IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8472 of 2024

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Mohammad Sueb Khan S/o- Mohammad Lal Khan, Resident of House No.- 36, Gali No.- 2, New Basti, P.O.- Kureni, District - North West Delhi, New Delhi-110040.

... ... Petitioner/s

Versus

1. Punjab National Bank through the Authorised Officer, Circle SASTRA Centre, Darbhanga, Bihar.
2. The Authorised Officer, Punjab National Bank, Circle SASTRA Centre, Darbhanga, Bihar.
3. The District Magistrate -cum - Collector, Darbhanga.
4. The Additional Deputy Collector (Banking), Darbhanga.
5. The Sub Divisional Magistrate, Sadar, Darbhanga.
6. The Circle Officer, Sadar, Darbhanga.
7. The Senior Superintendent of Police, Darbhanga.
8. The Deputy Superintendent of Police, Sadar, Darbhanga.
9. The Station House Officer, Town Thana, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikas Kumar Jha
For the Respondent/s	:	Mr. Vivekanand Prasad, Government Pleader 7
	:	Mr. Sanjay Kumar, AC to GP7

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 04-09-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

> *"(i) For issuance of writ in the nature of mandamus, directing and commanding upon the respondent authorities to hand over the physical possession of the land-building/property bearing Mauza- Senapat, Thana, Circle & District - Darbhanga, Ward No. 21, Naka nO. 5, Tauzi No. 3331, Municipal Khesra No. 17949, 17951, 17952, 17953, 17915, 17916, 17997, 17998, Area 1 Katha 15 Dhur, which has been purchased by the petitioner in auction*

held by the respondent no.1 and the 'SALE CIRCTIFICATE' dated 02.12.2021 of the said land-building/property has been issued in favor of petitioner after getting full payment of bid amount i.e. Rs.70,07,600/- but till date the respondent bank has not given the physical possession to the petitioner after due identification of property mortgaged with regard to the area and nature of the property.

(ii) For issuance of writ in the nature of mandamus, directing and commanding upon the respondent no. 3 to 9 to pass the appropriate order or act as per law in relation to take physical possession of the said land-building/property in favor of petitioner as the Ld. Court of District Magistrate, Darbhnaga has passed the order dated 11.01.2019 in SARFESI Case No. 67/2016 whereby and whereunder the Sub-Divisional Officer, Sadar, Darbhanga is authorized and directed to ensure physical possession through the help of the concerned Circle Officer and Police Station In-charge and the bank is also directed to provide proper assistance to Sub-Divisional Officer, Sadar, Darbhanga in obtaining physical possession but neither the respondent bank nor the concern authority is interested in taking physical possession of the said property after lapsing of more than 2 years.

(iii) For holding and fixing the liability of the respondent bank if it is found that he has fraudulently taken money on account of sell of the said land-building/property in auction sell for recovering his debt/loan amount from the petitioner as the physical possession is not being given to the respondent bank despite of many request and representation, which creates the doubt and suspicion over the respondent bank that he may sell the disputed land or something else in the land/property which was mortgaged by the lonee with connivance of respondent bank officials at the time of loan sanctioning as the bank had the responsibility and liability to test the legal status of land before accenting as a mortgage property.

(iv) To any other relief or reliefs, which the petitioners may be found entitled to in the facts and circumstances of the case.

(v) Cost of this litigation.”.

3. The following reliefs has been added by filing I.A. No. 01 of 2025.

> *"A. For issuance of writ in the nature of Mandamus, directing and commanding upon the respondent authorities to return the entire bid amount of Rs. 70,07,600/- (Seventy Lakh Seven Thousand Six Hundred Rupees) along with the compound interest @18% per annum from the date of deposits i.e. Rs. 17,51,900/- (Seventeen Lakh Fifty-One Thousand Nine Hundred Rupees) was deposited on 12.08.2021 as an initial deposit and the rest of amount Rs.52,55,700/- (Fifty Two Lakh Fifty Five Thousand Seven Hundred Rupees) was deposited on 02.12.2021 as the same was deposited by the petitioner against the auction held by the respondent bank on 12.08.2021 for the sale of the land-building/property bearing Mauza- Senapat, Thana, Circle & District Darbhanga, Ward No. 21, Naka No. 5, Tauzi No. 3331, Municipal Khesra No. 17949, 17951, 17952, 17953, 17915, 17916, 17997, 17998, Area 1 Katha 15 Dhur."*

4. It is the case of the petitioner that following a notification dated 12.08.2021 issued for sale of the subject land building/property bearing Mauza-Senapat, Thana Circle & District- Darbhanga, Ward No. 21, Naka No. 5, Tauzi No. 3331, Municipal Khesra No. 17949, 17952, 17952, 17952, 17915, 17916, 17991, 18998, Area-1 Katha 15 Dhur by the respondent-Bank by way of Public Auction, the petitioner has participated in the auction and being the highest bidder the subject property was knocked in his favour.

5. Learned counsel appearing on behalf of the petitioner submits that after the sale was knocked in his favour, the petitioner has deposited the full sale consideration and the sale certificate dated 02.12.2021 has been issued in his favour. Learned counsel submits that though the petitioner has deposited the entire sale consideration and the sale certificate was issued in his favour by the Bank, till date the petitioner has not been given the physical possession of the subject property. That in spite of making several requests to the Bank, they have till date not put the petitioner in physical possession of the subject land. Learned counsel submits that after the petitioner deposited the amount, sale consideration and sale certificate was issued to him, subsequently the petitioner came to know that there are multiple litigations pending before the various courts in respect of the subject land which were not disclosed to the petitioner before the auction was conducted nor the same was mentioned in the auction notice. That the petitioner was constrained to file I.A. No. 01 of 2025 seeking amendment of the prayer when it has come to the knowledge of the petitioner that there are litigations pending before various forums and the petitioner is unlikely to get the physical possession of the subject property soon. Learned counsel submits that the litigations which are pending in respect of the subject property are multiple in nature and before different forums and it is unlikely that in the near future, the same are going to get resolved therefore, the petitioner left with no other alternative, has filed the I.A. No. 01 of 2025 seeking refund of the sale amount deposited by him along with the interest.

6. *Per contra*, the learned counsel appearing on behalf of the respondent-Bank has vehemently opposed the prayer sought in the present writ petition. Learned counsel for the respondent-Bank has submitted that the petitioner was well aware of the litigation pending in respect of the subject property and the property was sold on “as is where is basis” and, therefore, the petitioner cannot seek refund of the amounts deposited by him towards the sale consideration. Learned counsel has stated that there is every likelihood of the litigations pending over the subject property resolved soon and the official respondents are taking all necessary steps to get the same dismissed and hand over the physical possession of the subject property to the petitioner at the earliest. Learned counsel has stated that the prayer sought for in the present writ petition cannot be granted as the petitioner knowing fully well has purchased the property on “as is where is basis” and therefore, prayed this Hon’ble Court to dismiss the present writ petition.

7. Admittedly in this case, the subject property was put to auction by the respondent-Bank *vide* Public Notice dated

23.07.2021 thereafter, the petitioner has participated in the said public auction and being the highest bidder, the sale was knocked in his favour. Thereafter, the confirmation of sale was communicated to the petitioner on 12.08.2021/13.08.2021 and after the petitioner deposited the entire sale consideration, the sale certificate was issued in favour of the petitioner on 02.12.2021. However, it is to be noted that the physical possession of the subject property has not been handed over to the petitioner till date.

8. A perusal of the pleadings reveals that there are multiple litigations pending in respect of the subject property one case has been filed by the one Mariyam Khatoon and another challenging the SARFAESI proceedings initiated by the respondent-Bank for recovery of the possession before the DRT, Patna and the same has been numbered as SA No. 182 of 2023. Further, it is also to be noted that there is a title suit pending before the Sub-judge bearing Title Suit No. 06 of 2024-23 in which the respondent-Bank is one of the defendants.

9. As rightly pointed out by the learned counsel for the petitioner, the litigations pending in respect of the above mentioned subject property are unlikely to get resolved in the near future. Therefore, the contention of the counsel for the respondent-

Bank that the authorities are taking necessary steps to resolve the issue and deliver the physical possession of the subject property to the petitioner at the earliest is without any basis and the same is made only to defeat the claim of the petitioner. The other contention raised by the respondent-Bank that the property was sold on "as is where is basis" and, therefore, the petitioner cannot back out from the sale is also without any basis as the above mentioned two cases have been filed after the sale certificate was issued to the petitioner and furthermore, the authority is not in a position to hand over the physical possession of the subject property to the petitioner any time soon. Even though the petitioner has deposited the entire sale amount and sale certificate was issued in his favour way back in the year 2021 and more than four years have lapsed, the physical possession of the subject property has not been handed over to the petitioner till date.

10. The Hon'ble Delhi High Court in the case of ***Kalyani (India) Pvt. Ltd. Vs. Punjab National Bank and Anr.*** reported in ***2024 ibclaw.in 75 HC*** under similar circumstances has held as under;

> *"39. The expressions 'as is where is' basis and 'as is what is' basis are commonly used in the commercial agreements, especially in property auctions. The expressions are indicative of an unconditional transfer wherein a buyer purchases the property subject to all encumbrances, rights, title and liabilities. In such cases, the buyer generally gets a*

fair opportunity to conduct due diligence and is expected to conduct an inspection of all relevant aspects of the property. It is premised on the concept of caveat emptor, which puts the onus on the buyer. However, the real effect of an 'as is where is basis' clause is to be seen in light of the specific facts and circumstances of the case, as recently observed by the Hon'ble Supreme Court in K.C. Ninan v. Kerala State Electricity Board & Ors, 28, in the following paragraph:-

> *"148. While examining the effect of an "as is where is" clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision."*

40. Therefore, an 'as is where is clause is not a clause of blanket application. The meaning to be placed on an 'as is where is clause must result in a just and equitable outcome. The need for caution, while giving effect to such a clause, arises because of the potential of abuse that it carries. Such clauses have the tendency to become the tools of abuse at the hands of unscrupulous sellers. If a buyer suffers, not because he was not vigilant enough, but because of an act of active and deliberate concealment by the seller, the brunt thereof must not fall upon the buyer. At times, the principle of caveat emptor did give rise to such undesirable consequences and therefore, the duty of the buyer to be vigilant was coupled with the duty of the seller to not indulge in an act of egregious fraud.

41. It is pertinent to accentuate the rise in the principle of caveat venditor i.e., the seller beware as compared to caveat emptor Le., the buyer beware, due to the changes in the orientation of market dynamics, which is becoming more consumer-oriented. There is an emerging need to find a balance between the respective responsibilities and due diligence standards of buyers and sellers. In a case where the Bank conceals the encumbrance on physical possession, despite undertaking to disclose fully as per its knowledge, liability could not be fixed on the buyer on the ground that he should have been more vigilant. Such a consequence would be grossly unjust and *would be against the very foundation of good conscience and justice. Law is not expected to place an unrealistic burden on either side as it would lead to absurdity. An 'as is where is' clause must be construed in a pragmatic sense and a buyer cannot be held responsible if the seller indulged in an active concealment of foundational facts. What could be such foundational facts is a matter of judicial application of mind and it would not be apposite to lay down any rule of law in that regard. Therefore, the Bank cannot take shelter under the guise of 'as is where is' clause to shed away the responsibilities enshrined upon it."*

11. Further, the Hon'ble Delhi High Court duly taking into consideration the law laid down by the Hon'ble Supreme Court in the case of ***the State of U.P. Vs. Jaswant Sugar Mills Ltd.*** reported in (***2014) SCC OnLine SC 503*** and also the judgment of the Andhra Pradesh High Court in the case of ***Mandava Srinvasu Vs. State Bank of India & Ors.*** reported in (***2023) SCC OnLine AP 1301*** has granted interest on the deposited amount. The Hon'ble High Court of Madras in the case of ***S. Shanmuganathan Vs. Indian Overseas Bank & Ors.*** reported in (***2017) SCC OnLine Madras 1549*** under similar circumstances i.e., whether any interest can be granted to the auction purchaser or not while refunding the deposited amount has held as under;

"32. The other question is as to whether the petitioner is entitled to interest.

33. The petitioner deposited the sale consideration on 24.07.2008. The bank retained the money all these years without delivering the property to the petitioner. The bank is therefore liable to pay interest to the petitioner.

34. In Ambalavanan v. Canara Bank (order dated 01.04.2016 in Review Application (Writ) No. 302 of 2015) a Division Bench of this court considered the question regarding payment of interest. The Division Bench made the following observation, while directing payment of interest to the purchaser of a secured asset:-

"9. The Bank issued the sale notice to auction the property mortgaged by the first respondent. The applicant participated in the auction. The bid submitted by the applicant was accepted by the Bank and the sale was confirmed in his name. The applicant paid a sum of Rs. 65,07,000/- to the Bank. The amount was deposited on 27 August 2010. The sale was subsequently set aside by this Court. The Bank refunded the amount deposited by the applicant. However, interest was not paid. The Bank cannot be heard to say that the purchaser of the property is not entitled to interest. The money was deposited with the Bank. The Bank was having the money throughout the proceedings. The Bank utilized the money. The Bank charges different rates for different transactions. The Bank is charging 14% for mortgage loans. There are other transactions wherein the Bank charges even 18% interest per annum. Such being the factual position, the Bank cannot be heard to say that the applicant has to be satisfied only with the principal amount. We are of the view that the Bank having kept the amount for years together, is bound to pay interest to the applicant."

35. The petitioner is entitled to interest which we fix at 12% per annum.

36. We direct the bank to refund the sale consideration viz. Rs. 62,00,000/- (Rupees Sixty Two Lakhs only) to the petitioner with interest at the rate of 12% per annum, calculated from 24.7.2008 within a period of four weeks from the date of receipt or production of a copy."

12. In this particular case also the respondent-Bank cannot take shelter under the clause "as is where is basis" as the petitioner was not made aware of any litigation pending before he has participated in the auction, as culled out from the pleadings the litigation has propped up only after the auction was conducted and, therefore, the petitioner cannot be blamed for the same. Even otherwise the petitioner was not made aware of any litigation pending before the auction was held at the most the clause "as is where is basis" can only be made applicable to the physical description of the property, the condition of any structure or machinery existing in the subject premises, arrears of any statutory dues etc. but cannot by any stretch of imagination be extended to any pending litigation which have not been disclosed to the petitioner before the auction was conducted. Further, it is to be noted that the respondent-Bank were obligated to take physical possession of the subject property before putting it to sale but in this case for reasons best known to them, they have not done so and have auctioned the property without having the physical possession of the subject property for which the petitioner cannot be blamed.

13. Having regard to the above, this Court is of the opinion that the ends of justice would be met if the respondent-Bank is directed to refund the entire sale amount deposited by the petitioner together with simple interest at the rate of 7% per annum from the date of deposit till the date of actual payment. The respondent-Bank shall refund the amount as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of this order.

14. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	04.11.2025.
Transmission Date	NA