**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**WRIT PETITION NO.7643 OF 2021**

State Bank of India,
having its Local Head Office
At Mumbai and one of its Branch,
Stressed Assets Recovery Branch
at Plot No.1, Ground Floor, FIMM,
R.B.O. Building, Town Centre, CIDCO
Aurangabad through its Authorized Officer … **PETITIONER**

**VERSUS**

1. State of Maharashtra
through its Secretary Revenue
& Finance Department, Mantralaya,
Mumbai.
2. The Sub Registrar II,
Sub Registrar Office, Beed-II.
3. Bhakti Rajaram Marathe
Age : 31 years, Occu: Advocate,
R/o. AF-704, Jasminiyam,
Magarpatta City, Pune - 411028 … **RESPONDENTS**

…

Advocate for Petitioner : Mr. S.R. Deshpande
AGP for respondent Nos.1 and 2 : Mr. S.B. Yawalkar
Advocate for Respondent No.3 : Mr. L.H. Kawale

…

**CORAM : MANGESH S. PATIL &**
**SANDEEP V. MARNE, JJ.**

**DATE : 26.09.2022**

**ORDER (MANGESH S. PATIL, J.) :**

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent Nos.1 and 2. Mr. Kawale waives service for respondent No.3. At the joint request of the parties the matter is heard finally at the admission stage.

2. The petitioner is a nationalized bank. It is aggrieved by refusal of the respondent No.2 to register the sale certificate issued pursuant to the e-auction held by it under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after the Securitization Act) whereby the property mortgaged by the borrower with it was sold to the respondent No.3.

3. Learned advocate for the petitioner would submit that by the communications dated 12.01.2021 and 15.03.2021 the respondent No.2 has refused to register the sale certificate on the ground that because of the software program of the office of the respondent No.2 regarding online registration, the process could not be completed because of the variance in the extent of the land mentioned in the revenue record and the one mentioned in the sale certificate. Mr. Deshpande would submit that the respondent No.2 has no jurisdiction to refuse to register the document. By virtue of Clause 17(g) (Maharashtra Amendment), of the Registration Act, 1908 a sale certificate is a compulsorily registrable document. Under Rule 44 of the Maharashtra Registration Rules, 1961 registration can be refused for the specific grounds mentioned therein. The ground being furnished now by the respondent No.2 does not find place anywhere and the order is illegal.

4. Mr. Deshpande would also submit that a Citizen's Charter issued by the State Government under the Department of Registration and Stamps (Exhibit-M) comprehends such a situation in Item No.5 on the subject of

registration of document. It specifically enables manual registration to be resorted to if due to occurrence of any technical problem computerized registration system fails. He would submit that the respondent No.2 had no power and jurisdiction to refuse registration on the ground of variance in the extent of land mentioned in the sale deed and the one appearing in the revenue record.

5. Per contra, learned AGP would refer to the affidavit-in-reply filed by the respondent No.2 and would justify the decision. He would submit that because of the computerization and the computer program, the system does not admit of contingency when there is variance in the extent of land mentioned in the revenue record and the data that was being filled into the system while registering the sale certificate. He would submit that e-filing Rules have been formulated by the State Government in the year 2013 (Exhibit R-1) and adverts our attention to a stipulation in Rule 6 which prohibits the process of registration unless all mandatory information is filled in.

6. The learned advocate for the respondent No.3 would submit that pursuant to the e-auction held by the petitioner bank, she has purchased the land to the extent of 1 Hectare 68 Are and is awaiting registration.

7. The respondent Nos.1 and 2 do not dispute that the property was mortgaged with the petitioner which was sold under the Securitization Act to the respondent No.3 in an auction to realize the debt. Even it is not

disputed that the sale certificate issued pursuant thereto is compulsorily registrable.

8. The only dispute seems to be the manner in which the sale certificate is required to be registered. The stand of the respondent Nos.1 and 2 is that the computer program does not admit of a situation where there is variance in the extent of the land described in the sale document and the one appearing in the revenue record. In our considered view, Rule 44 of the Maharashtra Registration Rules does not admit of such a contingency as a ground entitling the registering authority to refuse to register a document. Whatever may be the benevolent intention in preparing the computer program to obviate a possible fraud etc., there could be a situation like the one at hand where the property which is mortgaged with the petitioner bank for whatever reason is not appearing in the revenue record to the fullest extent but it is armed with the right of a mortgagee who is entitled to sell it. In other words allowing the registration office to rake up such an issue as a ground for refusing registration would lead to unprecedented consequences and would defeat the rights of the owners of the properties or could cause serious prejudice to the persons having a supervening title to a property.

9. It is not that the borrower who has mortgaged the property with the petitioner bank has been raising any objection with the respondent No.2 Sub-Registrar. The matter is straightforward. The petitioner is a bank with which the property was mortgaged and in realization of debt it has

auctioned it in favour of the respondent No.3 and the sale certificate is to be registered.

10. Since the respondent No.2 is a public officer responsible for registration of documents, he is not entitled to refuse registration when a document is presented to him strictly in accordance with law.

11. Neither Rule 44 of the Maharashtra Registration Rules nor the Maharashtra E-Registration and E-Filing Rules, 2013 empower him to refuse to register the sale certificate on the ground mentioned in the impugned communications, regarding variance in the extent of land mentioned in the sale certificate and the one appearing in the revenue record.

12. We are in complete agreement with the learned advocate for the petitioner that a scrupulous borrower would deal with the mortgaged property behind the back of mortgagee bank resulting in some mutations in the revenue record and then obstructing the bank to effectively put the mortgaged property to sell. It would certainly defeat the law and cannot be countenanced.

13. The learned AGP, as a last resort, tried to demonstrate that by a Departmental Circular dated 05.10.2018 the Controller of Stamps and Deputy Director of Registration Maharashtra State has issued guidelines which enables the Registrars to verify the 7/12 record whenever a document is presented for registration.

14. We have carefully gone through that circular but it nowhere comprehends a situation like the matter in hand.

15. We allow the Writ Petition, quash and set aside the impugned communications and direct the respondent No.2 to undertake the process of registration of the sale certificate and shall not refuse to register it on the grounds mentioned in the communications which are being quashed.

16. Rule is made absolute.

**(SANDEEP V. MARNE, J.)** **(MANGESH S. PATIL, J.)**