IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3186 OF 2021

1] Digambar s/o Bhikaji Puri,
Aged about 63 years,
Occupation-Agriculturist,
R/o. Saraswati Nagar, Shegaon,
Tah. Shegaon, District-Buldhana.

2] Yogesh s/o Digambar Puri,
Aged about 37 years,
Occupation-Business,
R/o. Saraswati Nagar, Shegaon,
Tah. Shegaon, District-Buldana. .. Petitioners

.. Versus ..

1] State of Maharashtra, through
District Registrar and Collector
Office, Buldana, Tah. and District-
Buldana.

2] Sub-Registrar, Class-I, Shegaon,
Tah. Shegaon, District-Buldana.

3] The Authorised Officer,
Jijau Commercial Co. Op. Bank Ltd,
Amravati, Branch at Akola,
Opposite R.L.T. College,
Harsh Sankul, Civil Lines Road,
Akola, Tah. & Distt. Akola.

4] Shri Santosh Chiranjilal Murarka,
Aged Major, Occ. Business,
R/o. Shegaon, Tah. Shegaon,
District-Buldana. .. Respondents

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Shri R.K. Thakkar, Advocate for the petitioners,
Ms M.A. Barabde, AGP for respondent nos.1 and 2,
Shri G.R. Sardar, Advocate for respondent no.3,
Shri Rohan Malviya, Advocate for respondent no.4.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 07.10.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition, the petitioners challenge the order dated 18.08.2021 (Annexure-E) passed by the respondent no.1-District Registrar and Collector, Buldana in Appeal No.3/Order/1775/2021 thereby registering the sale certificate issued in favour of the respondent no.4.

3. The petitioner no.2 claims to be the owner of the property Gat no.412/1 Plot No.1, Saraswati Nagar, Shegaon ad-measuring 3432.44 sq. ft. having construction of 1523.08 sq.ft. on first floor and 1665 sq.ft. on the ground floor (for short 'said property'). The said property was mortgaged with the respondent no.3-Bank for the loan borrowed by the petitioner no.1. Since petitioner no.1 failed to repay the loan, the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act') were initiated by the

respondent no.3-Bank. The said property was put to auction by issuing auction notice dated 01/01/2020 published in local newspaper on 02/01/2020 and reserve price of the said property was fixed at Rs.84,44,800/-. According to the petitioners, on the date of auction no bid above the reserve price was received. In spite of that by lowering the reserve price, the property was auctioned for Rs.75,25,000/-, which is contrary to the Rule 9(1), (2) and (3) of the Security Interest (Enforcement) Rules, 2002 (for short 'Rules-2002').

4. The petitioners approached the Debt Recovery Tribunal, Nagpur (for short 'DRT') by filing Interim Application (IA) No.400/2020 challenging the sale. Since it was not decided, Writ Petition No.2250/2020 was filed seeking direction to the DRT. This court directed to decide the IA No.400/2020. Pursuant to which, the DRT passed an order that taking into consideration the fact that interim orders are passed by the Cooperative Court and a letter has been addressed to the Sub-Registrar not to register the sale certificate and the Sub-Registrar has withheld the registration of the sale certificate, which is communicated to the auction purchaser, by letter dated 7.9.2020 and taking into consideration the conduct of the petitioners, who are approaching various forums to stall the sale, the Tribunal came to the conclusion that the applicant (petitioner

no.2) is not entitled for any interim order pending the disposal of the order SA No.161/2019. It however observed that any further action pursuant to issuance of the sale certificate shall be subject to the outcome of the SA and accordingly dismissed the Interim Application.

5. After the issuance of sale certificate, respondent No.4 approached Sub-Registrar for registration of the sale certificate. The registration was refused vide order dated 02/03/2021 on the ground that S.A. No.161 of 2019 is pending and the Cooperative Court is dealing with Dispute No.303 of 2020, wherein interim order is passed.

6. Respondent Nos.3 and 4 challenged the order of the Sub-Registrar by filing appeal before the District Registrar and Collector, Buldhana, who allowed the appeal by order dated 18/08/2021 and directed the Sub-Registrar to register the sale certificate. This order is impugned in the present petition.

7. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for the respondent nos.1 and 2, the learned Advocate for the respondent no.3 and the learned Advocate for the respondent no.4.

8. The learned Advocate for the petitioner submitted that there is violation of rule 9 (1),(2) and (3) of the Rules-2002 while conducting the auction, the auction is therefore, illegal. He submitted that before passing the impugned order in the appeal, no opportunity of hearing was given to him and on that count the impugned order is liable to be quashed and set aside. By relying on the stay order granted by the Cooperative Court, he submitted that the sale certificate could not have been registered by the Registering Authority. He also tried to argue on the merits of the proceedings pending before the Debts Recovery Tribunal. He submitted that the impugned order directing to register the sale certificate is liable to be quashed and set aside.

9. Per contra, the learned Advocate for the respondent no.3 - Bank submitted that in terms of Section 34 of the Registration Act, the Registering Authority has no power to refuse registration of the document. He further submitted that petitioner No.2, who is the owner of the said property, has no locus to raise objection in respect of registration of the sale certificate. At the time of registration of document, the Registering Authority is not deciding the lis between the parties. By registering a document, the Registering Authority is doing an administrative act. He further submitted that there was no

order restraining the registration of sale certificate on 09/02/2021. According to him, the Cooperative Court was not dealing with the challenge raised to the auction conducted by respondent no.3-Bank. The Cooperative Court had also noted the mortgage of the said property in favour of respondent-Bank. He therefore, submitted that the interim order passed by the Cooperative Court cannot be relied upon to contend that registration of sale certificate was not warranted in the facts of the present case. According to him, the interim order passed by the Cooperative Court was automatically vacated in view of non-compliance of the conditions mentioned therein. Since the petitioner failed to deposit an amount of Rs.20,00,000/- with the respondent-Bank, then one month from the date of interim order passed on 22/09/2020, the same stood automatically vacated. He therefore, submitted that there is no merit in the challenge raised by the petitioners and therefore the petition is liable to be dismissed.

10. The learned Advocate for the respondent no.4 adopted the argument of the learned Advocate for the respondent no.3 and he further submitted that the respondent no.4 is a bonafide purchaser for valuable consideration and he has purchased the property in auction sale conducted by a statutory authority and, therefore, the registration of sale certificate was required to be done

which is rightly done by the appellate authority and, therefore, there is no case made out by the petitioners to interfere in the impugned order.

11. The learned Assistant Government Pleader appearing for respondent nos.1 and 2, supported the impugned order stating that since the sale certificate was issued after following due procedure mentioned in the Securitisation Act and Rules, the respondents were justified in passing the impugned order thereby directing the registration of sale certificate.

12. Admittedly, the said property, which was sold by public auction, was mortgaged with respondent No.3-Bank. It is also not in dispute that a public auction was conducted and sale was effected by respondent no.3-Bank by following the procedure prescribed under the Securitization Act and the Rules-2002 and sale certificate is issued in favour of respondent No.4. When respondent No.4 sought registration of the sale certificate, it was rejected by respondent No.2. The said rejection was challenged by filing an appeal before respondent No.1, which was allowed and registration was directed.

13. It is not possible to accept the submissions of the learned Advocate for the petitioners that in view of stay granted by the

Cooperative Court, the registration of sale certificate should not have been allowed. The Cooperative Court in its order has observed as follows:

> *"14. The status-quo order was granted on 25.08.2020 in regard of recovery of amount as at that time it was found this court that in the interest of justice the ad-interim needs to granted. The said order was not applicable to the proceeding initiated by bank against the disputant under securitization Act. But the disputant by misinterpreting said order urged to sub-registrar and to reject the execution of document and according said authority rejected execution of document in order to grant the relief firstly the disputant must have shown and proved prima-facie case and balance of convenience lies in his favour and will cause loss to him, if application rejected.*
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> *15. I have gone through the dispute and the application, it appears that the disputant no where challenge the action of bank taken under securitization Act. The proceeding under said Act is different than this proceeding. Both the forum under the special Act given the respective power. The material fact at this juncture is whether the amount claim by the opponent bank Rs.87,70,624/- is outstanding or not. It is admitted fact that disputant obtain loan and mortgage property in favour of bank and bank taken action under securitization Act. The disputant mainly emphasize on the account statement maintain by bank. The disputant accordingly sought interim relief on the basis of account statement saying that such huge amount is not outstanding against disputant. The disputant challenge the said amount shown by bank. Now consider the order aspect of matter that is action of bank initiated under securitization Act. It appears*

