

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3972 of 2017

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Sarabjeet Singh Gandhi Son of Taranjit Singh Gandhi, Resident of NC- 119, SBI Colony, Kankarbagh, Patna at present A-25, Vijay Shree Jagat Apartment, Kankarbagh, Patna.

... .. Petitioner/s

Versus

1. The State Bank Of India
2. The Assistant General Manager Stressed Assets Recovery Branch, State Bank of India, 2nd Floor, Main
3. The Chief Manager, Stressed Assets Recovery Branch, Patna, State Bank of India, 2nd Floor Main Bran
4. The Authorized Officer, Stressed Assets Recovery Branch, Patna State Bank of India, 2nd Floor, Main
5. The Deo Prasad Singh @ Deo Prasad Sinha, S/o Late Ganur Singh, R/o Sheikhpur Bagich, P.S. Shahhn Naya, Dist.- Patna.
6. Satyendra Kumar Choudary, S/o Motilal Choudhary, R/o Vill Post Hilsa, P.S. Hilsa, Dist.- Nalanda.
7. The State of Bihar though Collector, Patna though competent of Land Reforms and Revenue, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S.Arora, Sr. Advocate
	:	Mr. Manoj Kumar, Advocate
		Mr. Rakesh Kumar, Adv.
		Mr. Himanshu Shekhar, Adv.
For the Respondent/s	:	Mr. Anant Kumar Sharan, Adv.
	:	Mr. Prabhat Kumar Sharan, Adv.
	:	Mr. Hemant Kumar Sharan, Adv.
	:	Mr. Jayant Kumar Sharan, Adv.
		Mr. Ashok Kumar, Adv.
		Mr. Shailesh Kumar, Divedi. AC to AAG-12

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 11-02-2025

1. The Writ petition is filed commanding the respondent bank to hand over the vacant possession of the entire 4 katthas of land purchased by the



petitioner, in the auction sale and the property of the guarantor, Madhu Singh in connection with the recovery of loan amount, against the loanee, M/s Rishav Dev Sale. In lieu whereof, a sale certificate was issued on 31.01.2012.

(ii). Further relief sought by the petitioner is that respondent and the State of Bihar be directed to give support, protection and help to the petitioner in raising boundary wall on the said land purchased in the auction sale by the petitioner, to prevent any interference with the peaceful possession of the petitioner on the said land.

2. The brief facts culled out from the Writ petition are that one Rishabh Dev obtained a loan from the State Bank of India(SBI), for which Madhu Singh stood as the guarantor for the loan and mortgage 12.75 decimals of land. The loanee failed to repay the loan amount, accordingly, the State Bank of India initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as “the Act” or



SARFAESI). An auction notice was issued on 21.10.2011 by the respondent bank.

3. The petitioner emerged as the highest bidder in the said auction and purchased the land measuring 12.75 decimals after making full payment of the sale amount, i.e. a sum of Rs. 55,75.000/- as on 31.01.2012.

4. Consequently, the bank issued a sale certificate in favour of the petitioner. However, at the time of issuance of the sale certificate, the vacant possession of the said four katthas of land was not handed over to the petitioner.

5. On 21.08.2012, and 28.08.2012, the respondent bank addressed letters to the Circle Officer, Phulwarisharif requesting for the mutation of the petitioner's name concerning the auctioned land. As a result, the petitioner's name was mutated vide Mutation Case No. 4023/7 of 2011-12 and a rent receipt was issued in his favour. Since the vacant possession of four katthas of land was not handed over to the petitioner, the bank through a letter dated 20.09.2016 informed the petitioner that there



is no responsibility on the bank for delivering possession of the property, after issuing the sale certificate.

6. Aggrieved by the bank's action, the Writ petitioner was constrained to file CWJC No. 10014 of 2015. This Court, vide its order dated 07.02.2017, observed that the bank authorities were obligated to hand over the property to the petitioner in the event of an auction sale.

