

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18103 of 2016

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M/s Lakhan Homes Ltd. through its Managing Director Sanjay Kumar S/o Yogendra Singh having its Registered Office at A - 2, 2nd Floor Lakhan Sona, P.O. - Danapur Cantt., P.S. - Rupaspur, District - Patna.

.... Petitioner/s

Versus

1. The Union of India through Secretary, Finance Department, New Delhi.
2. The Housing and Urban Development Corporation through its Secretary, having its Regional Office at Maurya Lok Complex, Dak Bunglow, Patna.
3. The Recovery Officer, Debt Recovery Tribunal, Ashiyana Digha Road, Patna.
4. The Presiding Officer, Debt Recovery Tribunal Ashiyana Digha Road, Patna.
5. Yogender Singh S/o Late Ram Lakhan Singh (Certificate Debtor No. 4) Resident of Mohalla - Shekhpura, Durga Ashram Gali, P.S. - Shastri Nagar, District - Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5368 of 2017

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1. Shiv Nandan Barnwal, son of Baldeo Barnwal, Resident of Flat No. B-4 of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
2. Archana Gandhi, Daughter of Jaynandan Sharma, Resident of Flat No. E-4 of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
3. Anita Jha, Wife of Late Arun Kumar Jha, Resident of Flat No. A-2 of Lakhan Cottage, near RPS Girls School, Bailey Road, Patna.
4. Nirmala Sinha, Wife of Jitendra Narayan Sinha, Resident of Flat No. B-1 of Lakhan Cottage near RPS Girl School, Bailey Road, P.S.- Rupaspur, Patna.
5. Shiw Shankar Singh, Son of Phulena Singh, Resident of Flat No B-2, of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
6. Chanchala Kumari, Daughter of Chandrika Prasad Choudhary, Resident of Flat No. G-1 of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
7. Kumari Anupama, Wife of Late Raju Nandan Prasad, Resident of Flat No. H-3 of Lakhan Cottage, Near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
8. Vikram Kumar, Son of Kedar Prasad, Resident of Flat No. C-1 of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
9. Anju Sinha, Wife of Nirmal Kumar Sinha, Resident of Flat No. A-1 of Lakhan Cottage, near RPS Girl School, Bailey Road, P.S.- Rupaspur, Patna.
10. Binod Kumar Sinha, Son of Babu Nandan Sinha, Resident of Flat No. F-1, of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
11. Sanjeev Kumar, son of Srikant Singh, Resident of Flat No. F-3, of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.
12. Kunal Kumar, Son of Late Shashi Bhushan Mandal, Resident of Flat No. C-4, of Lakhan Cottage, near RPS Girls School, Bailey Road, P.S.- Rupaspur, Patna.

.... Petitioner/s



Versus

1. The Housing and Urban Development Corporation Ltd. through its Managing Director, having its registered office at HUDCO Bhawan, Core-7A, India Habitat Center, Lodhi Road, New Delhi, 110003.
2. Managing Director, Housing and Urban Development Corporation Ltd., having its registered office at HUDCO Bhawan, Core-7A, India Habitat Center, Lodhi Road, New Delhi, 110003.
3. The Regional Chief, Regional Office, The Housing and Urban Development Corporation Ltd., 2nd Floor, Block-B-2 Mauryalok Complex, Dak Bunglaw Road, Patna.
4. The Authorized Officer Regional Office, The Housing and Urban Development Corporation Ltd. 2nd Floor, Block- B-2, Mauryalok Complex, Dak Bunglaw Road Patna.
5. The Union of India through Debts Recovery Tribunal through its Secretary, Ashiyan Digha Road, Patna.
6. The Recovery Officer, Debts Recovery Tribunal, Ashiyan Digha Road, Patna.
7. M/s Lakhan Home Ltd., having its registered office at A-2, Second Floor, Lakhan Sona, near RPS more, Bailey Road, Patna.
8. Sanjay Kumar, Son of Yogendra Singh, Managing Director of M/S Lakhan Homes Ltd., Resident of Sumitra Villa Apartment, B/5, Magistrate Colony, Patna- 800014.
9. Renu Sinha, Daughter of late Shashi Bhushan Singh, Wife of Sanjay Kumar, Managing Director of M/S Lakhan Homes Ltd., Resident of Sumitra Villa Apartment, B/5, Magistrate Colony, Patna- 800014.
10. Yogendra Singh, Son of Late Ramlakhan Singh, Resident of Sheikhpura, Durgasthan, Patna- 800014.
11. Usha Singh, Wife of Yogendra Singh, Resident of Sheikhpura, Rajendra Lane, Shastrinagar, Patna- 800023.
12. Meenu Wife of Arvind Kumar, Daughter of Yogendra Singh, Resident of Flat No. 102, Sapna Apartment, Ramnagri Road, Ashiana Nagar, Patna- 800025.
13. Amit Ranjan, Son of late Gajendra Kumar, Resident of Kailash Nivash, Bhikhna Pahari, Patna- 800004.
14. Amrendra Narayan, Son of Late Ramashish Prasad, Resident of CDA Colony, Behind Shiv Mandir, North Shastri Nagar, Patna- 800023.
15. Santosh Kumar Singh, son of Late Shashi Bhushan Singh, Resident of 92, Sheikhpura, West of TP Singh, Patna- 800014.
16. Rajeev Kumar Singh, Son of Surendra Prasad, Resident of Flat no. 402, Sapna Apartment, Ramnagari Road, Ashiana Nagar, Patna- 800025.

