

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

201

CR No. 822 of 2020 (O & M)

Date of decision : 7.9.2021

Haryana Sahari Vikas Pradhikaran, Gurugram

.....Petitioner

Vs.

Bazal International Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Arvind Seth, Advocate, for the petitioner

Ms. Munisha Gandhi, Senior Advocate with
Mr. Viksit Arora, Advocate and
Mr. Viraj Gandhi, Advocate, for the respondents

Rajbir Sehrawat, J. (Oral)

This petition seeking quashing of the order dated 21.11.2019 passed by the Executing Court, whereby the present petitioner was directed to transfer the property comprised in Institutional Plot No. 43, Sector 32, Gurugram, in favour of respondent No.3, who had purchased the same in a Court auction, in execution of the decree passed against respondent No.2.

The brief facts of the case are; that in a suit filed by respondent No.1 against respondent No.2, a decree dated 28.8.2006 was passed for recovery of an amount of Rs.49,15,150/- along with interest. The judgment debtor did not make the payment of the amount. The said default necessitated the filing of the execution petition by respondent No.1. In the said execution petition and proceedings, respondent No.1 furnished the details of the above said plot, which was allotted by the petitioner to the respondent No.2, for being sold so as to realize his money. After carrying out the necessary process and

the necessary proceedings, the Court ordered the sale of the said plot. However, the petitioner was not made as party to any proceedings upto this stage. Ultimately, the present petitioner came to know of the execution proceedings on receipt of the order of the executing Court; for effecting transfer of the above said plot in the name of respondent No.3/auction purchaser. Feeling constrained by its rules and regulations, the petitioner preferred an application before the executing Court raising an objection against the order requiring the petitioner to transfer the property in the name of respondent No.3-auction purchaser. The said application was dismissed by the executing Court vide order dated 21.11.2019.

Arguing the case, counsel for the petitioner has submitted that the petitioner being a statutory authority dealing with the development and regulations of the land, it is bound by the statutory provisions, as well as, by the rules and regulations relating to development, allotment and transfer of the property. Since the petitioner was not a party before the trial Court or before the executing Court, therefore, the case of the present petitioner could not be put up before the executing Court. Since the petitioner is governed by the statutory provisions and there cannot be any estoppel against the statutory provisions even if the petitioner so desires, therefore, the order passed by the executing Court cannot be executed; as such. However, if respondent No.3/auction purchaser would comply with all rules, regulations, policies and the conditions meant for transfer of the plot from one person to another; then the petitioner does not have any objection in compliance of the order passed by the executing Court. Right from the day one, the respondent No.3/auction purchaser knew that the property in question is subject to certain rules and

regulations of the petitioner. As per the rules and instructions, respondent No.3/auction purchaser is required to apply online to the petitioner for getting the transfer done in its name and the same is required to be processed as per the statutory rules and regulations. Only after undergoing the complete process, the transfer can be effected. Counsel has further submitted that in another CWP No. 3443 of 2017, titled as '**Nehru Place Hotel and Real Estates Private Limited v. State of Haryana and another**', this Court had passed order for making unconditional transfers in favour of the purchaser through a private sale transaction. The matter had gone up to the Hon'ble Supreme Court. The Supreme Court had ordered that the High Court could have directed that the matter should be decided in accordance with law, instead of directing the manner in which the transfer was to be effected. After the above said judgment, the petitioner has reviewed its policy for transfer and has framed a new policy. This policy holds the field and has not even been challenged. The petitioner has no objection in transferring the property to Respondent No.3/auction purchaser subject to this transfer policy and in accordance with law.

