

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5747 of 2005

Purna Chandra Nayak

....

Petitioner

Mr. S.K. Nayak, Advocate

-versus-

***Orissa State Financial Corporation and
others*** ***Opposite Parties***

Mr. P.K. Tripathy, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

Order No.

ORDER
28.02.2022

12. 1. On 22nd January 2020, the following order was passed in the present case:

“It appears that the petitioner has challenged the action of the opposite party no.1 more specifically taking possession of the property under section 29 of the State Financial Corporation Act and seizing the landed property of the petitioner, who is the guarantor.

Learned counsel for the petitioner has relied upon a decision of the Hon’ble Apex court in the case of **Subhranshu Sekhar Padhi -Vrs.- Gunamani Swain and others reported in 2014 (II) Current Legal Reports (S.C.) 670**, wherein a decision in the case of **Karnataka State Financial Corporation –Vrs.- N. Narasimahaiah and others reported in (2008) 5 Supreme Court Cases 176** has been referred wherein the Hon’ble Apex Court has observed that it is only the properties of the defaulter which can be proceeded against under section 29 of the S.F.C. Act but not against the properties of the third parties whether they are guarantors and mortgagors etc. Xerox copy of the decision filed by the learned counsel for the petitioner be kept on record.

Learned counsel appearing for the Financial Corporation submitted that the purchaser has only deposited 25% of the amount to determine for sale of the property, but no further step has been taken till date. He further submitted that even though he has already filed a counter affidavit, he seeks further time to obtain instruction as to whether the Corporation will return the property to the petitioner or not by the next date and what would be the terms and conditions.

List this matter on 05.02.2020.”

2. Having heard learned counsel for the parties, it is plain that in terms of the decision of the Supreme Court of India in ***Subhransu Sekhar Padhi v. Gunamani Swain*** (*supra*), the action of the Opposite Party No.1 in seeking to bring to sell the property of the Petitioner by invoking Section 29 of the State Financial Corporation Act, 1951 (SFC Act) is unsustainable in law.

3. As explained in the aforementioned decision, the action under Section 29 of the SFC Act can be taken only against the borrower and not the guarantor. In that view of the matter, the order issued by the SFC in 4th March, 2005 is hereby quashed. The property in question be returned to the Petitioner forthwith, if not already done.

4. The writ petition is disposed of in the above terms.

5. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge