

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 13621 of 2021

**Khoda Box Sk.
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Biswarup Biswas Mr. Mojnu Sk
For the respondent nos. 1 to 4.	:	Mr. Srijan Nayak Mrs. Rituparna Maitra
For the respondent no. 5	:	Mr. Malay Kumar Roy
For the respondent no. 6	:	Mr. Goutam Banerjee Ms. Priya Dey
Heard on	:	08.02.2024
Judgement on	:	08.02.2024

PARTHA SARATHI SEN, J.:

1. The writ petitioner, the respondent No. 1 to 4, respondent No. 5 and respondent Nos. 6 are represented by their respective learned Advocates.
2. By filing the instant writ petition under Article 226 of the constitution of India the writ petitioner has prayed for an appropriate order for release of his arrear salary including others

dues as kept in the suspense account of the respondent No. 5/Bank on account of sale in auction of a cold storage constructed by Purbasthali-II Co-operative Agricultural Marketing Society Limited (hereinafter referred to as the 'said Society' in short) being the respondent No. 6 herein.

3. It is contended on behalf of the writ petitioner that said cold storage was constructed by the respondent No. 6/Society after obtaining financial assistance from the respondent No. 5/Bank and since the respondent No. 6/Society was incurring loss, respondent No. 5/Bank took control and started to run the said cold storage on lease since 1993 till 2002. It is the further case of the writ petitioner that during the said period the present petitioner along with some other employees of the said co-operative worked in the said cold storage on deputation basis and that the salary of the writ petitioner and the other employees remained dues. Since the respondent No. 6/Society could not repay the loan the said cold storage was auctioned at a price of Rs. 92 lakhs.
4. Drawing attention to Annexure P5 to the writ petition it is contended that a breakup was prepared by the cooperation department of Government of West Bengal with regard to the apportionment of the sale proceeds of Rs. 92 lakhs in which Rs. 17,63,220/- was proposed to be kept aside for payment of the due

salaries and other dues as payable to the employees of the said co-operative who worked on deputation with the respondent No. 5/Bank. Drawing further attention to the Annexure P8 it is submitted that the respondent No. 4 under cover of his letter dated 06.01.2020 addressed to the respondent No. 5/Bank confirmed that an amount of Rs. 5,34,420/- has been apportioned for payment to the employees of the said cold storage and that was kept in the suspense account of the respondent No. 5/Bank. It is thus contended that the present writ petitioner being the ex-employee of the said cold storage is thus entitled to his proportionate dues upon the said sum of Rs. 5,34,420/-.

5. Learned Advocate for the writ petitioner, thus, submits that an appropriate order may be passed for releasing the proportionate dues of the present writ petitioner which is still lying with bank authority that is the respondent No. 5.
6. Per contra Mr. Roy, learned Advocate for the respondent No. 5/Bank at the very outset draws attention of this Court to Annexure P8 of the writ petition that is the letter dated 06.01.2020 as written by the respondent No. 3 to the respondent No. 5. It is contended that from the said letter it has become crystal clear that for non-payment of the loan amount a certificate proceeding was initiated and on the basis of the said certificate proceeding the said cold storage was auctioned at price of Rs. 92

lakhs. Mr. Roy in course of his argument also draws attention of this Court to the Annexure A1 of the affidavit-in-opposition as filed by the respondent No. 5 which includes an annual report of the said bank for the year 2009-2010. From the annual report as placed before this Court it reveals that as against the total dues of the bank that is Rs. 43,74,423/- towards principal + Rs. 1,26,17,082/- towards interest totaling to Rs. 1,69,91,505/- a sum of Rs. 92 lakhs (Rs. 43,74,423 towards principal and Rs. 48,25,577 towards interest) have been recovered and the respondent/bank has still outstanding dues to the tune of Rs. 77,91,505/- which the respondent/bank has waived on the basis of the resolution as taken in the annual general meeting in the year 2009-2010.

7. Drawing attention to Section 26 of the Bengal Public Demands Recovery Act, 1913, it is contended that since the dues of the respondent/bank tantamounts to public demand under the said Act of 1913, the respondent/bank being the certificate holder in the certificate proceeding is entitled to recover the following, namely, (i) the cost incurred by the certificate holder; (ii) the amount due to him under the certificate in execution of which the assets were realized; (iii) any other dues which remains unpaid to the certificate holder and (iv) the balance, if there be any, shall have to be paid to the certificate debtor.

8. It is contended that from the statement of accounts placed and approved in the Annual General Meeting, it reveals that the entire recovered amount of Rs. 92 lacs as and by way of auction sale has been utilized for mitigating the dues of the respondent no. 5/Bank as a certificate creditor and, therefore, there cannot be any dues payable by the respondent/Bank to the writ petitioner.
9. On perusal of the entire materials as placed before this Court, this Court finds sufficient logic in the submission of Mr. Ray, learned advocate for the respondent no. 5/Bank in view of the provision of Section 26 of the said Act of 1913. Before this Court, the respondent no. 5/Bank being the certificate holder has clearly indicated as to how the sale proceeds of the auction value of the cold storage have been utilized and, therefore, in considered view of this Court, the letter dated 06.01.2020, as written by respondent no. 4 to respondent no. 5/Bank is of little significance.
10. This Court is satisfied that the respondent no. 5/Bank being the certificate holder has clearly explained as to how the sale proceeds of the auction has been utilized and in considered view of this Court, those are in accordance with the provision of Section 26 of the said Act.
11. This Court thus, considers that this instant writ petition being WPA 13621 of 2021 is devoid of any merit and is, thus, dismissed.
12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)

Suvayan Ghosh, A.R. (Court)
Sourav Banerjee, A.R. (Court)