
(2021) 12 OHC CK 0004
In the Orissa High Court
Case No : Writ Petition (C) No. 8371 Of 2017

Samir Parida

APPELLANT

Vs

AO cum OHDC, BBSR And Another

RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Registration Act, 1908 — Section 17(2)
Security Interest (Enforcement) Rules, 2002 — Rule 9

Citation : (2021) 12 OHC CK 0004

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Subrat Mishra, A. Parida

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned advocate appears on behalf of petitioner and submits, his client was auction purchaser in a sale conducted under Securitisation and Reconstruction of Financial Assets And Enforcement Of Security Interest Act, 2002 (SERFAESI Act, 2002). The first annexure in the petition is sale certificate dated 12th July, 2010, whereby Orissa Rural Housing Development Corporation Ltd. sold the flat to his client. His client sought execution of sale document but was made to run from pillar to post. Writ petition was filed (W.P.(C) No.17449 of 2016 petitioners own case) by his client and dealt with by order dated 18th November, 2016, directing the Corporation to look into the request made by petitioner under letter dated 3rd August, 2016. By impugned office order dated 5th January, 2017 the Corporation has stated that a dispute stands created by Orissa State Housing Board against the Corporation, which has resulted in the sale deed not being executed.

2. He submits further, sale certificate dated 12th July, 2010 stands issued to his client in respect of one Flat no.A-501 (5th Floor, in Toshali Apartment, Block

no.IV (Rupa), Satya Nagar, Mouza-Satya Nagar, Bhubaneswar. He refers to rule 9 in Security Interest (Enforcement) Rules, 2002 to submit, opposite party no.1 being the Authorized Officer should be compelled to formally convey the property by executing sale deed. He hands up circular dated 24th October, 2016 issued by Revenue and Disaster Management Department to, inter alia, Inspector General of Registration, where from paragraph-3 is reproduced below:

"3. The Law Department has been consulted in the matter. The Law Department is also of the view that the Authorized Officer -cum- Chief Manager under SARFAESI Act is neither a Civil nor a Revenue Officer within the meaning of the clause (xii) of sub-section 2 of section 17 of the Registration Act, 1908 and therefore, registration of such sale certificate is not exempted from stamp duty and registration. For effecting changes in revenue records, the registration of such sale certificate issued in favour of the auction purchaser requires compulsory registration."

3. Mr. Parida, learned advocate appears on behalf of opposite party no.1. He submits, opposite party no.2 is the secured creditor and by reason of their claim remaining outstanding, they have raised dispute, informed to petitioner by impugned office order. Following from impugned office order is reproduced below:

"Therefore, the dispute created by OSHB for collection of their unauthorized fair rent pending from Sahu Trust, demanded to be paid by ORHDC has resulted dispute and that the sale deed is not executed by OSHB in favour the petitioner."

4. None appears on behalf of opposite party, the secured creditor. On query from Court Mr. Mishra submits, notice was duly issued. The file bears acknowledgement due card, in which there is endorsed acknowledgment of receipt by opposite party no.2.

5. The sale certificate says that sale price was received in full, delivery and possession of scheduled property given to petitioner free from all encumbrances as known to the secured creditor. Rule 9 in the Rules says that the authorized officer has the power to sell. As such the sale certificate itself is the conveyance of the property sold. By said circular dated 24th October, 2016, inter alia the Registering Authority was told that registration of sale certificate is not exempted from stamp duty and registration for effecting changes in revenue records. As such, petitioner will present the sale certificate for registration before the Registering Authority. The Registering Authority will forthwith register the sale certificate as the conveyance in respect of the flat/property conveyed to petitioner by the certificate. Petitioner will be required to pay the stamp assessed and registration fee. To complete the title documents, petitioner might search and apply for certified copies of earlier registered instruments in respect of the flat purchased by him.

6. With above directions, the writ petition is disposed of.

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