

GAHC010083582018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2809/2018

PRAMOD PATODIA
S/O- SRI GOPAL PATODIA, C/O- MEDICINE MART, M.G.ROAD, P.O.
RANGAPARA, DIST- SONITPUR, ASSAM-784505

VERSUS

THE STATE OF ASSAM AND 4 ORS.
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM, URBAN
DEVELOPMENT DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
SONITPUR
TEZPUR-784001

3:THE CHAIRMAN
TEZPUR DEVELOPMENT AUTHORITY HATIPILKHANA
TEZPUR-784001

4:HOUSING DEVELOPMENT FINANCE CORPORATION LTD. (HDFC LTD.)
A COMPANY REGISTERED UNDER THE COMPANIES ACT 2013 (AS
AMENDED) HAVING ITS REGISTERED OFFICE AT RAMON HOUSE
169
BACKBAY RECLAMATION
MUMBAI-400020
THROUGH ITS AUTHORISED OFFICER C/O- 1ST FLOOR SWAGOTA
ENVISION
SIX MILE
G.S.ROAD
KHANAPARA
OPP. AGRICULTURE OFFICE
GHY-22

5:THE SENIOR SUB REGISTRAR
SONITPUR
TEZPUR-78400

Advocate for the Petitioner : MR. A GANGULY, MS. A DUTTA,MR. A DHANUKA

Advocate for the Respondent : GA, ASSAM, MR. K P PATHAK (R4),MR. P N GOSWAMI (R4)

BEFORE

THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Order

02.09.2024

1. Heard Mr. A Ganguly, learned counsel for the petitioner. Also heard Mr. KP Pathak, learned counsel for the respondent No. 4 and Ms. U Das, learned Additional Senior Government Advocate for the State. None appears for the respondent No. 3.
2. The petitioner was the successful bidder in an E-auction dated 29.01.2016 initiated by respondent No. 4 HDFC Limited, in which the petitioner purchased certain land. In term of e-auction, land for sale measuring 2 Bighas 3 Kathas 9 Lechas covered by Dag No. 839, 842 and 843 of PP No. 107 at Da-ati Gaon, Mouza Bhairavpad, Second Gate, Madhab Mandir, Tezpur, Assam was the subject land. Being the successful bidder and after paying entire bid amount of Rs. 7,50,000/-, the petitioner was issued a sale certificate dated 10.03.2016 under the SARFAESI Act, 2002 and the Rule framed thereunder.
3. However, Tezpur Development Authority rejected sale permission on the ground that area of land as per revenue record, is less than 3 Kathas 9 Lechas whereas sale is effected for larger area and the authority had also insisted on obtaining an NOC from the co-pattadars of the defaulting borrowers.
4. This court under its order dated 05.06.2024 after considering the nature of the issue involved has directed the State respondent to file affidavit-in-opposition. Accordingly, an affidavit-in-opposition has been filed. It is contended by Mr. Ganguly that a specific stand has been taken raising disparities between the land sold in the auction and actual ownership of the land and in the aforesaid backdrop, according to him, the bank has misrepresented in the

auction notice and therefore, the sale certificate is nonest in the eye of law and for such reason the petitioner is not interested in pursuing the present writ petition or to get sale certificate registered, more particularly for the reason that it will be a futile exercise for him and he will not get possession of the land, which he had purchased in the auction. Therefore, he submits that in view of the development, he may be permitted to withdraw this application with a liberty to approach the Debt Recovery Tribunal, Guwahati assailing action of the respondent or to any forum which is available to him assailing the action of the respondent Bank.

5. The Hon'ble Apex Court in ***Agarwal Tracom Pvt. Limited Vs Punjab National Bank*** reported in **(2018) 1 SCC 626**, while dealing with the provisions of Section 17 (2) of the SARFAESI Act, 2002 and Rules 9 and 8 of the SARFAESI Rules, 2002 laid down the following propositions of law.

- I. Section 17(2) of the Act, 2002 empowers the tribunal to examine all the issues arising out of the measures taken under Section 13 (4) including the measures taken by secured creditor under Rule 8 and 9 for disposal of the secured assets of the borrower.
- II. The expression "provision of this Act and Rule made thereunder" occurring in Sub-section (2), (3), (4) and (7) of section 17 clearly suggests that it includes the action taken under Section 13 (4). It also includes therein the action under Rules 8 and 9, which deals with the completion of the sale of the secured assets.
- III. The expression "any of the measures referred to in Section 13(4) taken by the secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules, which relates to the measures specified in Section 13 (4) of the Act, 2002.
- IV. The auction purchaser would come within the expression of "any person" as specified under Section 17(1) and hence would be entitled to challenge the action of the secured creditor before the Tribunal by filing an application under Section 17 (1) of the Act, 2002.

6. Therefore, in the case in hand, the petitioner being an auction purchaser, his grievance against the secured creditor shall come within the ambit of Section 17 of the Act, 2002 and the petitioner would come within the meaning of 'any person' mentioned in Section 17 of the Act, 2002. At this stage Mr. Ganguly submits that there is a period of limitation for 45 days and that as there was no dues of the petitioner to be secured creditor, the applicable fees under Section 13(2)(e) of the Rules, 2002 would be Rs. 2,000/-. This court is in total agreement with such argument inasmuch perusal of the Rules 13 of the Rules, 2002 and the table therein shows that any application that may be filed by the petitioner with the grievance that the sale was defective and resulted in damage to the petitioner would come within the ambit of Rule 13(2)(e) of the Rules, 2002 inasmuch as it is the argument of Mr. Ganguly that in view of the affidavit filed by the Deputy Commissioner, a cause of action arises for him to seek a declaration and compensation. This court is also of the opinion that the cause of action that may arise to file an application before the DRT shall arise when the Deputy Commission has taken a stand that the land sold in auction is not the actual land. Therefore in the considered opinion of this court, the plaintiff is entitled to a reasonable period for filing the application under Section 17 of the Act, 2002.
7. Accordingly, this court in exercise of power under Article 226 of the Constitution grants the plaintiff the liberty to prefer an application before the Debt Recovery Tribunal, Guwahati seeking remedies in terms of Section 17 & 19 of the Act, 2002 within 45 days from the date of the instant order.
8. With the above observation and directions, the instant petition stands disposed of on withdrawal.

JUDGE

Comparing Assistant