

Item No. 8

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

09.10.2023
Ct-24

WPA 24226 of 2023
Suman Kalyan Jana & Anr.

v.

The State of West Bengal & Ors.

Mr. Debashis Banerjee

Mr. Rakesh Jana

... for the petitioners.

Mr. Santanu Kumar Mitra

... for the State.

Mr. Milan Chandra Bhattacharyya, Ld. Sr. Adv.

Ms. Sulagna Bhattacharya

... for the respondent no. 4 & 5.

The petitioners are aggrieved by the notice of proclamation of sale of property.

It has been submitted that the said notices were issued without a formal demand being raised by the Co-operative Society.

The petitioners filed an objection before the Sale Officer. The sale is scheduled today. The objection is yet to be considered.

Learned senior advocate representing the Co-operative Society submits, upon instruction that, the writ petition is liable to be dismissed on the ground of gross suppression of material facts. The daughter of the loanee i.e. the sister of the petitioners has not been impleaded as party respondent. The writ petition suffers from non-joinder of necessary parties.

The petitioners, contrary to the provisions of the West Bengal Co-operative Societies Act, 2006 transferred the mortgaged property without prior concurrence of the Co-operative Society. The same is impermissible in law.

It is further been submitted that a two storied building has been constructed over the land by the transferee without obtaining permission from the Society.

It has been submitted that in view of the encumbrance in the mortgaged land, the Co-operative Society is not in a position to proceed with the sale.

As it appears that an objection is pending consideration before the Sale Officer, accordingly, the present writ petition is disposed of by directing the respondent no. 3 being the Sale Officer to consider the said objection in accordance with law at the earliest after giving reasonable opportunity of hearing to all the necessary parties including all the heirs of the deceased loanee.

If it transpires that the mortgaged property has been encumbered contrary to the provisions of law, then necessary steps shall be taken by the respondent authority in accordance with law.

A decision shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

Leave granted to the learned advocate representing the respondent nos. 4 and 5 to file Vakalatnama in the department in the course of this week.

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

Sh

(Amrita Sinha, J.)