

23-08-2021
sl. no.47
tkm/ct. 8

WPA 127873 of 2021
Prokash Mishra
Versus
Union of India & Ors.
(Through Video Conference)

Mr. Sabyasachi Chatterjee
Mr. S Das
Ms. D Sarkar

... for the petitioner

Mr. Sudipto Panda
Mr. Subrata Ghosh

... for the State

Mr. Debashis Saha
Ms. Namrata Chatterjee

... for the SBI

Petitioner assails the action of the bank in dispossessing the petitioner under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Learned advocate for the petitioner relies upon *AIR 2011 Cal 57 (Debasree Ds vs. State of West Bengal & Ors.)* and contends that, a writ petition against an action taken by the bank is not barred despite existence of statutory, alternative remedy. He submits that the petitioner was dispossessed by the bank.

Learned advocate for the bank submits that the bank proceeded against the flat owner claiming mortgage over the same. He submits that apparently, the promoter sold the same flat twice. The first purchaser mortgaged the flat in favour of the

bank. On the failure of the first purchaser to repay the loan, the bank proceeded under the Act of 2002 and took possession of the flat in question.

Learned advocate for the petitioner submits that the measurement of the flat of the first purchaser is 700 square feet. while the flat purchased by the petitioner is 1000 square feet. He submits that the petitioner is an officer of Airport Authority of India and that the petitioner purchased the flat after obtaining loan from the authorities.

In the facts of the present case, it appears that there are rival claims with regard to the title in respect of the same immovable property. In the event, the claim of the bank is correct that the immovable property was sold to a third party prior to the same being sold to the petitioner then, in that case the no right, title and interest in respect of the flat concerned exists in favour of the petitioner. The right, title and interest of the petitioner in the flat therefore, stands contested by the bank.

In *Debasree Das* (supra) the Division Bench found that there was no valid mortgage in favour of the financial institution. In the present case, there is a claim of mortgage by the bank through the first owner of the flat. Apparently, with the title, flat being conveyed to the first owner, the claim of the petitioner of ownership of the flat is doubtful. Writ Court need not enter into

such disputed arena. In such circumstances, since the facts scenario are different from *Debasree Das* (supra), the same cannot be applied herein.

The petitioner is not remediless. There are statutory, efficacious alternative remedy available to the petitioner under the provisions of the Act of 2002.

In such circumstances, I am not minded to interfere in the present writ petition.

WPA 12783 of 2021 is disposed of accordingly.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(DEBANGSU BASAK, J.)