GAHC010017552023

2026:GAU-AS:12509

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/634/2023

PRADIP MAZUMDAR AND 2 ORS
S/O- LT. SHRI BIJAY KRISHNA MAZUMDAR, R/O- ODALBAKRA
LALGANESH LOKHRA ROAD, GUWAHATI- 781034

2: JYOTSNA MAZUMDAR
W/O- SHRI PRADIP MAZUMDAR
R/O- ODALBAKRA LALGANESH LOKHRA ROAD
GUWAHATI- 781034

3: TRIPTI MAZUMDAR
W/O- PRABIR MAZUMDAR
R/O- ODALBAKRA LALGANESH LOKHRA ROAD
GUWAHATI- 78103

VERSUS

THE INDUSTRIAL COOPERATIVE BANK LTD AND ANR
REP. BY ITS MANAGING DIRECTOR, S.S. ROAD, LAKHTOKIA, GUWAHATI-781001

2:THE MANAGING DIRECTOR
INDUSTRIAL COOPERATIVE BANK LTD.
S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001

3:THE STATE OF ASSAM

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT

4:THE REGISTRAR

COOPERATIVE SOCIETIES

ASSAM.

5:THE OFFICER ON MANAGEMENT

THE INDUSTRIAL COOPERATIVE BANK LTD.
S.S. ROAD
LAKHTOKIA
GUWAHATI-781001

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Dr. P. Agarwal, Advocate

For the Respondent(s) : Mr. U. Dutta, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **25.08.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Dr. P. Agarwal, the learned counsel for the Petitioners. Mr. U. Dutta, the learned counsel appears on behalf of the Respondent Nos. 1 and 2.

2. None appears on behalf of the Cooperation Department on call.

PREFACE

3. The present writ petition was filed by the Petitioners being aggrieved on one hand by the inaction on the part of the Respondent Nos. 1 and 2 in not handing over possession of the property sold to the Petitioners in an auction purchase vide Sale Certificate dated 20.02.2015 and on the other hand not refunding the consideration paid for the purchase of the property described in the Sale Certificate dated 20.02.2015.

4. This Court is therefore to adjudicate in the present facts as to whether directions can be issued for refund of the sale consideration along with interest and/or whether any other writ direction or order can be passed.

BRIEF FACTS OF CASE AND THE PRESENT PROCEEDINGS LEADING THE PRESENT JUDGMENT

5. One Sri Naba Kumar Das mortgaged a plot of land admeasuring 2 Kathas with one Assam-type house standing thereon covered by Dag No. 883 (old)/2472 (new) of K.P. Patta No. 41 (old)/603 (new) at Village Maidamgaon under Mouza Beltola in the district of Kamrup (M), Assam to secure a loan amount. The said land and the house standing thereon are hereinafter referred

to as “the property”

6. The said Sri Naba Kumar Das defaulted in making payment and as such, proceedings were initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the Act of 2002”).

7. On 21.11.2012, a notice was issued to Sri Naba Kumar Das to either liquidate the loan amount within 60 days, failing which the Respondent bank would take possession of the mortgaged property. Subsequently, another notice was issued on 04.01.2013 directing Sri Naba Kumar Das to vacate and hand over the said property.

8. The records further reveal that the District Magistrate, Kamrup (Metro) issued an order on 17.01.2013 appointing one Sri Tankeswar Das, ACS, Circle Officer to take over possession of the land in question from Sri Naba Kumar Das. Physical possession of the said plot of land was handed over to the Respondent No. 1 bank under Section 14 of the Act of 2002 on 13.12.2013 and a certificate of physical possession dated 13.12.2013 was issued by the Circle Officer, Dispur Revenue Circle.

9. At this stage, it is relevant to take note of that one Sri

Dimbeswar Kalita claiming that he had entered into an agreement for sale with Sri Naba Kumar Das in respect of the property in question filed a suit being Title Suit No. 553/2013. In the said suit, the said Sri Dimbeswar Kalita filed an injunction application, which was registered and numbered as Misc. (J) Case No. 891/2013 seeking an ad interim temporary injunction restraining the said Sri Naba Kumar Das, the defendant in the said suit from alienating and/or transferring the suit land to any third person. An injunction order was passed on 02.01.2014 thereby directing the said Sri Naba Kumar Das not to alienate and/or otherwise transfer the suit land till the filing of the objection. It has been informed to this Court that the said suit as well as the injunction proceedings which are more than a decade old is still pending.

