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gd/ssd

WPA(P)/293/2021
IA NO: CAN/1/2022, CAN/2/2023

SRI NILENDRA NARAYAN RAY
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Arunangshu Chakraborty,
Ms. Geniya Mukherjee
..for the Petitioner.

Md. T.M. Siddiqui,
Mr. Nilotpall Chatterjee
..for the State.

Ms. Soni Ojha
..for the Respondent No.7.

In this public interest petition the petitioner has challenged the order of the District Magistrate dated 31.03.2021 passed under Section 14 of the SARFAESI Act.

The plea of the petitioner is that the land in question is government land and the mortgage was created by the borrower in favour of the bank in respect of the land in question without sanction of the State of West Bengal. The plea of the petitioner is that the lessee could not have mortgaged the leasehold property in favour of the bank and bank cannot take possession

of the said property behind the back of the State Government, therefore, the order of the District Magistrate under Section 14 of the Act is bad in law.

Learned counsel for the State as also respondent bank have raised the issue of maintainability of this public interest petition, therefore, counsel for the parties are heard on this issue.

Submission of learned counsel for the petitioner is that the technicalities do not come in the way of maintaining the public interest petition and since it is a case of corruption, therefore, the petition should be entertained. He has further submitted that it is not relevant as to how the petitioner came in possession of a particular document but once the documents are produced, they should be looked into. He submits that it is the duty of the Court to examine such issue and that whenever there is violation of law, the Court is required to intervene in PIL.

In support of his submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of ***Messrs. Bhatia Co-operative Housing Society Limited vs. D. C. Patel*** reported in ***AIR 1953 SC 16***, Paragraph 10 and in the matter of ***Yashwant Sinha and Others vs. Central Bureau of Investigation Through Its Director and Another*** reported in ***(2019) 6 SCC***, Paragraph 9.

Learned counsel appearing for the respondent bank has questioned the locus of the petitioner and has submitted that no public interest is involved in the petition and it is a collusive petition filed in order to protect the interest of the borrower and guarantor.

In support of her submission she has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ashok Kumar Pandey vs. State of W.B.** reported in **(2004) 3 SCC 349**, in the matter of **Esteem Properties Pvt. Ltd. vs. Chetan Kamble and Others** reported in **2022 SCC Online SC 246** and in the matter of **St. Mary's Education Society and Another vs. Rajendra Prasad Bhargava and Others** reported in **2022 SCC Online SC 1091**.

Learned counsel for the State has also questioned the maintainability of the petition by submitting that it is a petition relating to private dispute and that the petition is based upon the mortgage document dated 14th January, 2021 and it is not clear as to how the petitioner came in possession of the said document when it relates to the bank and the borrower.

We have heard the learned counsel for the parties and perused the material on record. The record clearly indicates that the petition has been filed to safeguard the interest of the borrower and guarantor as one of the prayers in the writ petition is to declare that the

provisions of SARFAESI Act, 2002 are not applicable in the case. The petitioner is trying to obstruct the proceeding under SARFAESI Act by challenging the order passed by the District Magistrate under Section 14 of the Act. That apart, we also find that so far as the issue of mortgage of the properties is concerned, it is a private transaction between the bank and the borrower/guarantor. It is only the State which can have objection in this regard as the plea of the petitioner is that the land belongs to the State but before this Court the State itself has questioned the maintainability of the petition.

Having regard to the nature of controversy which has been raised in the petition, we are of the opinion that no public interest is involved in the matter.

The respondent bank in paragraph 3 (w and x) of the affidavit-in-opposition have clearly disclosed that the mortgagor had filed an application under Section 17 of the Act before the DRT-III Kolkata being SA No.275 of 2021 which has been dismissed and that Smt. Sunanda Roy, wife of the mortgagor had preferred another SARFAESI application being SA No.125 of 2021 on the self-same cause of action and WPA 17204 of 2021 has also been preferred before this Court in connection with the same manner.

In the matter of **Ashok Kumar Pandey** (supra)

Hon'ble Supreme Court has observed that when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. It has also been observed that if the PILs are not properly regulated and abuse averted, it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well.

In the matter of ***Esteem Properties Pvt. Ltd.*** (supra) Hon'ble Supreme Court considering the earlier judgment in the case of ***Balwant Singh Chauhal*** has observed that the Court should prima facie verify the credentials of the petitioner and should be fully satisfied that substantial public interest is involved.

We are of the view that the test, which has been laid down in the case of ***Balwant Singh Chauhal*** (supra), is not satisfied in the present case.

In the case of ***St. Mary's Education Society*** (supra) in Paragraph 69(b) it has been held that individual wrongs or breach of mutual contracts without having and public element as its integral part cannot be rectified through a writ petition under Article 226.

Hence, in view of the above pronouncement, we are of the view that it would not be proper to protect the public interest. So far as the judgment in the matter of

Messrs. Bhatia Co-operative Housing Society Limited (supra) relied upon by counsel for the petitioner is concerned, in that case the issue has been examined keeping in view the particular lease deed and the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, therefore, the said judgment is distinguishable on its own facts. So far as the judgment in the matter of **Yashwant Sinha**, Paragraph 9 relied upon by learned counsel for the petitioner is concerned, this Court is not on the issue of admissibility of the document, annexure "P-8" but the issue is in respect of drawing the inference of collusion on the basis of the said document, therefore, the judgment in the case of **Yashwant Sinha** (supra) is not applicable in law.

Learned counsel for the petitioner has made an attempt to enter into the merits of the matter by placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Uttar Pradesh and Others vs. United Bank of India and Others** reported in **(2016) 2 SCC 757**. But having regard to the conclusion about the collusion and non-maintainability of the petition, no benefit on the basis of the said judgment can be availed.

Hence, we are of the view that the present public interest petition cannot be entertained, which is,

accordingly, dismissed.

In view of the dismissal of the petition, pending connected applications are also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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