

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15527 of 2022

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Brajesh Kumar Singh @ Kumar Brijesh, son of Parmanand Prasad Singh @ Parmanand Prasad, resident of Chandanpura, P.O.- Jamalpur, P.S.- Naya Ram Nagar, District- Munger.

... .. Petitioner/s

Versus

1. The Bank of Baroda through Regional Manager, Regional Office, 2nd Floor in front of C.R.P.F., 159 Battalion Jail Road Gaya- 823001.
2. The Chief Manager, Authorized Officer, Bank of Baroda, Deepak Smriti Sadan, Gilzar Pokhar, Munger- 811201.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Kumar Sharma, Adv
For the Resp. Nos. 1 & 2:		Mr. Shivendra Kishore, Sr. Adv.
		Ms. Nishi Nath Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 08-02-2024 Head learned counsel for the parties.

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

“A. For issuance of writ in nature of mandamus to restraint the respondent Bank to proceed in sale of petitioner immovable property in pursuance of e-auction Notice dated 11-09-2022 issued by the respondent BANK OF BARODA against the petitioner immovable property without considering the fact that petitioner is neither borrower/debtor nor he has executed mortgage deed in favour of BANK OF BARODA or become guarantor with respect of his immovable property in connection with any debt/loan from the respondent Bank.



B. For direction to the respondent no. (1) and (2) to stay or kept in abeyance of Possession Notice dated 01-02-2022 and e- auction Notice dated 11-09-2022 issued by the respondent BANK OF BARODA against the petitioner immovable property till the final disposal of the present writ.”

3. Learned counsel appearing on behalf of the petitioner has stated that the Bank authorities are trying to sell the property of the petitioner by way of e-auction notice dated 11.09.2022. Learned counsel has stated that the petitioner has purchased the subject property which falls in Khata No. 45, Khesera No. 483 and 484 vide registered sale deed dated 27.05.2016. That the Bank authorities without verifying the boundaries of the subject property are trying to sell the same through e-auction. Therefore, left with no other option, the petitioner has approached this Hon'ble Court by way of the CWJC. Learned counsel has stated that the action of the Bank authorities is trying to sell the property belonging to the petitioner without proper verification is arbitrary, illegal and bad in law and therefore, prays this Hon'ble Court to set aside the e-auction notice.

4. Per contra, the learned counsel appearing on behalf of the Respondent Bank has vehemently opposed the



very maintainability of the writ petition and stated that the petitioner has not challenged any order or notices under Sections 13(2) and 13(4) of the SARFAESI Act. Learned counsel has stated that the own brother of the petitioner namely one Vikash Kumar had obtained a loan from the Bank by mortgaging the property in Khata No. 66 and 45, Khesra No. 472 and 483, which were purchased by said Vikash Kumar vide Registered Deed No. 824 dated 29.03.2017 (Annexure A of the counter affidavit). Learned counsel has stated that the Bank authorities subsequently on 13.01.2021 have declared the loan account of Vikash Kumar as Non Performing Asset (NPA) and issued notices under Section 13(2) of the SARFAESI Act on 16.09.2022 and under Section 13(2) of the SARFAESI Act on 01.02.2022. Thereafter, the possession was taken by the Bank authorities. Subsequently, the Bank authorities has issued the sale notice on 22.07.2022 for holding the e-auction on 11.09.2022. Learned counsel has stated that the property purchased by the petitioner and the property purchased by Vikash Kumar and mortgaged with the Bank are distinct and separate. That the petitioner has no locus to challenge the e-auction notice for the sale of property belonging to Vikash Kumar.



5. Learned counsel has drawn the attention to this Court to the documents filed by the petitioner himself along with CWJC to show that the property which the petitioner, is claiming is falling is Khata No. 45, Khesera No. 483 and 484 whereas the property purchased by one Vikash Kumar and mortgaged to the Bank is falling under Khata No. 66 and 45, Khesra No. 472 and 483. Learned counsel has also drawn the attention of this Court to the notices issued by the Bank to show that the property of Vikash Kumar is being auctioned and not that of the petitioner. Learned counsel has stated that if there is any dispute with regard to the identity of the property, the remedy of the petitioner is to approach the competent Civil Court or DRT by filing appropriate application and not by way of CWJC before this Court. Learned counsel has stated that disputed questions of fact cannot be gone into under Article 226 of the Constitution of India and prays for dismissal of the present writ petition.

6. A perusal of the documents filed by the petitioner himself, reveals that property belonging to one Vikash Kumar, was mortgaged to the Bank and the said land was purchased under registered sale deed no. 824 dated 29.03.2017 in respect of Khata Nos. 66 and 45, Khesra Nos. 472 and 483 whereas the



property purchased by the petitioner is falling under Khata No. 45, Khesra Nos. 483 and 484. The petitioner has not brought on record and document to show as to what is the total area of Khesra Nos. 483 and 484 and where the property of the petitioner is situated. Admittedly the property that is being auctioned is falling in Khata Nos.66 and 45, Khesra No. 472 and 483 and the same belongs to Vikash Kumar.

7. If there is any dispute with regard to the identity of the property or there is any dispute with regard to the title of the property, the only remedy available to the petitioner is to approach the DRT or the competent Civil Court. This court under Article 226 of the Constitution of India cannot go into the disputed questions of fact. Moreover, the petitioner has not challenged the notices issued under Section 13(2) of the SARFAESI Act and Section 13(2) of the SARFAESI Act or the possession taken by the authorities concerned.

8. Having regard to the above, this Court does not find any merits in the present writ petition which warrants any interference. The present writ petition is, accordingly, dismissed.

9. However, liberty is granted to the petitioner to approach either the DRT or competent Civil Court for redressal of his grievance.



10. It is made clear that this Court has not decided any of the issue involved in the present writ petition and the same are left open for DRT or the competent Civil Court to take a decide. Any observation made in the present writ petition is only for the purpose of disposal of the present writ petition and should not be construed as making any comments on the merits of the case.

(A. Abhishek Reddy , J)

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