D/L.14.
March 20, 2024.
MNS.

WPA No. 4620 of 2024

Durga Shankar Narayan Chowdhury
and others
Vs.
The State Bank of India and others

Mr. Soumya Majumdar,
Ms. Rashhmi Singhee,
Ms. Garima Raijada

… for the petitioners.

Mr. Om Narayan Rai,
Mr. Shiv Mangal Singh

…for the respondent-Bank.

Mr. Supratic Roy,
Mr. Ajit Keshari

…for the respondent nos. 7 to 10.

Ms. Sutapa Guha,
Ms. Jayati Chowdhury,
Ms. Mandobi Chowdhury

…for the respondent no. 11.

1. Affidavit-of-service filed in Court today be kept on record.
2. The workers of a factory have preferred the instant writ petition.
3. Learned counsel for the petitioners contends that the petitioners were ousted in a cruel manner while they were working in the factory, in the garb of implementation of an order under Section 17 of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (2002 Act).

4. It is contended that an application under Section 17 of the 2002 Act is pending at the behest of the borrowers against the sale, pursuant to which the impugned action was taken. However, it is doubtful as to whether the interest of the workers shall be represented properly in the said proceedings.
5. Learned counsel contends that there was apparently no reason for the extreme promptitude shown by the bank in ensuring that the possession is given by pursuing the application under Section 14 of the 2002 Act since notional possession was taken as far back as in the year 2021.
6. Learned counsel for the petitioners also submits that in connection with an application under Section 17 of the 2002 Act, an order was passed by the Presiding Officer of Debts Recovery Tribunal- III, Kolkata, where the interests of the present petitioners were not considered at all.
7. It was merely observed in the said order that it is desirable that banks should take physical possession to ensure smooth auction process. Immediately thereafter, possession was given to the auction purchaser through the bank.

8. Learned counsel for the petitioners also submits that in an order dated March 11, 2024, the Debts Recovery Tribunal refused to grant any further protection than restraining the purchaser from creating any third party interest in respect of the secured property, which does not alleviate the assault on the livelihood of the petitioners.
9. It is contended on behalf of learned counsel for the petitioners that Article 21 of the Constitution of India is far-reaching and prevails over the provision of Article 19 of the Constitution and its restrictions.
10. Accordingly, in order to vindicate the right to life of the petitioners, who are poor workers, the writ court ought to grant relief by restoring their possession, at least permitting the workers to do their daily labour in the factory situated on the said premises.
11. Learned counsel for the bank points out that the possession was taken in due process of law under Section 17 of the 2002 Act and the challenge is already pending in which sufficient protection has been given by the DRT by way of restraining the purchaser from creating any third party interest.
12. Upon hearing learned counsel, it transpires that there may be an angle of the

petitioners/workers being set up by the borrower to prefer the instant challenge.

13. Taking a constricted view of the matter, the workers do not have a *locus standi* to prefer the instant writ petition, being not parties to either the loan or the consequential action taken under Section 13(4) of the 2002 Act, since they claim through the borrower and their interest is represented by the borrower. However, on a broader premise, it cannot be denied that the right to livelihood and consequentially the right to life of the petitioners, who were workers in the factory which is situated on the subject premises, is directly affected.

14. However, even taking the utmost liberal view on such count in favour of the petitioners, it cannot but be said that however comprehensive the spread of Article 21 is, since it is not a provision by which the Constitution confers the right to life and liberty but merely recognizes the implicit rights to life and liberty, which are inherent in a human being, Article 21 cannot be said to override the specific bar created under a different Article within Part-III of the Constitution of India. Although Article 19 has been conferred by the Constitution to the citizens of India, the

same comes with the rider embodied in sub-article (6).

15. In terms of Article 19(6), reasonable fetters can be imposed on the right of pursuing any profession by the Parliament by enacting legislation which is not unreasonable.

16. In the present case, the 2002 Act has survived several challenges to its *vires* and is still there in the statute book. Thus, a presumption of unreasonableness cannot be attributed to such an existing statute, particularly within the limited scope of Article 226 of the Constitution where the *vires* of the statute has not even been challenged. As far as the statute is concerned, the same clearly provides the provisions which have been invoked in the present case in dispossessing the borrower from the premises-in-question and handing over the property to the petitioners.

17. The petitioners have suffered a collateral damage in the sense that they were the workers employed in the factory which was situated in the premises-in-question. That, at best, can confer a right on the petitioners, in their capacity as workers of the factory which was situated on the secured asset, to prefer a challenge under Section 17 of the 2002 Act by giving liberal interpretation of sub-section (1)

of the same, which allows ‘any person’ (including borrower) aggrieved by any of the measures referred to Section 13(4) of the 2002 Act to take out a challenge under the said provision.

18. However, at this juncture, the writ court cannot undo the measures which have been taken under Section 13(4) of the 2002 Act and have found fruition through the dispossession of the borrower under Section 17 of the said Act.

19. As such, despite having full sympathy for the plight of the workers, who might have lost their livelihood for the present, their remedy lies against the owner of the factory, that is the borrower, and not by way of the present writ petition.

20. At best, the petitioners would be at liberty to approach the concerned Debts Recovery Tribunal with an independent challenge under Section 17 of the 2002 Act or get themselves impleaded as parties to the pending challenge under the same provision.

21. There is no scope of grant of relief in favour of the petitioners in view of the above discussions.

22. Accordingly, WPA No. 4620 of 2024 is disposed of in the light of the above observations.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)