

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9558 of 2025

Kundan Kumar Son of Sri Ashok Kumar Sah, Resident of Mohalla- Arara,
P.S. Kazipur, District - Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Vaishali at Hajipur.
2. The Superintendent of Police, Vaishali at Hajipur.
3. The Sub-Divisional Officer, Hajipur, District - Vaishali.
4. The Authorized Officer cum-Adhiyachna Adikari, Ujjivan Small Finance Bank, Anwarpur Chouk, Hajipur, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bhola Kumar
For the Respondent/s	:	Mr. Government Pleader 04

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

13 06-07-2026 Heard the learned counsel for the parties.

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

“A. For issuance of a writ in the nature of mandamus commanding the respondents concerned to not take physical possession of the dwelling house of the petitioner standing over Khata No.520, Plot No.2004, Area-1 Kattha, 15 Dhur, Situated at Mohalla- Arara, P.S.Kazipur, District- Vaishali

B. For quashing the order dated 17.03.2025 passed by the Collector, Vaishali at Hajipur passed in SARFAESI Case No.86/24-25.

C. For staying the letter dated 25.03.2025 written by the SDO, Hajipur to the Superintendent of Police, Vaishali at Hajipur, District-Vaishali.

D. For passing any other Writ/s, Order/s, Command/s or Direction/s in the facts and circumstances of the instant Case.”



The following relief has been added by allowing the
I.A. No. 01 of 2025.

"1 AA. "For issuance of an appropriate writ directing the respondents to open the lock of the house of the petitioner which is not subject matter of the loan taken by the petitioner from the respondent no.4." and relief no. IAAA.

1 AAA. "For directing the respondents to allow the petitioner and his family members to live in the house standing over Khata No.525, Plot No.2003, Jamabandi No.479, Area-9 decimals situated at Mauza-Arada, P.S. Hajipur, District-Vaishali which was not mortgaged with the respondent no.4 and have no concerned with the loan taken by the petitioner".

4. It is the case of the petitioner that the petitioner has mortgaged the property bearing No. Khata No. 525, Plot No.2003, Jamabandi No. 479, Area-9 decimals situated at Mauza-Arada, P.S. Hajipur, District-Vaishali and the loan account of the petitioner has turned NPA. Thereafter, the respondent authorities have taken steps to recover the same under the SARFAESI Act, 2002.

5. Learned counsel for the petitioner has submitted that the authorities without verifying as to which property has been mortgaged are trying to take possession of another property which has not been mortgaged with the respondent-Bank. Learned counsel has submitted that the respondent-Bank does not have any authority or jurisdiction to auction or take



possession of any other property other than the mortgaged one. That the act of the respondent-Bank in trying to take over the physical possession of the property which has not been mortgaged is illegal, bad, arbitrary and against the well settled principles of law. Learned counsel has therefore, prayed this Hon'ble Court to set aside the impugned possession notice dated 17.03.2025 issued under Section 14 of the SARFAESI Act, 2002.

6. *Per contra*, the learned counsel appearing on behalf of the respondent-Bank has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that in case the petitioner is aggrieved by the possession notice under Section 14 of the SARFAESI Act, his remedy is to approach the DRT, Patna under Section 17 of the SARFAESI Act, 2002. However, the petitioner without availing the said remedy has straightaway approached this Hon'ble Court. Further, It is stated that the petitioner has availed the loan and has not repaid the same in time therefore, the respondent-Bank left with no other option has initiated the SARFAESI proceedings. That the notice issued under Section 14 is for taking possession of the property which has been mortgaged and not any other property. Learned counsel has therefore, prayed



this Hon'ble Court to dismiss the present writ petition and relegate the petitioner to DRT, Patna for redressal of his grievance, if any.

7. In order to resolve the issue as to whether the respondent-Bank is trying to take physical possession of the property which has been mortgaged with the respondent-Bank or whether it is trying to take possession of the property which has not been mortgaged with the respondent-Bank, this Court *vide* order dated 16.02.2026 has directed the Circle Officer, Vaishali, Hajipur to survey and identify the property which has been mortgaged. The Circle Officer was also directed to find as to whether the property which is sought to be taken possession of is a separate and distinct property from that of the mortgaged one. Pursuant to the said direction, the Circle Officer has filed the report along with the supplementary counter-affidavit dated 17.04.2026. In the said report, it is clearly stated that the property which has been mortgaged is a separate and distinct one from one that is sought to be taken physical possession of. The report of the Circle Officer is extracted below for easy reference.



