29.06.2022
Sl. No.41
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W.P.A. 10600 of 2022

Masrur Alam
Vs.
The State of West Bengal & ors.

Md. Salman
Mr. Swarup Banerjee
... for the petitioner

Ms. Sima Adhikari
Ms. Kakali Naskar
... for the State

Mr. Onkar Ganguly
Ms. Ayanabha Raha
... for the respondent nos.6 & 7

Mr. Md. Rehan
... for the respondent no.9

Affidavit of service filed in Court is taken on record.

The petitioner does not deny the fact that the property being premise No.8C, Sapgachi 1st Lane, renumbered as 24/1A, Chandra Nath Roy, Tiljala, Kolkata, was mortgaged.

The petitioner alleges that the authorities of Canara Bank have fraudulently sold the property of the petitioner being premises No. 24/1A, Chandra Nath Roy Road, by holding an online auction on August 24, 2018.

According to the petitioner, the bank had cheated the petitioner by conducting such auction. The petitioner is the mortgagee/borrower.

According to the bank, premises No. 24/1A, Chandra Nath Roy Road, under Police Station Tiljala, Kolkata-700039 and Calcutta Leather Complex, Plot No.Z-485, J.L. No.35, Mouza Gagapur, Bantala, 24-Parganas (South), had been mortgaged to the Bank by the petitioner, against a loan. The loan account of the petitioner became a non-performing asset on December 13, 2008. The demand notice under Section 13(2) of SARFAESI Act was issued on December 22, 2008 and possession notice under Section 13(4) of the SARFAESI Act was issued on March 18, 2009. Sale notice was published in The Telegraph and The Bartaman on July 18, 2018. The online auction was conducted on August 24, 2018. The sale certificate was registered in the name of the auction purchaser. The sale certificate was signed by the Chief Manager of ARM Branch. Possession has been handed over and registration is complete.

It is the specific case of the Bank that the sale notice was affixed at a conspicuous place of the property, which was sold in auction. It also appears that the petitioner has filed an application before the Debts Recovery Tribunal-III, Kolkata challenging the sale of the property, that is, the property No.2, which is situated at Calcutta Leather Complex, on the ground that the said property was not mortgaged.

With regard to sale of the property situated at 24/1A, Chandra Nath Roy Lane, Tiljala, the petitioner has not challenged the said sale before any forum.

The police authorities have also filed a report, which reiterates the factual position as elaborated hereinabove.

It further appears that the possession was taken as per the order of the District Magistrate and upon paper publication with regard to premises No.24/1A, Chandra Nath Roy Lane, Tiljala.

Under such circumstances, this Court is of the opinion that the issue raised by the petitioner with regard to the sale of a property without a valid notice, cannot be decided by the police authorities. No relief can be granted in the writ petition.

The allegation that the police authorities must investigate as to whether the Bank had acted in accordance with law, is also not for this Court to direct, as the proceedings as elaborated hereinabove, were initiated under the SARFAESI Act and reached to its logical conclusion. Notice was also given to the petitioner. Possession notice was affixed at the property sold. The auction process cannot be re-opened. Misdescription of the property in the sale notice, as alleged, is not an issue to be decided by the police.

Thus, it is neither for the writ court or the police authorities to investigate into the matter. The allegation of the petitioner that all the proceedings were initiated in respect of a different property and the Bank had fraudulently sold the premises No.24/1A, Chandra Nath Roy Lane, cannot be decided in this proceeding. The fact that the property which was sold was the mortgaged property, is an admitted position. The petitioner has not denied the receipt of the notices under Section 13(2) and Section 13(4) of the SARFAESI Act.

With the above observation, this writ petition is disposed of.

All parties are to act on the basis of website copy of this order.

(Shampa Sarkar, J.)