

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.8798 of 2022

O. Kamala Rao

.... ***Petitioner***

Mr. S. S. Mohapatra, Advocate

-versus-

Punjab National Bank & Another

Opposite Parties

Mr. S.K. Mishra, Advocate on behalf
of Mr. Tuna Sahu, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
13.10.2022

Order No.

05.

This matter is taken up by virtual/physical mode.

1. Complaining non-delivery of possession of schedule property which was originally recorded in favour of one Dharanidhar Rout under Khata No. 772/604, stitiban plot No. 3324/5427 covering an area of Ac.0.048 decimals and plot No.3309/5426 having area Ac.0.032 dec, the Petitioner, being successful bidder has come up before this Court by way of writ petition for the following relief:-

“Under these circumstances the Petitioner prays that your Lordships would be graciously pleased to admit the Writ Petition, issue *Rule NISI*, calling upon the Opp.Parties to show cause as to why the Opp.Parties shall not hand over the possession of the 1st floor of the building over the schedule property vide **Annexure-2 & 3** and why the absolute possession of the said property as described in the schedule below shall not be handed over to the Petitioner by strictly following the procedure of the Act, Rules and the laws in force within a stipulated period.

If the Opp.Parties fail to show cause or show insufficient cause, the said rule may be made absolute thereby issuing a *Writ of Mandamus* directing the Opp.Parties to transfer the absolute possession of the schedule property in accordance with the sale deed executed vide **Annexure-2** and certificate vide **Annexure-3** directing the Opp.Parties to follow the provisions of the Act and Rules and also the provisions of Transfer of Property Act in immediate and absolute transfer of possession of the 1st floor of the building over the property as described in the schedule below.

And further be pleased to pass any other writ/writs, order/orders, direction/directions as would be deemed fit and proper to grant justice to the petitioner and to allow the writ application with cost though out.”

2. It is alleged that the legal heirs of Dharanidhar Rout (since dead) together with M/s. Utkal Chromium Pvt. Ltd. could not repay the loan availed from Punjab National Bank, Station Square Branch, Bhubaneswar which led to sale of mortgaged property which was purchased by the present Petitioner. It is further stated in the writ petition that the Debts Recovery Tribunal vide order dated 29th July, 2019 allowed the application of the original owner in SA No. 18 of 2019 with the condition of depositing entire consideration within one month from the date of order failing which the Bank could deal with the property in accordance with law. It is alleged that the Petitioner, though was successful, the Bank has not delivered physical possession of the said property. This Court on 13th September, 2022 has passed the following order:-

“1. It is contended by the learned counsel for the auction purchaser/petitioner that in spite of the borrower not depositing the required amounts in terms of the conditional decree dated 29th July, 2019, and thereby upholding the sale in favour of the petitioner by default, the Bank is yet to handover the physical possession of the portion of the purchased building.

On our asking Mr. Tuna Sahu, panel lawyer of Punjab National Bank appears and prays for time to seek instructions. Let a copy of the Writ petition be served upon him during the course of the day.

2. List this matter on 15.09.2022.”

3. A counter affidavit dated 13th October, 2022 has come to be filed by the Opposite Parties-Bank . Para-3 of said counter affidavit runs as follows:-

“That the writ petitioner in this writ petition made a prayer seeking direction to the Bank authorities to handover the possession of the part of the auctioned property i.e., First Floor of the building over the schedule property described in Annexure-2, Sale Deed and Annexure-3 the Sale Certificate. Such prayer is not maintainable and difficult to adjudicate without leading evidence. Such prayer is inconsistent and contrary to own admission of the petitioner made under Annexure-4. The delivery of possession, acknowledgment dated 03.03.2018 under Annexure-4 shows that the writ petitioner as an Auction Purchaser has taken over all the part and parcel of immovable property which described in the Sale Certificate as well as Sale Deed. The Writ Petitioner signed on the delivery possession acknowledgment dated 03.03.2018. The contents of said delivery of physical possession of the property acknowledgement is quoted for reference.

“Delivery of Possession.”

Whereas Authorised Officer of the Punjab National Bank, ARM Branch, Lewis Road, Bhubaneswar in exercise of the power conferred on him under the provision of the SARFAESI Act has sold the property scheduled below through public auction to O.Kamala Rao (PAN No. CDLPR8816H) W/o O. Krishna Rao, At: Junuspatna, P.O. College Square, P.S. Malgoldown, Dist: Cuttack possession of the property is handed over to him on this 3rd day of March, 2018, Smt. O.Kamala Rao acknowledges the receipt of physical possession of the property scheduled below.

Description of Property:

All that part and parcel of immovable property situated at Khata No. 772/604, Plot No. 3309/5426, Area-Ac 0.032 dec., Plot No.3324/5427, Area-Ac0.048 dec. Total Area-Ac 0.080 dec, Mouza-Nimpur, P.S. Jagatpur, SRO/Tahasil-Jagatpur, Dist: Cuttack, recorded in the name of Shri Dharanidhar Rout.

Sd/-
03.03.2018
Possession handed over

Sd/-
possession taken over."

In view of the categorical stand taken in the counter affidavit by the Bank that the physical possession was delivered to the Petitioner-purchaser, and as proof of delivery of physical possession enclosed the copy of the acknowledgement receipt of title deed and other relevant papers are enclosed at Annexure-A/9, there is no scope for any other inference than to hold that the allegation of the Petitioner is unfounded. Therefore, no interference by this Court in the writ petition with regard to factum of delivery of physical possession is warranted.

5. Accordingly, the writ petition stands dismissed.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge