

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17717 of 2010

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Rajeshwar Prasad Sinha, Partner of M/S Hind Concrete Allied Manufacturing Company, R/O Chak Musallahpur, P.S. - Kadam Kuan, District- Patna.

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Branch Manager, Bihar State Financial Corporation, Chapra.
4. M/s Ram Pravesh Rai Estate Pvt. Ltd. a company registered under Company Act 1956, having its registered office- Goharua House Sri Nagar Siwan, District- Siwan, At present 44, Patliputra Colony, Patna, P.S. - Patliputra, Patna- 800013, District Patna through its Managing Director Sri Ram Pravesh Rai, S/o Sri Kamla Rai, R/o 19, Patliputra Colony, Patna, P.S. - Patliputra, Patna- 800013, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manik Vedsen, Advocate with Mr. Subhash Chandra Bose, Advocate
For the Respondent-Corporation:	:	Mr. Vinay Krishna Tripathy, Advocate
For the Private-Respondent/s	:	Mr. Binod Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-01-2016

In a second round litigation the petitioner prays:

(a) To quash the order dated 23.3.2007 issued vide Memo No. 493/Z-I/06-07 as contained in Annexure-13 whereby a sale order in respect of the unit of the petitioner has been issued in favour of the private respondent.

(b) To quash the order dated 17.8.2010 bearing Memo No.197/Z-I/10-11 as contained in Annexure-17 whereby order has been issued under the signature of the Managing Director of the respondent Corporation to take over the assets of the petitioner's unit for handing it over to the private respondent in

purported exercise of power vested under Section 29 of the State Financial Corporation Act, 1951.

- (c) To issue appropriate direction to the authorities of the Corporation to allow the petitioner to pay the dues in terms of Clause 5.1(a) of the One Time Settlement Scheme, 2009 (hereinafter referred to as the 'OTS Scheme, 2009') circulated vide Circular No.02/10-11 dated 17.8.2010, a copy of which is placed at Annexure-16 to the writ petition.

The petitioner had earlier approached this Court through CWJC No.5907 of 2007 *inter alia* being aggrieved by the action taken by the authorities of the Corporation for auction sale of the assets of the petitioner for his default in repayment of the loan obtained from the Bihar State Financial Corporation (hereinafter referred to as 'the Corporation'). The writ petition was dismissed in the following terms:

“In view of above stated position the Court is not inclined to pass any order in favour of the petitioner at such a belated stage more so when subsidy amount cannot be paid as it has lapsed in the year it was released.

The petitioner as well as respondent Corporation however will be well advised to sit on a table, work out the liability keeping the totality of the situation in mind. If one time settlement scheme or any other scheme will facilitate any relief to the petitioner the Corporation would be well advised to do so to settle the dispute.”

It is the grievance of the petitioner that even when this Court in its order dated 18.3.2010 passed in CWJC No.5907 of



2007 clearly opined that the petitioner as well as the respondent Corporation would be well advised to sit on a table, work out the liability keeping the totality of the situation in mind and further advised that if any One Time Settlement Scheme or any other scheme would facilitate relief to the petitioner then the Corporation would be well advised to settle the dispute, yet the Corporation has wholly arbitrarily rejected any such consideration for settlement *inter alia* on grounds that at the relevant time no One Time Settlement Scheme was in operation and which decision was communicated vide letter dated 21.7.2010 (Annexure-14) whereunder a total liability of Rs.1,22,78,157/- was worked out against the petitioner requiring him to clear the same within seven days, failing which the possession of the unit would be handed over to the purchaser.

This matter was first heard on 27.10.2010 when a Bench of this Court after taking note of the grievance raised by the petitioner in the backdrop of the fact that the unit stood sold way back in the year 2007 and the purchaser had also deposited the entire sale amount, directed the authorities of the Corporation to accept the application of the petitioner under the 'OTS Scheme, 2009', to be considered and disposed of in accordance with law subject to the result of the writ petition. The authorities of the Corporation were further directed not to interfere with the possession of the petitioner

over the unit, in the meanwhile.

Mr. Manik Vedsen has appeared for the petitioner, the respondent Corporation is represented by Mr. Vinay Krishna Tripathi and the private respondent is represented by Mr. Binod Kumar Singh.

