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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 09.02.2022

+ W.P.(C) 2469/2022 & CM APPL. 7099/2022

M/S SHRI TRINKESHWAR DEVELOPERS AND BUILDERS PVT.
LTD Petitioner

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.
..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. M.P.S.Kasana, Advocate.

For the Respondent: Ms. Puja Kalra, Standing Counsel, North DMC with Mr.
Virendra Singh, Advocate for R-1.
Mr. Gurmeet Singh, Advocate for R-6.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Petitioner seeks quashing of sanction letter dated 02.07.2021 whereby a building plan has been sanctioned qua property No.A-163, Meera Bagh, New Delhi.
3. Learned counsel for the petitioner submits that the plan has been got sanctioned by misrepresentation and not disclosing that there is litigation pending in respect of the subject property. He submits that



he has also given a representation to the Deputy Commissioner, North Delhi Municipal Corporation bringing to his notice that there is litigation pending in respect of the subject property and as such the plan could not have been sanctioned and further prayed that mutation be not carried out.

4. It may be noticed that petitioner who was the earlier owner of property had mortgaged the same to a financial institution. Proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by the financial Institution and pursuant thereto subject property was sold in a Court auction. Said property was purchased by respondent Nos.2 to 4. A sale certificate is also alleged to have been issued in their favour.

5. Petitioner has filed an application before the DRT and initiated proceedings before the DRAT impugning the said sale. However as per learned counsel for the Petitioner there is no interim protection granted to the Petitioner or stay of the sale.

6. Further, the only litigation that is pending qua the subject property, as per learned counsel for the petitioner, are the proceedings initiated by the petitioner impugning the auction sale and the sale certificate issued by DRT qua the sale of the subject property under the SARFAESI ACT. Admittedly there is no other dispute with regard to the said property.

7. Learned counsel for petitioner concedes that there is no interim



protection granted to the petitioner either by the DRT or by the DRAT against the said sale to respondent Nos.2 to 4.

8. The remedy of the petitioner to challenge the sale is either before the DRT or DRAT, which remedy petitioner has already initiated and admittedly there is no interim protection granted to the petitioner. Thus, petitioner cannot approach this Court by seeking to invoke Article 226 of the Constitution of India to indirectly seek the same relief which petitioner has failed to get from DRT and DRAT.

9. Further, the contention of the petitioner that representation of the petitioner given to the Deputy Commissioner, North Delhi Municipal Corporation has remained unanswered and a direction be issued to decide the representation is also of no consequence. The Commissioner, MCD is not the authority to comment upon the proceedings which are pending before the DRT or DRAT under the SARFAESI ACT. Commissioner has to act upon the sale certificate issued and upon the title of the property that today stands vested in respondent Nos.2 to 4.

10. Admittedly, there is no other litigation with regard to the subject property impugning the title except the proceedings initiated by the petitioner before the DRT and DRAT.

11. In that view of the matter, this Court is not inclined to exercise discretionary powers under Article 226 of the Constitution of India. Accordingly, the petition is dismissed.



12. It is clarified that this would be without prejudice to the rights and contentions of the parties and without prejudice to the proceedings initiated by the petitioner before the DRT and DRAT.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J.

FEBRUARY 09, 2022

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