IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24296 of 2013

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1. Manju Singh, Wife of Late Shri Balram Singh Resident Of Sheolibari, G.T. Road, Kumardhubi, District - Dhanbad
2. Priti Singh Daughter of Late Shri Balram Singh Resident Of Sheolibari, G.T. Road, Kumardhubi, District - Dhanbad
3. Manmohan Singh Son of Late Shri Balram Singh Resident Of Sheolibari, G.T. Road, Kumardhubi, District - Dhanbad

... ... Petitioner/s

Versus

1. Bihar State Financial Corporation, Head Office, Frazer Road, Patna
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna
3. The Branch Manager, Bihar State Financial Corporation, Bokaro
4. Sri Premjeet Singh At Nirsha Bhamal, P.O.- Nirsa, District- Dhanbad, State Of Jharkhand

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 9880 of 2015

Premjeet Singh S/O Sri Rabindra Prasad Singh At and P.O.- Nirsha Bhamal, Distt.- Dhanbad Jharkhand

... ... Petitioner/s

Versus

1. The State Of Bihar through Bihar State Financial Corporation, Frazer Road, Patna
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna
3. The Branch Manager, Bihar State Financial Corporation, Bokaro, Jharkhand

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 24296 of 2013)

For the Petitioner/s : M/s Ajay Kumar Sinha
Ajit Kumar Sinha,
Dilkash Khan, Advocates

For the BSFC : Mr. Raju Giri, Advocate
Mr. Harsh Vardhan, Advocate

(In Civil Writ Jurisdiction Case No. 9880 of 2015)

For the Petitioner/s : Mr. Hemant Kumar, Advocate

For the BSFC : Mr. Raju Giri, Advocate
Mr. Harsh Vardhan, Advocate
Mr.Vinay Krishna Tripthy, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
CAVJUDGMENT
Date : 22-11-2024

1. These two Writ petitions, are interlinked and interconnected, were heard together and disposed of by a common order.

2. For better appreciation of the facts, each case are being dealt separately.

3. It is relevant to mention here that the Respondent No. 4 (Premjeet Singh) of CWJC No. 24296 of 2013 is the petitioner in CWJC No. 9880 of 2015.

<u>Re. CWJC No. 24296 of 2013</u>

4. The petitioner has filed the present Writ petition for the following reliefs:

> *(I) For issuance of appropriate Writ/order/direction to consider the OTS proposal submitted on behalf of petitioners for settlement of the loan amount and/or redemption of the mortgaged assets of M/s Ram Autar Nursing Home (P) Ltd. hereinafter referred to as Company.*

(ii) For issuance of appropriate Writ(s)/order(s)/direction(s) for quashing the proceeding of auction/sale of the assets of Ram Autar Nursing Homes (P) Ltd.

(iii) For issuance of other appropriate Writ/order/direction which the petitioner may in the facts and circumstances of this case may be found entitled to.

5. The brief facts culled out of Writ petition are that in the year 1988 a term loan of Rs. 37 lakhs was granted vide sanction letter No. IA/APP1/1437 dated 24.03.1988 (Annexure-1) by the respondent Bihar State Financial Corporation (hereinafter referred to as 'the respondent Corporation) to one M/s Ramautar Nursing Home (P) Ltd. Sheolibari, G.T.Road, Kumar Dhubi, District Dhanbad. It is stated that the petitiners are heirs of the promoter / Director of Late Balram Singh. The borrower Company was promoted by Late Balram Singh and his father Late Ram Awatar Singh. Aforesaid two Promoter Directors, namely Ramavtar Singh and Balram Singh died on 25.09.2000 and 15.07.2003 respectively. It is submitted that after death of aforesaid

Promoter Directors, the petitioners met with the respondent No. 3 to enquire about the Account i.e. whether the Account could be settled under OTS in vogue, but no response was given by the the respondents. Thereafter, the petitioner No. 2 vide letter dated 22.11.2013 (Annexure-3) submitted as offer for one time settlement of Account of the Company, before the respondent No. 2. It is submitted that the petitioner has recently come to know that the respondent Corporation has accepted an offer of purchase of the assets of the Company without notice to the petitioners who are heirs of the promoter Director of the Company. It is the specific contention that the petitioners are heirs of the Promoter Directors of the Company and are entitled to notice by respondent Corporation before going for sale of the assets of the Company especially when the Promoter Directors are no more. It is submitted on behalf of the petitioner that the aforesaid action of the respondent Corporation in going for sale of the assets of the Company is bad both in law as well as on fact, besides the same is violative of Articles 14, 19(1)g, 21 and 300A of the Constitution of India.

