

04.08.2022
Court No. 19
Item no.6 (DL)
CP

W.P.A. No. 12480 of 2022

Ananta Mukherjee
Vs.
The State of West Bengal & ors.

Mr. Tonmay Mukherjee
Mr. Kusal Chatterjee
Mr. Tapan Kr. Mahapatra
...for the petitioner.

Mr. Debashis Ghosh
Mr. P. K. Basu
...for the State.

Mr. Samrat Mukherjee
Ms. L. Dasgupta
....for the respondent no. 2.

Mr. Jayanta Das
Ms. Soumita Ghosh
....for the respondent no. 5.

The petitioner alleges that the Inspector-in-Charge, New Barrackpore has failed and neglected to take steps against the respondent no. 5 pursuant to a complaint made by the petitioner which was diarized as G.D.E. No. 482 dated January 6, 2021. It is alleged that the respondent no. 5 had forcefully taken possession of the property which was mortgaged to the bank and had been sold at an auction in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). The

allegation is that the bank did not take physical possession of the property in accordance with law and, as such, the respondent no. 5, even if had been issued the sale certificate, could not have forcefully taken possession and demolished the structures.

There is no dispute with the fact that the property had been sold in auction. The only issue is whether the possession was taken from the borrower in accordance with the provisions of law or not. The petitioner submits that the possession was taken forcefully by the respondent no. 5. The secured creditor is the UCO bank, which is represented.

The learned advocate for the respondent no. 5 submits that the physical possession was handed over by the UCO Bank on November 29, 2021. It further appears that the police authorities had filed a report before the learned Executive Magistrate in MP Case No. 3681 of 2021, inter alia, stating that the respondent no. 5 had purchased the property being the highest auction bidder. The bid was organized by the bank. The bank executed a registered sale certificate on August 24, 2021. After purchase the property was also mutated before the Bilkanda I Gram Panchayat in the name of the respondent No. 5. The police authorities have ensured that peace and tranquility is maintained.

The petitioner has filed SA No. 50 of 2021 before the learned Debt Recovery Tribunal – 3. Challenging the sale notice an application was filed for an interlocutory order. However, no orders in favour of the petitioner has been passed as yet by the tribunal. It is the contention of Mr. Mukherjee, learned advocate for the petitioner, that the post of the presiding officer in the tribunal is vacant and, as such, the application could not be heard. It is further submitted that in another proceeding under Section 144(2) of the Cr.P.C. being M.P. Case No. 1790 of 2022, the learned Executive Magistrate at Barrackpore has passed an order preventing the parties therein from causing any illegal activity, and directing the respondent No. 5 not to grab the property and not to create any untoward incident at the property. The concerned police station was also directed to give legal protection to the petitioner. It is prayed that the police authorities must be directed to prevent further demolition work. The learned Executive Magistrate has fixed the next date on August 30, 2022.

The bank authorities have also submitted that the possession was taken as per law and possession was handed over to the respondent no. 5 also as per law.

Mr. Ghosh, learned advocate for the State, submits that the police authorities do not have any role to play and the learned Executive Magistrate could not have passed the order in the proceedings under Section 144(2) of the Cr.P.C.

Under such circumstances, the police authorities shall comply with the order of the learned Magistrate by giving protection to the petitioner and shall prevent any untoward incident and illegal activities on the suit property. This court cannot pass any restraint order on the respondent no. 5 who has been given physical possession by the bank.

A mandatory direction on the police authorities to stop the activities of the respondent no. 5 which is going on in the premises would be an indirect injunction in favour of the petitioner by this court, when the appropriate authority under the SARFAESI Act is in seisin of the matter.

It also appears that the tribunal has already passed a protective order to the effect that any sale that may take place during the pendency of the SA, shall be subject to the final decision of the SA. Thus the petitioner is sufficiently protected.

Neither the police authorities nor this court are in a position to determine the allegation of the illegality in the procedure adopted by the bank or the respondent no. 5 in taking possession of the property

and using the same as the exclusive property of the respondent no. 5.

The possession of the respondent no. 5 cannot be interfered with. There is no injunction on the respondent no. 5 in carrying on his business from the premises.

The police will ensure protection of the petitioner as per the order of the learned Executive Magistrate. Steps shall be taken before the learned Executive Magistrate on the next date.

This order shall not be construed as a declaration of the correctness of the allegations made by the petitioner. Parties are at liberty to take appropriate measures before the appropriate courts of law and/or forum.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)