(2017) 09 DEL CK 0094

In the Delhi High Court

Case No : Civil Writ Petition No. 7173 Of 2015

M/S. Maurya Techno Securities Pvt. Ltd APPELLANT

Vs

Land And Development Office RESPONDENT

Date of Decision : 26-09-2017

Acts Referred:

Citation : (2017) 09 DEL CK 0094

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Yeeshu Jain, Rakesh Kumar

Final Decision : Dismissed

Judgement

Indermeet Kaur, J

1 The petitioner is aggrieved by the rejection letter dated 13.05.2015 issued by the respondent (Land and Development Office) wherein his prayer

seeking conversion of the status of his property bearing No. F-1198, Chittaranjan Park, New Delhi from leasehold to freehold had been rejected.

2 Record shows that the petitioner was an auction purchaser of the aforenoted property i.e. F-1198, Chittaranjan Park, New Delhi. His auction had

been conducted by the United Bank of India while exercising powers under the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as â?? SARFAESIâ?? Act). A sale certificate dated 14.06.2005 was issued by

the said Bank in favour of the petitioner after receipt of its pay order.

3 On 22.11.2005, the petitioner had made an application to the Respondent for conversion of his status from leasehold to freehold; he deposited a sum

of Rs.77,500/-. He had applied for stamping/registration of sale certificate before

Collector of Stamps. The original title deed had not been furnished

by the Bank to the petitioner. Meanwhile, notice was issued to United Bank of India asking them to handover the original title deeds to the petitioner.

4 Since the sale consideration was not mentioned in the sale certificate, upon a request to rectify the defect made by the petitioner to the Bank the

same was rectified in terms of addendum certificate dated 05.08.2008 stating that Rs.70 lacs has been paid by the petitioner to the Bank as a sale

consideration of the said property. On 25.08.2008 (pursuant to this rectification), the petitioner again approached the Collector of Stamps and furnished

the addendum certificate with a request to get his sale certificate stamped. The original title deed was not issued to the petitioner, he was constrained

to file W.P.(C) No.7349/2009. This petition was disposed of on 12.01.2011. The Bank had been directed to obtain certified duplicate copies of the title

deeds and hand them over to the petitioner. The Collector of Stamps had been directed that on the basis of certified duplicate title deeds which were

to be obtained and handed over to the petitioner as also the addendum of the sale certificate, he will process the case of the petitioner. The writ

petition was disposed of accordingly.

5 On 27.01.2012, the Collector of Stamps stamped this sale certificate in favour of the petitioner; the stamp duty of Rs.5,60,000/- was paid by the

petitioner. The petitioner, thereafter, followed up his application with the respondent seeking conversion of his status from leasehold to freehold but the

same was declined. Submission being that this order is illegal. It is liable to be set aside.

6 Counter affidavit has been filed by the respondent. The respondent has denied these submissions. Submission of the respondent is that in the

absence of sale certificate being registered document, it is not possible for the respondent to carry out any mutation in the records of the L & DO qua

the status of the petitioner; the status of the property to be converted from leasehold to freehold is the second step which can be taken only after the

mutation of the property had been effected in favour of the petitioner. The sale certificate not being a registered document, the respondent cannot act

upon this document. It is pointed out that there is no provision under the SARFAESI Act which exempts sale certificate to be registered. This counter

affidavit further states that these submissions now made by the petitioner had been referred to the legal department of the respondent. Submission

again being reiterated that in the absence of sale certificate being registered, the respondent is not in a position to allow the mutation of the property to

be carried out in favour of the petitioner.

7 Rejoinder has been filed reiterating the averments made in the petition and denying the defence sought to be set up by the respondent. It is pointed

out that the present petitioner who is a successful auction purchaser already having got a sale certificate in his favour on which the stamp duty has

also been paid, the question of registration of this sale certificate would not arise. The sale certificate is not required to be mandatorily registered.

8 In the course of argument, learned counsel for the petitioner has placed reliance upon a judgment of the Madras High Court reported as AIR 2008

Madras 108 K. Chidambara Manickam ;Vs. Shakeena & Others as also another judgment of the Apex Court reported as 1991 AIR 1880 Smt. Shanty

Devil. Singh And Anr Vs. Tax Recovery Officer And Ors. Submission being that in both these cases, it was held that the sale certificate is not

compulsorily registrable.