> *that opponent bank by adopting the procedure prescribed under securitization Act, obtained possession of mortgage property of disputant and auction the property. But subject matter in dispute has no concerned with the said process and disputant has also no objection. The document produce on record shows that the bank was the consent of disputant taken the possession of mortgage property."*

The above observations make it clear that the Cooperative Court was not concerned about the auction conducted by respondent No.3-Bank under the Securitization Act. The subject matter of challenge before the Cooperative Court was different. Therefore, reliance placed by the petitioners on the interim order passed by the Cooperative Court is misplaced and misconceived.

14. In terms of section 34 of the Registration Act, 1908 and Rule 45 of the Maharashtra Registration Rules, 1961, the Registering Authority does not discharge a quasi judicial function, but it does an administrative act of registering the document. A duty is cast on the Registering Authority to ascertain whether the document presented for registration was executed by a person by whom it purports to have been executed and to satisfy himself as to the identity of the persons appearing before the Registering Authority. Therefore, Section 34 of the said Act needs to be reproduced which reads thus :

"Section 34 : Enquiry before registration by registering officer *.- (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :*

Provided that, if owning to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon -

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the person appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-

Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders."

15. Rule 44 of the Maharashtra Registration Rules, 1961 as follows :

"44. Certain requirements to be verified before accepting a document for registration :-

(1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain -

(a) that it is properly stamped;

(b) that it is presented within the prescribed time, and in the proper office;

(c) that it was presented by a competent person;

(d) if it relates to immovable property, that it is not open to objection under section 21 or 22.

(e) if any document is in a language which he does not understand, that the provisions of section 19 are complied with;

(f) that any interlineations, blanks, erasures or alterations appearing in the document are attested by the signature or initials of the person or the persons executing the same as required by section 20.

(g) that the dates of execution of

the document, if written according to more than one calendar, tally with each other; and

(h) that the registration of such document has not been declared as opposed to public policy under section 22-A.

(2) If on presentation of the document, the fees prescribed under section 78 are not paid on demand, the registering officer shall refuse to register the document."

16. These provisions contemplate limited enquiry and no hearing is contemplated by the said provisions and hence the argument of the petitioners that they were not heard before registering the documents, is unacceptable.

17. In the case of **Satyapal Anand .vs. State of M.P. and others**, reported in **(2016) 10 SCC, 767**, the Hon'ble Supreme Court held:

"15. In view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of Satyapal Anand (supra), the Registering Officer under the Act of 1908 has no power to adjudicate upon the issue of marketable title to the property. The power of the Registering Officer is purely administrative and is not quasi judicial power. The Registering Officer has no right to decide whether a person who has presented the document for registration has marketable title or not.

16. Section 17 (2)(xii) of the Act of 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary document which requires registration under sub-sections (b) and (c) of section 17 (1) of the Act of 1908. Such sale certificate does not require registration which may have been issued by an Officer authorized by the Court. It is well settled that when a property is sold by public auction, in pursuance of an order of the Court and the sale is confirmed by the Court in favour of the purchaser, the said becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, no further deed of transfer form the Court is required. The sale certificate itself is evidence to such sale and title. Therefore, the respondent no.5 ought to have taken into consideration this position of law before refusing to register the sale certificate issued by the Authorized Officer."

18. In view of the aforesaid observations, no merit is found in the challenge raised by the petitioners to the impugned order. There is no substance in the petition and the same is therefore, dismissed.

Rule stands discharged. No costs.

(N.B. Suryawanshi, J.)

Gulande