

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15510 of 2015

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Satish Kumar Son of Sri Raghunandan Prasad, Resident of Nehur Tola, P.S. Chowk, Post- Begumpur, District- Patna

.... Petitioner

Versus

1. The Regional Manager Cum Authorised officer, Central Bank of India, Regional Office, B. Block 2nd Floor, Maurya Lok Complex, Patna
2. The Senior Manager-cum-Recovery Officer, Central Bank of India, Regional Office, B. Block 2nd Floor, Maurya Lok Complex, Patna
3. The Zonal Manager, Central Bank of India, Zonal Office, Maurya Lok Complex, Patna
4. The Branch Manager, Central Bank of India, Jhauganju Branch, Patna City, Patna
5. The State of Bihar through, the District Magistrate, Patna
6. The Sub-Divisional Officer, Patna City, Patna
7. The Anchal Adhikari, Patna City
8. Rahmatulla son of Nabi Hasan, Proprietor, M/s R.T. Enterprises, Resident of Kadam Kuna, Patliputra Building, P.S. Kadam Kuan, District- Patna

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Syed Firoz Raza, Adv.
For the Bank : Mr. Ajay Kumar Sinha, Adv.
For the Respondent No.8 : Mr. Abhinash Kumar, Adv.
For the State : Mr. Amit Bhushan, A.C. to G.P.16

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-02-2017

Heard learned counsel appearing for the respective parties.

2. In this case, the petitioner is raising grievance that his land appertaining to Mauza Kumhar Khata No.570, Plot No.169/172, measuring 6.38 decimals of land was mortgaged to the Central Bank of India for the loan amount of Rs.3,00,000/- has been



put to auction by the Bank without giving any notice as provided under Section 13(2) of the Act as well as did not follow provision of 8 and 9 of the Rule.

3. Learned counsel for the petitioner submits that without giving any notice and without any information, the petitioner was declared to be the defaulter and the property, in question, has been put to auction sale. In consequence thereof, the property, in question, was given to respondent No.8 and he approached this Court for handing over the property by filing C.W.J.C. No. 19421 of 2012. The said writ application was disposed of vide order dated 17.12.2013 in the following terms:-

“Learned counsel for the respondent-Bank produces a photo copy of Panchnama which shows that petitioner has taken over possession of the land on 13.12.2013 which was purchased by him in auction.

Let the copy of the Panchnama be kept on record.

Petitioner is at liberty to take further steps and approach the Bank authorities for registration of sale deed in accordance with law.

This application is disposed of.

4. It appears that in the said writ petition the present petitioner was not impleaded as party, so the aforesaid order cannot be said to be the binding effect on the present petitioner.



5. It has been informed by the learned counsel for the Bank as well as the auction purchaser - respondent No.8, when the auction purchaser had gone along with the authorities to take possession of the land, adjacent Raiyat raised objection that land which was intended to be taken possession belongs to him, not to borrower, he approached the Tribunal, challenging the handing over of the land to the auction purchaser, claiming that the land which has been given to the auction purchaser is not the land of the borrower, but it is his land. In pursuance thereof, the objector filed Case vide No.13 of 2014. The Tribunal passed the order against the auction purchaser and rejected the claim and against that order, the auction purchaser has moved before the D.R.A.T. by filing Appeal No.212 of 2014 and the same is pending.

6. In the present case, the petitioner submits that he has not received any notice under Section 13(2) of the Act. If that be so, the entire proceeding will vitiate.

7. This issue has gone into by the Hon'ble Supreme Court in the case of **Mathew Varghese vs. M. Amritha Kumar and Others.**, reported in (2014) 5 S.C.C. 610 and in the case of **Vasu P. Shetty vs. Hotel Vandana Palace and Others**, reported in (2014) 5 S.C.C. 660.



8. In such view of the matter, this Court directs the present petitioner to approach the Debt Recovery Appellate Tribunal, Patna under Section 17 of the SARFAESI Act. If the petitioner approaches the Debt Recovery Appellate Tribunal, Patna, within four weeks from today, the Tribunal will be obliged to look into the claim of the petitioner and pass appropriate order in accordance with law without being influenced by the earlier orders passed by this Court. The Tribunal, while considering the Limitation Petition, will take into consideration the fact that the petitioner was not made a party in any proceeding in the past as he has submitted that he has not received any notice. It is clarified that this Court is not giving any opinion on the merit of the case.

9. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.02.2017
Transmission Date	N/A.

