

CWP-24301-2021 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-24301-2021 (O&M)

Reserved on: 24.02.2025

Date of Decision : 07.03.2025

SUNIL KUMAR AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present : Mr. K.S. Boparai, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana.

Mr. Pravindra Singh Chauhan, Senior Advocate with
Ms. Vasundhra Asija Bhandari, Advocate
for respondents Nos.2 to 4-HSVP.

Mr. Viren Sharma, Advocate for respondent No.5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners have prayed for the issuance of a writ in the nature of mandamus directing the respondents No.3 and 4 to issue No Objection Certificate and to transfer Plot No.1591-B, Sector 23-23A, Gurugram in the name of the petitioners, in the records of respondents No.2 to 4, besides for issuance of re-allotment of letter in terms of confirmation of sale conducted by respondent No.5 on behalf of State Bank of India under Securitization and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act').

2. Respondent No.5 under the provisions of the Act sold property bearing No.1591-BP Sector 23-23A, Gurugram, by public auction for a total sale consideration of Rs.2,28,37,425/- towards cost of the property and Rs.1,72,575/- towards TDS. Resultantly, respondent No.5 issued letter of acceptance of Bid dated 06.02.2020 in the name of the petitioners.

3. On payment of the aforesaid amount, the sale certificate has been issued by respondent No.5 in favour of the petitioners with respect to property No.1591-BP, Sector 23-23A, Gurugram and the possession of the property has also been handed over by the District Magistrate, Gurugram on 12.10.2021.

4. Respondent No.5 vide letter (Annexure P-2), which was received by respondent No.2 on 06.07.2020 requested respondent No.2 for issuance of NOC for transfer of property/House No.1591-BP, Sector 23-23A in the records of respondents No.2 to 4.

5. Administrator (HQ) for and on behalf of respondent No.2 issued a letter dated 14.08.2020 (Annexure P-3) to respondent No.3 for directions to respondent No.5 for moving application for re-allotment in the name of petitioners directly in PPM system. In continuation of the said letter, respondent No.3 advised respondent No.4 for issuance of NOC as per Rules/Instructions issued from time to time vide letter dated 26.08.2020 (Annexure P-4).

6. Thereafter, respondent No.5 vide letter dated 20.10.2021 (Annexure P-5) requested respondent No.4 to complete all the formalities for making entries in favour of the petitioners in the records of HSVP.

7. Till date the grievance of the petitioners has not been redressed, and, because of which they are suffering irreparable loss and injury, as the petitioners are not in a position to use the said property in their business or otherwise till the relevant entries of NOC and re-allotment are carried out by the respondents No.2 to 4 in the records of HSVP, despite the petitioners having invested a sum of Rs.3 crores.

8. The gravamen of the contention raised by the respondents concerned, against the writ relief becoming accorded to the petitioners, is that, though the present respondents permitted the State Bank of India, Special Commercial Branch, Sector 17-B, Chandigarh, to create a mortgage in respect of the subject plot. However, it is contended that since no permission became taken by the said bank to make sale of the subject plot, through public auction. Resultantly, it is contended that irrespective of the present petitioners purchasing the subject plot, in a public auction, yet only for want of no objection certificate becoming issued by the present respondents, thus for conducting the sale of the subject plot by way of public auction, qua therebys the subject allotment becomes ridden with a gross illegality.

9. However, the said contention is meritless and is required to be rejected, on the ground that once the respondents concerned, issued a No Objection Certificate, to the lending institution (supra), to create a mortgage over the subject plot, therebys the permission granted for the creation of a mortgage, over the subject plot, did also, on failure of the borrower to liquidate the loan installments, to the financial institution concerned, but

naturally became a consequent permission to the lending institution, to make sale of the subject plot through public auction.

10. The reasons for making such a conclusion becomes sparked from the factum, that once a mortgage became permitted to be created over the subject plot by the respondents concerned, therebys there was a concomitant thereto rights endowed upon the mortgagee to, on failure of the borrower to liquidate the installments in terms of the contract, as became entered inter se the mortgagor and the mortgagee, thus to make sale of the subject plot by public auction, for therebys ensuring the redemption of the mortgage monies.

11. The further reason for making such a conclusion becomes generated from the trite factum, that the said permission is inherent in the permission so granted to the lending institution to create a mortgage of the subject plot and also is inherent the subsequent thereto contract of borrowing as became entered into, at the instance of the lending institution, as has been instantly done. Resultantly all the (supra) are to be construed to be binding even upon the respondents concerned.

12. Moreover, though the remedy as available to the present petitioners was to challenge the sale of the subject plot, through public auction, on the ground that the same became vitiated, flawed or became ingrained with a material illegality. However, none of the said grounds have been taken. Even otherwise, the said grounds were to be taken by the competent authority, thus only before the Forum alternate to the instant writ remedy.

13. Now, assuming that the instant Court, may provide the said efficacious remedy, even to the present respondents, through a reply in the

said regard becoming filed. However, a keen perusal of the reply filed to the instant writ petition at the instance of the respondent concerned, discloses that excepting the ground, that the sale of the subject plot through public auction, rather remaining unpreceded by a no objection certificate becoming issued by the respondents concerned, no other objection became canvassed, as relating to the sale of the subject plot, through public auction rather becoming ridden with any material illegality, inasmuch as, the said sale through public auction being ridden or being a sequel of collusion inter se the present petitioner and the officers supervising the auction proceedings. Resultantly therebys in the wake of the said omission, the ground (supra) is of no help to the present respondents. Contrarily, when as stated hereinabove, there is an inherent right in the mortgagee to, on the failure of liquidation of the relevant installments by the borrower, thus to subject the subject plot to sale through public auction. As such, the lack of NOC by the respondents concerned, to the lending institution for making sale of the subject plot, through public auction, for therebys its ensuring realization of the money(ies) as lent to the borrower, rather is completely meaningless, as the same merges into no objection granted to the lending institution to make mortgage of the subject plots or the said permission is a necessary sequel of the initial permission, as became granted to the lending institution concerned.

14. In aftermath, there is merit in the instant petition, and, the same is allowed. Resultantly, respondents No.3 and 4 are directed to issue No Objection Certificate and to subsequently transfer Plot No.1591-B, Sector 23-23A, Gurugram, in the name of the petitioners, thus in the records of

respondents No.2 to 4, besides to re-allot letter in terms of confirmation of sale conducted by respondent No.5m on behalf of State Bank of India.

15. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

07.03.2025

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No

(VIKAS SURI)
JUDGE