Item No.2
05.01.2026
Court. No. 2
GB

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION

WPA 2278 of 2025

West Bengal Financial Corporation & Anr.
VS
The State of West Bengal & Ors.

Mr. Saptansu Basu, Sr. Adv.,
Mr. Milindo Paul,
Mr. Nabankur Paul,
Mr. Sannidhya Dutta,
Ms. Sutapa Sen Paul,
Ms. Bedashruti Bose,
Mr. Subham Das,
Mr. Bodhisatya Ghosh
... for the Petitioners.
Mr. Sumit Kumar,
Mr. Pretom Das
... for the State.
Mr. Sankar Nath Mukherjee,
Mr. Niraj Gupta,
Ms. Sunayanan Parveen
... for the Respondent Nos.5 to 7.

1. This writ petition has been filed by the West Bengal Financial Corporation, alleging inaction of the police authorities. It is submitted by Mr. Basu, learned senior advocate that despite steps having been taken under Section 29(1) of the State Financial Corporation Act, 1951 (hereinafter referred to as the 'said Act'), the petitioners have not been able to take over possession of the property mortgaged to the corporation. The secured asset was sold upon permission being

granted by an Hon'ble Single Judge of this Court. Although, the borrower preferred an appeal, no interim protection was given to the borrowers. Rather, the appeal court had posed a question as to whether the borrowers could match the price offered by the auction purchaser. The appeal court recorded that the borrowers had submitted they could not match the price. Thus, no protective order was given to the borrowers. The appeal has been kept pending. Directions for exchange of affidavits were passed.

2. Mr. Basu relies on the decision of ***Pawan Beriwal versus The State of West Bengal & Ors.*** passed by this Court in ***WPA 12219 of 2023.*** He prays for similar order. Paragraph 11 whereof is quoted below:-

> *"11. Under such circumstances, the present writ petition is disposed of with a direction upon the Superintendent of Police, Birbhum to take all steps, and hand over possession to the corporation 30 days from the date of communication of this order, mandatorily and the corporation shall hand over the possession to the petitioner."*

3. Learned advocate for the borrowers submits that the notice of sale is under challenge. The calculation of the corporation was incorrect. The police authorities do not have any right to dispossess the borrowers from the property.

4. Learned advocate for the State submits that all steps were taken by the police on receipt of a complaint from the Head of the Operations of the corporation. A prosecution was filed against the persons who had been obstructing the police from taking over possession.
5. Upon exercise of power under Section 29(1) of the said Act, the corporation was entitled under the law to take over the management and possession of the property and to sell the property under Sub-Section (2). The ownership stood transferred to the auction purchaser upon sale being completed.
6. In the earlier round of litigation, a coordinate Bench was of the view that the corporation had published a public notice for holding e-auction of the secured asset. A bidder had responded to the notice. The borrowers were given an option to match up to the bid or to pay up the dues upfront. The corporation was permitted to proceed with the sale strictly in accordance with law. Time till June 25, 2025 was given to the borrowers either to match up to the bid or to pay up the dues.
7. It is an admitted position that the dues were not paid. It is also an admitted position that the borrowers could not match up to the bid. Although, an appeal is pending before the Hon'ble Division Bench, no protective order has been given. It was

further recorded by the Division Bench that the learned advocate for the borrowers had submitted that they were not in a position to match up the bid offered by the sole bidder.

8. Reference is made to the decision of the Hon'ble Apex Court in the matter of ***The Orissa State Financial Corporation & Anr. versus Smt. Sukanti Mohapatra & Ors.*** reported in ***(2002) 3 SCC 496***, in which the Hon'ble Apex Court has held that the financial corporation had a right to take over management, possession or both and thereafter deal with the property. Thus, the corporation in this case has the right to take over possession, and handover the property to the buyer in accordance with law. Paragraph 25 of the said decision is quoted below:-

> *"25. The decision in Mahesh Chandra (supra) has been overruled in Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr., in which it has been held that Section 29 gives a right to the financial corporation inter alia to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assign to the financial corporation. This right accrues when the industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives the financial corporation in the event of default, the right to take over the management, possession or both, and thereafter, deal with the property. It is observed that the guidelines issued in Mahesh Chandra*

> *(supra), place unnecessary restrictions on the exercise of power by the financial corporation contained in Section 29 of the Act, by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. In fact, the procedure indicated in Mahesh Chandra (supra) would only result in a further delay in realization of the dues by the Corporation through sale of assets. Thus, the observations in Mahesh Chandra (supra) do not lay down the correct law and was overruled."*

9. The Hon'ble Apex Court also observed that no restrictions could be put in the exercise of power by the corporation under Section 29 of the said Act.
10. Under such circumstances, not only did the corporation acquire the right to sell the secured asset on account of failure of the concerned to pay up the amount dues, but the corporation is under a legal obligation under Sub-Section (2) of Section 29 of the said Act to handover possession to the auction purchaser, who has now become the owner of the secured asset, upon sale.
11. Under such circumstances, the corporation does not have to go through any further legal procedure to take over possession of the secured asset after exercising the rights conferred upon it by the special statute.
12. No one can be dispossessed, except in accordance with law. In this case, dispossession of the

borrowers from the secured asset is a consequence of failure of the borrowers to pay up the dues and right of the corporation to take over possession of the secured asset and deal with it in the manner provided under the law. The corporation acted on the basis of the law and leave granted by the Court. The admission of the appeal does not indicate that any, prima facie, satisfaction has been recorded by the appeal court that the procedure adopted by the corporation was fallible in any way.

13. Under such circumstances, the police authorities have a duty to ensure that the persons, who are resisting the corporation from taking over possession, do not obstruct the implementation of the statutory provisions. The resistance to the police authorities in this regard amounts to interference with the administration of justice.

14. Under such circumstances, if the borrowers do not handover possession of the concerned property to the corporation within a period of four weeks from date, the police authorities shall ensure that all assistance is rendered to the corporation to take over physical possession of the property. The police authorities shall be at liberty to take appropriate steps if any resistance is caused. However, as the appeal is pending before the Hon'ble Division Bench, the corporation is

restrained from handing over the physical possession of the secured asset to the auction purchaser for a further period of eight weeks from date.

15. Accordingly, the writ petition is disposed of.
16. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)