HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 660 of 2017

- Smt. Seema Shah W/o Vinesh Shah Aged About 54 Years R/o Techno Industries Katora Talab, Raipur, District Raipur, Chhattisgarh

--- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Accommodation & Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001

--- Respondents

WPC No. 675 of 2017

Smt. Sanju Sharma W/o Bankat Lal Sharma Aged About 44 Years R/o Shop No. 14, Radhamohan Complex, Ground Floor, Near Agrasen Chowk, Raipur, District Raipur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Accommodation And Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001

8. Assistant General Manager, State Bank Of India, R.A.C.P.C. Branch, Zonal Office, Byron Bazaar, Raipur, District Raipur, Chhattisgarh **--- Respondents**

WPC No. 676 of 2017

Smt. Varsha Sharda W/o Amol Sharda Aged About 38 Years R/o Chhattisgarh Cloth Center, Bagbahra, District Mahasamund, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of Accommodation And Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001 **--- Respondents**

WPC No. 677 of 2017

1. Smt. Tulsi Valmik W/o Ram Lal Valmik, Aged About 44 Years R/o Ambedkar Chowk, Village & Post Gariyaband, District Raipur (Chhattisgarh).

2. Kumari Sapna Uike, D/o Shri Govindram Uike, Aged About 20 Years R/o Ambedkar Chowk, Village & Post Gariyaband, District Raipur (Chhattisgarh). **--- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Accommodation And Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur (Chhattisgarh).

2. Commissioner Cum Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur (Chhattisgarh).

3. Collector, District Raipur (Chhattisgarh).

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur (Chhattisgarh).

5. Municipal Corporation, Raipur, Through Its Commissioner, Raipur (Chhattisgarh).

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Road, Raipur, District Raipur (Chhattisgarh).

7. Diwan Housing Finance Corporation Limited, D H F L, Registered Office Warden House, Second Floor, Sir P. M. Road, Fort Mumbai 400001. **--- Respondents**

WPC No. 678 of 2017

- Smt. Bina Singh W/o Ashok Kumar Singh Aged About 57 Years R/o Q. No. 7a, Street Avenue-B, Sector-1, Bhilai, District- Durg, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of Accommodation and Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001 **--- Respondent**

WPC No. 679 of 2017

- Smt. Sapna Goshwami W/o Nirmalpuri Goshwami R/o Kasturba Nagar, Near Kaushik Kirana Store, Sindhi Colony, District- Bilaspur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of Accommodation and Environment, Mahanadi Bhavan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001

--- Respondents

WPC No. 684 of 2017

- Hoshiyari Lal Agrawal S/o Shambhu Ram Agrawal Aged About 59 Years R/o Hari Kishan Colony, Infront Of Mamta Tent House, Shivtakji Raod, District- Bilaspur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department Of Accommodation & Environment, Mahanadi Bhawan, Mantralaya, New Raipur, Raipur, Chhattisgarh

2. Commissioner-Cum-Director, Nagar Tatha Gram Nivesh, Naya Raipur, District Raipur, Chhattisgarh

3. Collector, District Raipur, Chhattisgarh

4. Chief Executive Officer, Raipur Development Authority, Bhakt Mata Karma Parisar, New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

5. Municipal Corporation, Raipur Through Its Commissioner, Raipur, Chhattisgarh

6. Sanjay Bajpai, Builders Private Limited, (New Swagat Vihar Project), Through- Its Managing Director Smt. Sarita Bajpai, R/o 3rd Floor, Krishna Complex, Jail Raod, Raipur, District- Raipur, Chhattisgarh

7. Diwan Housing Finance Corporation Limited, Dhfl, Registered Office- Wardern House, Second Floor, Sir P.M. Raod, Fort Mumbai 400001

8. Rajesh Dubey S/o Shri Manilal Dubey Aged About 44 Years R/o

House No. 171, Behind The Tank Colony, Fafadih, Raipur, Tahsil & District Raipur, Chhattisgarh **--- Respondents**

For the Petitioners	:	Mr.Manish Upadhyay, Advocate
For the State	:	Mr. Anil S. Pandey, Govt. Advocate.
For respondent no.4	:	Mr. Ashish Shrivastava, Advocate
For respondent No.5	:	Mr.H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