7. The contents of the Writ petition further disclose that during the intervening period, Dev Prasad Singh executed a sale deeds of two katthas of the said land in favour of one Satyendra Kumar Chaudhary vide registered deed of Sale dated 06.10.2015. This fact was also brought to the notice of the bank. Consequently, upon the instructions of the bank, the petitioner was constrained to file Miscellaneous Case No. 473 (M) of 2016 before the Sub-Divisional Magistrate Sadar, Patna seeking initiation of proceedings under Section 144 of the Cr.P.C. However, the case was disposed of vide order dated 05.07.2016, with an observation that the



dispute between the parties will not fall within the jurisdiction of the Court. Furthermore, the petitioner made multiple representations to the Chief Manager of the Recovery Bank, Patna requesting for handing over the physical possession of the land. However, no action was taken in this regard.

8. As the bank failed to act, the petitioner was constrained to file the present Writ petition seeking relief granted in CWJC No. 10014 of 2015 vide order dated 07.02.2017.

9. A detailed counter affidavit was filed by the 6th respondents contending that the land bearing No. Tauzi No. 129, Thana No. 23, Ward No. 21, Khata No. 11 Survey Plot No. 254 under the said Khata No. 11, measuring a total area of 23 decimals altogether situated at Mauza Dhelwan, Phulwarisari P.S. Ram Krishana Nagar, District Patna. The land was exclusively allotted to Kishori Singh through a compromise decree dated 08.05.1993, passed by this Hon'ble Court in F.A. No. 339 of 1977 and since then, he had been in physical possession of the land.



After the death of Kishori Singh, his legal heirs took possession of the said land.

10. Naresh Singh, the son of late Kishori Singh sold the land through four registered sale deeds dated 15.12.1988, to four individuals namely Rajeev Nandan, Krishna Ballabh, Ram Eqwal Singh and Manoj Kumar Pandey. The said purchaser agreed to leave a three foot passage in the middle portion of the Plot No. 253 to provide access to Plot No. 254.

11. Additionally, Ram Eqwal Singh also sold his entire land measuring one kattha in plot No. 253 to Ashok Kumar through a registered sale deed dated 19.12.1989 and since then, Ashok Kumar has been in possession of the land.

12. Furthermore, Smt. Bageshwari Devi widow of late Kishori Singh and his son Suresh Singh jointly sold $31\frac{1}{4}$ decimals of plot No. 254 (measuring 23 decimals) and $8\frac{1}{4}$ decimals of plot No. 253 to Pakiza Sahkari Grih Nirman Samiti Limited, under a registered sale deed dated 17.02.1990. Subsequently, on 02.04.1994, Smt. Bageshwari Devi and Suresh Singh made corrections to the sale deed



dated 17.02.1990. One Sunita Kuer a member of the Samiti, purchased 1,150.50 square feet of land from Plot No. 253 through a registered sale deed dated 13.12.1998.

13. On 21.05.1999, Ramesh Singh S/o late Kishori Singh sold two katthas of land to respondent No. 5, Deo Prasad Singh through a registered sale deed. Since then, respondent No. 5 has been in possession of the land. Later in the year 2015, respondent No. 5 sold his entire two katthas land of the land to respondent No. 6 Satyendra Kumar Chaudhary.

14. It is specific contention of the Learned counsel for the 6th respondent that the respondent No. 6 is the owner of the said land and that the bank had no authority to auction the property to third parties, therefore, prayed to dismiss the Writ petition.

15. On the other hand, a detailed counter affidavit was filed by the respondent Nos. 1 to 4 on behalf of the bank. The contents of the counter affidavit disclose that immediately after the auction



sale of the mortgaged property on 09.01.2012 in favour of the petitioner, the respondent bank received the sale amount of Rs. 55,75,000/- on 31.01.2012, issued a sale certificate in favour of the petitioner and handed over the mortgage property to him. Additionally, the respondent bank also assisted him in getting his name mutated over the said land in the record of, Anchal Padadhikari, Phulwarisharif. Since the petitioner raised the issue of possession only after four years, his claim is not at all tenable.

16. Additionally, the counter affidavit further disclose that Smt Sushama Singh purchased 12.75 decimals of land comprised in Survey No. 253 of kattha 11 from different individuals including Manoj Kumar Pandey, Ashok Kumar Singh, Suresh Singh and Rajeev Nandan. She obtained absolute ownership, title, and interest in the property and got her name mutated in the revenue records. Subsequently, Sushama Singh sold the land to Madhu Singh vide registered sale deed No. 20857 dated 24.08.2007.



17. In the meantime, M/s Rishav Dev Sales approached the bank for sanction of a loan. After appraisal of the loan application, the respondent bank required the borrower to execute the security document as well as equitable mortgage on deposit of sale deeds. Upon securing the necessary documents, the bank disbursed the loan amount. Since the principal borrower defaulted on the repayment of the loan, the bank proceeded with the auction of the guarantor's property under SARFAESI Act by issuing notice under Section 13(2). The principle borrower and the guarantor were issued a notice for the repayment of loan amount of Rs. 10,10,262/- within a period of 60 days, failing which the steps shall be taken under other provisions of the Act. The respondent bank also published a notice in two leading newspapers on 31.10.2011 for the sale of the property and accordingly, the auction was held on the scheduled date. The petitioner participated in the auction and offered Rs. 55,75,000/- as a highest bidder.



18. The counter affidavit further disclose that the bank accepted the sale amount and issued a sale certificate in the favour of the petitioner on 31.10.2012. Simultaneously the bank handed over possession of the property to the petitioner. Further, a supplementary counter affidavit was filed by respondent Nos. 1 to 4 reiterating the entire facts mentioned in the original counter affidavit particularly as stated in Para-20:-

That it is submitted here that the Smt. Sushma Sinha altogether has purchased 3½ katha land of Plot No. 253 as land of part of Plot No. 253 has been sold twice and the same has been purchased twice by Smt. Sushma Sinha, i.e. firstly from Suresh Singh and secondly from Rajeev Nandan. Therefore, said Sushma Sinha altogether purchased only 3½ katthas (equivalent to 10.9375 decimals= 11 decimals approx) land and not 4½ katthas land in Plot No. 253. Though in view of the above said facts this transaction is wrong and illegal. Contrary to above said



statements, made elsewhere in writ application is wrong, illegal misconceived and hereby denied.

19. Further, Paragraph 20 of the supplementary counter affidavit filed on behalf of the respondent Nos. 1 to 4 disclose that the respondent/ bank is still ready to cooperate with the petitioner in accordance with law, with the help of the District Administration and police assistance to hand over the delivery possession of the property to the petitioner.

20. Heard the Learned Senior counsel Mr. J.S. Arora for the petitioner as well as the the Learned counsel for the respondents bank authorities and private respondent and perused the record.

21. A rejoinder was also filed by the petitioner to the supplementary counter affidavit filed by the respondent Nos. 1 to 4 contending that they are ready to receive possession of the property from the bank. The entire record disclose that the petitioner purchased the property in the auction held



by the respondent bank under the provisions of SARFAESI Act.

22. On perusal of the sale certificate, it is evident that the description of the land was mentioned along with list of documents handed over to the petitioner which are included in the sale certificate such as :-

Sale certificate

Sale deed No. 20857 dated 20587

Letter of encumbrances

Land receipt- Dakhil Kharij

23. Furthermore, it is specifically contended by the Learned counsel for the respondent bank that that possession of the scheduled property was delivered on 31.01.2012. However, a comparison of the contents of the sale certificate with the documents received by the petitioner, it is evident that the documents do not indicate that possession was delivered to the petitioner on the said date. Nevertheless, the supplementary counter affidavit clearly disclose that the respondent is ready to



deliver the property with the assistance of District Administration and police officials.

24. Therefore, this Court is of the considered view that the auction purchaser should not suffer after investing a huge amount with the bank. It is an admitted fact that the bank received the amount from the petitioner way back on 31.01.2012. Despite this, the petitioner has ben suffering till date, for not receiving the possession of the property from the bank.

25. It is pertinent to mention that the petitioner had not sought any relief against the 6th respondent/private party. If at all the 6th respondent had any grievance against the auction made by the bank, he would have challenged the proceedings of the bank before the appropriate authority. This Court cannot decide the dispute of the title and if at all the 6th respondent is aggrieved by the action of the bank, it is for him to challenge it before the appropriate forum.

26. In view of the above discussion, the Writ petition is partly allowed, directing the respondent-



bank to hand over the entire four katthas of land purchased by the petitioner in the auction sale of Madhu Singh’s property, for which the sale certificate was issued on 31.01.2012.

27. Further, respondent No. 7/State of Bihar, represented by the Collector, shall provide assistance to the bank authorities in complying with the orders of this Court. The bank is directed to complete this process within a period of two months from the date of receipt of this order.

(G. Anupama Chakravarthy, J)

Manishkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

