

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.22 of 2017

Jitan Manki

....

Appellant

Mr. Rabi Narayan Behera, Advocate

-versus-

Chandra Sekhar Patra and others

....

Respondents

Mr. Ishwar Mohanty

Additional Standing Counsel for State

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

13.10.2022

Order No.

02.

1. The present writ appeal is directed against the judgment dated 14th December 2016, passed by the learned Single Judge allowing the W.P.(C) No.2348 of 2014 filed by the Respondent No.1.

2. Sri Bahadur Manki, the father of the present Appellant, who was the Opposite Party No.1 in the writ petition, in 1993, sought permission from the Officer on Special Duty (OSD), Panposh to mortgage his land having area of Ac.1.530 dec. On 23rd December, 1993 the said permission was granted.

3. One Dilor Topno established a crusher unit for which the father of the present Appellant of a collateral security by mortgaging the aforementioned land. Since the borrower defaulted in the loan taken from the Orissa State Financial Corporation (OSFC), invoking

Section 29 of the State Financial Corporation Act, 1951 (SFC Act), OSFC put the mortgaged property to sale by way of auction in 2006.

4. The Respondent No.1 emerged as a successful bidder and was put in possession of the crusher unit in question. Permission was granted under Regulation-II of 1956 and the auction in favour of Respondent No.1 was finalized for a total sum of Rs.3.25Lakhs. The sale proceeds were credited to the loan of the Appellant's father. It was found that there was an outstanding balance of Rs.13,00,530/- as on 30th June, 2006.

5. As a result, notices were issued to the borrower, i.e., the father of the present Appellant, for payment of the balance dues. Since the dues could not be paid, the remaining mortgaged property was taken over by the OSFC invoking Section 29 of the SFC Act and put to public auction on 12th January, 2007. This was sold in favour of Respondent No.1 for a total sum of Rs.3.31Lakhs on outright purchase basis and also handed over to him.

6. The present Appellant filed an application thereafter under Regulation-II of 1956 on 11th September, 2007 in Revenue Misc. Case No.125 of 2007 for restoring the property to his custody. The OSD, by its order dated 23rd December, 2009 directed eviction of the Respondent No.1 from the case land.

7. Respondent No.1 then filed Revenue Appeal No.3 of 2010 which was dismissed and this was thereafter challenged in the writ petition before the learned Single Judge.

8. In the impugned order, the learned Single Judge has referred to the decisions of the Supreme Court in ***Subhransu Sekhar Padhi v. Gunamani Swain (2014) 12 SCC 368***, ***Government of the A.P. v. J.B. Educational Society (2005) 3 SCC 212*** and the decision dated 25th November, 2016 of the Supreme Court in Civil Appeal No.11247 of 2016 (***UCO Bank v. Dipal Debbarma***) and concluded that once the borrower failed to discharge the loan, the Bank became owner of the mortgaged property and the subsequent sale by way of auction would confer valid title on the auction purchaser. It is held that such transfer would not come within the purview of Regulation-II of 1956.

9. Having heard learned counsel for the parties, the Court is unable to find any error having been committed by the learned Single Judge. The impugned order has only followed the decisions of the Supreme Court and has correctly concluded that the auction in sale in the circumstances outlined above in favour of Respondent No.1 would not be hit by Regulation-II of 1956.

10. Consequently, there is no merit in the present writ appeal and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge