

S/L 7
26.07.2022
Court. No. 19
GB

WPA 15513 of 2022

Mohan Lal Jaiswara
VS
The State of West Bengal & Ors.

Mr. Haradhan Mondal.

...for the Petitioner.

*Mr. Dipanjan Datta,
Mrs. Rituparna Saha.*

...for the Respondent Nos.6 & 7.

Affidavit-of-service and supplementary affidavit filed in Court today, be kept with the record.

The petitioner alleges overt act of the Inspector-in-Charge, Singur Police Station. According to the petitioner, lease of certain premises were granted to the petitioner by the alleged owner, by an agreement dated December 1, 2017. The petitioner runs his sawmill from the said premises. The premises includes an open land area of 10 cottahs with shed, office building and a structures covering about 23 cottahs. The entire property measures 33 cottahs. The dag numbers, over which the property is situated, are L.R. Dag Nos.2515, 2516 and 2517.

The petitioner prays for a direction to set aside the order of the District Magistrate dated January 3, 2022, which was passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'). The prayer for reinstatement of the petitioner in the premises has also been made. Further contention is that, the respondent nos.6 and 7, that is the bank authorities, should be

restrained from disturbing the activities in the factory of the petitioner.

The petitioner relies on a letter dated July 14, 2022, written by the District Magistrate, Hooghly to the authorized official of Bank of Baroda, *inter alia*, asking the authority to take such steps as were permitted in law, on the basis of the order that shall be passed by the learned Presiding Officer of the Debts Recovery Tribunal-III, Kolkata in SA 583 of 2019 and also any order that may be passed by the learned civil court in Title Suit No.42 of 2022.

Relying on the aforementioned letter, the petitioner submits that the writ court must pass necessary orders, cancelling the earlier order of the District Magistrate and also reinstate the petitioner in the property in question.

The learned advocate appearing on behalf of the bank authorities submits that the owner of the land and the structure, who had granted lease to the petitioner had mortgaged the property to the Bank of Baroda, prior to such lease. He was a defaulter. The bank authorities initiated proceeding under the SARFAESI Act and proceeded in accordance with law by taking symbolic possession. Thereafter, the bank approached the District Magistrate, Hooghly under Section 14 of the SARFAESI Act for necessary orders to take physical possession of the property in question, with police protection.

Such order was passed by the District Magistrate. The police authorities acted on the basis of such order and the possession was taken. The petitioner submits that his right

as a tenant, is sub judice before the learned civil court and as such, the District Magistrate could not have passed any orders directing that physical possession should be taken over by the bank authorities, with police assistance.

Subsequent letter written by the District Magistrate to the bank authorities is not an issue for the disposal of this writ petition for the following reasons:-

- a) This Court does not have any jurisdiction to set aside the order of the District Magistrate, passed under Section 14 of the SARFAESI Act.
- b) The remedy of the petitioner would be before the learned Debts Recovery Tribunal-III, Kolkata, where SA 583 of 2019 is pending.
- c) The right of the petitioner as a tenant/lessee in respect of the premises can be looked into by the Debts Recovery Tribunal-III, Kolkata, if the petitioner approaches the said Tribunal, with relevant records and pleadings.
- d) No allegations have been levelled against the police authorities, save and except that the police authorities had acted on the basis of the order of the District Magistrate.
- e) Whether the letter of the District Magistrate issued to the Bank of Baroda on July 14, 2022 would amount to recalling of the order, which was passed under Section 14 of the SARFAESI Act, is also to be determined by the learned Tribunal. Procedural defects, if any, during taking over physical

possession can also be raised before the appropriate forum.

- f) Lastly, the remedy of the petitioner against the order dated January 3, 2022 is before the appropriate forum under the concerned statute.

Under such circumstances, the jurisdiction of the court being limited to the issue of inaction of the police and overt act of the police authorities, the prayers in the writ petition, cannot be allowed. The writ petition is disposed of accordingly.

This order shall not have any influence on any proceeding that the petitioner may initiate, in accordance with law.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)