<u>Re. CWJC No. 9880 of 2015</u>

6. As stated Supra the petitioner of this Writ petition is arrayed as respondent No. 4 in CWJC No. 9880 of 2015.

7. The petitioner has filed the present Writ petition for issuance of Writ/order/direction to the respondents to handover the possession of M/s Ramawtar Nursing Home Pvt. Ltd., Sheolibary, G.T. Road, Kumardhubi, District Dhanbad in the State of Jharkhand, to the petitioner in terms of agreement between the petitioner and respondents dated 19.12.2013 and if not, direction be given to the respondents to refund the sum of Rs. 20,00,000/- paid by the petitioner, to the respondents with interest till date.

8. It is submitted by the petitioner that in the year 1988, Bihar State Financial Corporation granted a term loan of Rs. 37 lakhs to M/s Ramawtar Nursing

Home Pvt. Ltd., Sheolibary, G.T. Road, Kumardhubi, District-Dhanbad, but in due course of time the aforesaid Nursing Home company failed to pay the loan amount of the Respondents and as a result of, non payment of loan, advertisement for sale of recovery of the Corporation dues, the Respondents invited tenders in the local News Papers on 30.08.2012. In response to it, the petitioner applied for tender on 21.01.2013 which was approved by the Respondent no. 2., under the terms mentioned in Annexure-1, which was accepted also by the petitioner. It is further submitted that in spite of repeated attempts of the petitioner the Respondents took no response to handover the possession of the aforesaid Nursing Home. The respondents are neither doing any formalities in terms of Annexure-1 nor they refunded the deposited amount of Rs. 20,00,000/-to the petitioner. Thereafter the petitioner got a notice from this Hon'ble Court which reveals that C.W.J.C. No. 24296 of 2013 is pending regard to said Nursing Home filed by Manju Singh and others.

9. It is submitted by the Learned Senior Counsel for the petitioner that the respondents / BSFC may be directed to refund the sum of Rs. 20,00,000/- paid by the petitioner to the respondents with interest.

10. From perusal of records, it appears that by order dated 12.09.2018, this Court has tagged up both the Writ petitions for hearing.

11. Heard Learned counsel for the parties. Perused the records.

12. On perusal of records, it appears that an interlocutory application bearing I.A. No. 2 of 2019 has been preferred by petitioners (Manju Singh & Ors) of CWJC No. 24296 of 2013. A co-ordinate Bench of this Court has passed a detailed order on 26.02.2019. For better appreciation, the order dated 26.02.2019 is reproduced as below:-

> *"Interlocutory Application No. 2 of 2019 has been preferred seeking an appropriate order and direction to the respondents-Corporation to allow the petitioners to avail one time settlement*

scheme (in short 'OTS scheme') floated vide Circular No. 03/2018-19 dated 27.12.2018 as contained in Annexure-'P/5' to the Interlocutory Application.

It is the case of the petitioners that even though the unit in question was auction sold in favour of private respondent Sri Premjeet Singh who is the Writ petitioner in C.W.J.C. No. 9880 of 2015 for a consideration of Rs. 80 lakhs, the auction purchaser could deposit only a sum of Rs. 20 lakhs by now. The purchaser, thus, having failed to pay the entire consideration amount in terms of the sale order, it cannot be said that the sale order has already taken effect.

Learned counsel submits that in the present Writ application the petitioners are challenging the proceeding of auction sale of assets in favour of the private respondent no. 4, thus, at this stage when the OTS scheme has come into existence, he may be allowed to participate in the OTS scheme subject to final outcome of the Writ application.