10. Be that as it may, on 30.09.2014, the Respondent No. 1 bank issued an auction sale notice in respect of the property in question fixing the reserve price at Rs. 40 lakhs. The Petitioners participated in the said auction sale and on 20.12.2014, paid the entire consideration of Rs. 55 lakhs. A Sale Certificate was issued thereupon on 20.02.2015. The Sale Certificate though was issued to the Petitioners, but the possession of the land was not actually handed over. The Petitioners, on various occasions requested the Respondent No. 1 bank to hand over possession.

11. The Respondent No. 1 bank having not handed over possession, the Petitioners filed a suit before the learned Court of the Civil Judge No. 1, Kamrup (Metro), at Guwahati which was registered and numbered as Money Suit No. 89/2017 seeking refund of the amount of Rs. 55 lakhs along with interest at the rate of 18%. Subsequently, the said suit was withdrawn with liberty to take recourse to appropriate alternative legal remedies. The said prayer was allowed and accordingly, the suit was disposed of on withdrawal.

12. The Petitioners thereupon approached this Court by filing the present writ petition on 24.01.2023 seeking a direction upon the Respondents to refund the entire sum of Rs. 55 lakhs to the Petitioners along with interest at a rate equivalent to the rate of interest applicable to fixed deposits for the relevant period from the date of full payment by the Petitioners, i.e. 20.12.2014, till the amount is refunded to the Petitioners. It appears that the Petitioners filed the writ petition upon legal advice based upon an order dated 25.02.2021 of the learned Coordinate Bench of this Court in the case of ***Ajay Sharma Vs. Punjab National Bank & Others.***

13. The records reveal that the Respondent Nos. 1 and 2 have

filed an affidavit-in-opposition wherein apart from what has been stated hereinabove, it is mentioned that the Petitioners were handed over possession of the property at the time of execution of the Sale Certificate and as such, the Respondent Nos. 1 and 2 cannot be held responsible if there is any encroachment on the land in question. It was further mentioned in the said affidavit-in-opposition that regarding the execution of the Sale Deed, the Petitioners were repeatedly asked to coordinate with the bank for execution of the Sale Deed, but the Petitioners did not do so. At paragraph No. 16, it is further mentioned that the Respondent Nos. 1 and 2 are ready to execute the Deed of Sale and hand over possession of the property in question to the Petitioners within a period of six months.

14. The Petitioners thereupon filed an affidavit-in-reply bringing on record various representations submitted by the Petitioners for execution of the Deed of Sale.

15. The Respondents filed an additional affidavit on 30.10.2024 stating inter alia that the affidavit-in-opposition which was filed earlier was at a time when Title Suit No. 553/2013 was dismissed for default, but in the meantime, the said suit was restored vide order dated 28.05.2024. It is also mentioned that various attempts

have been made for taking over possession by removing the livestock which could not be done in view of the injunction order passed in Title Suit No. 553/2013.

16. Another additional affidavit was filed by the Respondent Nos. 1 and 2 on 11.05.2026 which in the opinion of this Court is relevant for the purpose of determination of the present proceedings. In the said additional affidavit, it was admitted that the Petitioners were successful in the auction sale and that the Petitioners deposited the amount of Rs. 55 lakhs on 20.12.2014. It was further mentioned that on receipt of the bid amount on 20.12.2015, the Authorized Officer of the bank validated a sale certificate in favour of the auction purchaser by stating that "the undersigned acknowledge the receipt in full and had handed over delivery of the scheduled property". The said Sale Certificate was received by the Petitioners on that date.

17. It was categorically mentioned at paragraph No. 8 that once the Sale Certificate had been issued, the Petitioners became the title holder of the property in question and that such Sale Certificate is exempted from registration under Section 17(2)(xii) of the Registration Act, 1908 read with Section 89(4) of the said Act. It was further averred that the Petitioners had therefore to take

appropriate action against the unauthorized occupants of the property in question before the appropriate forum. In addition to that, it was also mentioned that in Title Suit No. 553/2013, an application was filed in the year 2024 for impleadment of the bank. However, the said application has not yet been disposed of.

