IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2952 of 2023

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Sanjay Kumar Gupta son of Late Keshav Prasad Gupta, Resident of Mohalla-Navratan Bazar, Sasaram, Police Station-Sasaram, District-Rohtas, PIN-821115 ... Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Finance, Government of Bihar, Patna.
2. The Bihar State Financial Corporation Ltd., Frazer Road, Police Station-Kotwali, Patna-800001, through its Managing Director.
3. The Managing Director, the Bihar State Financial Corporation Ltd., Frazer Road, Patna-800001.
4. The Deputy Manager (Recovery I/C), The Bihar Financial Corporation Ltd., Frazer Road, Patna-800001.
5. The Branch Manager, Bihar State Financial Corporation Ltd., Shahabad Branch, Mahabir Tola, Ramana Road, Arrah, District-Bhojpur.
6. Kumar Parmindra son of Late Sarju Prasad Singh, resident of Mohalla-New Area, Sasaram, Post Office-Sasaram, District-Rohtas, PIN-801115.
7. Birendra Singh son of Sri Braj Raj Singh, resident of Mohalla-New Area, Sasaram, Post Office-Sasaram, District-Rohtas, PIN-801115... Respondents

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Appearance :

For the Petitioner	:	Mr.Dhanendra Chaubey, Adv.
For the Respondents	:	Mr.Anil Kumar Singh (GP 26)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

12 29-08-2024 Heard the parties.

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

> *"…………… (i) for setting aside the order dated 01.02.2022 passed by the Deputy Manager I/C (Zone II) of Bihar State Financial Corporation Ltd. Issued vide Memo No. 1049 dated 02.02.2022 by which the Sale of Mortgaged assets of M/S Rohtas Marble Chips & Mineral industries has been approved in favour of Shri Kumar Parmindra and Shri Birendra Singh on a consideration amount for sale Rs. 130.00 Lacs (Rupees*

One Crore Thirty Lacs) only and further to allow this petitioner to retain the unit in view of previous terms of auction sale held in the year 2012 by the Respondent-BSFC and further to pass any other order/orders to petitioner found entitled too.

(ii) For adding the prayer in the writ application for setting the Deed of sale executed by Bihar State Financial Corporation in favour of Respondent No. 6 and 7 vide Deed No. 4944 dated 28.03.2023 on the basis of facts and circumstances of the case as it has been executed and registered without following the rule of law.

(iii) For staying the further proceeding about the enforcement of the order issued under Memo No. 1049 dated 02.02.2022 (Annexure-3) and consequent actions of Respondents during pendency of this writ application.

3. It is the case of the petitioner that originally mother and father of the petitioner along with his paternal uncles, namely, Ram Randhir Prasad Gupta and Ram Ranveer Prasad Gupta had started the business in the name and style of M/s Rohtas Marble Chips and Mineral Industries at Sasaram, district Rohtas. Thereafter for the purpose of running the industry the above named persons had approached the Bihar State Financial Corporation (in short, 'the BSFC') for loan and were sanctioned an amount of Rs.2,20,000/- way-back in the year 1974. That the above named

persons had mortgaged an area of 0.75 acres of land as a security for the amount taken. The details of the land mortgaged is as below :

Khata No.	C.S. Plot No.	M.S. Plot No.	Mauza	Area
86	192	1789	Rajokhar	0.02 Dec
86	193	1790	Municipality	0.73 Dec

4. That the parents of the petitioner and his uncles have started the production but subsequently due to fluctuation in the market conditions the business of the M/s Rohtas Marble Chips and Mineral Industries became defunct and ultimately ran into losses and was shut down. Counsel for the petitioner has stated that the parents of the petitioner, namely, Keshav Prasad Gupta and Smt. Meena Gupta died in the year 1984 and 2020 respectively and the uncles of the petitioner are aged more than 80 years and suffering from ailments therefore the petitioner has filed the present CWJC. It is further stated that for the first time the petitioner noticed that the BSFC was intending to sell the mortgaged assets after the tender notice was published in the “Dainik Jagran” newspaper on 26.09.2012. The learned counsel for the petitioner has stated that the Respondent-BSFC did not bother to issue any notice to the petitioner nor the partners of M/s Rohtas Marble Chips and Mineral

Industries at any point of time and without properly evaluating the value of the mortgaged property they have auctioned the same. Learned counsel has stated that contrary to the provisions of the Bihar State Financial Corporation Act, 1951, the authorities have gone ahead and sold the lands to the private Respondents No. 6 and 7. Further it is stated that the sale of the mortgaged property without putting either the partners of the M/s Rohtas Marble Chips and Mineral Industries on notice or the legal heirs of the deceased partners, i.e., Keshav Prasad Gupta and Smt. Meena Gupta on notice the same is not only contrary to the principles of natural justice and equity but also the provisions of the Bihar State Financial Corporation Act, 1951. That learned counsel has stated that the authorities without issuing any public notice have sold the subject property in favour of the Respondents No. 6 and 7 and therefore prays this Hon'ble Court to allow this CWJC and to set aside the sale deed executed in favour of the Respondents No. 6 and 7 and also the confirmation of the sale.

5. Per contra, the learned counsel appearing on behalf of the Respondent-Bank as well as the Respondents No. 6 and 7 has vehemently opposed the very maintainability of the Writ Petition.

6. Learned counsel Respondent-Bank has stated that the petitioner was well aware of the entire chain of events right from

the time the notice was published for sale of mortgaged property to the issuance of sale certificate. That the petitioner at no point of time approached the authorities for re-payment of the loan amount. That the partners of the M/s Rohtas Marble Chips and Mineral Industries who had taken the loan way-back in the year 1974 have not maintained the account properly and as a result of which the outstanding loan amount with accrued interest is more than Rs.203.04 lakh by the time of auction. That the authorities have followed the procedure as contemplated under the Bihar State Financial Corporation Act, 1951. That the authorities having found the bid offered by the Respondents No. 6 and 7 was the highest, have executed the sale deed in favour of the Respondents No. 6 and 7. Further it is contended by the counsel for the respondents that once a sale deed is executed in favour of the Respondents No. 6 and 7 the only remedy available to the petitioner is to approach the Civil Court seeking cancellation of the sale deed and this Court sitting under Article 226 of the Constitution of India cannot entertain the Writ Petition seeking the cancellation of the sale deed already executed. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present Writ Petition.

7. Admittedly as seen from the pleadings and documents filed by both the parties the subject property of the land is an area

of 0.75 acres situated at Khata No. 86, C.S. Plot Nos. 192 and 193, M.S. Plot Nos. 1789 and 1790, Mauza Rajokhar Municipality, district Rohtas at Sasaram. The said property was mortgaged by the parents of the petitioner along with his paternal uncles who were all partners of the M/s Rohtas Marble Chips and Mineral Industries. The said partners have mortgaged the above mentioned property and taken loan way-back in the year 1974.

8. A perusal of the notices issued by the respondents reveals that as on the date of sale of the subject property an outstanding amount of more than Rs.203.04 lakh was due to be paid by the above mentioned partners. There is no iota of proof filed by the petitioner that at any point of time either the above mentioned persons or the petitioner has taken any steps for re-payment of the outstanding loan amount. It is not the case of the petitioner that the partners of the M/s Rohtas Marble Chips and Mineral Industries did not take any loan, on the other hand it is clearly admitted that the loan has been taken by mortgaging the property. Once a loan is taken it is duty of the borrower to re-pay the amount within the time frame granted by the Bank. However, in this particular case the same was not done. Further as seen from the record the authorities have issued legal notices to the partners of the firm and also published notices in the newspapers, but, the

petitioner failed to re-pay the amount. In the affidavit filed in support of present Writ Petition, the petitioner has himself admitted that for the first time in the year 2012 he has seen the advertisement for sale of the subject property in the newspaper “Dainik Jagaran”. Even after the sale notice has come to the notice of the petitioner the petitioner, has not taken any step to re-pay the loan amount. Further as seen from the provisions of the Bihar State Financial Corporation Act, 1951, once the bid offered by an auction-purchaser is found to the highest the Bank authorities will give an opportunity to the borrower to match the highest bid amount or to re-pay the entire loan amount but the petitioner failed to take the said opportunity and he did not re-pay the loan amount. Even going by the averments made by petitioner in the main CWJC, the petitioner was aware about the loan and the auction notice in the year 2012 itself but for reason best known to the petitioner he did not re-pay the outstanding loan amount. Further as seen from the letter, dated 30.08.2005 (Annexure ‘O’) the petitioner has himself participated in one of the negotiation with the Bank, so it cannot be said that the petitioner was totally unaware about the outstanding loan in the subsequent sale of the property. As seen from the documents filed by the Respondent-Bank, they have followed the procedure contemplated under the Act and issued public notice before and after the date of auction, therefore it cannot be said that the auction was conducted behind the back of the petitioner. Further it is to be noted that the sale deed has already being executed in favour of the Respondents 6 and 7 and the same cannot be set aside by this Court under Article 226 of the Constitution of India.

9. This Court does not find any infirmity or perversity in the procedure followed by the Bihar State Financial Corporation for sale of the mortgaged property and the consequential execution of sale deed and confirmation of sale.

10. This CWJC is accordingly dismissed however without costs.

(A. Abhishek Reddy , J)

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