Mr. Raju Giri, Learned counsel representing the Bihar State Financial Corporation (in short 'BSFC') has drawn the attention of this Court towards the eligibility categories and condition no. 1(e) thereunder which reads as follows :-

> *"1(e) In cases where sale order has been issued and initial cash down payment has been accepted from the purchaser i.e. cases where promoters of these units have not retained assets after issue of sale order within stipulated time shall not be eligible for settlement under this scheme."*

It is the contention of Mr. Giri that in the present case since sale order has already been issued, the petitioners shall not eligible for settlement under this scheme.

Prima-facie the submission of Mr. Giri would be correct but this Court finds that the very sale order which is obstructing the petitioners from participating in the OTS scheme is under *challenge in the present Writ application, thus, in case the sale order is finally set aside by this Court, the embargo created under Clause 1(e) of the OTS scheme will vanish.*

Taking note of this situation, in order to balance the equity, this Court deems it just and proper to direct the BSFC to allow the petitioners to submit their offer under the OTS scheme which will be subject to result of the Writ application. Mere submission of offer for the OTS scheme by virtue of this order would not confer any right upon the petitioners and at the same time the fact that the petitioners have been allowed to participate in the OTS scheme will not in any way affect the contentions of the BSFC and the private respondent."

13. It is submitted by the Learned Senior Counsel for the petitioners in CWJC No. 24296 of 2013 that the procedure adopted by the Corporation is bad in law and also on facts, besides the same is violative of the law laid down by the Hon'ble Supreme Court in the

case of **Kerala Financial Corporation Vs. Vincent Paul & Ors. (2011) 4 SCC 171** and in paragraph 20 their Lordships have held as follows:

> ***"20.*** *We have already concluded that the decree for specific performance granted by the High Court cannot be sustained. We also observed in the earlier part of our judgment that though KFC has initiated proceedings under Section 29 of the Act, admittedly, the State has not framed rules or guidelines in the form of executive instructions for sale of properties owned by them. Till such formation of rules or guidelines or orders as mentioned above, we direct KFC to adhere to the following directions for sale of properties owned by it:*
>
> *(i) The decision/intention to bring the property for sale shall be published by way of advertisement in two leading newspapers, one in vernacular language having sufficient circulation in that locality.*
>
> *(ii) Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of*

such immovable secured asset by any of the following methods:

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) by inviting tenders from the public; or

(c) by holding public auction; or

(d) by private treaty.

Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

(iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction-sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process

of sale and everybody has an opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.

(vii) Reserve price means the price with which the public auction starts and the auction-bidders are not permitted to give bids below the said price i.e. the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.

It is submitted by the the Learned Senior counsel for the petitioner that in view of the above, all actions of respondents towards sale of the property in question are fit to be quashed.

14. It is further submitted that all actions for sale, included sale made without notice to the petitioners, who are heirs of the Promoters – Directors. It is also submitted on behalf of the petitioners that the property was sold on the basis of auction notice of 2008 in the year 2013, on which date the two Promoters were dead and no more and that the address on the notice were in the name of Company and the deceased Promotors / Directors. The respondent Corporation has neither brought on record any evidence of personal service prior to and/or after sale to the petitioners or even to deceased Directors. It is further contended that the valuation done in the year 2012 was without notice to the petitioners. It is submitted that the sale is also bad as the same was made only to a single bidder, as the other bidders were absent on the date of impugned sale. It is further submitted that the Office Order /2007-08 of the respondents as contained in Annexure R/6 regarding delegation of powers for approval of sale is only an

executive instruction of the Corporation and the same is not a statutory role / guidelines and as such the same is violative the law laid down in **Kerala Financial Corporation (supra)**. It is further submitted by the Learned Senior Counsel for the petitioners that there is no sale in the eye of law for non fulfillment of conditions in sale order. In view of the fact, that no notice was served to the petitioners, there would have been no occasion for the petitioner to retain the property for 21 days, as per Clause 6 of sale order and consequently no occasion even for the purchaser to deposit initial payment, under Clause-2 would arise and payment made by the purchasers, if any, is inconsequential and the same would not satisfy the condition of sale order and as such the same will not come in way of the petitioner to contend that no sale ever took place in the eye of law as a condition in Clause-2 cannot be said to have been validly complied with.