.... Respondents

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Appearance :

(In CWJC No.18103 of 2016)

For the Petitioner : Mr. Uma Shankar Singh, Advocate.
For the Resp. No. 2 : Mrs. Namrata Mishra, Advocate.
For the UOI : Mr. Kumar Priya Ranjan, Advocate.

(In CWJC No.5368 of 2017)

For the Petitioners : Mr. Anjani Kumar Jha, Advocate.
For the Resp. No. 1 to 4 : Mr. Prashant Kumar, Advocate.
For the UOI : Mr. S.D. Sajay, Addl. S.G
Mr. Kumar Priya Ranjan, CGC



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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-11-2017

C.W.J.C. No. 18103 of 2016

This writ petition has been filed for quashing the order or “warrant of attachment of immovable property” dated 07.10.2016 issued order the seal & signature of the Recovery Officer, Debts Recovery Tribunal, Patna in connection to R.P. No. 171/2013, arising out of the order dated 23.10.2013 in O.A. No. 68 of 2013.

2. At the very outset, learned counsel for the respondents invites attention to paragraphs 5 and 6 of the counter affidavit filed on behalf of respondent no. 2, wherein a categorical stand has been taken that the warrant of attachment has already been executed and the report submitted by the Advocate Commissioner and hence the writ petition has become infructuous. It has further been stated that the petitioner has alternative remedy under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 against any order passed by the Recovery Officer and hence the present writ petition is not maintainable.

3. Learned counsel for the petitioner has not refuted the stand of the respondents as no rejoinder in this regard has been filed.

4. In the above view of the matter, C.W.J.C. No. 18103 of 2016 stands dismissed with the observation that the petitioner may take remedial steps before the appropriate forum in accordance with



law for redressal of its grievances. I.A. No. 9896 of 2016 also stands disposed of.

C.W.J.C. No. 5368 of 2017.

The present writ petition has been filed for quashing the part of Warrant of Attachment of Immovable Property dated 07.10.2016 issued by the Recovery officer, Debts Recovery Tribunal, Patna, whereby 60% share of the Builder i.e. respondent no. 7 in Lakhan Cottage situated at Khata No. 229, Survey Plot No. 326, Tauzi No. 5292, Thana No. 23, Mauza Saguna, Pargana-Phulwari, P.S. Danapur, District- Patna, which includes the Flat of the petitioners sold by the Developer of the Apartment (respondent no. 7) i.e. serial no. (i) of schedule of Property mentioned in attachment notice; and to recover the amount due against the Developer from whom petitioners have purchased the flat and from the secured assets of other certificate debtors mentioned at serial no. (ii) of schedule of Property mentioned in the attachment notice.

2. Learned counsel for the respondents relies on the counter affidavit filed in C.W.J.C. No. 18103 of 2016 to submit that the warrant of attachment in question, which is the same in both the writ petitions, has already been executed and hence the prayer for quashing the warrant of attachment has become infructuous.

3. In this view of the matter, this prayer of the petitioners is rejected.



4. So far as the second prayer of the petitioners for recovery of the amount due against the Developer is concerned, the relief sought is against the private respondent no. 7 being the Developer of the property and not against the Bank with whom the petitioners did not have any privity of contract. This prayer is thus held to be not maintainable and stands rejected.

5. In the result, the writ petition stands dismissed as aforesaid with liberty that the petitioners may take remedial steps before the appropriate forum in accordance with law for redressal of their grievances.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.11.2017
Transmission Date	N.A.

