

02.12.2022
Court No.13
Item No.4
pk

WPA 18208 of 2022

**Samir Kumar Kundu
Vs.
State of West Bengal and others**

Mr. Sandip Ghosh,
Mr. Debayan Ghosh

... For the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Saheli Mukherjee

... for the State.

Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
Mr. S. Srivastava

... for the respondent Bank.

The authorised officer of the Bank has indicated in no uncertain terms to this Court on the 25th of November, 2022 that physical and vacant possession of the property was handed over to the writ petitioner by the Bank. Documents to this effect are also annexed to this writ petition.

This Court has no hesitation whatsoever to come to this conclusion that the writ petitioner has been forcibly and illegally dispossessed from the secured assets by the private respondent.

Counsel for the private respondent submits that his client has preferred an application before the Debts Recovery Tribunal on 7th October, 2022. No particulars of such application are before this Court.

Under the normal circumstances a person, who is being illegally dispossessed from his property, is required to approach the civil court, inter alia, under Section 6 of the Specific Relief Act, 1963.

However, given the clear evidence and undisputed facts before this Court, of the petitioner having been handed over vacant possession of the immovable property/secured asset by the Bank and the physical possession and entry of the private respondent/borrower by dispossession of the petitioner illegally, special and exceptional called for.

Counsel for the Bank submits that there are still outstanding dues to the extent of Rs.20 lakhs and odd payable by the private respondent/borrower to the bank. The same is, however, disputed by the counsel for the private respondent, submitting that only Rs.14 lacs is due and payable.

The private respondent borrower is directed to vacate the premises in question and return possession of the secured asset to the writ petitioner.

In default this Court directs the O. C., Nimta Police Station to physically evict the private respondent/borrower from the said premises with sufficient force and hand over vacant possession of the property to the writ petitioner. The costs of police deployment shall be borne by the writ petitioner.

The police shall be entitled to remove all belongings of the private respondent in the said premises if the private respondent does not remove the same on his own.

FIRs registered against the writ petitioner as well as the private respondent shall, however, continue to be investigated in accordance with law.

The writ petition is disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)