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27.02.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28189 of 2023

Salam Mallick & Anr.

Vs.

The Authorised Officer, Punjab
National Bank & Ors.

Mr. Abhishek Sikdar

...for the petitioners

Mr. Abhishek Banerjee,

Ms. Parna Roy Chowdhury,

Ms. Ankana Roy

...for the respondent Bank

Mr. Goutam Chakraborty,

Mr. Satyaki Chakraborty

...for the respondent no. 4

1. An interesting question has been raised by the petitioners. The petitioners claim to be agriculturists, who are *bhaag chashi's* in respect of the property, which was sold to the private respondent/purchaser in a SARFAESI sale by the respondent-Bank.

2. Learned counsel for the petitioners raises a cardinal question as to whether the Debts Recovery Tribunal (DRT) has jurisdiction to take up a challenge under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in view of the property-in-question/secured asset being an

agricultural land, which is not amenable to the jurisdiction of the 2002 Act.

3. It is further argued that in view of such lack of jurisdiction, the entire proceedings taken by the Bank under Section 13(4) of the 2002 Act and the fallout thereof, that is, the sale-in-question, are acts of nullity and can be ignored or negated by the Court.

4. Learned counsel for the respondent-purchaser submits that at least a portion of the land, which apparently is shown in the records as agricultural land, was duly converted and sold to the said respondent. As such, it is argued that not merely the entries in the land records but the actual user and nature of the land is required to be looked into, which is a palpably disputed question of fact and is amenable to the jurisdiction of the DRT under Section 17 of the 2002 Act.

5. Learned counsel for the Bank argues that the well-settled position of law is that the borrower can seek redemption prior to the auction sale notice being published.

6. That apart, the allegations of the writ petitioners are denied by the Bank.

7. The question which presents itself before the Court is whether the writ petition is maintainable.

8. However, this is a peculiar case where even to ascertain maintainability, a mixed question of fact and law is required to be entered into, which is beyond the domain of the writ court.

9. The petitioners argue that the land is shown in the record of rights and depicted in the photographs annexed to the writ petition as an agricultural land and, as such, falls outside the purview of the 2002 Act. However, in view of the stand taken by the purchaser and the Bank that at least a portion of the same was converted duly in accordance with law and only thereafter sold to the respondent-purchaser, the question partakes the colour of a mixed question, which cannot be and ought not to be ascertained by the writ court, which is not equipped properly to take evidence and decide the issue on merits.

10. In any event, even the question as to jurisdiction of the Bank to take measures under Section 13(4) of the 2002 Act on the ground that the said Act is not applicable, is amenable to the jurisdiction of the DRT. Section 17 of the 2002 Act provides that any aggrieved person can take up a challenge to the action taken under Section 13(4) of the 2002 Act under the said provisions before the concerned DRT. There is no reason as to why the issue of the exercise being a nullity, since without

jurisdiction, cannot also be taken up before the DRT and form a subject-matter of challenge by the person aggrieved under Section 17 of the 2002 Act. For the limited purpose of ascertaining the said question, the DRT definitely has the jurisdiction as conferred under Section 17 of the 2002 Act.

11. In such view of the matter, it would only be prudent to relegate the matter to the appropriate Tribunal having determination.

12. However, keeping in view the fact that the petitioners hail from the marginalized sections of society and are cultivators having a strong *prima facie* case as to the merits of the case, the ends of justice demand limited protection being given to the petitioners till they approach the concerned Tribunal with an independent challenge under Section 17 of the 2002 Act.

13. It is relevant to note here that the argument that already a challenge under the said provision is pending at the behest of the borrower and the petitioners can join themselves there, is not tenable, since the petitioners make an independent claim as “bhaag chashi’s” to the land, which is not a claim made as a representative of the borrower or through the borrower and, as such, the petitioners are not proper or necessary parties in the said pending application of the borrower.

14. In the light of the above observations, W.P.A. No. 28189 of 2023 is disposed of by granting liberty to the petitioners to approach the appropriate Tribunal with a properly constituted challenge under Section 17 of the 2002 Act on the issues raised in the present writ petition. Such approach shall be made by the petitioners positively within a week from date.

15. If such a challenge is made and an interlocutory application is moved in connection with the said application under Section 17 of the 2002 Act by the writ petitioners, also within a week from date, the concerned DRT shall positively decide the issue of grant of interim orders within a week thereafter by acting on a server copy of this order, coupled with a written communication by the learned advocate for the petitioners, without insisting upon prior production of a certified copy thereof

16. The parties shall maintain *status quo* as on date in respect of the property-in-dispute for four weeks from date or until further orders as passed by the DRT, whichever is earlier.

17. It is made clear that the interim order passed above is only by way of an *ad hoc* protection to the petitioners to enable the petitioners to prefer a proper challenge before the DRT and shall not be

construed in any manner to be an adjudication, even on a *prima facie* footing, on the respective cases of the parties. Such ad hoc protection shall be subject to any order which may be passed by the DRT.

18. The Tribunal shall be at liberty to proceed independently and in accordance with law without being influenced by the above ad interim order in deciding the issues before it.

19. There will be no order as to costs.

20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.