HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1328 of 2019

Rajendra Kumar Yadav, S/o. Late Sadashiv Ram Yadav, Aged About 50 Years, R/o. Om Nagar, Jarhabhata, Bilaspur, Tahsil Revenue & Civil District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

Cent Bank Home Finance Limited, First Floor, Mittal Complex, Beside Union Bank, Vyapar Vihar, Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. S.S.Rajput, Advocate
For Respondent	:	Mr. Anand Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29.04.2019

Heard.

1. It has been contended that the petitioner has not availed any loan from the Bank, he has purchased the property from three persons namely Samual James, Subhash James & Smt. Shobhna James by a sale deed dated 17.07.1998. The subject property was the land bearing Khasra No.79/2 admeasuring 1375 sq.ft. situated at Jarhabhata, Guru Ghasidas Ward No.21, Patwari Halka No.21, Revenue Circle & Municipal Corporation Bilaspur. It is stated that the petitioner was residing outside. The said land was subsequently numbered as 79/6 and the diversion was also carried out and was numbered as plot No.238 admeasuring 1378.

2. Learned counsel for the petitioner would submit that the auction notice and the sale was carried out by the Bank in respect of the construction made over plot No.79/5. It is stated that certain construction was also carried out over the plot of the petitioner which is Khasra No.79/2 subsequently numbered as 79/6 of plot No.238. It is stated that since the persons who availed the loan have defaulted as such the Bank has proceeded under the SARFAESI Act, 2002 and the flat which was constructed including the plot

of the petitioner were auctioned. It is stated that the petitioner has not availed any loan from the Bank as such in any case the plot of the petitioner cannot be enveloped in the auction and was not mortgaged and there is no privity of contract in between the petitioner and the Bank. Therefore, the auction which has been made if includes the property of the petitioner is liable to be set aside.

3. Learned counsel for the Bank would submit that the petition is not tenable. He further submits that the entire construction was over Khasra No.79/5. It is stated that the construction had not included Khasra No.79/6. It is not disputed that the petitioner is not a loanee and has not availed the loan and mortgage of his property bearing Khasra No.79/6 with the respondent Bank was never created.

4. Be that as it may, it is obvious that the Bank before grant of loan get the property surveyed and search are carried out through experts about the ownership of the property including the site situation of the property with relevant document. The same is done to confirm the identity and ownership of property. Thereby, it is imperative that after the search and valuation report are obtained, the loan is sanctioned by mortgage of property. According to the Bank, the properties which were subject of mortgage were situated over Khasra No.79/5 and not over 79/6. Whereas the petitioner who has not availed the loan contends that the property on which the Bank has advanced loan has enveloped the property of petitioner bearing Khasra No.79/6 situated at Jarhabhata. For purpose to decide this writ petition it would be difficult to ascertain those facts as it would require detail evidence. It is disputed question of fact. However, at the same time in case if the property of the petitioner was not mortgage and it was taken into sweep by the construction of flats and was eventually mortgaged, then the Bank too cannot pass a better title to the purchasers. This situation can be settled only when the demarcation is carried out in respect of the land.

5. In the facts of this case, it is directed that the petitioner shall carry out the demarcation in respect of Khasra No.79/6, Plot No.238 situated at Jarhabhata in respect of his land and if it is found that the property which was subject of sale by the Bank includes the part of the land belonging to the petitioner along with construction made over it then the purchasers and the Bank too may be held liable to make good the loss occasioned to the petitioner. The petitioner thereafter may redress his grievance in properly constituted suit or any other remedy available to him under the law.

6. With the aforesaid observation, the petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge

ashok