Whereas it is the argument of Mr. Vedsen, learned counsel appearing for the petitioner that despite the order passed by this Court in CWJC No.5907 of 2007 requiring the case of the petitioner to be considered by the respondent-Corporation against any settlement scheme and/or to work out a settlement but such direction was simply brushed aside by the Corporation on grounds that since there was no settlement scheme in operation on 21.7.2010 hence there could be no such consideration. A communication to such effect is present at Annexure-14 to the writ petition. He submits that the Deputy Manager of the respondent-Corporation even while referring to the order of this Court passed in CWJC No.5907 of 2007 has blatantly disregarded the directions and added a threat of taking possession of the unit of the petitioner. Mr. Vedsen has referred to the 'OTS Scheme, 2009, circulated vide circular dated 17.8.2010 present at Annexure-16 to the writ petition to submit that even when the Board of Directors of the Corporation had taken a decision to introduce the 'OTS Scheme, 2009' in its meeting held on 11.9.2009 and 23.6.2010 yet most arbitrarily and

malafidely the Deputy Manager of the Corporation on 21.7.2010 communicates refusal to consider the case of the petitioner under the cover that no OTS Scheme was in operation.

Adverting next to the claim of the petitioner for his consideration under the scheme, Mr. Vedsen has submitted that since even on date except for the sale order dated 23.3.2007 present at Annexure-13 neither a sale-deed has been executed in between the parties nor the possession of the unit has been taken over by the Corporation which remains with the petitioner, hence the petitioner is fully entitled for consideration of his case for settlement under the 'OTS Scheme, 2009'. Learned counsel with reference to a judgment of the Supreme Court reported in AIR **1977 SC 774 (Narandas Karsondas vs. S.A. Kamtam)** has submitted that unless a sale order is reduced into a registered sale deed completing the transaction, the mortgagor i.e. the petitioner would be within his right of redemption. With particular reference to the conclusion drawn by the Supreme Court in paragraphs 31 to 37 of the judgment it is submitted that in view of the law settled by the Supreme Court even if the sale order had been issued but since neither a sale-deed was executed nor the possession taken over hence the right of redemption vested in the petitioner under section 60 of the Transfer of Property Act continues even as on date and in view of the specific direction of this Court in CWJC No.5907 of



2007, the respondent Corporation was duty bound to consider the case of the petitioner against the 'OTS Scheme, 2009'. Learned counsel has referred to a circular issued by the respondent-Corporation in context with OTS Scheme, 2006 enclosed at Annexure-25 to submit that what would constitute a sale has well been explained by the Corporation themselves while issuing such clarification.

Mr. Vedsen next referred to a Division Bench judgment of this Court reported in **AIR 2008 Patna page 105 (Bihar State Financial Corporation vs. Parmanand Kumar)** and with reference to paragraphs 19 to 23 of the judgment it is submitted that it is not only on issuance of a sale order that a right of promoter to redeem the mortgage gets extinguished rather until a deed is executed and possession handed over to the purchaser, the transaction does not get concluded and the right of promoter to redeem the property continues to exist.

On the same proposition learned counsel has further referred to a Bench decision of this Court reported in **2009(1) PLJR 800 (M/S Dayal Fuel Industry vs. Bihar State Financial Corporation)** and an unreported judgment of this Court rendered in the case of **Smt. Kanti Devi vs. the State of Bihar** arising from CWJC No.103 of 2010. Learned counsel in conclusion submits that in view of the law settled by the Courts, a simple issuance of a sale

order vide Annexure-13 legally did not constitute a sale and hence the petitioner was well within the parameters of the scheme for a one-time settlement under the 'OTS Scheme, 2009'.

Mr. Vinay Krishna Tripathy, learned counsel appearing for the respondent-Corporation rebutting the argument of Mr. Vedsen has mainly relied upon Clause 5.1(a) of the 'OTS Scheme, 2009' present at Annexure-16 to submit that since by virtue of the sale order dated 23.3.2007 impugned at Annexure-13 the unit had been sold hence the petitioner could not be considered for one time settlement and at best his case could be considered at Clause (c) of paragraph 5.1 for repayment of the balance outstanding against the unit. Responding to the argument of Mr. Vedsen that a sale order simplicitor did not complete the transaction of sale, learned counsel has submitted that the opinion expressed by the Bench in the case of Smt. Kanti Devi (supra) was reiterated in another judgment arising from CWJC No.12898 of 2010 (M/s Satyam Roller and Flour Mills vs. State) and which judgment of the Bench was upset by the Division Bench in LPA No.727 of 2013 heard with LPA No.1025 of 2013. It is the argument of Mr. Tripathy that the conduct of the writ petitioner is not above board for even when the sale order was issued on 23.3.2007, no step was taken by the petitioner for matching the offer nor any application for settlement was made by the petitioner in the light of the directions of the Writ



