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

(Through Video Conferencing)

CWP-11050-2017

Date of Decision: November 02, 2020

Ravinder Kumar Bansal and another

.....Petitioners

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Pankaj Gupta, Advocate and
Mr.Harminder Singh, Advocate
for the petitioners.

Ms.Deepali Puri, Additional Advocate General, Punjab.

Mr.Rajinder Goyal, Advocate
for respondent No.5.

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NIRMALJIT KAUR, J.

The prayer in the present petition is for setting aside the order dated 30.07.2015 vide which Naib Tehsildar-cum-Assistant Collector, Derabassi (respondent No.4) refused to enter the mutation in favour of the petitioners on the basis of registered sale deed dated 11.07.2013 executed by IDBI bank on the basis of sale conducted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act') till such time Vasika No.3034, dated 04.06.2010, was cancelled.

Learned counsel for the petitioner contended that the petitioners

had purchased the property in open auction, which was mortgaged. The possession thereof was given and sale certificate was also issued in their favour. However, in the meantime, during the subsistence of the mortgage deed, the owner had transferred the property in favour of one Mukesh Gandhi and Gurjit Kaur. The petitioners had earlier approached this Court by filing CWP No.5292 of 2015, which was decided on 29.04.2015, whereby, Naib Tehsildar, Derabassi had undertaken to take appropriate action in accordance with law. However, vide order dated 30.07.2015 (Annexure P-7), Naib Tehsildar rejected the mutation. He further submitted that original sale deeds were in the custody of the Bank and therefore no sale deeds could have been executed in favour of any one else. It is apparent collusion between the vendor and Bank.

Short reply has been filed by respondent Nos.1 to 4 stating therein that vide mutation No.9941, land measuring 0-2-8, i.e. 48/7680th share of land measuring 19-4, plots 8, comprised in above said khasra numbers was sold by Kamaljit Singh s/o Jaswinder Singh in favour of Mukesh Gandhi s/o Mamraj Gandhi and Smt.Gurjit Kaur s/o Parwinder Singh in equal shares (deed No.3034 dated 4.6.2010) through general attorney M/s U.T. Builders and Promoters Limited and further at the time of entering the mutation No.9941 on the basis of sale deed No.3034, there was neither any entry of equitable mortgage in the revenue record/jamabandi nor any appeal or objection was filed against said mutation. Moreover, at present, mutation is entered in the jamabandi for the year 2012-13. In such circumstances, it has been rightly concluded by the Naib Tehsildar that the mutation cannot be entered in the name of the petitioners till cancellation of sale deed is made in the name of Mukesh Gandhi and Gurjit Kaur.

The petitioners moved an application bearing CM No.5643-CWP-2020 to implead Mukesh Gandhi and Gurjeet Kaur as respondent Nos.6 and 7 in the writ petition. The application was allowed and they were allowed to be impleaded as respondent Nos.6 and 7. They are duly served, as per the report of the Process Server. However, no-one put in appearance on their behalf in spite of service. Accordingly, vide order dated 10.08.2020, they were ordered to be proceeded ex parte and the matter was listed for 02.11.2020, i.e. today for arguments. Today also no-one has put in appearance on their behalf.

It is evident from the impugned order dated 30.07.2015 passed by the Naib Tehsildar itself that respondent Nos.6 and 7 chose not to appear even before the Naib Tehsildar-cum-Assistant Collector in spite of various notices having been sent to them. Ex parte proceedings were initiated against them even at that stage. Relevant part of the order is reproduced below:

“ xx xx xx Sh.Mukesh Gandhi and Smt.Gurjit Kaur, despite sending notices and contacting them time and again did not submit any reply. Therefore, ex-parte proceedings were initiated against them.”

