

ORDER SHEET
WPO NO. 8 OF 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. ADL PROPERTIES AND ORS.
Versus
THE BANK OF BARODA AND OTHERS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 11th February, 2021

Appearance :
Mr. Arnab Saha,
Mr. Abhimanyu Banerjee,
Mr. Subhasis Saha, Advs.,
for the petitioner.

Mr. Sudeep Pal Choudhri,
Ms. Saswati Sikder, Advs.,
for the respondent.

The Court : The petitioner complains that despite sale certificate having been issued in favour of the petitioner by the respondent-bank, pursuant to an auction sale, the respondent-bank is sitting tight over the request of the petitioner to have the sale certificate registered. Learned Counsel for the petitioner submits that such registration is being sought for abundant caution, in order to lend a presumptive value to the document as well as obviate unnecessary complications in respect of the transaction.

Learned Counsel also places reliance on a representation given by the petitioner in that regard to the respondent-bank, on July 8, 2020.

Learned Counsel appearing for the respondent Bank submits that registration of the sale certificate is not compulsory under the law. Learned Counsel relies on the judgment of Shakeena & Anr. Vs. Bank of India & Ors., rendered by the Supreme Court on August 20, 2019 in Civil Appeal No.8097-8098/2009, in support of the said proposition.

In the said judgment, the Supreme Court relied upon the provisions of Section 17(2)(xii) of the Registration Act, 1908 to hold that registration of a sale certificate was not necessary and the issuance of such certificate was conclusive proof of the transaction. The said judgment, as well as the judgments relied upon by the Supreme Court for rendering the cited report, arose in the context of a prayer for redemption of the property, which was turned down by the Supreme Court on the above ratio.

Despite there being a distinction in the factual backdrop of the cited decision and the present case, the ratio holds good to the extent that registration of a sale certificate is not compulsory, which is also the stipulation of Section 17(2)(xii) of the 1908 Act.

However, merely because a document is not compulsorily registrable does not mean that the parties thereto are precluded from having the document registered for abundant caution, in order to avoid future complications. Sale certificates being exempted from compulsory registration under Section 17 of the Act *ipso facto* does not debar parties to such documents from having the document registered all the same.

Since, in the present case, the petitioner seeks to have the document registered at the petitioner's cost, there is no reason for the respondent-bank to stand in the way of such registration.

Accordingly, WPO 8 of 2021 is disposed of by directing the respondent-bank to comply within a week from date with the request made by the petitioner in its representation dated July 8, 2020 (Annexure P-1 at page 55 of the writ petition) insofar as it relates to furnishing the necessary details of the bank's representative who would be present when the document shall be executed. However, the said representation, in so far as it asks for a fresh sale deed to be registered in terms of the sale certificate, shall not be given effect to, in view of such a fresh sale deed being redundant in view of Section 17(2)(xii) of 1908 Act as well as in view of the issuance of sale certificate itself being conclusive proof of the transaction.

The petitioner, in the meantime, shall have a fresh assessment of the stamp duty payable on the certificate. The respondent-bank shall then co-operate with the petitioner in getting the sale certificate registered.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

S.Das
AR[CR]