IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2291 of 2015

==

Koshy Vaidyan Son of Late Kochummen Vaidyan, Resident of Don Bosco High School, Rajendra Path, P.S- Town, District - Siwan.

.... Petitioner/s

Versus

1. The Regional Manager, Allahabad Bank Muzaffarpur.
2. The Zonal Manager, Allahabad Bank, Muzaffarpur.
3. The A.G.M., Zonal Office, Allahabad Bank, Muzaffarpur.
4. The Authorized Officer, Zonal Office, Allahabad, Bank, Muzaffarpur.
5. The Senior Branch Manager, Allahabad Bank, Branch Siwan.
6. The Branch Manager, Allahabad Bank, Siwan Branch.
7. The State of Bihar
8. The District Magistrate, Siwan
9. The Union of India through Ministry of Finance, New Delhi.
10. The Reserve Bank of India, New Delhi.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Md A.Rahman, Advocate.
For the Rsp. No. 1 to 6	:	Mr. Sanjay Singh Thakur, Advocate.
For the State	:	Mr. Devendra Kumar Sinha, AAG-2.

==

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-03-2016

Heard learned counsel for the parties.

The writ petition has been filed seeking refund of a sum of Rs. 29,14,550/- with up-to-date interest on account of petitioner having deposited the money as bid amount for a land which was put on sale by the respondents no. 1 to 6, but neither possession given nor registered deed executed.

Learned counsel for the petitioner submits that pursuant to being the successful bidder for a property appertaining to Khata Nos. 147 and 153 having area of 3 khatas 4 dhurs situated in village

Mahpur, PS- Pachrukhi, District- Gopalganj, the petitioner deposited total bid amount of Rs. 29,14,550/-. Despite sale certificate having been issued in favour of the petitioner, the petitioner could not take possession of the land, as it had been sold by the ex-borrower of the respondent Allahabad Bank (hereinafter referred to as the 'Bank') much prior to the sale and the transferee was in possession. It is submitted that a fraud was committed on the petitioner when the property was sold without it being in the possession of the Bank and which the Bank knew that it could not give possession of and despite that without first taking possession of the land, the same was sold to the petitioner and also the entire consideration money taken. It is further submitted that the petitioner had to send legal notice in October, 2014 for refund of the money along with interest on the fixed deposit rate, but the same has not been done.

Learned counsel for the respondents no. 1 to 6 submits that they have taken action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') to which they are legally entitled and thus, no *mala fide* can be attributed on their part. He further submits that the Bank is ready to refund the money to the petitioner. However, he is not in a position to controvert the fact that the Bank has written to the District Magistrate, Siwan (respondent no. 8) for taking possession of the land in question only in February, 2015.

Learned counsel for the State, who was called upon to produce the original records of Register-II before the Court, submits that he had the same in his custody but because of the financial year coming to an end, the same was returned though he has kept photocopy of the same, which discloses that the land sold to the petitioner had already been sold by the ex-borrower much prior to the sale in question.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the firm opinion that in the present case, the action of the Bank has been totally arbitrary, which is reflected from the conduct inasmuch as without ensuring about the land sold to the petitioner relating to its title as well as the actual position, the same was sold and further the entire consideration amount also taken from the petitioner. Though strictly in law, the Bank could have taken such step, but it has a legal obligation to the party who is the successful bidder to ensure that the land sold to him and for which the Bank has got full consideration money, peaceful and vacant possession is handed over to the said party. Thus, in the present case, when the State officials have certified that the said land was already transferred by the original borrower to a third person as per the revenue records which indicate that even the purchaser had got his name mutated and the Bank had not taken any steps to get the land in question entered in its name in the official revenue records and further, the Bank itself now moving before the respondent no. 8 for getting possession, the conduct of the Bank and its officials is clearly *mala fide* amounting to malice in facts. The Bank cannot take the stand before a court of law that on the one hand, it has the right to exercise all powers vested in it under the SARFAESI Act, but on the other hand, it is not responsible even if the party, who has paid money to it on account of auction of any property, is neither put in possession nor is able to enjoy the fruits of his investment.

The law cannot be interpreted in such an absurd manner so as to cause injury to any party without there being any fault or laches on his part. Further the Bank was required to be aware of the ground reality and should have been cautious and if its intentions were fair, it should have taken steps, prior to sale of the land, for getting its name mutated in the revenue records and taking actual possession of the land through the process of law, which has clearly not been done. It thus, appears to the Court that the Bank has in fact acted dishonestly by taking the full amount in satisfaction of its demands and leaving the petitioner, who in good faith had taken part in the bid and also paid the entire amount, and now running from pillar to post and neither getting the refund of his money nor the possession of the land which was promised to be given to him by the Bank under such sale.

Accordingly, the Court directs the respondents no. 4, 5 and 6 to refund the amount of Rs. 29,14,550/- to the petitioner along with 9% per annum simple interest from the date of deposit till the date of refund within four weeks from a copy of the order being served upon them.

The attention of the Court having been drawn to the facts of the present case, leaves it shaken with an uncomfortable feeling that the authorities of the Bank are behaving in an arbitrary manner and in fact playing fraud on the system inasmuch as though there are extreme and harsh powers under the SARFAESI Act, but they are neither conscious nor careful to ensure that persons, who come forward pursuant to public notice and pay the money, are not able to enjoy the fruits of their investment moreso, for the reason that an institution making a public offer inherently inspires confidence in the person who may come forward to take part in the bid that the deal is lawful and that he would be given the property which has been promised to him and for which the offer has been made. Thus, incidents like the present shakes the confidence of the general public in institutions like the Bank, where it has behaved in a manner which shows complete lack of regard for the rights of the citizens and also shows the Bank, as an institution, that its only concern is about money, in whatever manner it may get, even by holding out a promise to a perspective buyer, which may be patently false on facts and far removed from the ground reality and even thereafter when the total amount is paid, leave the buyer to fend for himself and also not return the money.

Accordingly, the Court deems it appropriate to refer the matter to the Union of India, Ministry of Finance, Department of Banking as well as to the Reserve Bank of India to look into the said practices of the Bank, especially with regard to the present transaction, and take appropriate corrective measures after fixing responsibility on the person(s) who may be responsible for such a situation.

For the said purpose, let the Union of India through the Ministry of Finance and the Reserve Bank of India be impleaded as respondents no. 9 and 10 respectively.

Necessary corrections be made during the course of the day.

The respondents no. 9 and 10 shall be at liberty to call for the relevant records relating to the present case from the respondents no. 1 to 6.

Registry shall serve a copy of the order on Mr. S.D. Sanjay, learned Additional Solicitor General, for communication to the respondents no. 9 and 10, forthwith, for necessary action.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

U			