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22.05.2024  
Ct. 3  
RS

**IN THE HIGH COURT AT CALCUTTA  
Circuit Bench at Jalpaiguri  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 1048 of 2024**

**Surendra Kumar Sharma  
Versus  
Union of India and Ors.**

Mr. Amales Ray, Adv.  
Ms. Suman Sehanabis, Adv.  
Mr. Salok Sah, Adv.

... for the petitioner

Mr. Sudipto Kumar Mazumder, Ld. D.S.G.I.  
Mr. Ajoy Kumar Singhanian, Adv.

... for the UOI

Ms. Aasia Hasan, Adv.

... for the respondent no.2

Mr. Amales Ray, learned counsel, is appearing for the petitioner. Mr. Ajoy Kumar Singhanian, learned counsel, is appearing for the State. Ms. Aasia Hasan, learned counsel, is appearing for the respondent no. 2.

The petitioner has challenged the e-auction notice for sale of immovable property of RTC property India Limited.

The petitioner says that initially the petitioner has filed a Title Suit before the Learned Court of Civil Judge (Junior Division) Additional Court at Cooch Behar being Title Suit No. 26/2010 and in the said suit, the defendants have also filed their counter-claim. Learned Civil Judge (Junior Division) Additional Court has

dismissed the suit filed by the plaintiff as well as the counter-claim. Being aggrieved with the judgment and decree of dismissal, the plaintiff has preferred an appeal before the learned Additional District Judge, 3<sup>rd</sup> Court, Cooch Behar being Title Appeal No. 22 of 2015 but the Appellate Court has also dismissed the appeal filed by the petitioner. While dismissing the appeal, the Appellate court in its judgment dated 28.06.2019 recorded finding that from the pleading of the plaintiff and the defendant it appears that during pendency of the suit, the defendant no.1 has sold the suit property to the defendant no.2 but could not hand over the vacant premises to the defendant no.2. From the written statement of the defendant no.2 it also appears that the plaintiff is still in possession of the suit premises.

Counsel for the petitioner submits that being aggrieved with the order of the Appellate Court has preferred second appeal and the second appeal is pending. He submits that as the appeal is pending with respect of the said property and prayed for stay of the impugned e-auction notice dated 29<sup>th</sup> April, 2024 with respect of the RTC Properties India Limited.

Counsel for the Union of India submits that the authority has already initiated e-auction and the petitioner has failed to obtain any order from the Civil Court as in both the Courts the petitioner has lost the cases and as such, no stay can be passed.

Counsel for the respondent no.2 submits that the petitioner cannot claim for stay of the said notice and the writ application filed by the petitioner is premature.

Heard the learned counsel for the respective parties. Perused the application.

This Court finds that the recovery officer has issued e-auction notice with respect of the several properties including RTC Properties India Limited and the petitioner has failed to obtain any decree from the two forums of the Civil Courts and in the pending second appeal also the petitioner has not obtained any order of stay. As such, the writ petition being WPA 1048 of 2024 filed by the petitioner is misconceived and the same is dismissed.

Affidavit of service filed by the petitioner be kept with the record.

**(Krishna Rao, J.)**