

AD-09
Ct No.09
26.08.2022
TN

WPA No. 4711 of 2022

Smt. Kakali Naskar
Vs.
The State of West Bengal and others

Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh

.... for the petitioner

Mr. Soumitra Mukherjee,
Mr. Rajat Dutta

.... for the State

Mr. Jishnu Chowdhury,
Mr. Aritra Basu,
Mr. Abhijit Sarkar,
Mr. Abhik Chitta Kundu

.... for the respondent nos.2 to 4/WBFC

Learned counsel for the petitioner urges a relevant question as to whether the possession taken by the West Bengal Financial Corporation (WBFC) from the petitioner on the ground of non-payment of monetary dues was unlawful.

Learned counsel points out from the annexures to the supplementary affidavit filed by the petitioner in connection with the writ petition that although the notice under Section 29(1), read with Section 30 of the State Financial Corporations Act, 1951, was dated February 09, 2022 and gave fifteen days' notice for the petitioner either to pay up or to vacate possession, the same was sent much subsequently, that is, on March

08, 2022 and the possession was taken on the scheduled date, that is, March 16, 2022.

Hence, it is argued that the fifteen days given in the said notice itself were not left for the petitioner to make payments and/or to vacate possession.

Learned counsel for the respondent-authorities, in his usual fairness, submits that it transpires from the documents of postal service annexed to the supplementary affidavit of the petitioner that the allegation on facts is true as regards the notice being served late. However, it is contended that equity is against granting the relief prayed for by the petitioner.

First, it is submitted that the petitioner has not paid a single rupee after the taking over of possession and/or the issuance of the notice-in-question. It is pointed out from the notice itself that it narrates prior consent of the petitioner to pay back the entire dues to the respondent-authorities, which term the petitioner failed to comply.

Hence, since even after considerable time having expired subsequent to the fifteen days given in the notice, no payment has been made by the petitioner, contrary to the petitioner's undertaking.

It is further submitted that upon the WBFC taking over possession, the petitioner sought to take

back such possession unlawfully, which also speaks against the petitioner having come with clean hands.

Upon a consideration of the submissions of the parties, it is more acceptable to the court that, as argued by learned counsel for the respondents, the entire exercise of restoring possession to the petitioner and permitting the WBFC again to take back possession for non-payment of dues, which is an admitted position, will be a futile exercise.

Although, strictly speaking, the possession taken on March 16, 2022 by the WBFC was irregular, in the sense that the time stipulated in the notice itself was actually not given before taking such possession, even if the possession is directed to be restored on such score, the non-payment of the petitioner to this date renders such restoration of possession futile and infructuous. Otherwise, the WBFC is entitled to get back the possession even today.

During arguments, learned counsel for the respondent-authorities, with utmost fairness, gave an offer of part-payment immediately by the petitioner for the WBFC restoring the possession of the property to the petitioner, subject to subsequent payment of two instalments of the balance amount.

However, on instruction, learned counsel for the petitioner submits that such payment is not possible by his client.

Hence, there is no scope of exercise of equity in the writ jurisdiction in favour of the petitioner for the above reasons.

Accordingly, WPA No. 4711 of 2022 is dismissed on contest without any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)