Court passed in CWJC No.5907 of 2007, a copy of which is placed at Annexure-8 to the writ petition. He submits that the opinion of the Bench in CWJC No.5907 of 2007 instead was questioned by the petitioner by filing a letters patent appeal bearing LPA No.833 of 2010 which though was withdrawn but does reflect the conduct of the petitioner. Learned counsel has made reference to the letter of the petitioner dated 28.7.2010 in which a request was made to the Corporation not to precipitate action in the light of the order passed in CWJC No.5907 of 2007 since the petitioner had preferred a letters patent appeal. It is the argument of Mr. Tripathy that despite Incentive –cum- Loan Restructuring Scheme, 2008 (hereinafter referred to as ‘the ILRS, 2008’) being enforced which gave an option to the petitioner to get the loan settled under the said scheme yet he did not choose to apply against the said scheme. In sum and substance it is the argument of Mr. Tripathy that the petitioner is a chronic defaulter and right since 2007 when the sale order was issued that he has neither allowed the same to attain finality nor has come forward to settle the matter.

Mr. Binod Kumar Singh leading the argument for the private respondent-purchaser has questioned the right of the petitioner to maintain the writ petition, inter alia, on grounds that the petitioner lacks bona-fide and has no intention to repay. With reference to the pleadings made in CWJC No.5907 of 2007



particularly paragraphs 18 to 22 he submits that the possession of the unit being taken over by the Corporation has been admitted by the petitioner to deny his responsibility on the unit as regarding its assets but for the present the petitioner has taken a turn around which is not permissible. It is argued that the petitioner is not entitled to the benefit under the scheme nor any order of settlement can be passed in this regard. Learned counsel has relied upon a decision of the Allahabad High Court reported in **AIR 2002 Allahabad 96 (M/s M.M. Accessories vs. M/s U.P. Financial Corporation)**. With reference to the finding of the Court recorded in paragraph 5 of the judgment it is submitted that a mandamus cannot be issued to direct for a settlement which has to be in tune with the statutory prescriptions.

Reverting to the 'OTS Scheme, 2009' present at Annexure-16 learned counsel has referred to Clause 5.7 thereof to submit that it is the Managing Director of the Corporation alone who is authorized to approve any settlement under the scheme and who has rejected the request of the petitioner for supply of application form in respect of 'ILRS, 2008'. He thus submits that since the petitioner did not choose to question such decision of the Managing Director to reject his claim for settlement against 'ILRS, 2008' as communicated vide Memo no.450 dated 12.11.2008 enclosed with Annexure-11, he neither had a claim for settlement



under 'ILRS, 2008' nor has right for settlement under the 'OTS Scheme, 2009' in view of the fact that the unit stands sold. Learned counsel with reference to the clarification issued by the respondent Corporation on the aspect of sale vide circular present at Annexure-25 submits that the condition so present in 2006 scheme is not present in the 'OTS Scheme, 2009'. He submits that a clarification issued by the respondent Corporation in context with a different scheme cannot be utilised in the present context. Learned counsel has referred to a Division Bench judgment of this Court reported in **2012 (1) PLJR 308 (Bihar State Financial Corporation vs. Alakh Saran)** to canvass that since the petitioner did not take steps to match the sale price in the light of the option available under the sale order, he had no right to claim settlement under the 'OTS Scheme, 2009'. Learned counsel has also referred to a judgment of this Court reported in **2000 (2) PLJR 408 (M/S Hotel Mayur Private Limited vs. State)** to submit with reference to paragraphs 8, 13, 15 and 17 that chronic defaulters are not entitled to any relief.

The arguments of learned counsel for the Corporation and for the private respondent has been responded to by Mr. Vedsen and in his short reply he has argued that neither of the counsel have responded on the legal issues raised by the petitioner on the issue of sale as settled by the judgments of this Court and the Apex Court and they have also not responded as to why the claim of the



petitioner for settlement under the 'OTS Scheme, 2009' was not entertained even when the scheme had been finalized on the date when the prayer was rejected by the respondents vide communication dated 21.7.2010 present at Annexure-14. He further submits that the judgment relied upon by Mr. Tripathy in LPA No.727 of 2013 to meet the reliance of the petitioner on the judgment of Smt. Kanti Devi (supra) has been stayed by the Supreme Court in the Special Leave Petition so preferred by M/S Satyam Roller and Flour Mills vs. State in SLP (Civil) No.22141-22142 of 2014 vide order passed on 22.8.2014, when an order of status-quo on possession has been directed to be maintained by the parties.