18. A reply was filed by the Petitioners to the said additional affidavit filed by the Respondent Nos. 1 and 2 wherein at paragraph No. 11, it is categorically mentioned that in the circumstances, if the amount cannot be refunded in view of the title having already been conferred upon the Petitioners by virtue of the said certificate, the Petitioners should be handed over possession of the property.

19. This Court duly heard the learned counsels appearing on behalf of the parties whose submissions were on the basis of their respective pleadings. Their submissions would be reflected in the portion of the present judgment under the Heading "ANALYSIS AND DETERMINATION."

ANALYSIS AND DETERMINATION

20. The Petitioners primarily seek the refund of the sale consideration and in the alternative if not possible for appropriate

directions for handing over the possession.

The primary question therefore is as to whether direction can be issued for refund of the sale consideration and if not what appropriate directions can be issued.

21. From the materials on record, it is apparent that pursuant to the auction sale notice issued on 30.09.2014, the Petitioners participated in the said proceedings and being successful deposited the entire consideration of Rs. 55 lakhs on 20.12.2014. Thereupon, a Sale Certificate was issued on 20.02.2015. The question arises as to what is the effect of issuance of a Sale Certificate.

22. The Sale Certificate is issued in terms with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 (for short, "the Rules of 2002").

23. It is well settled that upon issuance of a Sale Certificate, the title over the immovable property stands transferred to the person to whom the Sale Certificate was issued. There is also no requirement for execution of any additional Sale Deed or registration of the said certificate. This is the mandate of Section 17(2)(xii) of the Registration Act, 1908 read with Section 89(4) of the said Act. The only requirement is that upon issuance of the

Sale Certificate in terms with Rule 9(6) of the Rules of 2002, the original Sale Certificate has to be issued to the auction purchaser and a copy thereof has to be sent to the Sub-Registrar to note it in Book No. 1 thereby recording the transfer.

24. The above proposition of law appears to be well settled by the Supreme Court in the case of ***M/s Esjaypee Impex Private Limited Vs. Assistant General Manager and Authorised Officer, Canara Bank*** reported in ***(2021) 11 SCC 537***. Paragraph Nos. 15 and 16 of the said judgment being relevant are reproduced hereinbelow:

> "***15.*** *The learned counsel for the Bank agreed that the sale certificate has to be further validated and assured that the needful will be done within two weeks. However, a submission was made that the sale certificate was then to be handed over to the registering authority for registration and payment of stamp duty.*
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> ***16.*** *We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."*

25. This Court also finds it relevant to take note of another judgment of the Supreme Court in the case of ***B. Arvind Kumar Vs. Government of India & Others*** reported in ***(2007) 5 SCC 745***, wherein the Supreme Court observed that when a property is sold by public auction pursuant to an order of the Court and the bid is

accepted, the sale is confirmed by the Court in favour of the purchaser. The sale becomes absolute and title vests in the purchaser. A Sale Certificate is issued to the purchaser only when the sale is absolute. The Sale Certificate is merely evidence of such title.

26. In the case of ***State of Punjab & Another Vs. M.S. Ferrous Alloys Forgings P. Limited & Others reported in 2024 SCC OnLine SC 3372***, the Supreme Court observed that a Sale Certificate is issued to the purchaser only when the sale becomes absolute. The Sale Certificate is merely evidence of such title and it is well settled that when an auction purchaser derives title on confirmation of sale in his favour and a Sale Certificate is issued evidencing such sale, no further deed of transfer from the Court is contemplated or required. In the said judgment, the Supreme Court also reiterated the proposition of law laid down by the Supreme Court in the case of ***M/s Esjaypee Impex Private Limited (supra).*** Paragraph Nos. 16 to 20 of the said judgment being relevant are reproduced hereinbelow:

> "***16.*** *In B. Arvind Kumar v. Govt. Of India and Others reported in (2007) 5 SCC 745, this Court observed that when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser*

only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction- purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Although in the said case, the sale certificate was registered yet this Court proceeded to observe that a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of Section 17(1) of the said Act.

17. *The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act. It is not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the competent authority after all the objections against the sale have been disposed of.*

18. *Recently, a three-Judge Bench of this Court in M/s Esjaypee Impex Private Limited v. The Asst. General Manager and Authorized Officer Canara Bank reported in (2021) 11 SCC 537 observed that the mandate of law that flows from a combined reading of Sections 17(2)(xii) and 89(4) of the Registration Act respectively is that the auction purchaser is entitled to receive the original sale certificate and a copy of the same is required to be forwarded to the Sub- Registrar for the purpose of filing in Book-1 as per the Registration Act.*

> ***19.*** *In Inspector General of Registration and Another v. G. Madhurambal and Another reported in 2022 SCC Online SC 2079, a two- Judge Bench of this Court observed that the consistent position of law is that a certificate of sale cannot be regarded as a conveyance subject to stamp duty. The Court further observed that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and requirement of any further action is obviated.*
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> ***20.*** *The position of law discussed above makes it clear that sale certificate issued by the authorised officer is not compulsorily registrable. Mere filing under Section 89(4) of the Registration Act itself is sufficient when a copy of the sale certificate is forwarded by the authorised officer to the registering authority. However, a perusal of Articles 18 and 23 respectively of the first schedule to the Stamp Act respectively makes it clear that when the auction purchaser presents the original sale certificate for registration, it would attract stamp duty in accordance with the said Articles. As long as the sale certificate remains as it is, it is not compulsorily registrable. It is only when the auction purchaser uses the certificate for some other purpose that the requirement of payment of stamp duty, etc. would arise."*

27. The above proposition of law upon applied to the facts of the present case makes it clear as a noon day that with the issuance of the Sale Certificate on 20.02.2015 by the Authorized Officer of the Respondent No. 1, the title in respect to the property stood vested in the Petitioners.

28. Let this Court at this stage take note of the order passed by the learned Coordinate Bench of this Court dated 25.02.2021 passed in the case of ***Ajay Sharma Vs. Punjab National Bank & Others*** in W.P.(C) No. 8227/2019 whereby the learned Coordinate Bench had directed refund of the amount. In the opinion of this Court and with due respect to the learned Coordinate Bench, the said direction could not have been made without first cancelling the Sale Certificate inasmuch as on the basis of the Sale Certificate, the title had already vested in the auction purchaser. Further to that, a direction to refund the sale consideration without cancelling the Sale Certificate would lead to unjust enrichment inasmuch as the title over the property would continue to be vested unless the Sale Certificate is cancelled while the Auction Purchaser would get the refund of the sale consideration. It is the opinion of this Court that a direction for refund of the sale consideration is only consequential to the cancellation of the Sale Certificate.

29. A question duly arises as to the course of action this Court should follow in view of the judgment of the learned Coordinate Bench. His Lordship R.M. Sahai, J (as His Lordship then was) in his concurring opinion rendered in the case of ***State of U.P. & Another Vs. Synthetics and Chemicals Ltd. & Another*** reported in ***(1991) 4***

SCC 139 explained the concept of ratio decidendi as well as when a judgment is held to be per incuriam. Paragraph Nos. 39, 40 and 41 of the said judgment being relevant are reproduced hereinbelow:

> "***39.*** *But the problem has arisen due to the conclusion in the case of Synthetic and Chemicals. The question was if the State legislature could levy vend fee or excise duty on industrial alcohol. The bench answered the question in the negative as industrial alcohol being unfit for human consumption the State legislation was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the Seventh Schedule. While doing so the bench recorded the conclusion extracted earlier. It was not preceded by any discussion. No reason or rationale could be found in the order. This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incuriam and is liable to be ignored.*
>
> ***40.*** '*Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.*
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> ***41.*** *Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of*

sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

30. From the above quoted paragraphs, it would show that any declaration of law without application of mind or preceded without any reason cannot be deemed to be a declaration of law or authority of a general nature binding as a precedent.

31. The Constitution Bench of the Supreme Court in the case of

Dr Shah Faesal & Others Vs. Union of India & Another reported in ***(2020) 4 SCC 1*** observed that a judgment rendered in ignorance of the statute or a binding precedent cannot be regarded as a binding judicial precedent. Paragraph Nos. 28 and 29 of the said judgment being relevant are reproduced hereinunder:

> "***28.*** *The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd.]. The aforesaid rule is well elucidated in Halsbury's Laws of England in the following manner:*
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> > "*1687. … the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."*
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> *(emphasis supplied)*
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> ***29.*** *In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak assumes great relevance : (SCC p. 716, para 183)*
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> > "*183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not*

> *happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. … Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)*
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> *'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'"*
>
> *(emphasis supplied)"*

32. In the nstant case, the directions passed by the learned Coordinate Bench in the case of ***Ajay Sharma (supra)*** is not only contrary to Rule 9 of the Rules of 2002 but also contrary to the settled principles of law laid down by the Supreme Court prior to the decision rendered by the learned Coordinate Bench as well as post. Under such circumstances, the judgment in the case of ***Ajay Sharma (supra)*** cannot be said to be a valid judicial binding precedent.

33. It is the opinion of this Court that the question of refund to the sale consideration cannot arise unless and until the Sale Certificate is cancelled by due process.

34. The learned counsel for the petitioners submitted that the Sale Certificate be cancelled in exercise of the plenary powers of this Court as a fraud had been committed inasmuch the property in question was not handed over. It is the opinion of this Court that the exercise of plenary powers of this Court cannot be made in the given facts as it would require an adjudication on the existence of facts that a fraud had been committed. This aspect, this Court cannot adjudicate in the present proceedings under Article 226 of the Constitution. Apart from that, mere non-handing over the possession would not amount to a commission of fraud.

35. In that view of the matter, this Court is of the opinion that no direction can be passed directing refund of the amount of Rs. 55 lakhs to the Petitioners inasmuch as without cancellation of the Sale Certificate, the question of refund does not arise.

36. Under such circumstances, let this Court analyze what appropriate writ, direction or order can be passed in the present facts.

37. The Sale Certificate was issued on 20.02.2015. In the contents of the Sale Certificate, it is mentioned that possession was handed over. However, from the various documents which have been

enclosed with the writ petition, more particularly the communication issued by the Chief Manager (Development) of the Respondent No. 1 to the Deputy Commissioner, Kamrup (Metro) dated 21.07.2016, it appears that possession of the property in question was not handed over. In other words, what was transferred to the Petitioners vide the certificate of sale was a limited transfer in respect to the title without possession.

38. This Court now finds it relevant to take note of Rule 9(9) of the Rules of 2002 which mandates that the Authorized Officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of the money as specified in Sub-Rule (7) of the said Rules. The said Rule therefore imposes an obligation upon the secured creditor, i.e., the Respondent No. 1 to hand over the possession.

39. In this regard, this Court finds it very pertinent to take note of the judgment of the Supreme Court in the case of ***ITC Limited v. Blue Coast Hotels Limited & Others*** reported in ***(2018) 15 SCC 99*** wherein an issue arose as to whether the secured creditor can after issuance of the Sale Certificate, exercise the powers under Section 14 of the Act of 2002. The Supreme Court observed that till possession is handed over accompanied by the certificate of sale, it

is a limited transfer and the secured creditor still retains the authority to invoke the provisions of Section 14 of the Act of 2002 by approaching the District Magistrate for taking over possession of the secured asset. Paragraph Nos. 44, 46 and 48, being relevant are reproduced hereinbelow:

> "***44.*** *According to the debtor, since Section 14 provides that an application for taking possession may be made by a secured creditor, and the creditor having ceased to be a secured creditor after the confirmation of sale in favour of the auction-purchaser, was not entitled to maintain the application. Consequently, therefore, the order of the District Magistrate directing delivery of possession is a void order. This submission found favour with the High Court that held that the creditor having transferred the secured assets to the auction-purchaser ceased to be a secured creditor and could not apply for possession. The High Court held that the Act does not contemplate taking over of symbolic possession and therefore the creditor could not have transferred the secured assets to the auction-purchaser. In any case, since ITC Ltd. was the purchaser of such property, it could only take recourse to the ordinary law for recovering physical possession.*
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> ***46.*** *The question, however, whether the creditor could maintain an application of possession under Section 14 of the Act even though it had taken over only symbolic possession before the sale of the property to the auction-purchaser, depends on whether it remained a secured creditor after having done so. Section 2(1)(d) of the Act defines "secured creditor" to mean a "banking company" having the meaning assigned to it in clause (c) of Section 5 of the Banking Regulation Act, 1949; Section 2(1)(l) includes debts or receivables and any right or interest in the security whether full or part underlying such debt or receivables or any beneficial interest in property vide Sections 2(l)(i), (iv) and (v). Sub-section (6) of Section 13 posits that the transfer of the secured asset by the secured creditor shall vest in the transferee all the rights as if the transfer had been made by the owner of the*

> *secured asset.*
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> ***48.*** *In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction-purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction-purchaser and thus remained a secured creditor in the Act."*

40. It is very relevant at this stage to take note of another aspect of the matter as to why the Respondent Nos. 1 and 2 have not been able to take over possession of the property in question.

41. The reason is the pendency of Title Suit No. 553/2013 wherein there is an injunction operating thereby directing Sri Naba Kumar Das not to alienate or transfer the said suit property. It is of pertinence to note that the said suit is between one Sri Dimbeswar Kalita and Sri Naba Kumar Das. The Respondent Nos. 1 and 2 are not parties to the said suit. The Sale Certificate which has been issued in favour of the Petitioners has not been put to challenge. There is no injunction operating against the Respondent Nos. 1 and 2. Further, the said injunction order which has been passed in the said suit is limited to Sri Naba Kumar Das.

42. On the other hand, in the instant case, it is seen that the sale which has been carried out in favour of the Petitioners by issuance of the certificate of sale is under the Act of 2002 as well as the Rules of 2002. The said injunction, under no circumstances, would create any impediment or bar upon the Respondent Nos. 1 and 2 or even the District Commissioner or any other authority delegated by the District Commissioner to take possession of the property so that the possession can be handed over to the Petitioners.

43. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The issuance of the Sale Certificate dated 20.02.2015 in favour of the Petitioners by the Authorized Officer of the Respondent Nos. 1 and 2 amounts to a valid sale of the property in favour of the Petitioners. By issuance of the said certificate, the Petitioners have right, title and interest over the property in question.

(ii) The Respondent Nos. 1 and 2 are directed to forthwith forward a copy of the said Sale Certificate to the Sub-Registrar, Kamrup (M). The Sub-Registrar, Kamrup (M) upon receipt of the copy of the Sale Certificate in terms with

Section 89 of the Registration Act, 1908 note the contents of the same in Book No. 1 regarding the transfer.

(iii) The Respondent Nos. 1 and 2 are further directed to take up the matter with the District Commissioner, Kamrup (Metro) for taking over possession of the property in question and the District Commissioner, Kamrup (M) either by himself or through his authorized officer shall take due steps in compliance with Section 14 of the Act of 2002.

(iv) Mr. U. Dutta, the learned counsel for the Respondent Nos. 1 and 2 submitted that within 30 days from the date of the present judgment such steps would be taken before the District Commissioner, Kamrup (M) and the Sub-Registrar, Kamrup (M).

(v) It is further observed and directed that once such steps are taken by the Respondent Nos. 1 and 2, the District Commissioner, Kamrup (M) shall do the needful for taking over possession of the property and hand it over to the Respondent Nos. 1 and 2, so that the same can be eventually handed over to the Petitioners.

(vi) The said exercise shall be completed within a period of

60 days from the date of the request made by the Respondent Nos. 1 and 2 to the District Commissioner, Kamrup (M).

(vii) This Court clarifies that neither the pendency of the Title Suit No. 553/2013 nor the injunction order passed in Misc. (J) Case No. 891/2013 in Title Suit No. 553/2013 shall cause a bar upon the District Commissioner, Kamrup (M) or his authorized Officer or the Respondent Nos. 1 and 2 to take steps for handing over the possession of the property to the Petitioners.

(viii) No costs.

JUDGE

Digitally signed by Satyam Sharma
Date: 2026.09.02 07:02:26 +05'30'
Comparing Assistant