

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20338 of 2021

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Shamsul Hassan Khan Son of Late Qamrul Hassan Khan Resident of
Mohalla- Whitehouse, Road No.3, P.S.- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Finance, New Delhi.
2. The District Magistrate, Gaya.
3. The Circle Officer, Chandauti, District- Gaya.
4. The Punjab National Bank through the Chief Manager, Punjab National Bank, Rai Kashi Nath More Branch, Kashi Nath More, P.S.- Civil Line, Gaya.
5. The Authorized Officer-cum-Chief Manager, Punjab National Bank, Rai Kashi Nath More Branch, Kashi Nath More, P.S.- Civil Line, Gaya.
6. The Regional Manager, Punjab National Bank, Rai Kashi Nath More Branch, Kashi Nath More, P.S.- Civil Line, Gaya.
7. The Branch Manager, Punjab National Bank, Rai Kashi Nath More Branch, Kashi Nath More, P.S.- Civil Line, Gaya.
8. Sajjad Hussain @ Sunny Son of Mobarak Hussain Resident of Mohalla- Whitehouse (Near Med Care Hospital), Road No.4, P.S.- Rampur, District- Gaya.
9. The Registrar, District Registry Office, Registry Office, Behind Gaya Bar Association Building, Civil Court Area, Gaya.
10. Mansoorul Hassan Khan Son of Late Qamrul Hassan Khan Resident of Mohalla- Whitehouse, Road No.3, P.S.- Rampur, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rashid Izhar, Advocate
For the Respondent/s	:	Mr. Dr. Krishna Nandan Singh (ASG)
		Mr. Kumar Priya Ranjan, Advocate
		Smt. Anuradha Singh, S.C. 21

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

I. Issuance of writ or writs in the nature of mandamus commanding the Respondents Bank Authorities to correct the Auction Sale under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and its Rule only after carving out the land of the petitioner, which was not part of the mortgage to the Respondent Bank and put up a fresh Auction Sale with respect to the mortgaged plot.

II. Issuance of writ or writs in the nature of Certiorari quashing the Auction Sale dated 07.10.2021 made by the Respondent Nos. 5 & 6 as the landed property of the petitioner having an area of 747 Sq. ft. from Deed No. 1919/1994 which was not subject matter of mortgage by the petitioner nor the petitioner was ever a Guarantor/Mortgager or any way connected with the loan but despite undertaking by the Respondent Bank the land of the petitioner was illegally auctioned which rendered the Auction Sale as invalid and illegal.

III. For issuance of such other order or orders, direction or directions for which the petitioner is found entitled under the facts and circumstances of the case and as your Lordships may deem fit and proper.”

It is submitted on behalf of petitioner that respondent no. 10, who is his own brother, had secured housing loan of Rs. 40 lacs from the bank and as security had mortgaged land as detailed in two sale deeds, and on account of failure to re-pay the housing loan, notice dated 04.09.2020 for auction sale of the land was issued by the Punjab National Bank.

It is submitted on behalf of petitioner that registered sale deed No. 3195 dated 25.02.1993 measuring 1318.90 sq. ft. is exclusively in name of respondent no. 10 but sale deed no. 1919/1994, measuring 791.34 sq. ft. is a joint sale deed, in

which petitioner share is 747.38 sq. ft. and share of respondent no. 10 is 43.96 sq. ft. still bank has put on auction 4.60 decimal's which includes petitioner's land of 747.38 sq. ft. although, petitioner is neither a loanee nor a guarantor.

Respondent bank has filed its affidavit stating therein that respondent no. 10 borrower created security by means of registered mortgage on 21.03.2016 upon which all his brothers including petitioner had put their signature, which included lands of both sale deed (30 dhur:4.60 decimal:2003.7 Sq. ft.), subsequently, bank rectified the area of land for auction from 4.60 decimal to 53x27 sq. ft. i.e. 1431 Sq. ft. and a site plan was also prepared showing possession of all brothers as existing on the spot (Annexure-A), upon which all the brothers including petitioner put his signature and accepted the site plan and possession was handed over to auction purchaser as per the site plan prepared, in which possession of borrower (respondent no. 10) was shown over the land/house 53x27 Sq. ft.=1431 Sq. ft. which was handed over to the auction purchaser.

In such view of the matter, auction purchaser has been handed over possession of the auction sold property(House+Land), over which respondent no. 10 had exclusive, title and possession and property shown to be in

possession of petitioner in site plan has not been touched and said site plan prepared on the spot has been accepted by all the brothers including petitioner by putting their signature. However, subsequently it is being disputed by petitioner.

Heard learned counsel for the petitioner and learned counsel for the Bank.

Even according to petitioner, the total lands in two sale deeds were 2003.76 Sq. ft. which was mortgaged with the bank, however, on objection being raised by the petitioner 1431 sq. ft. of land has been auction sold, and possession handed over to auction purchaser as such, no interference is warranted by this Court at this stage when SARFAESI proceeding has concluded.

The writ petition is, accordingly, disposed of.

Interlocutory application(s) if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2022
Transmission Date	NA