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21.03.2025

WPA 17338 of 2024

Bank of Baroda
Vs.
The State of West Bengal & Ors.
(Assigned)

Mr. Avishek Guha
Ms. A Dutta
Mr. A. Majumdar
… … for the petitioner
Mr. Suman Ghosh
Mr. Chandan Chakraborty
… … for the State

1. Pursuant to the order of this Court on September 5, 2024, a report has been filed by the Bank of Baroda.

2. Initially, the loan was sanctioned by Dena Bank. The borrower had mortgaged the property along with the assets of the company in favour of the Dena Bank. The property is a leasehold property in Kalyani township. The borrower defaulted. Notice under Section 13(2) was issued by the bank sometime in 2005. Notice under Section 13(4) was issued sometime in 2006.

3. The Joint Secretary to the Government of West Bengal, Urban Development Department came to know of that sale notice issued by the bank and informed the bank that the same could not be sold, as the borrower was not the owner of the property, but only had a leasehold right. The department of

Urban Development and Municipal Affairs was the lessor. Thereafter, the bank applied for permission to auction the leasehold right. The leasehold property in Kalyani township could not be mortgaged without the permission from the Urban Development Department. Thus, the bank could not proceed to sell the leasehold right, although a huge amount was due to the bank. Admittedly, the borrower is communicating with the bank.

4. In 2009, the Land Manager, O.S.D. & Ex-Officio Deputy Secretary to the Government of West Bengal informed the bank that, subject to compliance of certain formalities, the "no objection" could be given to the bank, to sell the leasehold right in respect of the property namely, D-34 Industrial Plot, Kalyani.

5. The borrower approached the BIFR. The BIFR recommended winding up. The winding up application was transferred to the NCLT and ultimately, the application before the NCLT stood dismissed for default. Although, the Official Liquidator had taken possession of the assets, including the property at a time when the matter was pending before the High Court, but the matter stood transferred to the NCLT.

6. The bank again approached the Estate Manager, Kalyani Township for a no objection, but the same

was refused on the ground that the respondent No.4 had not obtained permission from the lessor, before creating the mortgage. The mortgage was created contrary to the provision of law. Clause 2.7 of the Lease Deed which prohibited the same.

7. The bank approached this Court for a direction upon the State authorities to grant such permission. This Court was of the view that a report should be filed by the State/lessor, as to what formalities were required to be fulfilled by the bank in order to hold the auction and to realize the dues, insofar as, the sale of the leasehold right in respect of the mortgaged property was concerned.

8. The report indicates that outstanding salami, interest and transfer fees are payable. The bank is willing to pay the outstanding salami and the interest which amounts to more than Rs. 9 lakhs. The bank has an objection with regard to the requirement to pay $1/4^{th}$ of the IGR.

9. Mr. Guha, learned advocate for the bank, submits that the IGR value has been calculated in terms of a Government Order dated October 8, 2010 which was notified in the Official Gazette on October 12, 2010.

10. According to Mr. Guha, the value of the land would not be more than Rs. 4.5 crores, as the entire land has been encroached.

11. The writ petition was filed for a direction upon the State to grant necessary permission. The State has already filed a report indicating the compliances to be made by the bank for such permission.

12. Further submission of Mr. Guha that, the IGR value as per official website could not be taken as fair market value, is a subsequent development, based on the report which has been filed.

13. Under such circumstances, the Principal Secretary, Urban Development and Municipal Affairs Department, may be approached by the petitioner with the submissions which have been made before this Court, for consideration of the IGR value, so that permission to auction the leasehold right in respect of the mortgaged property, can be granted upon consideration of the actual value which Mr. Guha submits to be not more than Rs. 4.5 crores.

14. Such issue will be decided by the concerned authority, upon taking note of the present situation and also the fact that the land, which is now encroached, will be of no use to the State authorities. The property has been mortgaged to the bank and till now the bank holds the leasehold right in respect of the property in question and the matter has now become complicated. The property has also been encroached.

15. These aspects shall be considered by the concerned authority and a reasoned order shall be passed. The bank is granted liberty to approach the Principal Secretary, Urban Development and Municipal Affairs Department, by filing an appropriate representation with all the documents and the said authority shall hear all interested parties, including the Land Manager, O.S.D. & Ex-Officio Deputy Secretary to the Government of West Bengal as well as the Estate Manager, Kalyani Township and pass a reasoned order, upon taking a pragmatic view. Public money must be protected and retrieved in some manner.

16. With the aforesaid observations, the writ petition being WPA 17338 of 2024, is disposed of.

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

(Shampa Sarkar, J.)