I have heard learned counsel for the parties and I have perused the materials on record.

Although extensive arguments have been advanced by the parties but the issue which falls for consideration lies in a very narrow compass. However, before proceeding to record my opinion on the issues which fall for consideration, there are certain relevant aspects of the matter which needs to be put on record and which are as follows:

- (a) The sale order was issued on 23.3.2007 present at Annexure-13. The petitioner approached this Court in CWJC No.5907 of 2007 on 4.5.2007 questioning the



demands raised by the respondents and an interlocutory application bearing I.A. No.735 of 2008 was filed to restrain the respondents from disturbing the possession of the petitioner over the unit. A counter affidavit was filed on behalf of the Corporation bringing on record the sale order dated 23.3.2007. The writ petition was dismissed by the Bench but with a direction to the parties i.e. the petitioner and the Corporation to sit on a table, work out the liability keeping the totality of situation in mind and if OTS Scheme or any other scheme would facilitate relief to the petitioner then the Corporation was advised to do so for settling the dispute.

- (b) The order of the Writ Court though was questioned by the petitioner on its dismissal but the letters patent appeal bearing LPA No.833 of 2010 was withdrawn by the petitioner on 7.9.2010 vide Annexure-19 for approaching the respondent-Corporation for settlement under 'OTS Scheme, 2009' which had been announced vide circular dated 17.8.2010 present at Annexure-16. The appeal was disposed of accordingly.
- (c) Neither the Corporation questioned the directives issued by the Writ Court regarding settlement of the



dispute before a superior forum nor did the purchaser either chose to get impleaded in the proceedings nor questioned the directions before a superior forum which has since attained finality by the withdrawal of the letters patent appeal by the petitioner bearing LPA No.833 of 2010 without any objection raised by the Corporation.

- (d) Although the sale order was issued on 23.3.2007 but neither any sale-deed has been executed by the Corporation in favour of the auction purchaser nor the possession of the unit has been taken over which continues to be with the writ petitioner.
- (e) Even though the sale order was issued on 23.3.2007 and the purchaser is stated to have deposited the entire sale amount but there is nothing on record to show that the purchaser knocked the doors of the forums available to him for confirmation on the sale or for delivery of possession.
- (f) In the light of the interim order passed by this Court in the present proceedings on 27.10.2010 the application form of the petitioner under 'OTS Scheme, 2009' has been accepted and the entire settlement amount has been deposited by the petitioner. A statement to such

effect has been made by the petitioner in paragraph 13 of the rejoinder to the counter affidavit of intervener filed on 15.12.2014.

These are some of the extraordinary features in the present litigation and I have consciously put them on record to demonstrate that neither the Corporation nor the private respondent are within their right to question the claim of the petitioner for settlement under 'OTS Scheme, 2009' having not bothered to question the opinion of the Bench expressed in the order passed in CWJC No.5907 of 2007 requiring a consideration of the claim of the petitioner for settlement under any scheme to facilitate his relief of settlement. The order of the single Judge in CWJC No.5907 of 2007 casting an obligation on the Corporation to sit across the table and work out the liability as also to facilitate any relief to the petitioner under any OTS Scheme or any other settlement scheme has attained finality and is binding on the Corporation and they cannot wriggle out from this situation.

In the aforementioned circumstances where the order passed by the Writ Court has attained finality and was not questioned by the Corporation before any superior forum, the letter dated 21.7.2010 of the Deputy Manager present at Annexure-14 issued with reference to the order passed in CWJC No.5907 of 2007 directing the petitioner to liquidate the entire dues while brazenly



mentioning that there was no OTS Scheme in operation, in my opinion, borders on contempt. A plain reading of the 'OTS Scheme, 2009', a copy of which is present at Annexure-16 would show that the Board of Directors of the Corporation had already decided to implement the 'OTS Scheme, 2009' in its meeting held on 11.9.2009 and 23.6.2010 i.e. well before issuance of the letter dated 21.7.2010 and in which view of the matter it was wholly a malafide and contemptuous act on the part of the authorities of the Corporation including its Managing Director and the Deputy Manager to have directed the petitioner to liquidate the dues without having regard to the directives issued by the Writ Court in CWJC No.5907 of 2007.

