



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

Date of decision: 09th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 13930/2023**

ARUNA KASERA

..... Petitioner

Through: Ms. Pratiti Rungta and Mr. Sumit Pargal, Advocates.

versus

GOVT NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with Mr. Pradyut Kashyap, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for a direction to Respondent No.2 to file the sale certificate dated 13.05.2019 in respect of the property bearing Plot No.27, Block ND, Pitampura, Delhi in Book No.-I as per Section 89 of the Registration Act, 1908 which has been forwarded to Respondent No.2 by Respondent No.3/ State Bank of India, SAM Branch-II, Tolstoy Marg.
2. The facts as narrated by the Petitioner reveals that the property in question which is a residential property was put on auction due to default in repayment of loan availed by M/s Veekay Polycoats Limited.
3. It is stated that the auction was conducted on 13.05.2019 and the deceased husband of the Petitioner participated in the auction as was declared as the highest bidder in the auction for Rs.15,02,00,000/-.



4. It is stated that the entire amount of Rs.15,02,00,000/- has been deposited with the Bank and a sale certificate under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, has been issued in the name of late husband of the Petitioner.
5. It is stated that the Petitioner's husband passed away on 30.04.2021. It is stated that the children of the Petitioner executed a registered relinquishment deed, relinquishing their share in the property in question in favour of the Petitioner herein *vide* a registered relinquishment deed dated 28.06.2022. The Petitioner thereafter wanted to get the sale certificate to be filed in Book No.-I of the records so that the sale certificate can be duly registered.
6. It is not in dispute that the sale certificate has already been sent to Respondent No.2 on 17.10.2023 but the same has not been filed in Book No.-I as required under Section 89(4) of the Registration Act.
7. Notice was issued to the writ petition on 20.10.2023.
8. Learned Counsel for the Petitioner states that the issue raised in the instant writ petition is squarely covered by the judgment of the Apex Court in Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank, 2021 (11) SCC 537. The Apex Court in the said judgment has observed as under:-

"16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act. "



9. The said judgment has been followed by a subsequent Order dated 11.11.2022 passed by the Apex Court in Inspector General of Registration & Anr. v. G Madhurambal & Anr., SLP (Civil) No.16949/2022. The said order is reproduced as under:-

"Learned counsel for the petitioner(s) has made a valiant endeavor to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically so as this issue has been repeatedly settled and if one may say, a consistent view followed for the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No.2 of 1875 (In Re: Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty, by the Allahabad High Court in Adit Ram v. Masarat-un-Nissal opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of Act III of 1877 and is not compulsorily registrable and this Court's view in Esjaypee Impex Pvt. Ltd. v. Asst. General Manager and Authorised Officer, Canara Bank² opining that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this Court in M.A. No.19262/2021 in SLP(C) No.29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action.

It is time that the authorities stop filing unnecessary special leave petitions only with the objective of



attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time. "

10. Therefore, in view of the aforesaid pronouncements, there can be no impediment for Respondent No.2 to comply with the mandate of Section 89(4) of the Registration Act.

11. *Per contra*, Mr. Satyakam, learned ASC for GNCTD, places reliance on the following judgments:-

- a) R. Thiagarajan v. Inspector General of Registration, 2019 SCC OnLine Mad 9085;
- b) Mid India Power and Steel Ltd. v. M P Audyogik Kendra Vikas Nigam (Indore) Ltd., 2010 SCC OnLine MP 40;
- c) Friends Traders v. State of Punjab, 2016 SCC OnLine P & H 8569;
- d) Munirathnam Reddy Kamasani v. District Registrar, 2020 SCC OnLine AP 991;
- e) Maurya Techno Securities (P) Ltd. v. Land and Development Office, 2017 SCC OnLine Del 10869.

12. All these judgments are of High Courts. In any event even if they take a counter stand, it stands impliedly overruled.

13. In view of the pronouncements of the Apex Court in Esjaypee Impex (supra) and G Madhurambal (supra), the writ petition stands allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 09, 2024

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