

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33226 of 2021

Bina Gayan

....

Petitioner

Mr. Gurudutta Kar, Advocate
with Mr. Gopal Prasad Jena, Advocate

-versus-

***Collector-cum-District
Magistrate, Balasore and
Others***

....

Opp.Parties

Mr. L. Samantaray, AGA for O.P. Nos.1 & 2
Mr. Arupananda Das, Advocate
(for O.P. Nos.3 & 5/Canara Bank)
Mr. Santanu Kumar Sarangi, Senior Advocate with
Mr. Sudeep Kumar Sarangi, Advocate
(for O.P. No.4/PNB)

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

**ORDER (Oral)
29.07.2022**

Order No.

- 08.** 1. This matter is taken up through virtual/physical mode.
2. The petitioner is the widow and one of the succeeding LRs of late Paresh Kumar Gayan (died on 05.06.2021), who had mortgaged his two adjacent properties situated within the revenue state of village Srikanthapur as collateral security for two separate loans availed by M/s. Biraja Industries Ltd. and M/s. MLN Minerals. The loan availed by M/s. Biraja Industries was from Canara Bank and by M/s. MLN Minerals was from Punjab National Bank (PNB).
3. It transpires that both the companies had defaulted in payment of installments leading to the

recovery process under the SARFAESI Act, 2002 (for short “the Act, 2002”) being initiated by both the banks against the principal borrower-companies and the common guarantor i.e. late Paresh Kumar Gayan.

4. By filing the present writ petition, the petitioner has laid challenge to the action of S.D.M-cum-Sub-Collector, Balasore in providing official assistance to take physical possession in compliance of the order dated 22.05.2021 by Collector-cum-DM, Balasore upon an application under Section 14 of the Act, 2002 moved by Canara Bank inasmuch as the property mortgaged towards the loan availed from the Punjab National Bank has actually been taken into physical possession towards recoveries of Canara Bank.

5. Upon notice respective replies have been filed.

6. The Canara Bank had moved an application for demarcation of the property in question before the Tahasildar, Balasore in order to determine the correctness of the actual property mortgaged with it and thereafter proceed to auction the same.

7. This Court passed an order dated 11.02.2022 in presence of all the parties directing the Tahasildar, Balasore to expedite the exercise of demarcation and submitted the demarcation report.

8. At the time of hearing, learned counsel for the Canara Bank submits that the Tahasildar, Balasore

has filed his affidavit dated 17.05.2022 along with a demarcation report dated 09.03.2022 complied by R.I. sadar and Amin after inspection of the site.

9. Learned counsel for the Punjab National Bank submits that the actual physical possession taken by the Canara Bank of the mortgaged property pursuant to the order dated 22.05.2021 passed by the District Magistrate is not in conformity with the demarcation report therefore Canara Bank would have to file a fresh application before the District Magistrate with proper particulars for taking physical possession of the actual mortgaged property for securing it's loan with permission to return the physical possession assumed earlier of the property mortgaged with PNB.

10. In view of the aforesaid developments, learned counsel for the petitioner and the learned counsel for the both the Bank concede that nothing more survives for adjudication.

11. In view of the above, the writ petition is disposed of.

**(Jaswant Singh)
Judge**

**(M. S. Raman)
Judge**

Basudev

29th July, 2022
Cuttack