15. It is further submitted by the Learned

Senior Counsel for the petitioners that the petitioner has exercised OTS 2018 in terms of order dated 26.02.2019 and deposited the OTS amount vide DD No. 192176 dated 28.02.2019 (Annexure P/6). However, the respondent Corporation made objection that the rider as given in Clause 1(e) of the Scheme (Annexure- P/5) and that will not come in way of the petitioner for availing the OTS since the sale order itself is bad and is liable to be set aside. It is further submitted that this Court vide order dated 06.01.2014 has directed that until further order the sale shall not be confirmed and till date the interim order is continuing, therefore prays to allow the Writ petition directing the action of sale and the sale order (Annexure R/2) to be set aside and the OTS offered by the petitioners in terms of the order dated 26.02.2019 to be accepted.

16. Counter affidavit was filed on behalf of the respondent Corporation in CWJC No. 24296 of 2013. It is contended in the Counter affidavit that as per the terms and conditions of the Loan Agreement, the

petitioner Company was to repay full loan by October, 1998, but the Company did not make payments of the principal amount or interest accrued thereon though the Nursing Home came into operation and, thus, the Company became defaulter. Thereafter, the petitioner Company was served with Legal Notice, but the Petitioner’s Company did not responded for it. In order to recover legitimate dues from the defaulted Company, the mortgaged assets were advertised for sale in the Dailies on 26.05.1995 under continuous sale policy of the Corporation. When no prospective buyer was found the Unit was again re-advertised for sale on 31.08.2008/01.09.2008. Thereafter, the mortgaged assets of the Petitioner's Unit was advertised for sale in two leading news papers and the mortgaged assets were evaluated by the Branch Level Valuation Team on 26.07.2012. The assets were also evaluated by the External Valuer to the tune of Rs.52,88 lakhs. Thus, the reserve price was fixed at Rs.78.85 lakhs (Annexure-R/3). In pursuance of the Sale Advertisement, Sri Prem

Jeet Singh - respondent No. 4 (petitioner of CWJC No. 9880/2015) submitted Tenders for purchase of the mortgaged assets and he agreed to purchase the mortgaged assets at a consideration amount of Rs.75 lakhs. Thereafter, the Corporation issued Sale Order in favour of Sri Premjeet Singh-respondent No. 4 intimating the Petitioner i.e. M/s Ramawatar Nursing Home Private Limited vide Memo No. 231 dated 11.11.2013 (Annexure-R/2). Clause no.-6 of the sale order is the retention clause for the promoter. The promoter failed to retain the Unit though they were informed through registered post. In terms of section 27 of the General Clause Act, the Notice through registered post is valid. The petitioner has never challenged the Sale Order. It is further submitted by the Learned counsel for the respondent Corporation that through the 2nd Advertisement Notice, the Original Promoter/Owners of the Unit were informed to clear the dues within a month, from the date of issue of the Advertisement Notice. Through the Advertisement

Notice, the Original Promoter / Owners were again informed to keep in touch with the Corporation. In case the Corporation decides to sell their Unit, a Registered Notice will be sent to them giving 21 days time for retaining the assets on matching terms after finalizing the sale proposal, but the Corporation does not undertake any liability for Postal Delay or misplacement. It is further submitted that this Hon'ble Court vide order dated 06.01.2014 directed that until further Orders the Sale shall not be confirmed. It is contended that during pendency of the Writ petition, an amendment application being I.A No.2 of 2019 was also filed by the petitioner for allowing the petitioner to avail the OTS Scheme 2018, for settlement of the loan account and in the interlocutory application this Hon'ble Court vide order dated 26.02.2019 had directed the BSFC to allow the petitioners to submit their offer, under the OTS Scheme which will be subject to result of the Writ application. It is the contention of the respondent Corporation that the mortgaged/hypothecated assets of the petitioners were sold in favour of M/s Premjeet Singh and sale order dated 06.11.2013 was issued (Annexure-R/2). It is also stated that as per the Sale Order, the purchaser was to make an initial cash down payment of an amount equivalent to 25% of the total consideration price .i.e. Rs.20.00 Lakhs. The purchaser made payment of Rs.20.00 lakhs as against the consideration amount and executed a sale-cum-payment of balance loan agreement on 19.12.2013. It is submitted by the Learned counsel for the respondents that on perusal of clause-1(e) of the Circular No. 03 /2018-19 (Annexure-P/5) which is BSFC One Time Settlement Scheme -2018, it transpires that, in cases where sale order has been issued and initial cash down payment has been accepted from the purchaser .i.e. cases where promoters of these units have not retained their assets after issue of sale order within the stipulated time, shall not be eligible for settlement under this scheme. Since the Sale Order has already been issued, the petitioners shall not be eligible for settlement under this scheme. It is further submitted that the grant of benefit of OTS Scheme cannot be claimed as a matter of right and shall always be subject to fulfilling the eligibility criteria as mentioned in the scheme. The OTS does not involve any public element and the OTS is/was non discriminatory and non discretionary and shall be uniformally applicable to all borrowers.

17. The Learned counsel for the respondent relied on the judgment passed by the Hon'ble Apex Court in the case of **State Bank of India-Vs- Arvindra Electronics Private Limited (Civil Appeal No. 6954 of 2022)**, reported in **2023 (1) SCC 740** (para no. 12 to 16) wherein their Lordship has held as follows:-

> *"(i) no borrower can, as a matter of right pray for a grant for the benefit of one time settlement scheme; (ii) No Writ of mandamus can be issued by the High Court in exercise of Article 226 of the Constitution of India, directing the financial institution/bank to positively grant a benefit*

of OTS to a borrower, (iii) The grant of benefit of OTS scheme is subject to the eligibility criteria and the guidelines issued from time to time".

18. It is submitted that in view of the Law laid down by the Hon'ble Apex Court, and also in view of the eligibility criteria of the One Time Settlement Scheme as stated above, benefit of BSFC OTS Scheme 2018 cannot be extended to the petitioners.

19. To controvert the submissions made by the petitioner, the Learned counsel for the respondent Corporation submitted that the petitioners have relied upon the Judgment of the Hon'ble Apex Court, reported in **2011 (4) SCC 171** (**Kerala Financial Corporation Vs. Vincent Paul and Ors**) and submitted that the Respondents have not followed the procedure as laid down by the Supreme Court (in para 20 of the said Judgment). It is contended that the Hon'ble Supreme Court was pleased to hold that if there are no guidelines for sale, then procedure laid down in para 20 is to be followed. However, the Corporation has its own

guidelines/ procedure for sale which was followed in the present Case. The said guidelines were issued vide Office Order No. 1/ 2007-08 by the Managing Director of the Corporation (Annexure-R/6 of the fourth Supplementary Counter Affidavit). It transpires from the record that the petitioners are chronic defaulter.

20. The Learned counsel for the respondent Corporation further relied upon the judgment passed by the Hon'ble Division Bench of this Court in Judgment dated 22.03.2010 passed in **LPA No. 277 of 2008 (Bihar State Financial Corporation & Others-Vs-Kedar Nath Lohani)**, wherein at para no. 19 it is clarified that the One Time Settlement Scheme is only available to specified category of those who are not willful defaulter. Further, reference was made to para 21 of the same judgment wherein the judgment of the Apex Court in **Karnatka State Industrial and Development Corporation Ltd. Vs Calvalet India Ltd & Others,** reported in **2005 (2) PLJR 202 (SC)** has been referred, wherein para 19 (iv) it has been held that unless the

action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the Corporation liable. It is further submitted that the petitioners had taken loan from the Corporation and have defaulted the same and that after giving them Notice and publishing advertisement the Unit was put for auction sale. The sale was done in terms of the guidelines of the Corporation adhering to the Principles of Natural Justice by giving opportunity to the original promoter to retain the Unit for which registered Notice was also sent. But the original promoter failed to retain the Unit. Further, the original promoter .i.e. petitioner were not eligible for OTS scheme in terms of the eligibility criteria of the OTS scheme and also in view of the judgment of the Hon'ble

Apex Court passed in the case of **State Bank of India-Vs Arvindra Electronics Pvt. Ltd. (supra)** and also in view of the Division Bench Judgment of this Hon'ble Court passed in **LPA No. 277 of 2008 (Supra)**.

