IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-4179-2022 (O&M)
Date of decision:20.04.2022

Daya Kishan ... Petitioner

Vs.

Directorate of Enforcement, Chandigarh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE PANKAJ JAIN.

Present: Mr. Akshay Mittal, Advocate for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Arvind Moudgil, Sr. Standing Counsel for Govt. of India.

....

TEJINDER SINGH DHINDA, J. (ORAL).

Counsel for the parties are *ad idem* that after filing of the instant petition, orders have been passed by the Hon'ble Supreme Court of India dated 07.03.2022 and 01.04.2022 in **Writ Petition (Civil) No. 1243 of 2019 (Gulshan Arora & others Versus M/s SRS Real Estate Ltd. & others).**

For facility of reference, afore-noticed orders are reproduced hereunder:

Order dated 07.03.2022

*"**IA Nos. 30629/22 and 30641/2022***

The applications for impleadment of Directorate of Enforcement are allowed. Amendment be carried out within one week.

IA NOS. 30632 AND 30643 OF 2022

It is urged that the petitioners/applicants are similarly placed as impleaders who had

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moved the Adjudicating Authority and have been given relief in terms of order dated 31.08.2021 passed by the Adjudicating Authority under the Prevention of Money Laundering Act, New Delhi.

Further, the applicants have already moved a formal application before the Adjudicating Authority but the same has remained pending and for want of orders thereon, they apprehend that precipitative action will be taken in respect of their flats/units by the competent authority.

We have perused the order dated 31.08.2021.

Accordingly, until the Adjudicating Authority passes appropriate orders on the applications filed by the flat buyers before this Court, the status quo as of today with regard to the concerned flats/units be maintained by all concerned. The Adjudicating Authority is free to pass appropriate orders after hearing the impleadment applications filed by the applicants herein.

If similar applications have been filed or filed hereafter by other flat/unit buyers, the relief granted in terms of this order shall become applicable on the same terms.

In other words, similarly placed persons who approach the Adjudicating Authority by way of formal impleadment application and invite appropriate directions in respect of their flats, only those persons are being granted protection in terms of this order.

Mr. Vijay Hansaria, learned senior counsel appearing for the State Bank of India, Faridabad

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Branch submits that the Bank has been advised to file application before the Adjudicating Authority. The Bank is free to do so.

The Adjudicating Authority may pass appropriate orders on the said application(s) in accordance with law.

List this writ petition and all connected applications on 28.03.2022.

Mr. Mohit Paul, learned counsel appearing for the petitioners submits that he has filed one more writ petition being Diary No. 7162 of 2022. The Registry shall list the said writ petition on the next date along with these matters, if the same issue is involved."

Order dated 01.04.2022:

"These petitions have been filed by the home-buyers to issue direction to the Canara Bank (Respondent No.3) not to precipitate the action under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") against them being genuine home-buyers, who had purchased property in the concerned projects (SRS Royal Hills and SRS Pearl Residency) by taking loan from other banking/financial institutions much before the transaction effected between the Canara Bank and the builders-respondent No. 1 (SRS Real Estate Ltd.) and respondent No. 2 (SRS Real Infrastructure Ltd).

It is also noticed from the pleadings that besides the action initiated by the Canara Bank under SARFAESI Act with regard to the subject

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project, there are some other proceedings under the Prevention of Money Laundering Act against the Directors and Officials of the respondents-builders, in which attachment orders have been issued including affecting the home-buyers.

These proceedings are mutually exclusive and need to proceed in accordance with law.

In addition, the grievances of the writ-petitioners and similarly placed persons (home-buyers of the subject project) can also be assuaged and redressed by the Real Estate Regulator Authority (RERA), inter alia, in light of the dictum of this Court in Bikram Chatterji and Ors. vs. Union of India and Ors., reported in (2019) 19 SCC 161. We need not dilate on the merits of the issues required to be dealt with in the concerned proceedings. After hearing learned counsel for the writ petitioners, intervenors, impleadment applicants and also concerned banks/ financial institutions and the respondent Nos. 1 and 2-builders, we are of the considered opinion that these matters need to be disposed of by continuing the interim protection given to the petitioners and similarly placed genuine home-buyers in the subject project to enable them to approach the concerned Forum and seek further relief, as may be advised. The petitioners and similarly placed genuine home-buyers may do so within eight weeks from today.

The interim protection already given to the respective petitioners and similarly placed genuine home buyers in the subject projects shall continue to operate, if they resort to appropriate

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proceedings before the concerned Forum within eight weeks from today and until appropriate orders are passed by the concerned Forum after hearing all concerned. The concerned Forum may decide all pleas on its own merits and in accordance with law, keeping in mind the legal position expounded in the aforementioned reported decision or any other enunciation pressed into service by the concerned parties.

Needless to observe that this liberty would also enure in favour of the banks/financial institutions who have granted loan to the genuine home-buyers before transaction effected between the Canara Bank and respondents-builders. Even those banks/financial institutions may take recourse to appropriate proceedings as may be advised, which can be dealt with by the concerned Forum in accordance with law.

Needless to observe that the concerned Forum may deal with the proceedings filed by respective parties as per the liberty given in this order expeditiously. In the event any adverse order is passed by the stated Forum affecting the possession of genuine home-buyers, the same shall not be given effect to for a period of four weeks from the date of such order to enable them to take recourse to appropriate remedy.

We reiterate that all contentions as may be available to the concerned parties, including appropriate remedies as per law are left open, to be decided as and when occasion arises.

The writ petitions and all pending applications, including applications for

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impleadment/intervention are disposed of in the above terms."

Counsel for the petitioner seeks withdrawal of the writ petition with liberty to avail of his remedies in terms of orders passed by the Apex Court.

Mr. Satya Pal Jain, learned Additional Solicitor General of India with Mr. Arvind Moudgil, Senior Standing Counsel for Union of India has no objection to the prayer and submissions advanced by learned counsel for the petitioner.

In view of the above, writ petition is disposed of as withdrawn with liberty as prayed for.

(TEJINDER SINGH DHINDSA)
JUDGE

PANKAJ JAIN)
JUDGE

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(i) Whether speaking/reasoned? Yes/No

(ii) Whether reportable? Yes/No

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