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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6897/2019, CM No. 28679/2019

CENTRAL BANK OF INDIA Petitioner
Through: Mr. Rajnish Kr. Jha, Adv.

versus

DEPUTY COMMISSIONER, SDMC & ORS Respondents
Through: Ms. Namrata Mukim, Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **17.07.2019**

1. The present petition has been filed by the petitioner Bank with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may very kindly be pleased to:

- (i) Issue appropriate direction/s or order/s or writ/s to the Respondent no.1 not to demolish constructions on the third floor of property bearing no. C-2, Lajpat Nagar-I, New Delhi in purported compliance of the impugned order dated 15.01.2019 passed by the Court of Ms. Monika Saroha, Senior Civil Judge-cum-Rent Controller, South East District, Saket, New Delhi in CS 51245/2016.*
- (ii) Any other or further order/s which this Hon’ble Court may deem fit proper under the facts and circumstances of this case.”*

2. It is the case of the petitioner Bank that a housing loan for an amount of Rs. 30 Lacs was disbursed by the petitioner Bank to the respondent no.2 against which the Property No. C-2, 3rd Floor with terrace / roof rights,

Lajpat Nagar, Part-I, New Delhi – 110024 measuring 100 sq. yards was mortgaged with the petitioner Bank.

3. It is contended by the learned counsel that a notice under Section 13(2) of the SARFAESI Act, 2002 was served on respondent no.2. That apart an Original Application has been filed by the petitioner Bank against respondent nos.2 and 6 for recovery of an amount of Rs.40,72,851/-.

4. The grievance of the petitioner Bank in the present proceedings are that the respondent SDMC intends to take demolition action on the construction made on the third floor of the property, which is untenable.

5. Learned counsel appearing for respondent SDMC states, the said construction is without any sanctioned building plan and is being demolished in view of a judgment rendered by the Senior Civil Judge on January 15, 2019 in CS No. 51425/2016 inasmuch as, respondent no.3 in the said Suit, i.e., South Delhi Municipal Corporation has been directed to demolish the entire unauthorized construction on the third floor of the property. She states, in view of the judgment, they are under obligation to demolish the unauthorized construction.

6. On a specific query to the learned counsel for the petitioner Bank whether the present petition is maintainable as the action sought to be taken is on the basis of a judgment rendered by Sr. Civil Judge, the learned counsel for the petitioner has relied upon the Judgment of this court in the case of *Subhash Chand and Anr. v. Financial Commissioner and Ors. 2004 II AD (Delhi) 457* to contend that it is maintainable.

7. I have perused the said judgment. The facts in that case are the petitioners therein apprehending that their property situated in Khasra No. 1361/202 measuring 4 bighas 14 biswa would be demolished by the

respondent DDA, filed a writ petition before this court. It is noted in the judgment that earlier also writ petitioners therein had filed a petition being W.P.(C) 18/2003. The said petition was disposed of by this court vide order dated January 10, 2003 with a direction that the demarcation be carried out. The process of demarcation was thereafter started and it culminated in the demarcation report dated June 26, 2003 submitted by the ADM (South-West). The petitioners being aggrieved by the demarcation report filed an objection before the ADM (South-West) on July 11, 2003. Since the objections were not heard, they filed a revision petition bearing no. 181/2003 before the Financial Commissioner, Delhi. On August 18, 2003, Financial Commissioner issued notice to the respondents in the said revision petition pending before him returnable on December 26, 2003. It is during the pendency of the proceedings before the Financial Commissioner that the petitioners had approached this court by way of a writ petition as noted above seeking direction to the respondent no.1 (Financial Commissioner) to dispose of the stay application filed by the petitioners in the said writ petition. A further prayer was sought in the writ petition prohibiting the respondents from proceeding on the basis of demarcation report dated June 26, 2003 till the decision is taken by the Financial Commissioner.

8. This court noting the fact that the issue is pending before the Financial Commissioner both on merit as well as on the question of stay, was of the view that it is not appropriate for the court to interfere in the writ petition. It had also stated that the stay application moved by the petitioners therein be put up for hearing at an early date and dispose of the same in accordance with law. Suffice it would be to state, the facts in that case have no bearing to the facts which arises for consideration in this petition and as such has

no applicability.

9. In view of the fact that the demolition action is sought to be taken on the strength of an order passed by learned Sr. Civil Judge, the prayer as made by the petitioners in this petition shall not be maintainable. The present petition is dismissed as not maintainable.

Liberty shall be with the petitioner to seek such remedy as available in law.

CM No. 28679/2019

Dismissed as infructuous.

Dasti.

V. KAMESWAR RAO, J

JULY 17, 2019/jg