21. With regard to CWJC No. 9880 of 2015, the Learned counsel for the respondents submits that since the original Promoter failed to comply with the terms of sale Order, the Petitioner-Pramjeet Singh made payment of Rs.20 lakhs and executed a Sale Cum Payment of balance Loan Agreement on 19.12.2013. As per the Sale Order (Annexure-R/2 of CWJC No. 24296/2013), the remaining balance of 75% of the consideration amount .i.e. Rs.60.00 lakhs shall only be treated as a term loan to the purchaser, on the Corporation's usual terms and conditions, and shall be repaid within 2 years, by eight quarterly installments each of Rs.7,50,000/- only. The first installment will fall due, after completion of two months from the date of issuance of this sale Order. (clause 3 of the sale Order) and the rate of interest on such balance amount of the

consideration money shall be 16% per annum with quarterly rate. Other charges as per the norms of the Corporation shall also be charged as applicable. In case of default, penal interest @2% per annum on the amount and period of default shall also be charged (clause 4 of the sale Order). It is further submitted by the Learned counsel for the respondent Corporation, that as per clause 3 of the agreement, the remaining balance of 75% of the consideration amount .i.e. Rs.60.00 lakhs (Rupees Sixty lakhs) shall be treated as a term loan to the purchaser, on the Corporation's usual terms and conditions, and shall be repaid within 2 years, by 8 quarterly installment of Rs.7,50,000.00 only. The first installment shall become due, after the completion of two months from the date of issuance of this sale Order. Furthermore, as per clause-9 of the agreement, the sale is without prejudice to Orders (if any) passed by the Hon'ble Court. The Branch Manager, Bokaro Branch, will ensure the withdrawal/ disposal of restraining Orders arising from the pending litigation, if any, prior to permitting the execution of any legal formalities/ take over/ handover the of assets. It is contended that the Unit could not be handed over to the petitioner due to the Order passed by this Court in CWJC No. 24296 of 2013. However, there was no impediment to the petitioner in making the payment of remaining balance of 75% of the consideration amount of Rs.60 lakhs, in terms of Clause-3 of the Agreement. The BOS (Balance Outstanding) as on 28.02.2023 for the petitioner is Rs.2,77,35,917.00 (Rupees Two Crores Seventy Seven Lakhs Thirty Five Thousand Nine Hundred Seventeen only), as evident by letter No. 145 dated 28.02.2023 (Annexure-R/1 of the 2nd Supplementary Counter Affidavit) issued by the Branch Manager, BSFC to the petitioner. Hence in the light of the aforesaid facts and circumstances, the Writ petition is liable to be dismissed.

22. Heard the Learned Senior counsel for the petitioners as well as the Learned counsel for the respondents and perused the record of CWJC No. 24296

of 2013.

23. It is the specific contention of the Learned Senior Counsel for the petitioners that the Writ petition was filed on 02.12.2013, registered on 05.12.2013, and the matter came up before Bench on 20.12.2013 wherein the Learned counsel for the Corporation submitted to the Court that until furhter order the sale shall not be confirmed and the prayed time for filing Counter. On 06.01.2014, this Court passed an order which, reads as follows:

> *"I.A. No. 39/2014:*
>
> *The interlocutory application has been filed for impleading the purchaser of the property in question by the sale order dated 11.11.2013, namely, Premjeet Singh whose details are stated in para-2 of the interlocutory application, as party-respondent No. 4 to the Writ application.*
>
> *In the facts and circumstances of the case, the prayer for impleadment is allowed.*
>
> *I.A. No. 39/2014 is, accordingly, disposed of.*

Learned counsel for the petitioners submits that the respondents have not followed the procedure as laid down by the Supreme Court in para-20 of the decision in the case of ***Kerala Financial Corporation Vs. Vincent Paul and Ors.: (2011) 4 SCC 171*** *and thus all actions of the respondents towards the sale of the property in question are fit to be struck down as no notice was, at any time, given to these petitioners regarding the sale or even with respect to determining the valuation of the property.*

Issue notice to newly added respondent no.4. Requisites both under ordinary process and registered cover with A.D. must be filed within one week failing which the Writ application, as against him, shall stand rejected without further reference to a Bench.