In fact even at the stage of disposal of LPA No.833 of 2010 filed by the present petitioner seeking permission of the Division Bench to approach the Corporation under the 'OTS Scheme, 2009', no objection or a voice of protest was made by the Corporation as regarding the ineligibility whatsoever of the petitioner towards such settlement.

In my considered opinion in view of the clear directives issued by the Writ Court in its order dated 18.3.2010 passed in CWJC No.5907 of 2007 requiring a consideration of the case of the petitioner for settlement under any OTS Scheme or any other scheme, that the Board of Directors had already decided to

implement 'OTS Scheme, 2009' in its meeting held on 11.9.2009 and 23.6.2010 the Corporation was under a bounden duty and a legal obligation to consider the case of the petitioner under the said scheme, more so because they never chose to question the directives of the Writ Court before a superior Court.

Although for the conclusion drawn by me hereinabove I am not required to express any opinion as to whether or not the petitioner came within the parameters of Clause 5.1(a) and (b) of the 'OTS Scheme, 2009' for consideration of his claim for settlement for such relief had been provided to the petitioner by the Writ Court itself but even otherwise and in view of the law settled by this Court in the case of **M/s Dayal Fuel Industries and Smt. Kanti Devi** (supra) in the backdrop of the legal position settled by the Supreme Court in the case of **Narandas Karsondas** (supra), that except for the sale order dated 23.3.2007, neither any sale-deed had been executed in favour of the auction purchaser nor the possession of the unit in question has been handed over to the auction purchaser by the Corporation and which admittedly remains with the writ petitioner, the sale transaction is not complete and the unit not having been sold in legal terms, the petitioner has his right of redemption and in view of the law settled by the Courts as relied upon by Mr. Vedsen the petitioner was well within his right to seek a redemption under 'OTS Scheme, 2009' which cannot be denied to

the petitioner.

In this context I am tempted to reproduce some of the paragraphs of the judgment in the case of **Smt. Kanti Devi** (supra) bearing discussion on the issue of sale and right of redemption *in extenso* and which would apply on all fours to cover the case of the petitioner. It would be relevant to mention here that the case of **Smt. Kanti Devi** (supra) is also a case arising from 'OTS Scheme, 2009' and in which an identical issue fell for consideration before the Writ Court:

“Learned counsel for the petitioners, meeting the aforesaid stand of the respondent Corporation, relies upon a decision of a learned single Judge of this Court in the case of *M/s. Dayal Fuel Industry vs. Bihar State Financial Corpn. & Ors.*: 2009(1)PLJR 800. He specifically relies upon paragraph Nos. 4,9,10 & 11 of the said decision, which are quoted below:

“4. Petitioner’s prayer in the writ petition was that the Corporation came out with BSFC OTS Scheme, 2006. Petitioner, with due application money, made an application for settlement of all outstanding due under the said One Time Settlement Scheme. It had offered to take the settlement under Scheme 1A but the Corporation treating it to be a case under Scheme FA, ordered that the entire outstanding could be settled but petitioner would not be entitled to get back the unit, as the unit had been sold. In other words, the Corporation’s stand is that petitioner may pay the outstanding under settlement and forgo the unit as well. Thus, in other words, the mortgage is foreclosed with liability to liquidate the due outstanding, which on the face of it appears to be peculiar. Thus, in my view, the question is whether the unit was sold or not?

9. Provision of sub-section (2) of Section 29 in no way retracts from the provision of Transfer of Property Act. For a sale, the transfer of property has to be absolute in terms of Transfer of Property Act and that is to be achieved only by a document in writing duly registered. Section 29 of the State Financial Act authorizes the Corporation to execute such a document but even then such a sale takes place only when a transfer document is

executed and duly registered as contemplated under the Transfer of Property Act, which has not been done in the present case.

10. I fail to understand on what basis Corporation took the stand that the property was sold by virtue of the sale letter. If the property was sold by virtue of sale letter then this Court fails to appreciate why in the very sale letter is stated that the petitioner had a right to retain the property on matching term. If the sale was already made and the property sold to respondent no.6 by the sale letter how could the property be retained by the petitioner after the sale had been made. Then again where is the consideration for sale. It was said that it was sold for a consideration of Rs.3.41 lakh but what happened to that money. The Corporation admits that after payment of initial amount of Rs.78,000/- no further amount was deposited by respondent no.6, who had abandoned the transaction without completing the legal formality. There was no documentation for sale nor registration thereof.

