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30.11.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A. 6593 of 2022
IA No. CAN 8 of 2023
CAN 9 of 2023**

**Parbati Charan Banerjee
-versus
The State of West Bengal & Ors.**

**Mr. Debashis Banerjee,
Mr. Supreem Naskar,
Mr. Rakesh Jana.
...For the Petitioner.**

**Mr. Priyankar Saha,
Mr. Rudrajit Sarkar.
...For the State.**

**Mr. Malay Kumar Roy.
...For Respondent Nos. 5 & 6.**

The instant writ petition was filed on 11th April, 2022 praying for issuance of writ of Mandamus setting aside the act on the part of the Rampurhat Co-operative & Agriculture & Rural Development Bank to proceed with the auction for sale of the properties mentioned in the auction notice.

A further prayer has been made for issuance of a writ of Prohibition restraining the respondents from taking any steps for sale of the properties, for creating any third party interest and not to take any steps for dispossessing the petitioner from the subject property.

The matter was taken up for consideration by the Court on 13th January, 2022 and an interim order was passed by the Court directing that the possession of the

petitioner shall not be disturbed. The interim order passed was extended from time to time and is subsisting till date.

An affidavit-in-opposition to the application for extension of interim order has been filed by the respondent Bank.

In the said affidavit, the Sale Certificate issued in favour of the highest bidder by the Assistant Registrar of Co-operative Societies, Birbhum Range has been annexed. The Sale Certificate mentions that the auction purchase took effect on and from 19th January, 2022.

A communication by the Assistant Registrar of Co-operative Societies addressed to the Inspector of Co-operative Societies, Rampurhat-I Development Block dated 7th March, 2022 is also annexed to the affidavit.

By the said communication, the Inspector of Co-operative Societies was ordered to put the auction purchaser in possession of the subject property.

On a perusal of the aforesaid documents and upon hearing the submissions made on behalf of the respondent Bank, it appears that on the day the writ petition was taken up for consideration, the learned advocate was not posted with the proper facts. The Court was not appraised of the fact that the auction sale was already over and Sale Certificate and the letter to hand over possession were issued prior to the filing of the writ petition.

It has been submitted that the petitioner is in forceful occupation of the subject property.

Upon hearing all the parties and on perusal of the documents before this Court, I am of the opinion that right now there is no scope for further extension of the interim order. The auction sale in question was over prior to filing the writ petition. The Sale Certificate and the letter to hand over possession to the highest bidder was also issued prior to filing the writ petition. It has been submitted by the Bank that the highest bidder already deposited the sale amount and intends to take possession of the subject property but is unable to do so in view of the interim order passed by the Court.

It is clear that third party right in respect of the subject property was created before the present writ was filed. A statutory remedy is available to the petitioner for challenging the auction. It will be highly improper to proceed any further with the writ petition, that too, in the absence of the highest bidder.

In view of the above the interim order is not extended any further. The same stands vacated.

As the primary prayer of the writ petition restraining the respondents to proceed with the auction cannot be given effect to as the auction was conducted prior to the writ petition being filed, accordingly, the writ petition does not merit any further consideration. The same stands dismissed.

It will be open for the petitioner to approach the appropriate forum in accordance with law for redressal of his grievances, if so advised.

All connected applications stand disposed of.

As the writ petition has been dismissed on merit, learned advocate appearing for the Bank does not intend to press the application for review.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)