Until further orders the sale shall not be confirmed.

Put up under the heading "For Admission-I" on 3rd February, 2014."

24. As per the said orders, it is evident that the petitioners submitted to the Court that the respondents

did not follow the procedure as laid down by the Hon'ble Apex Court in the case of **Kerala Financial Corporation (supra).** Therefore, all the actions of the respondents towards the sale of the property in question are are fit to be struck down, as no notice was issued to the petitioners, at any point of time regarding the sale or even with respect to determining the variation of the property. It is also important to note that pursuant to that order, I.A. No. 39 of 2014 was filed bringing the Auction Purchaser Premjeet Singh as 4th respondent, and this Court specifically passed orders dated 26.02.2019 not to confirm the sale, in favour of the 4th respondent.

25. While considering the contentions of the Learned Senior Counsel for the petitioners, this Court, vide order dated 26.02.2019 directed the BSFC to allow the petitioners to submit their offer under the OTS scheme, which would be subject to result of the Writ petition. Inspite of it, no notice was sent to the borrowers. It was also contended that the BSFC did not

permit the petitioners to proceed with the OTS scheme, inspite of depositing the entire OTS amount.

26. A perusal of Annexure-R/2 (i.e. the order of BSFC) Column No. 6 disclose as follows:

> *"6. The original promoter(s) of the unit may retain the assets on matching terms and conditions, if they so agree they pay the consideration amount, and submit a suitable repayment plan for the difference of consideration price and their balance outstanding as on date of payment as well, and make the payment as per provision of para 2 within 21 days from the date of issue of the sale order accordingly. Further, if payment from original promoter is received and accepted by the Corporation in terms of this sale order, the payment made by the purchaser, if any, will be refunded without any interest thereon."*

27. Notice was issued by registered post to M/s Ramautar Nursing Home Pvt. Ltd. at Sheolibari, G.T.Road, Kumardhubi, District Dhanbad. It is relevant to mention that the due to his default in

payment of Corporation's dues, his assets hypothecated to Corporation have been ordered to be sold in favour of M/s Premjeet Singh at Nirsha Bhamal, P.O. Nirsha, District Dhanbad, under the terms and conditions mentioned in the sale order. If he so wishes, he may retain the unit on matching terms and conditions as contained in the sale order, provided he agrees to pay and a submit suitable repayment plan for the difference between the consideration price and the outstanding balance and, accordingly, if he makes the payment within 21 days from the date of issue of the sale under, and if his payment and payment plan to found acceptable by the Corporation in terms of the sale order. By registered post, Purchaser M/s Premjeet Singh was informed, that if payment from original promoter's is received in terms of this sale order, the payment made by Auction Purchaser, if any, will be refunded without any interest thereupon.

28. The said order of BSFC was sent to Ramautar Nursing Home Pvt. Ltd. through registered

post, vide order dated 11.11.2013, but it is the specific contention of the Learned counsel for the petitioners that they did not receive any notice thorugh registered post. The said fact was reiterated in the supplementary affidavit of the petitioners.

29. The Counter affidavit on behalf of the respondents (BSFC) disclose that the mortgaged assets of the petitioners' Unit, namely, M/s Ramawtar Nursing Home Pvt. Ltd., Dhanbad were advertised in two leading newspapers dated 31.08.2002 and 01.09.2002. However, the record reveals that Ramawtar Singh and Balram Singh i.e. both the Promoters passed away prior to 2003. The assets were again re-advertised in a daily newspaper on 08.09.2013 by incorporating the names of the dead persons, i.e. Ramautar Singh and Balram Singh. It is mentioned that, through advertisement notice, the original promoters and owners of the Units were informed to clear the dues within a month from the date of issuance of the advertisement notice and further in the second

advertisement notice, the promoters / owners (dead person) were again informed to keep in touch with the Corporation. The notice stated that in case the Corporation decides to sell the Unit, a registered notice will be sent to them, giving 21 days time to retain the assets, on matching terms after finalizing the sale proposal, however the Corporation does not undertake any liability for Postal delay or misplacement.

