

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2449 of 2016

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1. Md. Mansur Alam Son of late Manzur Alam,
 2. Bilqees Begum wife of Md. Mansur Alam,
Both residents of Mohalla- Samanpura, P.O.- B.V. College, P.S.- Shastrinagar,
Town & District- Patna.

.... Petitioner/s

Versus

1. The State Bank of India, a Body Corporate, constituted under State Bank of India, Act, 1955, having its corporate centre at Madam Cama Road, Nariman Point, Mumbai, 400021 and its Local Head Office at Gandhi Maidan, Patna-80001 and amongst one of its branches known as State Bank of India, Commercial Branch, Patliputra, Patna through its Chief Manager.
2. The Assistant General Manager, State Bank of India, Premises & Estate, Local Head Office, Patna.
3. The Chief Manager, State Bank of India, Commercial Branch, Patliputra, Patna.
4. The Presiding Officer, Debt Recovery Tribunal, Patna.
5. The Recovery Officer, Debt Recovery Tribunal, Patna.
Both at Central Government Officer Complex, Digha Ashiyana Road, Rajiv Nagar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narain Parbat, Sr. Advocate.
For the Respondent/s : Mr. S.D.Sanjay, Addl. Solicitor General.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 16-03-2016

Heard learned counsel for the parties.

The writ petitioner has moved the Court for quashing the sale notice published in daily newspaper “Hindustan” dated 3.01.2016 by which the land of the petitioners, covered under Tauzi No 5175, Thana No 1, bearing Khata No 1033, Survey Plot No. 2202, having an area of 30 decimals situated at Digha, P.S.- Rajiv Nagar in the District of Patna, has been put on auction sale by the State Bank of India (hereinafter referred to as the ‘Bank’). He further prays to



quash order dated 19.11.1999 passed by the respondent no. 5 in R.P.Case No. 59 of 1999 by which the land in question was attached and also to quash the orders dated 19.03.2001 and 03.05.2001 passed by the respondent no. 5 by which the bid of the Bank, being the sole bidder, was accepted, sale confirmed and certificate issued in its favour and also for quashing the sale certificate dated 03.05.2001.

By Interlocutory Application No. 2236 of 2016, the petitioners have sought amendment of the writ petition by seeking further relief for quashing of order dated 21.12.2009 passed by the Debts Recovery Tribunal, Patna (hereinafter referred to as the 'Tribunal') in M.A. No. 15 of 2006.

Learned counsel for the petitioners submits that they had purchased the land in question in the year 1990 by two registered sale deeds from the land owners and thereafter only the Bank had filed money suit for recovery of its dues against it which was for loan taken by the original land owners and thus any subsequent development would not have involve the land of the petitioners as at least half of the land in question was never mortgaged in favour of the Bank and also sold to the petitioners prior to issuance of the sale certificate by the Tribunal. Learned counsel submits that though the controversy with regard to the Bank having purchased the land in auction sale being known to them in the year 2003 and the son of the petitioners



moving an application for rehearing before the respondent no. 5 in the year 2005, the same having been dismissed on 03.02.2006, an appeal was preferred before the Tribunal in M.A. No. 15 of 2006 which was also dismissed on 21.12.2009, which is after more than one year of the death of his son, who had filed the said appeal and thus at no point of time their objection was considered on merits by any of the authorities. It is submitted that after the death of their son, due to circumstances, the petitioners could not move before any authority and have filed the present writ petition, which is fit to be entertained and relief granted as there is no deliberate delay and laches on their part. For such contention, learned counsel has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of ***Dehri Rohtas Light Rly. Co. v. Distt. Board, Bhojpur*** reported in ***(1992) 2 SCC 598***, relevant being at paragraphs no. 12 and 13 and also in the case of ***R.S.Deodhar v. State of Maharashtra*** reported in ***AIR 1974 SC 259***, relevant being at paragraph no. 9.

Learned counsel for the Bank has opposed the writ petition and submits that the Court may not be swayed by the factual aspect of the matter as the petitioners have not been diligent in defending or agitating their rights in accordance with law. It is submitted that though even on merits, the Bank has strong case as the persons, whom the petitioners claim to be their vendors, themselves



did not have any right to sell the land till the loan taken either by them or their predecessors-in-interest, was fully satisfied, which makes the subsequent sale bad in law, but without going into those factual aspects, at least when the petitioners themselves had knowledge of the property being purchased by the Bank and thus, moving the Court in the year 2016, the writ petition ought not to be entertained. It is submitted that even if the son of the petitioners had moved before the authorities, the petitioners cannot be given the benefit that they were unaware of such development moreso in view of the fact that in the writ petition itself, it has been admitted that in the year 2001 the person with whom the petitioners had made an agreement for sale of the land in question, had gone to the site and he was informed that the property had been taken over by the Bank for which he has lodged an F.I.R. in which there was a compromise and the petitioners had returned the money and thus, the ownership and title of the Bank was known to the petitioners in the year 2001 and at least in the year 2003 when they had moved before this Court in Cr. Misc. No. 19593 of 2003, Cr. Misc. No. 19682 of 2003 and Cr. W.J.C. No. 226 of 2003. It is submitted that even at the site there is a boundary wall and proper gate with lock and key and a big signboard inside it, which clearly states that the land belongs to the Bank and thus, only when the Bank has now decided to sell the land, the petitioners are trying to create

impediment and otherwise they were sitting tight over the matter. It is submitted that interference at this stage would give a premium to such persons who would be taking advantage on their own laches and faults. Learned counsel further submits that even otherwise as so many disputed questions of facts are involved, the writ petition may not be entertained. For such proposition, learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of *State of Rajasthan v. Bhawani Singh* reported in *1993 Supp.(1) SCC 306*.

Having considered the facts and circumstances of the case and the submissions of learned counsel for the parties, the Court finds substance in the contentions of learned counsel for the Bank. Without going into the merits of the case, the Court is unable to be convinced that there was no fault or laches on the part of the petitioners in not approaching the appropriate forum within a reasonable period of time. Accordingly, on the ground of delay and laches alone, the writ petition stands dismissed.

It goes without saying that if there is any interim order, the same automatically stands vacated.

(Ahsanuddin Amanullah, J)

Sujit/-

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