the attachment of aforesaid SCOs pleading that he was *bona fide* purchaser of the same to the extent of

20% on payment of full sale consideration. Objections of respondent No.1 were resisted by appellant-Corporation.

Hearing both the sides, the executing Court accepted third-party-objections of respondent No.1 vide impugned order dated 08.03.2011.

Learned counsel for the appellant *inter alia* contends that alleged sale transaction in between respondent No.1 and judgment-debtor-respondent No.2 was a sham transaction, inasmuch as after filing an application for transfer of 20% share in the aforesaid SCOs, before the Estate Officer, U.T., Chandigarh, neither respondent No.1 nor respondent No.2 ever pursued the same. They all of a sudden became active after passing of award and obtaining 'no objection certificate' from the office of Estate Officer, U.T., Chandigarh, judgment-debtor-respondent No.2 executed sale deed in favour of respondent No.1. The executing Court failed to appreciate that respondent No.1 did not ever dare to enter into the witness box before the executing Court. Thus statement of attesting witnesses of the alleged agreement to sell executed by judgment-debtor-respondent No.2 in favour of respondent No.1 in the year 2001 had no evidentiary value to prove genuineness of the same, because a attesting witness can only testify about signing of a document by the vendor in his presence and nothing more. Executing Court wrongly relying upon statement of attesting witness OW-8 Mahavir Sharma (wrongly typed as OW-10 in the impugned order) treated agreement to sell in favour of respondent No.1 allegedly executed by respondent No.2 as a genuine document. Executing Court also erred in not appreciating that aforesaid agreement was compulsorily registrable under Section 17 of the Registration Act, because possession of the aforesaid SCOs was shown to have been handed over to respondent No.1 to the extent of share of judgment-debtor-respondent No.2 therein. It was also required for judgment-debtor-respondent No.2 to obtain prior permission before entering into agreement to sell in terms of clause 7 of the allotment letter dated 12.09.1975 issued by the Estate Officer, U.T., Chandigarh, in favour of respondent No.2 and, thus, same was liable to be held as non est in the eyes of law in the absence of aforesaid prior permission and registration. In support of his submissions, learned counsel relied upon ***Niranjan Singh v. Ashwani Kumar and another****, 2010(5) R.C.R.(Civil) 675 (P&H)* and ***St. John's Welfare Centre v. Eastern Province of Sisters of St. Charles****, 2015 (5) R.C.R.(Civil) 162 (Kerala).*

On the other hand, learned counsel for respondent No.1 referring to judgment of this Court in ***Dilawar Singh v. Amandeep Singh****, 2016(4) R.C.R.(Civil) 724,* and refuting above submissions pleaded legality and validity of the impugned order.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal merits dismissal for the reasons to follow.

The property which was released from attachment i.e. SCO Nos.173-174, Sector 17-C, Chandigarh, was never kept as security or ever mortgaged with the appellant-Corporation by judgment-debtor-respondent No.2. Therefore, appellant-Corporation had no preferential charge over the legal right of respondent No.1 in whose favour, pursuant to agreement to sell of the year 2001, judgment-debtor-respondent No.2 executed sale deed in the year 2006. Much hue and cry was raised by the appellant-Corporation before the executing Court and also before this Court contending that agreement to sell and sale deed executed by judgment-debtor-respondent No.2 in favour of respondent No.1 were sham transactions and that respondent No.1 was not *bona fide* purchaser, but the appellant-Corporation could not rebut above plea of the respondent by leading any evidence, what to talk of any cogent and convincing. Series of transactions which took place after execution of agreement to sell by respondent No.2 in favour of respondent No.1, proves beyond doubt that respondent No.1 was a *bona fide* purchaser inasmuch as in January, 2003 respondent No.1 and his other co-sharers being purchasers of the aforesaid SCOs applied for issuance of 'no objection certificate' to get the leasehold rights transferred in their favour. They further sent reminder on 01.12.2005 for issuance of 'no objection certificate' to the Estate Officer, U.T., Chandigarh. However, Estate Officer, U.T., Chandigarh, did not budge to their above genuine request. He after remaining in a great slumber for around three years issued 'no objection certificate' on 23.06.2006.

Working and functioning of the officials of Estate Office is known to all. They keep on deaf ears to every request of an allottee, unless their whims and fantasies are satisfied through different modes. Therefore, respondent No.1 cannot be blamed for non issuance of certificate by the Estate Officer. To prove that he was *bona fide* purchaser of the aforesaid SCOs produced ample evidence on record that two tenants on the ground floor and Education Department, Haryana, on the first floor were paying rent to him since year 2001.

Two bank officials, namely, OW4 Malkhan Singh and OW6 Jai Narain Ahlawat also favoured respondent No.1, testifying that entire sale consideration of Rs.18.00 lakh was deposited by them in the bank account of judgment-debtor-respondent No.2 against two demand drafts of Rs.9.00

lakh each got issued by respondent No.1 in his favour. That part, respondent No.1 also started paying property tax w.e.f. 22.11.2004 of the aforesaid SCOs as per deposition of OW5 J.N. Sharma, Senior Assistant, Municipal Corporation, Chandigarh.

Above transactions and events falsify stand of the appellant-Corporation that it was a sham transaction between respondent No.1 and judgment-debtor-respondent No.2 to defeat its right of recovery of the awarded amount.

As far as judgment in ***St. John's Welfare Centre (supra)*** of the Kerala High Court qua the fact that an agreement to sell, where possession is delivered to the vendee is compulsorily registrable, is concerned the same cannot be considered in view of authoritative pronouncement of a Co-ordinate Bench of this Court in ***Dilawar Singh (supra)***, wherein it has been held that an agreement to sell does not require registration.

Even otherwise, it is well-settled that an agreement to sell can be oral. Thus, from this angle also, argument of learned counsel for the appellant that agreement to sell in favour of respondent No.1 executed by respondent No.2 being not registered, is meritless.

Since, agreement to sell has culminated into transfer of leasehold rights by way of registered sale deed and taking of various steps by respondent No.1 before different authorities amply prove on record that he was *bona fide* purchaser and no transaction between him and respondent No.2 was a sham transaction.

Argument raised by learned counsel for the appellant qua role of attesting witnesses relates to insignificant aspect of the case inasmuch as *bona fide* of respondent No.1 in purchasing the aforesaid SCOs, as discussed above, is being proved beyond doubt.

In view of discussion above, this Court is not inclined to interfere with the impugned order. Hence, same is upheld.

Dismissed.

(Ramendra Jain)
Judge

September 11, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No