अंचल कार्यालय, हाजीपुर (वैशाली)

माननीय उच्च न्यायालय, पटना द्वारा CWJC No.- 9558/2025 में दिनांक-16.02.2026 को पारित आदेश के आलोक में Mortgaged Property एवं वादी श्री कुन्दन कुमार के दावे वाली जमीन का राजस्व अभिलेख के ऑनलाईन पंजी-2 से एवं स्थलीय जांच की गयी। जिसकी विवरणी निम्न प्रकार है:-

Mortgaged Property की विवरणी :-

क्र०सं०	गौजा / थाना नं०	खाता	खेसरा	रकबा	जमाबंदी सं०	जमाबंदी रैयत का नाम
1	अरडा / 16	520	2004	0.0डी०	वर्तमान भाग-3 पृष्ठ-895, जमाबंदी-938	अशोक कुमार, पिता-यदुनन्दन साह

पंजी-2 के अवलोकन से स्पष्ट होता है कि उक्त जमाबंदी से खेसरा-2004 का कुल रकबा-7.5डी० दाखिल खारिज वाद सं०-5595/2019-20 के द्वारा दाखिल खारिज होकर जमाबंदी भाग सं०-15, पृष्ठ सं०-58 पर दर्ज है। दाखिल खारिज वाद सं०-5595/2019-20 के अभिलेख के अवलोकन से स्पष्ट होता है कि विक्रेता अशोक कुमार, पिता-यदुनन्दन साह के द्वारा निबंधित दस्तावेज सं०-6708, दिनांक-19.09.2019 के द्वारा माया दवी, पति- महाभारत साह ग्राम-अरडा, थाना-हाजीपुर सादर को विक्री की गयी है।

वादी के दावे वाले जमीन की विवरणी:-

क्र० सं०	गौजा / थाना नं०	खाता	खेसरा	रकबा	जमाबंदी सं०	जमाबंदी रैयत का नाम
1	अरडा / 16	525	2003	09डी०	वर्तमान भाग-12 पृष्ठ-2192, जमाबंदी-2890	कुन्दन कुमार, पिता-अशोक कुमार साह

माननीय न्यायालय के द्वारा पारित आदेश के आलोक में अंचल अमीन के साथ दिनांक-28.03.2026 को वादी कुन्दन कुमार एवं अन्य ग्राहिणों के उपस्थिति में दोनों जमीन का स्थल जांच की गयी। स्थल जांच के क्रम में पाया गया की वर्तमान में वादी कुन्दन कुमार का मकान खेसरा सं०-2003 में बना हुआ है, एवं खेसरा-2004 परती अवस्था में है। अंचल अमीन का गापी प्रतिवेदन एवं नजरी नक्शा मूल में संलग्न है।

ज्ञापांक-564 / दिनांक-28/03/26

प्रतिलिपि:- प्रभारी पदाधिकारी, जिला विधि शाखा को ज्ञापांक-671/जिला विधि, हाजीपुर, दिनांक-05.03.2026 के आलोक में सादर सूचनार्थ समर्पित।
प्रतिलिपि:- अनुमण्डल पदाधिकारी, हाजीपुर को सादर सूचनार्थ समर्पित।
प्रतिलिपि:- अपर समाहर्ता, वैशाली को सादर सूचनार्थ समर्पित।

अंचल अधिकारी
हाजीपुर
28/03/2026

अपर समाहर्ता
वैशाली
28/03/2026

8. The above said report is not controverted by the respondent-Bank.

9. Having regard to the fact that the authorities are trying to take physical possession of the property which has not been mortgaged with the respondent-Bank, the notice under Section 14 has to be necessarily held as bad, illegal, arbitrary and against the provisions of the law. The present writ petition is allowed and the notice dated 17.03.2025 is quashed. The



respondent authorities are directed not to take possession of the property bearing Khata No. 525, Plot No. 2003, Jamabandi No. 479, Area-9 decimals situated at Mauza-Arada, P.S. Hajipur, District-Vaishali.

10. Even though learned counsel appearing on behalf of the respondent-Bank has stated that the petitioner has played fraud while taking the loan by submitting different documents, this Court under Article 226 of the Constitution of India cannot go into the veracity or otherwise of the said fact and it is left open to the respondent-Bank to take necessary steps as may be available under the law for recovery of the loan. It is made clear that this order does not preclude the authorities from proceeding against the petitioner for recovering of the outstanding loan amount by auctioning the mortgaged property only.

11. With the above directions, the present writ petition stands allowed to the extent indicated.

12. All pending I.As., if any, are deemed to have been disposed of.

(A. Abhishek Reddy, J)

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