11. If on Corporation own showing legal formalities for sale were not completed, i.e., is neither was consideration received nor any document transferring the property executed nor any such document having been registered in terms of Transfer of Property Act, I fail to understand that on what basis Corporation takes the stand that the property was sold. The stand is misconceived in fact and in law and has no legs to stand. It is only a pretence for denying honorable exit to the petitioner from the debt trip laid out by the Corporation, where for a disbursement of Rs.82,000/- the petitioner had a liability to discharge now of over Rs.25 lakh. This Court can say no more. The stand of the Corporation being misconceived in fact and in law that the property was sold, the stand of the Corporation for settling the due under clause FA cannot be sustained either on fact or in law. The application of the petitioner for settlement otherwise was proper and had to be acted upon. Failure on the part of the Corporation to permit the petitioner to settle the due under the said scheme as per petitioner's option was thus wrongly denied to the petitioner. The Corporation is thus be liable to grant the facility to the petitioner to compound his liability in terms of BSFC OTS, 2006 as per his application or as per his desire under any of the scheme because choice is that of the defaulter under the scheme."

In the aforesaid decision it was clearly held by this Court that unless the formalities of sale are completed by the receipt of consideration, execution of document transferring the property and the document having been registered in terms of the Transfer of Property Act, it is not open to the Corporation to take the stand that the property was sold. The said stand of the Corporation is erroneous and misconceived on the

facts and in law and has no legs to stand. It has been held by this Court in the said case, where the facts were substantially similar, that permission on the part of the Corporation to settle the dues under the said scheme as per petitioner's option was wrongly denied to the petitioner.

Learned counsel for the respondent Corporation is unable to distinguish the present matter from the facts of the said decision.

Apart from what has been laid down in the aforesaid decision, it is evident that under Section 60 of the Transfer of Property Act a mortgagor's right of redemption cannot be taken away as long as there is no transfer of property by sale by the execution and registration of a deed of conveyance. It is based upon the principle "once a mortgage always a mortgage" and the right of redemption cannot be fettered, except in the manner as laid down in the said Section. The said proposition has been laid down by a three Judges Bench of the Supreme Court in the case of Narandas Karsondas vs. S.A. Kamtam and another: A.I.R. 1977 S.C. 774, in paragraph Nos. 35 and 37 of the said decision in the following terms:

"35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69 (3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act."

In view of the aforesaid proposition, there being no denial of the fact that there has been no registration or even execution of a deed of sale in favour of the auction purchaser, the petitioner's right to redeem the mortgaged property continues

and was in existence on 17.8.2010 when the OTS Scheme, 2009 was floated by the respondent Corporation and still continues to exist. So long as the right to redeem the mortgaged property remains and in the meantime any OTS is floated by the Corporation then it would be open to the promoter of the Unit to take the benefit of the said OTS Scheme as the owner of the said Unit.”

(Emphasis added)

In view of the law so well settled by this Court in the backdrop of the opinion expressed by the Supreme Court in the case of **Narandas Karsondas** (supra), there lies no confusion that the petitioner is fully entitled for consideration of his case for settlement under ‘OTS Scheme, 2009’ and mere issuance of sale order by the Corporation on 23.3.2007 and/or the deposit by auction purchaser neither takes away this right from the petitioner nor completes the sale transaction in absence of any sale-deed having been executed by the Corporation in favour of the auction purchaser and in absence of the possession being handed over to the auction purchaser.

That under the interim order of this Court passed on 27.10.2010 the application filed by the petitioner has been accepted by the Corporation, the settlement amount having been worked upon and having been deposited by the petitioner, the legal formalities towards the one time settlement stands completed and the order of the Writ Court passed in CWJC No.5907 of 2007 has taken its shape.

In the circumstances so discussed, the sale order dated

23.3.2007 impugned at Annexure-13 has become unsustainable and is accordingly quashed.

The writ petition is allowed. The interim order passed on 27.10.2010 and the steps taken by the Corporation pursuant thereto stands confirmed.

Let the Corporation take follow up steps for completing the process of settlement with the petitioner, under the 'OTS Scheme, 2009' viz. issuance of no objection certificate etc. as well as to refund the amount deposited by the auction purchaser in accordance with law.

(Jyoti Saran, J)

SKPathak/-

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