

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.616 of 2018

1. Ramesh Kumar Soni, (having no secured asset to security interest under Act 2002) aged about 43 years, S/o Late Motilal Soni, Daily Labour Worker, R/o Village Kharora, Gondpara, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)
2. Kanti Bai Soni, aged about 38 years, (agreement holder no borrower under Act 2002), W/o Ramesh Kumar Soni, R/o Village Kharora, Gondpara, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)
3. Minor Rishabh Soni (no borrower under Act 2002), aged about 6 years, Through Next Friend Mother Kanti Bai, W/o Ramesh Soni, R/o Village Kharora, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)
4. Hemraj Soni, aged about 49 years, (not borrower under the Act 2002), S/o Late Shri Motilal Soni, (brother of Ramesh Kumar Soni), R/o Village Kharora, Gondpara, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)

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Versus

1. Punjab National Bank, through the authorized (Pradhikrit Adhikari) officer, Address – Office at Raipur Madina Manjil (Kachhari Chowk), District Raipur (C.G.)
2. Branch Manager, Punjab National Bank, Office at Devendra Nagar, Raipur, District Raipur (C.G.)
3. The State of Chhattisgarh, Through the Secretary, Department of Financial, Mantralaya, New Rajdhani, Raipur (C.G.)
4. The Collector, District Magistrate, Raipur District Raipur (C.G.)
5. The Naib Tahsildar, Kharora, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)
6. Vishnoo Thakur, Naib Tahsildar Kharora, Police Station and Janpad Panchayat Kharora, District Raipur (C.G.)
7. Police Station House Officer, Prabhari Officer, Police Station Kharora, District Raipur (C.G.)
8. The District Superintendent of Police, Raipur Office at Raipur, District Raipur (C.G.)
9. The Patwari of Village Kharora, Janpad Panchayat working in the office Naib Tahsildar, Kharora, District Raipur (C.G.)

10. Union of India, through Secretary, Department of Finance, Secretariat,  
New Delhi.

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For Petitioners: Mr. Janak Ram Verma, Advocate.

For Respondents No.1 and 2: -

Mr. Ravish Verma, Advocate.

For Respondents No.3 to 5, 7 and 8: -

Mr. Ratan Pusty, Govt. Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/04/2018

1. The petitioners have filed this writ petition calling in question the order dated 23-1-2018 passed by the Naib Tahsildar, Kharora, directing petitioner No.1 to handover the possession of the subject land to the respondent Bank.
2. Learned counsel for the petitioners would submit that it is abadi land and security interest could have been created in favour of the Bank by petitioner No.1 and other petitioners have also interest, title and right over the said land, therefore, the entire proceeding initiated by the District Magistrate is unsustainable and therefore the petitioners' possession be protected.
3. In the case in hand, proceedings were initiated against petitioner No.1 who filed reply before the District Magistrate only on 16-10-2017 stating that he has taken a loan of ₹ 14,70,000/- and he has already deposited ₹ 5,89,000/-, but on account of unavoidable circumstances like demonetisation, coming into force of the GST and damage of crops, he could not pay the amount as the business was closed, therefore, four months' time be granted to make payment. No other objection was taken by petitioner No.1. Thereafter, the District Magistrate has passed the order on 8-1-2018 directing for providing

assistance for delivery of physical possession in favour of the Bank in which the order dated 23-1-2018 has been issued by the Naib Tahsildar, Kharora. The petitioners have not challenged the order dated 8-1-2018 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002'), but only challenged the consequential order issued by the Naib Tahsildar for delivery of possession. Even otherwise, petitioner No.1 has admitted before the District Magistrate that he has taken loan and he be granted time to pay the balance amount. Petitioners No.2 to 4 have not taken any objection before the District Magistrate and when the order under Section 14 of the Act of 2002 has been passed, in order to avoid the execution of the order, they have filed this writ petition before this Court, even petitioner No.1 has joined in doing so.

4. Taking into consideration the stand of petitioner No.1 before the learned District Magistrate and no challenge has been made to the order of the District Magistrate in this writ petition, only the consequential order of the Naib Tahsildar has been challenged without challenging and expressly seeking quashment of the order of the District Magistrate, the writ petition as framed and filed is held to be not maintainable in law. Even otherwise, challenge made by petitioners No.2 to 4 cannot be taken cognizance of in this writ petition at this belated stage.
5. I do not find any merit in the petition. The writ petition is liable to be dismissed and is hereby dismissed. However, the petitioners are at liberty to proceed in accordance with law / under the Act of 2002.

6. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

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