

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2374 of 2023

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1. Pankaj Kumar Son of Late Kishun Prasad, Resident of Road No. 14, East Ashok Nagar, P.O.- Lohia Nagar, P.S.- Kankarbagh, District - Patna.
 2. Anuj Kumar, Son of Late Kishun Prasad, Resident of Road No. 14, East Ashok Nagar, P.O.- Lohia Nagar, P.S.- Kankarbagh, District - Patna.

... Petitioners

Versus

1. The Union of India through Principal Secretary Department of Finance, New Delhi.
2. The Chairman-cum-Managing Director, Union Bank of India.
3. The Regional Manager, Union Bank of India Patna Region, Patna.
4. The Branch Manager, Union Bank of India Recovery Branch, Union Bank of India, first floor, Steel House near Police Check Post, Boring Road, Patna.
5. The State of Bihar through the District Magistrate, Patna.
6. Mr. Sudhanshu Kumar @ Sudhanshu Shekhar, s/o Unknown, resident of Plot No. 245 (P), 13/A, East Ashok Nagar, P.S.-Kankarbagh, District-Patna, Bihar-800020.

... Respondents

Appearance :

For the Petitioners	:	M/s Arun Kumar Tiwari, Pawan Kumar Verma & Dr. Pramod Kumar Pandey, Advts.
For the UBI	:	Mr. Shivendra Kr. Ray, Adv.
For Respondent 6	:	Mr. R.K. Chandran, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

10 07-11-2023

Heard the parties.

2. The present writ petition has been filed for the following relief(s) :

i) For issuance of an appropriate writ(s) in the nature of Mandamus for commanding and directing the Respondents to stop the auction of the petitioner's land published in the newspaper Dainik Bhaskar dated 13.11.2022 and to stay the further proceeding whereas the petitioner has not mortgage his land bearing Khata No. 38, Plot No. 256, Tauzi No. 167 area | Katha 6 Dhur 4 Dhurkis, Khata No. 38 Mauza-



Mohammadpur, Punkauli alias Changar, District-Patna.

ii) For issuance of an appropriate writ(s) for directing the respondents to conduct enquiry and spot verification of the land of the petitioner and further direct the respondents to notify a fresh auction of the actual land which has been mortgaged by Smt. Maya Devi w/o Late Ramakant Prasad Gupta bearing Khata No.8 Plot No. 245(P) Zamabandi No. 1662.

iii) And other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.

3. The learned counsel for the petitioners has stated that the petitioners had to approach this Hon'ble Court by way of present Writ Petition as the land of the petitioner is being auctioned by the Respondent-Bank without any authority. Learned counsel for the petitioners has stated that the land of the petitioners has not been mortgaged to the Bank by them, therefore, the Bank authorities cannot include the land of the petitioners in the auction notice. The learned counsel has sought a direction to the authorities to conduct an enquiry, spot verification of the land and further proceed with the auction in accordance with law. Learned counsel has drawn the attention of the Court to the various documents filed by the petitioners to



buttress his contentions and prove that the land which mortgaged and sought to be auctioned is a separate from the land belonging to the petitioners. Further, it is stated that though the petitioners have submitted various representations to the authorities including Bank authorities, they have till date not considered the same and continuing with the auction. Learned counsel for the petitioners has, therefore, prayed this Hon'ble Court to allow the Writ Petition and the prayers sought for in the present Writ Petition.

4. Per contra the learned counsel appearing on behalf of the Respondent-Bank has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioners without approaching the Debt Recovery Tribunal, have approached this Court by way this Writ Petition and the same is not maintainable. That the petitioners instead of approaching the Debt Recovery Tribunal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) have filed the present Writ Petition. Further, it is stated that the question as to whether the land of the petitioners has been mortgaged to the Bank or not all are disputed questions of fact which cannot be gone into under Article 226 of the



Constitution of India. That the Respondent-Bank has proceeded to auction the land which was mortgaged by the borrowers, i.e., one Neeraj Kumar and guarantors Smt. Maya Devi and Deepak Kumar after the loan account has become NPA. That in case the petitioner is disputing the identity of the land mortgaged to the Bank, his remedy is to approach the Debt Recovery Tribunal, but, not by way of the present Writ Petition. Further learned counsel has stated that the petitioner has himself filed a civil suit seeking declaration of title and same is pending before the Trial Court, therefore, the present Writ Petition is misconceived and prayed to dismiss the same

5. As seen from the averments made in the present Writ Petition, the petitioners are challenging the auction notice issued by the respondents whereby the land which was mortgaged to the Bank by one of the guarantors is being put to auction. The question as to whether the land mortgaged by the guarantors is the same as the one claimed by the petitioners cannot be gone into by this Hon'ble Court under Article 226 of the Constitution of India. further, the fact also remains that the petitioners have already approached to Civil Court by way of Title Suit No. 14 of 2011 with regard to the identity of the property and the same is pending adjudication, the petitioners



have not produced any order of injunction staying the auction of the subject property. The Hon'ble Supreme Court in catena of cases has held that the High Court sitting under Article 226 of the Constitution of India cannot resolve disputed questions of fact more particularly when there is serious dispute with regard to question of fact and identity of the property. The question as to whether the land mortgaged to the Bank is one and the same as claimed by the petitioners cannot be gone into under Article 226 of the Constitution of India.

In State of Bihar & Ors. Vrs. Jain Plastics & Chemicals Ltd reported in (2002) 1 SCC 216 the Hon'ble Supreme Court at para 3 has held as under :

“3.... It is to be reiterated that writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.”

In ABL International Ltd. Vrs. Export Credit Guarantee



Corporation of India Ltd. reported in (2004) 3 SCC 553 at para 28 the Hon'ble Supreme Court has held as under :

“28 : However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. [1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.”

6. Having regard to the above well settled legal position, this Court does not find any merit in the present Writ Petition which warrants any interference.

7. The Writ Petition is, accordingly, **dismissed** leaving it open to the petitioners to avail the remedies as available to



them under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act or the common civil law.

(A. Abhishek Reddy , J)

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