13.04.2017

1. Since the common question of law is involved in all these writ petitions and the facts are principally one and the same, they are being decided by this common order.
2. The batch of these petitions has been filed by the petitioners who purchased the plots from respondent No.6 Sanjay Bajpai Builders Pvt. Ltd., in between 2009 and 2012. The petitioners have filed these petitions when they have been served with a notice u/s 13(4) of the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (henceforth called as SARFAESI Act, 2002) read with Rule 8(1)(2) of the Security Interest (Enforcement) Rules, 2002 and it is informed to the petitioners that the symbolic possession has been obtained. It is contended that the petitioners are bonafide purchasers of the plots as they purchased the plots for certain considerations, neither they have obtained loans from respondent No.7 who has served notice u/s 13(4) of the Act, 2002 vide Annexure P-1 nor any financial liability was incurred on their behalf. It is submitted that the said notice is without jurisdiction as no *interse* relation of creditor and

debtor has been created, therefore, prima facie notice itself is bad in law and without jurisdiction.

3. Shri H.B. Agrawal, Sr. Advocate and Shri Ashish Shrivastava, Advocate, appearing for respondents 4 & 5 oppose the admission and submit that under the SARFAESI Act if the notice is served u/s 13(4), the remedy is provided to the aggrieved persons to file appeal before the appropriate forum i.e., D.R.T., having jurisdiction u/s 17 of the Act therefore, the petitions are not tenable.

4. Perused the notice dated 02.12.2016 Annexure P-1 which is under challenge. The notice purports that it was served u/s 13(4) of the SARFAESI Act read with Rule 8(1)(2) of Security Interest (Enforcement) Rules, 2002 by Diwan Housing Financial Corporation Ltd (for short 'DHFL'). The notice further purports that the seller/builder who sold the plots to the petitioners/purchasers had obtained loan and committed default in repayment of loan, therefore, a notice was initially served for recovery of the debt of Rs.30,79,29,295/-. The said notice was issued on 16.08.2016 and despite service of such notice, repayment of loan was not made by the borrower. Consequently since the borrower had failed to discharge his liability within the specified time of 60 days as contemplated u/s 13(2) of the Act, 2002, respondent No.7 DHFL who claims to be the secured creditor had taken measure under sub-section 4 of section 13 of the Act, 2002 and had taken symbolic possession of the entire property which was mortgaged to them.

5. Prima facie reading of notice would reflect that respondent No.6 Sanjay Bajpai Private Ltd., had obtained loan from

respondent No.7 Diwan Housing Financial Corporation Ltd., and made default in repayment of loan. Consequently the measures were taken u/s 13(4). Since the proceedings u/s 13(4) was initiated, if the petitioners are aggrieved by such act, they can avail the remedy of appeal u/s 17 of the SARFAESI Act before the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date of on which such measures were taken. Section 17 takes into sweep the words “any person”. Therefore by way of necessary implications, it will include the petitioners. The fact whether the mortgage was created prior to sale of land/plots or it was created after the sale was made in favour of the petitioners can only be adjudicated when the detailed evidence is led in this regard. This Court in exercise of powers conferred under Article 226 of the Constitution of India cannot go into or explore the issue like a fact finding forum. Since the particular forum has been provided under the statute, the petitioners have efficacious alternative remedy to file appeal before the appropriate forum i.e., Debt Recovery Tribunal.

6. In the result, I am not inclined to entertain these petitions as alternative efficacious remedy is available to the petitioners. Accordingly, these petitions are dismissed.

7. However, the petitioners, if so advised, may avail the remedy of appeal before the competent forum having jurisdiction i.e., Debts Recovery Tribunal. It is further observed that as the notices were served on 02.12.2016, the specified period has already expired to avail the remedy, therefore, if the appeal is filed pursuant to section 17 of the Act, 2002 along-

with application for condonation of delay, then the DRT may consider the same sympathetically taking into the fact that the petitioners had already approached this Court and challenged the act by way of Article 226 of the Constitution of India.

Sd/-

GOUTAM BHADURI
JUDGE

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