IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2013

CORAM: BENIN, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

No. J8/80/2013

22ND AUGUST,2013

MASS PROJECTS LTD. - - - DEFENDANT/APPELLANT/APPLICANT

VRS.

1. STANDARD CHARTERED BANK - - - PLAINTIFF/RESPONDENT/RESPONDENT

2. YOO MART LTD. - - - EXECUTOR/PURCHASER/RESPONDENT

RULING

BENIN JSC:-

The first respondent herein, namely Standard Chartered Bank sued the applicant herein, namely Mass Projects Ltd. before the High Court and obtained judgment

against the applicant. The first respondent moved to execute the judgment and thus caused the property of the applicant to be sold at a public auction. The successful bidder was the second respondent herein called Yoo Mart Ltd. The sale took place on 24th October 2012. On 12th November 2012 the applicant filed a motion on notice at the High Court seeking for the annulment of the auction sale for alleged irregularities. The registrar fixed the said application for hearing on 23rd November 2012. However, on 16th November 2012 the registrar of the High Court issued a Certificate of Purchase in favour of the second respondent. Before the application to set aside the sale was filed, the applicant issued a writ of summons at the High Court seeking to set aside the judgment obtained against them by the first respondent on ground of fraud. That action is still pending before the High Court. I must place it on record that the first respondent did not participate in the present proceedings at all.

Following receipt of the Certificate of Purchase and as a result of the refusal of the applicant to hand over the property, the second respondent applied to the High Court for an order to be placed in possession of the property they purchased at the auction. The applicant opposed the application. However, the High Court granted it on 22nd May 2013. The record indicates that the applicant appealed against the High Court's ruling to the Court of Appeal. Upon filing the appeal, the applicant applied to the High Court for an order to stay execution of the High Court's order granting possession to the second respondent. The High Court dismissed the application. The applicant repeated the application before the Court of Appeal which also dismissed it on 19th June 2013 on ground that no special circumstances existed to warrant granting it. The applicant filed an appeal to the Supreme Court against the Court of Appeal's dismissal of their repeat application for stay of execution.

Two grounds of appeal have been filed in this court, to wit:

i. The court erred in not giving adequate consideration to the plight of the Applicant.

ii. The court erred in ignoring the fatal error committed by the Registrar of the High Court in issuing Certificate of Purchase even though there was a motion pending challenging the auction sale.

The present application seeks an order to stay execution of the High Court's decision dated 22nd May 2013 referred to already. The papers filed in this application raised a number of issues relating to the fresh writ filed at the High Court. I advised Counsel to focus on the material facts and law as regards the conduct and processes of the auction sale. I thought the issue of fraud should not be discussed in this application in order not to prejudge that matter. Moreover that judgment remains valid for all purposes until it is set aside. So the focus here is the role played by the registrar in issuing the Certificate of Purchase whilst an application was pending to set aside the auction sale and whether that singular act has any material effect, factually and/or legally, on the decision to place the second respondent in possession of the property.

I note that the reliance on the registrar's role is to demonstrate that it is a serious violation of the legislation regulating the conduct of auction sale hence this calls for a determination by the apex court. In effect it amounts to special circumstance that warrants a grant of stay of execution, according to counsel for the applicant. The relevant legislation is the High Court (Civil Procedure) Rules, 2004, C.I. 47, Order 45, Rules 10 and 11 which provide:

10. (1) At any time within twenty-one days from the date of the sale of any immovable property, an application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on ground of such irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of the irregularity.

(2) If the application is granted by the Court, the Court shall make an order setting aside the sale for irregularity, and the purchaser shall be entitled to receive back any money deposited or paid by the purchaser on account of the sale with or without interest, to be paid by such parties and in such manner as the Court may direct.

11. (1) If no application is made under rule 10, the sale shall become absolute.

(2) If an application made under rule 10 is dismissed, the Court shall make an order confirming the sale.

(3) After a sale of immovable property becomes absolute or is confirmed under this rule, the Court shall grant a certificate to the person who was declared the purchaser at the sale to the effect that that person has purchased the right, title and interest of the judgment debtor in the property sold.

(4) A certificate of purchase granted under subrule (3) is a valid transfer of the right, title and interest of the judgment debtor in the property sold. (the emphasis is supplied)

Subrule 3 of rule 11 is clear in its language and terms, requiring no interpretation. An auction sale is confirmed only after the expiration of twenty-one (21) days from the date of the sale, or after the court has disposed of any objection raised as regards the sale. Thus when an application has been filed challenging the sale and it has not been disposed of by the court, the sale does not become absolute, therefore no certificate of purchase should be issued from the court. These rules were clearly violated in this case. The application to set aside the sale was filed on 12th November 2012 that was within the twenty-one (21) days allowed for such an application. What is worrisome is the fact that the registrar had fixed the application for hearing on the 23rd of November 2012, and yet the same registrar proceeded to issue the certificate of purchase a week before the date set for the hearing of the application. Hence Counsel for the applicant submitted that this apparent error is a special circumstance that should warrant a stay of execution.

For his part counsel for the second respondent pointed out that the applicant failed to pursue the application to set aside the sale and was accordingly struck out on 11th December 2012, as per exhibit 17. And that the High Court has considered these arguments and dismissed same as being without merit.

I take note of the fact that the certificate of purchase was issued before the application was due for hearing. Thus the act by the registrar had taken place before the application was struck out. The striking out of the application did not

and could not cure or remedy the irregular act of the registrar. But I also take note of the fact that an official act performed by a court official, however irregular it may be, will remain until steps have been taken to set same aside. A party affected by an irregular act or decision is entitled to have it set aside. But the party affected must take appropriate steps towards vacating the decision or act; it does not suffice to relax only for you to object when the person in whose favour the decision or act was made seeks to enforce it; such defence will not avail you.

The position then is that no step has been taken to set aside the certificate of purchase. The application to set aside the auction sale was also struck out and was thus not pending before the second respondent applied to the High Court to confirm the sale under Order 45 of C.I. 47. The application was struck out not because a certificate of purchase had been issued but because it was not pursued by the applicant. Thus the issuance of the certificate did not prevent the court from considering the application to set aside the sale. If the application had been pursued and the court had granted it, such decision would automatically have invalidated the certificate of purchase. But as it turned out the applicant did not prosecute the said application. Equally important to note is that the original judgment under which the auction sale was carried still remains valid and therefore enforceable or executable against the applicant. In these circumstances there was nothing preventing the High Court from exercising its discretion to grant that application to put the second respondent in possession. It is observed that even if the certificate of purchase had been set aside by the High Court, it would have been just a matter of issuing a fresh one pursuant to the High Court's decision of 22nd May 2013 since there was nothing inhibiting the issuance of the certificate as the validity of the auction sale was not under any challenge. The pending writ does not affect the execution of the judgment until the court has vacated it.

It is my view therefore that there is no justification for this application. The High Court having struck out the application to set aside the auction sale, and the application not having been restored before the court made the sale absolute by its decision of 22nd May 2013, a stay should not be granted without any special

circumstance being disclosed and none has been disclosed herein. The application is accordingly dismissed without costs.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

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