

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2842 of 2022

1. Arun Kumar Singh Son of Late Sukala Prasad Singh Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
2. Suresh Narain Son of Late Kuldeep Narayan Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
3. Rajeev Kumar Thakur Son of Late Yogendra Thakur Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
4. Amarnath Singhanian Proprietor of M/s Dungar Mal Lal Chand, Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
5. Pradeep Kumar Jalan Son of Late Navrattan Jalan Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
6. Manjeet Singh Son of Late Narendra Singh Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).
7. Kishan Lal Son of Late Ram Lal Proprietor M/s Kishan Lal and Sons, Shopkeeper Tenants at the Shop Katras annexed to the Murshidabad Estate belongs to West Bengal Govt. situated at Mohalla- Fulangiganj, P.S.- Khajekalan, P.O.- Jhauganj, Patna City- 800008 (Bihar).

... .. Petitioner/s

Versus

1. The Authorised Officer-cum-Chief Manager Indian Bank, (Erstwhile Allahabad Bank), Jhauganj Branch, Patna City, Patna- 8.
2. The Branch Manager, Indian Bank, Jhauganj, Patna City, Patna- 800008.
3. The Assistant General Manager, Indian Bank (Erstwhile Allahabad Bank), Zonal Office, Stressed Assets Recovery Provider B.I.E.C. Bhawan, Budh Marg, Near Maurya Lok, Dakbunglow Road, Patna- 800001.
4. Amarjeet Singh alias Sardar Amarjeet Singh Son of Late Sardar Mahendra Singh Resident of Mohalla- Bare-ki-Gali, P.S.- Chowk Kalan, P.O.- Jhauganj, Patna City, District- Patna- 800008 (Bihar) (Borrower)
5. Narendra Singh @ Sardar Narendra Singh Son of Late Sardar Mahendra



- Singh Resident of Mohalla- Bare-ki-Gali, P.S.- Chowk Kalan, P.O.- Jhauganj, Patna City, District- Patna- 80008 (Bihar) (Borrower)
6. Rajiv Ranjan S/o Jagdish Chandra Resident of 110, Adharshila Complex, South Gandhi Maidan, P.S.- Gandhi Maidan, Town and District- Patna.
 7. Dr. Bikash Krishna Singh S/o Dr. Bireendra Kumar Singh Resident of 110, Adharshila Complex, South Gandhi Maidan, P.S.- Gandhi Maidan, Town and District- Patna.
 8. Shanilur Rahman Prasad Son of Late Dr. Hafizur Rahman Resident of 110, Adharshila Complex, South Gandhi Maidan, P.S.- Gandhi Maidan, Town and District- Patna.
 9. Raj Kumar Prasad S/o Ramji Prasad Resident of Village- Bari Khurd, P.S.- Noor Sarai, P.O.- Bari Khurd, District- Nalanda (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sushil Jhunhunwala, Advocate
For the Respondent/s : Mr.Nishi Nath Ojha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 10-03-2022 Petitioner has prayed for the following relief(s):

“(i) Issuance of a direction/writ/order including writ in the nature of Mandamus commanding the respondent Bank to stay of operation of possession notice dated 28.01.2021 (Annexure P/01) which has been affixed on the tenanted and premises of the petitioners and published in leading News Paper in respect of the possession of the moveable and immoveable properties in occupation of the petitioners tenants over decades i.e. more than 50 years before the creation of mortgage which is under challenge in S.A. No. 253 of 2021 filed under section 17 of the Recovery of Debts and Bankruptcy Act,



pending before Debts Recovery Tribunal, Patna but the same is not being heard because there is no regular in-charge Presiding Officer at Debts Recovery Tribunal, Patna alternatively.

(ii) Issuance of a direction/writ/order including writ in the nature of writ of Mandamus commanding the respondent Bank to restrain from taking physical possession and proceeding against the same under section 13 of SARFAESI Act.

In view of the fact that the mortgaged property is in occupation of petitioners tenants admittedly in existence prior to the creation of questionable mortgaged and effected in the year 2011 by the respondent Bank by virtue of the alleged Lease Deed dated 18.05.2009 and other lease deed dt. 26.07.2008 which is under challenged consideration before the learned Sub-Judge-V, Patna City in which the learned Court below after hearing parties including private respondent No. 4 & 5 (Borrower and guarantor) has passed order of status-quo on 18.06.2015 during the pendency of the suit.

(iii) Issuance of a direction / writ / order including writ in the nature of writ of Mandamus commanding the respondent Bank to quash/set aside the Possession Notice dated 28.01.2021 affixed by the Respondent Bank to the extent of the property mentioned in the said notice as also described in para 8 herein.

(iv) Issuance of a



direction/writ/order including writ in the nature of writ of Mandamus commanding not to do any act in furtherance of the possession of the property.

In view of the facts that the neither borrower nor guarantor is entitled to create mortgage of the property as secured assets of Murshidabad Estate in-corporated under West Bengal Govt in terms of the Murshidabad Estate (Management of Properties) and Miscellaneous Provision Act, 1980.

(v) Issuance of direction(s)/ order(s)/ writ(s) to which the petitioners may be found entitled to in the facts and circumstances of the case.”

After the matter was heard for some time, finding the Court not in favour of the submissions made by the learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that the petitioner shall be content if the petitioner is permitted to withdraw the present petition, with liberty to initiate appropriate proceedings before the appropriate forum, including DRAT, and to take recourse to such other alternate remedies which are equally efficacious in law.

Prayer allowed.

The petition is disposed of as withdrawn with the



liberty aforesaid.

Interlocutory application(s), if any, shall also stand
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

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