

11.09.2024
Court No.09
Item no.07
CP

WPA No. 12219 of 2023

Pawan Beriwal
Vs.
The State of West Bengal & ors.

Mr. Shiv Mangal Singh
... for the Petitioner.

Mr. Joydip Banerjee
Mr. Amritalal Chaterjee
....for the State.

Mr. Sannidhya Dutta
Mr. Abhijit Sarkar
Mr. Abhik Chitta Kundu
....for the respondent nos. 2 and 3.

Mr. Basudeb Mukherjee
....for the respondent nos. 7 and 8.

1. The writ petition has been filed by the auction purchaser in favour of whom the sale was confirmed on March 17, 2020. The sale proceeds have been deposited in 2020. The property has not yet been handed over. The registration is not complete. A report in the form of an affidavit, has been filed by the Deputy Manger (Law) of the corporation, inter alia, stating that one Adbus Salam Rice Product Pvt. Ltd. had availed of financial assistance from the corporation. Owing to consistent default in repayment despite several

opportunities and sufficient time to regularize the loan accounts, the corporation invoked powers under Section 29 of the State Financial Corporations Act, 1951, for recovery of public money. The corporation issued notice dated May 24, 2012 under Section 29 of the said Act and took over physical possession of all the movable and immovable assets of the company, which were mortgaged and/or hypothecated to the corporation on June 12, 2012. The said assets of the company were thereafter put up for sale on multiple occasions. Lastly, the petitioner was the successful bidder, who offered a price of Rs.40.50 lakhs. A notice was served on the borrower on February 4, 2020, informing the borrower about the proposed sale of the properties and the borrower was afforded an opportunity to match the price offered by the successful bidder. No positive response was received from the borrower. As such, the sale of the assets and the properties were confirmed in favour of the petitioner. Upon full payment, the corporation initiated steps to hand over possession of the property to the writ petitioner.

2. During inspection of the property, it was found that, Mr. Nurul Islam, Mr. Nurul Afsar and Mr. Abdus Salam who were the directors of the borrower company, had trespassed into the property and were residing in the said property illegally. They obstructed the corporation's officials from handing over the possession. The Branch Head of Durgapur office wrote a letter to the Superintendent of Police, Birbhum, inter alia, requesting police assistance to maintain law and order and facilitate the handing over of the possession to the writ petitioner. Thereafter, the officers of the Durgapur Branch of the corporation met the Deputy Superintendent of Police, Suri on various occasions for a suitable date and time for taking over possession. Letters were sent to the Superintendent of Police, Birbhum by the managing director of the corporation. The SDPO informed the corporation that WP No.7942 (W) of 2020 had been filed before the High Court and, as such, the police authorities were unable to deliver possession.
3. The corporation has affirmed on oath that it is willing to hand over possession immediately. The police authorities are before this court and

submit that they will render all assistance to the corporation.

4. The learned advocate for the respondent nos. 7 and 8 submits that the said respondents had offered higher price than what was paid by the petitioner. Such matter is *sub judice* before another court.
5. However, the report of the corporation reveal otherwise. It states that the borrowers were given intimation about the proposed sale and adequate opportunity was allowed to the borrower to redeem the property.
6. Learned advocate for the respondent nos. 7 and 8 refers to a letter dated February 29, 2020 by which six months' time to redeem the property upon paying Rs.41.50 lakhs, was written by the petitioner. By a letter dated March 6, 2020 the Deputy General Manager, Durgapur Branch, informed the borrower company that the proposal to redeem the mortgage did not commensurate with the options given under the notice dated February 4, 2020 and as such, the proposal was not accepted.
7. Although, the learned advocate for the respondent nos. 7 and 8 urges this court to

consider the sum and substance of the letter dated February 4, 2020, on the ground that all that was asked to be done was to match the reserve price, this court finds that the corporation called upon the borrower and provided an opportunity to submit an offer either equal to or better than Rs.40.50 lakhs. Full down payment was requested within 30 days from the date of the letter. Thus, it appears to this court that an offer was made to the borrower, by giving an opportunity to match the price which the corporation had reserved at Rs.40.50 and redeem the mortgage by making full down payment within 30 days from receipt of the letter. Instead of complying with the said provision, the borrower company asked for six months time.

8. It was found to be contrary to the notice dated February 4, 2020 and, thus, by letter dated March 6, 2020 the proposal of the borrower company was refused. Thereafter, the sale took place on March 17, 2020.
9. Under such circumstances, this court does not find that the respondent nos. 7 and 8 had approached the corporation on any earlier

occasion, i.e., prior to the sale, offering to make the down payment within 30 days.

10. In any event, the writ petition filed by the respondent nos. 7 and 8 has been pending since 2020. This court is unable to ascertain what steps were taken by them to diligently pursue their remedy. There is no interim order in the matter.
11. Under such circumstances, the present writ petition is disposed of with a direction upon the Superintendent of Police, Birbhum to take all steps, and hand over possession to the corporation 30 days from the date of communication of this order, mandatorily and the corporation shall hand over the possession to the petitioner.
12. There shall be no order as to costs. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)