IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3081 of 2019

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Bimla Devi, aged about 61 years, W/o Late Kapil Dev Prasad Resident of Chamdoriya More, Nagla, P.S. and P.O. - Patna City, District- Patna- 800008

... ... Petitioner

Versus

1. Union Of India through Secretary, Ministry of Finance, New Delhi.
2. The General Manager-Cum-Managing Director, Punjab and Sindh Bank, New Delhi.
3. The Zonal Manager, Punjab and Sindh Bank, Bihar Region.
4. The Branch Manager, Punjab and Sindh Bank, Haziganj, Patna City, District- Patna- 800008.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anurag Anand

For the Respondent/s : Mr.S.D.Sanjay (ADSG)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 25-06-2019 Heard learned counsel for the petitioner and Mr. Anshuman Singh, learned counsel for the Union of India.

It appears that the matter relates to deposit of original title deed of a plot which was offered to Punjab & Sindh Bank, Haziganj, Patnacity as collateral security towards educational loan availed by the petitioner in the name of his son. According to the petitioner, the loan was sanctioned on 30.03.2005 against the mortgage of the land and building as collateral security. The petitioner claims that he had deposited the original sale deed No. 17714705 dated 16.09.1991 pertaining to Khata No. 282, Khesra No. 1883 and 1884 in the name of husband of the petitioner. The loan account was later on settled. It is stated that in the letter dated 13.06.2006 and the offer letter regarding one time settlement scheme dated 24.10.2017 as contained in Annexure ‘1’ and ‘3’ respectively, the Bank had made specific statement that the loan is being offered against the collateral security of land and building and that the title deed in question shall be returned upon One Time Settlement (in short ‘OTS’).

Learned counsel for the petitioner submits that though the loan account has been settled, the original title deed kept with the Bank is not being returned.

On perusal of the materials available on the record particularly Annexure ‘6’ to the Writ Application, this court finds that the petitioner had earlier moved to the office of the Banking Ombudsman, Reserve Bank of India, Patna where the complaint of the petitioner was considered, the conciliation meeting took place and in the said meeting the Bank came with a response that although the sanction letter dated 29.07.2005 mentions of collateral security, but, in fact, no such collateral security was taken and the letter contains only a clerical error. The Bank also came with a plea that on January 12, 2018 when the account was settled, no dues certificate was issued to the complainant, which the complainant confirmed and never raised any issue of the title deed. The Bank also took a plea that had the property been mortgaged with the Bank, the Bank would not have opted for OTS and would initiate action under SARFAESAI Act, 2002 and gone for auction of the property. The Bank offered to give the certified copy of the mortgage deed to the complainant.

The Banking Ombudsman thereafter concluded that the complainant is unable to produce any acknowledgment towards the mortgage of the title deed and the fact that the Bank settled the loan under OTS, which Banks normally do not resort to in respect of secured loans, the mortgage of property by the complainant cannot be established.

This court is of the considered opinion that once a fact finding body such as Banking Ombudsman of the Reserve Bank of India has recorded a finding of fact saying that the complainant is unable to produce any acknowledgment towards mortgage of the title deed and even before this court the petitioner has not brought on record any such material to show that he had submitted the original title deed with the Bank, this court sitting in it's writ jurisdiction under Article 226 of the Constitution of India would not take upon itself to assume certain facts and issue direction based thereon. The court finds no reason to issue a writ of mandamus in the facts and circumstances of the present case.

It, however, remains open for the petitioner to accept the certified copy of the deed which the Bank is said to have offered to the petitioner in course of conciliation meeting before the Ombudsman. If the petitioner approaches the Bank for getting the same, the Branch Manager, Punjab & Sindh Bank, Haziganj, Patnacity, District – Patna (Respondent No. 4) shall make available the certified copy to the petitioner forthwith.

The contentions raised by the petitioner are left open, and, if so advised, the petitioner may seek his remedy whatsoever available to him before any appropriate Court/Forum.

Accordingly, the Writ Application stands disposed of.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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