

13.01.2022  
Court No. 19  
Item no.5  
srm

W.P.A. No.19903 of 2021

Mamuli Biswas  
Vs.  
The State of West Bengal & Ors.

Mr. Partha Pratim Roy  
Mr. Sarbananda Sanyal  
..for the Petitioner

Mr. Srijan Nayak  
Ms. Rituparna Moitra  
..for the State

Mr. Kamal Krishna Pathak  
Mr. Souvik Majhi  
..for the Respondent Nos.3 & 4.

The writ petition has been filed challenging the procedure adopted by the respondent Nos.2 to 4 with regard to the sale/disposal of the property mortgaged by the petitioner. Admittedly, the petitioner is the borrower. The principal and the interest accrued on such loan account was not paid. The petitioner became a defaulter. The matter was taken up by the appropriate authority as Dispute Case No.05 of 2018-19 under the provisions of West Bengal Co-operative Societies Act, 2006. An award was passed. Thereafter, the award was upheld by the West Bengal Co-operative Tribunal.

The petitioner has preferred the writ petition on the ground that the Rule 191 and Rule 191B of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as the said Rules) had not been followed in this case. No sales officer was appointed for the proposed auction pursuant to the disposal of the Dispute Case No.05 of 2018-19 and no notice was served upon the petitioner.

It was the specific case of the petitioner that the proclamation was not issued but a signboard was hung on the building in question calling upon interested persons to get in touch with the co-operative society.

On *prima facie* being satisfied that the procedure adopted, as mentioned hereinabove was not in accordance with law, the Court had passed an ad interim order staying the proposed auction on the assurance of the petitioner that the petitioner proposed to pay up the entire awarded amount. An order was passed by this court that the petitioner would approach the authority within December 10, 2021 at 12.00 noon and the authority was to give a detailed calculation within December 13, 2021 with an opportunity to the petitioner to liquidate the entire amount.

The respondent-society has filed documents before this Court, from which it appears that one sales officer, namely, Shri Nripendra Kumar Saha, a Co-operative Development Officer under the Co-operation Directorate, Nadia Range, had been appointed on February 5, 2021 by the Deputy Registrar, Co-operative Societies, Co-operation Directorate, Nadia Range. The sales officer by a notice dated June 17, 2021 intimated the petitioner about the proposed sale with an opportunity to the petitioner to redeem the property as provided under Rule 191D of the said Rules. The copy of the AD card and the postal receipt showing service of the notice upon the petitioner has also been produced before the Court. The documents filed by the co-operative society are taken on record.

It has been submitted that affixation of the signboard on the property was a subsequent event and the question of not following the procedure as per the rules did not arise. It is submitted by the society that the auction has not taken place in furtherance of the notice issued by the sales officer.

Mr. Ray, learned Advocate appearing on behalf of the petitioner, submits that even the proclamation has not

yet been made by the sales officer, which is contrary to the provisions of law.

This Court sitting in judicial review can only look into whether the procedure so far followed by the respondents were in accordance with law. It is on record that the co-operative tribunal dismissed the appeal preferred by the petitioner against the award passed in the dispute case. The said order has become final as the same has not been reversed by any higher forum. The sales officer was appointed as per law. The sales officer had also issued notice to the mortgager, which was received by the mortgager. There is no irregularity in the procedure followed and the writ petition is liable to be dismissed.

However, the law provides opportunities under Rules 191E of the said Rules to the mortgager to pay up the entire dues with interest and accordingly the sale may be abandoned. Rule 191I also allows the mortgagor to pray for setting aside of the sale. The petitioner has pleaded before this Court that the petitioner is willing to pay the entire dues. Ample opportunity has been provided by the statute itself, which the petitioner can avail of.

The writ petition is disposed of. The interim order is vacated. The authority shall be at liberty to proceed in accordance with law.

There will be no order as to costs.

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

**(Shampa Sarkar, J.)**