Counsel has also pointed out that there has been a lot of manipulation in the matter on behalf of the original allottee. At one stage, the plot was under resumption. Thereafter, on furnishing of some undertaking by original allottee; the resumption order was withdrawn on a condition that he will raise the construction in accordance with law. However, even that was not done but occupation certificate was obtained by the original allottee in collusion with some officials of the petitioner. In that regard, a separate enquiry is already pending and that matter is still under consideration. As of

today, the plot in question is a vacant plot having no building. Therefore, respondent No.3/auction purchaser shall also have to comply with the building regulations qua raising construction by submitting building plans and getting approvals thereof. Moreover, as per the policy, the vacant plot cannot even be transferred in favour of subsequent purchaser.

On the other hand, counsel for the respondent No.3/auction purchaser has submitted that as per the record, the judgment debtor-original allottee had already obtained the occupation certificate. Hence, it cannot be argued by counsel for the petitioner that any building on the plot was never constructed and occupied. It is a different matter that after the occupation certificate qua the property was issued by the petitioner, the original allottee itself had demolished the building and submitted the revised plans for raising construction thereon in view of the increase in permissible constructible area in the meantime. The said plans are still available with the petitioner. Counsel has further submitted that the revised plans even stand approved by the petitioner subject to payment of certain fees. The respondent No.3/auction purchaser is ready to comply with all the rules, regulations, instructions and the policies of HUDA, as prevalent on the date the sale certificate was issued by the Court and subject to which the transfer is to be made.

Having heard counsel for the parties, this Court finds that the trial Court has not committed any mistake or error in law in conducting the sale of property, as such, in execution of the decree. Respondent No.3/auction purchaser has purchased the said property in a Court auction. Therefore, he cannot be deprived of the benefit which has accrued to him on account of purchase through the Court proceedings. However, another aspect which has

to be kept in mind is that the judgment debtor itself could not have transferred the property in question with any better rights or in a manner other than that which was not available to it. Therefore, any transfer ordered by the Court pursuant to the sale certificate has to be subjected to the same conditions, same rules and regulations and the policy or the instructions of the petitioner, which would have been applicable to the original allottee for such transfer. For the said purpose, respondent No.3/auction purchaser shall be deemed to have stepped into the shoes of the original allottee and would have only the same rights and liabilities qua the property in question as would have been available to the original allottee; in case the property is transferred in its name. The respondent No.3/auction purchaser shall also have to comply with all the conditions which are required for getting the property transferred in its name as per the rules and regulations and instructions of the petitioner. Although counsel for the petitioner has also submitted that for effecting transfer in favour of the subsequent purchaser, original allottee is required to make an online application for that purpose, however, that requirement would not be applicable in the present case because the property has been sold through Court auction. Hence, the petitioner is required to accept the application moved by respondent No.3/auction purchaser itself; for the purpose of transfer of the said property in its name. The original allottee has gone out of the picture on account of the Court process. Therefore, all the steps of making application and payments of charges etc., applicable in the present case, shall have to be undertaken by the respondent No.3-auction purchaser only.

It is deserves to be clarified that there has been a long standing dispute regarding the status of the plot qua the construction thereon, as well as,

qua the liabilities of the original allottee with respect to the present plot. Since respondent No.3/auction purchaser is stepping into the shoes of original allottee, therefore, it shall have to comply with all those conditions regarding the payment of money, compliance qua building plans and other requirements for raising construction thereon.

There is another contest between the parties as to which policy is to be made applicable qua the transfer of the plot in question in the name of respondent No.3/auction purchaser. Although counsel for respondent No.3/auction purchaser has submitted that the policy prevalent at the date of confirmation of the sale by the Court would be applicable, however, counsel for the petitioner has seriously disputed this proposition. Since the present proceedings have arisen only from the execution proceedings in which the issue of validity of any policy of petitioner or its scope of applicability is not under challenge or decided by the Court below, therefore, this Court is not expressing any opinion on this aspect.

In view of the above, the present petition is disposed of by upholding the order dated 21.11.2019, passed by the executing Court and with a further direction to the petitioner to transfer the property in question in the name of respondent No.3/auction purchaser, as per its rules and regulations and policy, as mentioned hereinabove.

(RAJBIR SEHRAWAT)
JUDGE

7.9.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No