IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.9307 OF 2022

Sebati Tudu .... ***Petitioner***

Mr. Niranjan Lenka, Advocate

-versus-

Authorized Officer, Indian Overseas Bank, Bhubaneswar and others .... ***Opp. Parties***

Mr. Aurovinda Mohanty, Advocate
(For Opp. Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.	**14.10.2022**
3.	1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition seeks for a direction to the Opposite Party Nos.1 and 2, namely, Authorized Officer, Indian Overseas Bank, Bhubaneswar and Branch Manager, Indian Overseas Bank, Baripada Branch, Mayurbhanj to execute the sale deed in respect of land and building standing over Plot No. 1555/1885 to an extent of Ac.0.150 decimals under Khata No.266/103 situated in mouza Chandua under Baripada Tahasil in the district of Mayurbhanj (for short 'the case land') and present the same before the District Sub-Registrar, Baripada-Opposite Party No.3 for registration.

3. It is submitted by Mr. Lenka, learned counsel for the Petitioner that the case land was purchased by the Petitioner pursuant to the auction held under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Although sale certificate has already been issued in respect of the land in question since 4th December, 2019 (Annexure-3) in favour

of the Petitioner, but the sale deed in respect of the case land has not yet been executed by the Bank for which the Petitioner is suffering a lot.

4. Learned counsel for the Opposite Party No.1-Bank submits that when sale certificate is issued in an auction sale under the provisions of SARFAESI Act, there is no requirement of execution or registration of the sale deed, as it is a document of sale. He, therefore, submits that relief, as prayed for in this writ petition, merits no consideration.

5. The Hon'ble Apex Court in the case of ***Indian Overseas Bank –v- RCM Infrastructure Ltd. and another***, reported in 2022 SCC OnLine SC 634, has held at paragraphs-30, 32 and 33 as under:

> ***"30.*** *In the case of B. Arvind Kumar (supra), the property in question was a suit property and was sold in a public auction. The sale was confirmed by the District Judge, Civil and Military Station, Bangalore. What has been held by this Court is that when a property is sold by public auction in pursuance of the order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. It has been held that a sale certificate is issued to the purchaser only when the sale becomes absolute. It was held that when the auction purchaser derives title on confirmation of sale in his favour and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Additionally, in the said case, the Court found that the sale certificate itself was registered.*
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> ***31.*** *xxx xxx xxx*
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> ***32.*** *It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. The sale would be complete only when the auction purchaser makes the entire payment and the authorised officer, exercising*

> *the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the Form given in Appendix V to the said Rules.*
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> ***33.*** *In the case of Shakeena v. Bank of India[10], which was a case arising out of SARFAESI Act, this Court has held that the sale certificate issued in favour of the respondent No. 3 did not require registration and that the sale process was complete on issuance of the sale certificate. The same has been followed by this Court in the case of S. Karthik (supra).”*

Further, in the case of ***Shakeena and another –v- Bank of India and others***, reported in 2019 STPL 9872 SC, the Hon'ble Supreme Court relying upon the decision in ***Indian Overseas Bank*** (supra) amongst other has framed the following question for consideration.

> ***“16.*** *Reverting to the impugned judgment of the Division Bench of High Court, it essentially considered three points as noted in paragraph 8 of the impugned judgment. The same reads thus:*
>
> *(i) Whether the sale of the secured asset in public auction as per section 13(4) of SARFAESI Act, which ended in issuance of a sale certificate as per rule 9(7) of the Security Interest (Enforcement) Rules, 2003 (in short “the rules”) is a complete and absolute sale for the purpose of SARFAESI Act or whether the sale would become final only on the registration of the sale certificate?*
>
> *xxx xxx xxx*

6. And answering to the aforesaid question, the Hon'ble Supreme Court relying upon the decision in ***B. Arvind Kumar –v- Govt. of India and others***, reported in (2007) 5 SCC 745 and applying the principle set out therein, concluded that execution and registration of sale deed is no more required after issuance of a sale certificate. It is thus held as under:

> *“10.17 The ratio laid down by the Division Bench of this court in Arumugham, S. v. C.K. Venugopal*

Chetty and the Supreme Court in B. Arvind Kumar v. Government of India, referred supra, squarely applies to the case on hand and we, therefore, have no incertitude to hold that the sale which took place on 19.12.2005 has become final when it is confirmed in favour of the auction purchaser and the auction purchaser is vested with rights in relation to the property purchased in auction on issuance of the sale certificate and he has become the absolute owner of the property. Further, as held by the Division bench of this court in Arumugham, S. v. C.K. Venugopal Chetty and the Supreme Court in B. Arvind Kumar v. Government of India, referred supra, the sale certificate issued in favour of the appellant does not require any registration in view of section 17(2)(xii) of the Registration Act as the same has been granted pursuant to the sale held in public auction by the authorized officer under SARFAESI Act.

10.18 The finding of the learned Single Judge that the sale is not complete without registration of sale certificate, therefore, is not sustainable in law and the same is liable to be set aside.

10.19 If the argument of the borrowers that even after the issuance of the sale certificate, prior to registration, they are entitled to redeem the property is accepted, it would make the provisions of the SARFAESI Act redundant and the very object of the SARFAESI Act enabling the Banks and financial Institutions to realize long term assets, manage problems of liquidity, asset liability mismatch and to improve recovery of debts by exercising powers to take possession of securities, sell them and thereby reduce non performing assets by adopting measures for recovery and reconstruction would fail and would open a pandora's box for the litigations upsetting the sale confirmed in favour of the bonafide auction purchasers, who invested huge money.

10.20 In view of our finding on this point, we hold that the sale of the secured asset in public auction as per section 13(4) of SARFAESI Act, which ended in issuance of a sale certificate as per rule 9(7) of the Rules is a complete and absolute sale for the purpose of SARFAESI Act and same need not be registered under the provisions of the Registration Act."

7. In view of the above, there can be no iota of doubt that once sale certificate pursuant to the auction held under the provisions of SARFAESI Act is issued, execution and registration of the sale deed in respect of the said property is not required. Accordingly, the Petitioner, if so advised, may file mutation application in respect of the case land in proper format enclosing the sale certificate issued under Annexure-3 before the concerned Tahasildar for mutation of the case land in his favour and in that event, the concerned Tahasildar acting upon the sale certificate shall take appropriate steps to mutate the case land in his favour, if there is no legal impediment.

8. With the aforesaid observation, this writ petition is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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