30. This Court is unable to understand as to how notice can be sent to dead persons by the BSFC. It is the duty casted upon the respondent/BSFC to issue notice to the legal heirs of the Promoters/ owners and not to the dead persons. The Counter of the BSFC itself disclose that no notice was issued to the legal heirs of the Promoters before selling the property to third party. The record also reveals that, on one hand the BSFC sought time for filing a counter affidavit, while on the other hand conducted the auction of the petitioners' property. Consequently, this Court was constrained to pass a detailed order dated 26.02.2019. Admittedly, the

petitioners have also filed an application before the BSFC to avail the OTS scheme but the same was not finalised. However, it is subject to the outcome of the Writ petition, as per the orders of this Court dated 26.02.2019.

31. It is the specific contention of the Learned counsel for the respondent Corporation that I.A. No. 2 of 2019, along with the order dated 26.02.2019, clearly disclose that the petitioners were required to deposit the principal amount and accordingly, they have deposited the amount but the same was not finalized as it is subject to the result of the Writ petition. The dues as on 28.02.2023 is Rs. 22,59,61,159/- and only 75% of sale consideration was not paid in view of the stay order against the auction purchaser. It is further contended that the right of the auction purchaser is only to deposit the 75% amount, but not for the refund of the amount.

32 In support of its contention regarding CWJC No. 24296 of 2013, the Learned Senior Counsel for petitioners placed reliance on the decision of **Kerala**

Financial Corporation (supra) in which their Lordships have held in paragraph 20(viii) as follows:

> *"20 (viii). The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale."*

33. This Court is of the considered view that the above ratio of Hon'ble Apex Court in **Kerala Financial Corporation (supra)** squarely applies to the present case in hand i.e. CWJC No. 24296 of 2013.

34. In view of the above ratio, this Writ petition (CWJC No. 24296 of 2013) is allowed, and the auction of sale and the sale order (Annexure-R/2) are hereby quashed. The respondent Corporation is directed to accept the OTS offered by the petitioners, in terms of the order dated 26.02.2019.

35. This Court also heard the Learned Senior counsel for the petitioner, as well as the Learned counsel for the respondents, and perused the record of

CWJC No. 9880 of 2015.

36. In CWJC No. 9880 of 2015, the petitioner specifically prays for a direction to the respondents to handover possession of M/s Ramawtar Nursing Home Pvt. Ltd., Sheolibary, G.T. Road, Kumardhubi, District Dhanbad, in the State of Jharkhand, to the petitioner in terms of the agreement between the petitioner and respondents dated 19.12.2013 and if not, direction shall be given to the respondents to refund the sum of Rs. 20,00,000/- paid by the petitioner to the respondents with interest to date.

37. Since CWJC No. 24296 of 2013 is allowed in which petitioner of CWJC No. 9880 of 2015 is arrayed as respondent No. 5, and this Court has already quashed the auction of sale and the sale order (Annexure-R/2) , the first part of the prayer made by the petitioner Premjeet Singh, is not at all permissible.

38. However, at the same time petitioner Premjeet Singh alternatively prayed for refund the sum of Rs. 20,00,000/- paid by the petitioner to the

respondents with interest till date.

39. Accordingly, it is directed to the respondent Corporation to refund the sum of Rs. 20,00,000/- with 9% of simple interest per annum to Premjeet Singh within a period of 4 months from the date of receipt of a copy of this judgment.

40. In result CWJC No. 9880 of 2015 is disposed of with the aforesaid observation and directions.

41. Interlocutory application (s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	23.09.2024
Uploading Date	22.01.2025
Transmission Date	