9 Arguments have been heard. Record has been perused.

10 Record shows that this property had purportedly been purchased by the petitioner in an auction for a sum of Rs.70 lacs which in the initial sale

certificate dated 14.06.2005, it did not find mention. This sale certificate (Annexure P-2) records that the aforenoted property (with details of

boundaries) has been sold to the petitioner. The petitioner being the highest bidder has been successful in the auction and the United Bank of India

recognizes this sale price in full and accordingly delivered the possession of the property to the petitioner. Accordingly, this document did not contain

sale price pursuant to which the petitioner was constrained to move an application before the United Bank of India seeking a correction/addendum in

the aforenoted sale certificate. This sale certificate was rectified by an addendum being issued by the respondent on 05.08.2008 (Annexure P-5). The

addendum issued by the United Bank of India records that the authorized officer of the Bank had sold this property to the petitioner in the sum of

Rs.70 lacs under the SARFAESI Act vide sale certificate dated 14.06.2005.

11 The petitioner was aggrieved that the original title deed had not been handed over to him. He filed W.P. (C) No.7349/2009. This was disposed of

on 12.01.2011. Categorical direction of the learned Single Judge reads as under:-

â??In the peculiar circumstances of the present case where the original title deeds have been misplaced by the bank the Petitioner should not suffer

for no fault of its. The Collector of Stamp will act on the basis of the certified duplicate title deeds that are to be obtained by the Bank and handed

over to the Petitioner in terms of this order. The Collector of Stamps will also act on the addendum to the sale certificate issued by the Bank for the

purpose of stamping. Further, the Petitioner will not be subject to any penalty for not presenting the sale certificate within the stipulated time.â??

12 A specific direction had been given to the Bank to handover certified duplicate title deeds to the petitioner upon which the Collector of Stamps

would act also keeping in view the addendum to the sale certificate issued by the Bank for the purpose of stamping. In the body of the petition, it has

been stated that the United Bank of India handed over certified duplicate title deeds to the petitioner company. The Collector of Stamps had asked the

petitioner to deposit a sum of Rs.5,60,000/- as a stamp duty which up on payment, the necessary endorsement was made on the sale certificate. The

sale certificate bearing the endorsement of the payment of stamps is not a part of the record. This Court notes that this document is conspicuously

absent.

13 This Court also notes that there is a specific averment made in the petition that the United Bank of India had handed over the copies of the title

deed to the petitioner yet the documents have not been placed on record. In fact in all the correspondences exchanged between the petitioner and the

United Bank of India, there is no mention of the certified copy of the title deeds given to the petitioner which the petitioner had admittedly received

from the Bank. The petitioner was only harping upon the un-registered sale certificate. Why he did not file the certified copies of the title deeds before

the respondent leads to a suspicion. The sale certificate had admittedly been issued by the Bank under the SARFAESI Act. The petitioner has also

failed to show any provisions in the SARFAESI Act which permits that a sale certificate is not required to be necessarily registered. Reliance by the

learned counsel for the petitioner upon K. Chidambara Manickam and Smt. Shanty Devil. Singh And Anr (supra) is misplaced.

14 The judgment of the Apex Court in Shanty Devil. Singh (supra) is

inapplicable; this was under the provision of the Income Tax Act where the

mandates and the procedures are different and distinct. The judgment of K. Chitambara Manickam (supra) is also inapplicable as that judgment had in

fact relied upon the ratio of the Apex Court delivered in B.Arvind Kumar Vs. Government of India and Ors. reported as (2007) 5 SCC 745 wherein

the sale certificate issued already stood registered.

15 Why the petitioner has not placed on record the certified duplicate copies of the title deeds when admittedly copies of these title deeds had been

received by the petitioner (pursuant to the orders passed in W.P.(C)7349/2009 dated 12.01.2011) is not explained. The sale certificate issued under

the SARFAESI Act by virtue of which an immovable property was to be transferred also required a registration.

16 Impugned order thus suffers from no infirmity. Petition is without any merit. Dismissed with cost of Rs. 25,000/-.