It is, therefore, evident that they are not interested in defending the matter and have nothing to say. In any case, the facts speak for themselves. One Mr.Kamaljit Singh Sidhu and his wife Smt.Raj Kaur Sidhu approached the IDBI Bank, respondent No.4 for grant of housing loan by creating equitable mortgage of the house built on a plot measuring 300 sq.yards situated at Street No.10, Prem Nagar, Village Madhopur, Barwala Road, Derabassi, District Mohali. The Bank sanctioned the housing loan of

was mortgaged in favour of the bank. The borrowers defaulted in the repayment of the loan amount to the Bank. To recover its dues, the bank initiated action against the borrowers under the provisions of the SARFAESI Act' and issued notice under Section 13(2) of the SARFAESI Act on 03.03.2006 and took the possession of the house in question on 11.02.2010 and the sale notice was published in the newspaper, 'Hindustan Times' dated 02.04.2013. The bank published the sale notice in the newspapers whereby the house in question was put to sale in two parts of 140 sq.yards and 160 sq.yards at the reserve price of the house Rs.9.00 lacs and 12.00 lacs respectively and the sale was to be conducted by way of inviting tenders, which were to be opened on 04.05.2013. The petitioners participated in the sale process of the house measuring 140 sq.yards and the bid of Rs.9.05 lacs given by the petitioners was accepted by the bank as the highest bid. It is relevant to mention here that the highest bid of Rs.12.05 lacs for the other house measuring 160 sq.yards was given by one Shri Gurvinder Singh and Shri Pawan Kumar. The bank confirmed the sale of the part of the house measuring 140 sq.yards in favour of the petitioners in pursuance to which the petitioners deposited the entire bid amount and the bank issued the sale certificate dated 24.05.2013 in their favour. On the basis of the sale certificate, the sale deed of the house measuring 140 sq.yards was got executed by the bank in favour of the petitioners before the office of the Sub Registrar, Derabassi on 11.07.2013. For the registration of the sale deed, the petitioners paid the stamp duty of Rs.81,450/-. In pursuance to the sale deed (Annexure P-2), the physical possession of the house measuring 140 sq.yards has been handed over by the bank to the petitioners. After the registration of the sale deed (Annexure P2), the petitioners approached the

Revenue Authorities for entering the mutation of the house measuring 140 sq.yards in their favour. However, the petitioners were shocked to know that out of the total area of 300 sq.yards, the borrowers have illegally sold an area of 140 sq.yards out of the house in question in favour of Mr.Mukesh Gandhi and Smt.Gurjeet Kaur on 04.06.2010 and on the basis of this illegal sale, mutation of 140 sq.yards area was entered in the revenue records in the name of the aforesaid two persons vide Vasika No.3034 dated 04.06.2010. Thus, the mutation of the house of 140 sq.yards could not be entered in the name of the petitioners whereas the mutation of the other house measuring 160 sq.yards has been duly entered by the Revenue Authorities in favour of the auction purchasers, namely, Shri Gurvinder Singh and Shri Pawan Kumar.

As the house in question has been mortgaged in favour of the bank on 09.11.2002 by deposit of the original title deeds, the subsequent sale of 140 sq.yards area by the borrowers to respondent Nos.6 & 7 is illegal and void. The physical possession of the house has been taken by the bank on 11.02.2010 and as per Section 13(13) of the SARFAESI Act, the subsequent sale of the mortgaged property by the borrower to a third party without the consent of the secured creditor is per se illegal.

The above facts are not disputed by the respondents-State or the Bank.

In view of the undisputed facts as also the fact that the subsequent sale of the mortgaged property by the borrowers to respondent Nos.6 and 7 is illegal and that too after the physical possession was taken over by the Bank on 11.02.2010, this Court has no hesitation in allowing the present writ petition.

Accordingly, the writ petition is allowed and the order dated 30.07.2015 is quashed and the respondents are directed to enter the mutation of plot in question situated at Prem Nagar, Village Madhopur, Street No.10, Barwala, Derabassi, District Mohali in favour of the petitioners on the basis of the registered sale deed dated 11.07.2013 (Annexure P-2) executed by the IDBI Bank.

November 02, 2020
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(NIRMALJIT KAUR)
JUDGE

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|---------------------------------------|---------------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |