

23.02.2023
sayandeep
Sl. No. 02
Ct. No. 05

WPA 4393 of 2023

Rajeev Jhunjunwala
-Versus-
State of West Bengal & Ors.

Mr. Reetobrato Mitra
Mr. J.D. Roy

.....for the petitioner

Mr. S.K. Md. Galib
Ms. Jyotsna Roy Mukherjee

.....for the State

Mr. Shibnath Bhattacharya
Mr. Abhishek Bhattacharjee

.....for the respondent Nos. 2 & 3

The affidavit-of-service be filed during the course of the day.

The petitioner is before this Court seeking a Mandamus on the respondent No. 7, being the Officer-in-Charge, Beniapur Police Station, not to take any steps in terms of an order dated 1st December, 2022 passed by the District Magistrate, South 24 Parganas under Section 14 of the SARFAESI Act, 2002. The petitioner duly went before the statutory forum available to it under the SARFAESI Act on 20th January, 2023 which is the Debts Recovery Tribunal-III. The matter was heard by the Presiding Officer of DRT-III on 21st February, 2023. The respondent Financial Institution was present during the hearing.

Learned counsel appearing for the petitioner submits that the hearing could not be completed by the Presiding Officer and no returnable date was fixed in

the matter. The case proceeding details is a part of the writ petition.

The F.I. is represented.

Learned counsel appearing for the F.I. submits that the question of the petitioner's locus is doubtful since the petitioner is not a tenant as explained in the application filed by the petitioner before the DRT.

Learned counsel appearing for the State submits that the Officer-in-Charge of the concerned P.S. was under instructions to take possession of the petitioner's office and therefore executed the said order on 22nd February, 2023.

The undisputed fact is that the petitioner filed the application before the DRT on 20th January, 2023, the matter was heard on 21st February, 2023 and remained undecided. The matter was not made returnable on a subsequent date. The respondent F.I. was before the DRT. The petitioner was constrained to file the present writ petition on 22nd February, 2023 seeking urgent relief since the possession was due to be given effect to on that date itself. The matter was mentioned before the Court but could not be filed due to logistical difficulties by reason of a strike called by the Court Officers on 22nd February, 2023. The matter could not be taken up for hearing for the same reason.

The respondent F.I. regardless of the fact that the petitioner was constrained to approach both the DRT as

well as the High Court, proceeded to take possession of the petitioner's property yesterday, i.e., 22nd February, 2023.

The action of the respondent in acting in terms of the D.M's order warrants intervention of this Court. The respondent was aware and was represented in the hearing before the DRT and was also aware that the hearing had not been concluded on 21st February, 2023. The respondent however pre-judged the outcome of the application and dispossessed the petitioner while the matter was still before the DRT. The respondent was also served notice of the present writ petition yesterday, i.e, 22nd February, 2023. The service of the respondent has been placed before the Court.

It is inconceivable that during the pendency of a proceeding when a litigant is before a statutory forum and a constitutional forum, the respondent would give effect to the action impugned. The principles of natural justice demand that parties before a forum have a sufficient and equal opportunity of representation before the lis is decided. In this case, the respondent did not give that opportunity to the petitioner and in effect non-suited the petitioner before the challenge was adjudicated upon.

The other question which needs to be answered is the maintainability of the writ petition. The respondent

F.I. is Bajaj Housing Finance Limited which is a private entity.

A Writ of Certiorari is generally issued against the acts or proceedings of a judicial or quasi-judicial body conferred with the power to determine questions affecting the rights of subjects. The aforesaid power casts a corresponding obligation on the body to act judicially. Although, Certiorari is generally issued for correcting gross errors of jurisdiction or acts without jurisdiction where jurisdiction has erroneously been assumed or where the authority has acted in excess of jurisdiction by overstepping the limits of jurisdiction, a writ of Certiorari can also be issued against a body which has acted in flagrant disregard of the law or the rules of procedure or in violation of the principles of natural justice including failure of justice where no fixed procedure has been prescribed. Certiorari can also step in where the error is manifest and apparent on the face of the proceedings where the law has been disregarded or where gross injustice or gross failure of justice has been caused as a result thereof.

The Supreme Court in a Constitution Bench decision in *T.C. Basappa v. T. Nagappa*; AIR 1954 SC 440 opined that the Writ of Certiorari can be issued even if the lis is between two private parties.

This Court is of the view that this is a fit case where the action of the private respondent can be called

into question and interfered with. There is no doubt that the petitioner must be given an opportunity to fight its case and the statutory forum must adjudicate on the lis which is already before it. Besides, cutting an adjudication short and rendering it infructuous is also in breach of a party's right to see the end of an adjudication.

The Supreme Court in *Surya Dev Rai vs. Ram Chander Rai*; (2003) 6 SCC 675 relied upon a 3-Judge Bench decision in *Dwarka Nath v. ITO*; AIR 1996 SC 81. *Bजारंग श्यामसुंदर आगरवाल vs. Central Bank of India*; (2019) 9 SCC 94 has been cited by the respondent on the point of validity of a tenancy which was in existence prior to the creation of a mortgage. This point goes to the merits of the matter and relates to the rights of the petitioner. The respondent can well take this point before the DRT as and when the matter is heard. The Court cannot – and will not – entertain the matter on merits.

The respondent No. 7 is directed to restore possession of the property which was taken possession of yesterday, by 8 p.m today i.e., 23rd February, 2023 for the above reasons. It is made clear that the Court has not gone into the merits of the case. The order has been passed purely on the view that the respondents have violated the petitioner's right to a fair hearing and a decision on the lis brought before the Court. The

respondent No. 7 shall file an affidavit-of-compliance on the returnable date.

List this matter on 28th February, 2023.

(Moushumi Bhattacharya, J.)