Sudarshan Patra Vs State of West Bengal

Writ Petition No. 19948 (W) of 2003

Court: Calcutta High Court

Date of Decision: Sept. 12, 2011

Acts Referred:
Constitution of India, 1950 â€” Article 226

Citation: (2012) 5 CHN 313

Hon'ble Judges: Ashoke Kumar Dasadhikari, J

Bench: Single Bench

Advocate: Anil Kr. Jana, Bhakti Prasad Das and Tamal Taru Panda, for the Appellant; P.C. Bhattacharyya and R.C. Gayen for the Respondent No. 4, Basudeb Gayen for the Respondent No. 8 and Arunabha Jana for the Respondent No. 7, for the Respondent

Judgement

Ashoke Kumar Dasadhikari, J.
This is a glaring instance when the bank authorities as well as the private respondents have practised fraud

for grabbing the property of four villagers without any cause or without any justification. The writ petitioners have purchased four plots of land

being plot No. 759 for 41 decimals by a registered sale deed dated 22nd June, 1989 at the cost of Rs. 7,000/-, plot No. 376/4443 for 83

decimals by a registered sale deed dated 15th May, 2000 at a price of Rs. 2,00,000/-, plot No. 715 for 31 decimals by a registered sale deed

dated 18th November, 1992 at the cost of Rs. 8,000/- and plot No. 684 for an area of 29.5 decimals by a registered sale deed dated 18th

November, 1992 at the cost of Rs. 15,000/- from the private respondent No. 8, since deceased. So far plot No. 759 is concerned after the

purchase was complete the purchasers got their names mutated in the record of right. So far the three plots are concerned although an application

for mutation was made but mutation was not granted in their favour for an unknown reason.

2. The private respondent No. 8 Nanigopal Singha, since deceased, was the original owner and he sold the aforesaid four plots of land to the

petitioners at the valuable consideration mentioned in the sale deed. Nanigopal was a very influential person. He was the director of the respondent No. 4, the Contai Co-operative Agricultural and Rural Development Bank Ltd., P.O. & P.S. Contai, Dist. Purba Medinipur. It was a land development bank. The said Nanigopal was the Pradhan of the local Gram Panchayat also at the relevant point of time. He was residing at vill. & P.O. Dekhali, P.S. Khejuri. The private respondent No. 7 is the brother of Nanigopal who is the auction purchaser of those four plots of land and he was also the revenue inspector of Khejuri. Out of four plots three plots bearing plot No. 759, 715 and 684 were sold prior to making application for loan by the respondent No. 8. But the respondent No. 8 fraudulently mortgaged the aforesaid three plots along with plot No. 376/4443 for obtaining a loan of Rs. 50,000/- from the abovenamed Bank.

3. The bank authorities without any enquiry and/or investigation, which is required under the Co-operative Societies Rules, have granted the loan to the respondent No. 8. After obtaining loan, being the director of the co-operative land bank, the said Nanigopal sold the land and tank bearing plot No. 376/4443 for 83 decimals on 5th April, 2002 without disclosing that the said plot of land was mortgaged to the bank. The bank authorities under the guidance of the respondent No. 8 did all such mischief in total disregard to the rule and provisions under the West Bengal Co-operative Societies Act as well as the rules framed thereunder.

4. After retirement, the respondent No. 8 who was a school teacher, also left Khejuri where he was originally residing and started to live with his younger brother Amalendu Singha, being the respondent No. 7. The said respondent No. 8 very cleverly did not pay the bank dues with a definite intent and object to grab those lands through his younger brother.

5. The bank authorities started proceedings for realisation of the aforesaid dues. The writ petitioners have no knowledge about such mortgage and/or taking loan by the respondent No. 8. After the auction was held they have come to know that the aforesaid lands were mortgaged for an amount of Rs. 50,000/- by the respondent No. 8 by suppressing the fact that those lands were transferred in favour of the writ petitioners and the said loan amount was not paid by him deliberately so that the bank can attach the lands and sale the same to the brother of the respondent No. 8, being private respondent No. 7 in this writ petition in collusion and connivance of the Bank authorities of which he was the Director.

6. The petitioners, after the alleged auction was held, got a copy of notice dated 10th May, 2002 wherefrom it appears that an amount of Rs. 8,335/- being the principal and Rs. 6,750/- as interest totalling amounting to Rs. 15,085/- was not paid in which it was informed to Nanigopal that because of nonpayment, the mortgaged property would be sold in public auction as per section 112 and section 28(5). The petitioners also obtained a copy of the notice dated 31st January, 2003 wherefrom it appears that the aforesaid four plots of land would be sold in auction in

Henria, P.S. Khejuri on 14th March, 2003 at about 11 a.m. for the aforesaid loan amount of Rs. 50,000/- as well as interest totalling an amount of

Rs. 64,047/-. Immediately after getting information of sale and after obtaining copies of notices from a reliable source, on 17th March, 2003

informed the then Executive Officer of the bank that they have come to know about the mortgage and they are agreeable to pay the amount and

they have informed that those lands be returned to the petitioners. Several representations were made from 17th March, 2003 to 22nd August,

2003 but the respondent bank did not respond to the same.

7. It appears that a suit was filed by the writ petitioner No. 1 against one of the plots being 759, but it was submitted that the said suit has not been

proceeded with and the same has already been dismissed since filing of the suit is barred under the Co-operative Societies Act.

8. Mr. Jana, learned Counsel appearing for the petitioner submits that the purchasers are not literate people and they are residing at village whereas

the respondent Nos. 7 and 8 are educated person and the respondent No. 8 is the director of the bank. He was also a local Panchayat Pradhan of

the then ruling party in power and a very powerful man. He was a teacher of the school. His brother, respondent No. 7 being the auction

purchaser is also a revenue inspector.

9. It was submitted that the learned man like the respondent No. 8 knowing fully well that he has sold the property, fraudulently mortgaged the

property with Bank and deliberately did not make payment to the bank authorities and the bank authorities without even investigation mortgaged

the property although they are obliged under the Act and the rules to investigate about the ownership of the property. Moreover, some plots were

mutated in the names of the purchasers and the record of right indicates the owners'' name who are Rayat in respect of the plot in question. The

bank authorities, the respondent No. 7 and 8 are all in league and they have practised fraud. The properties of the writ petitioners have been sold

and at the time of sale the bank authorities also did not follow the procedure as laid down under the Act as well as under the rules.

10. Mr. Jana referred section 105 under which the bank authorities before getting the property under mortgage for sanction a land, is to enquire

the status and ownership of the plot. In the instant case that was not done.

11. Mr. Jana further referred Rule 199 of the Rules framed under the said Act and submitted that procedure for dealing with application for loan

was also not followed. It was submitted that when application for loan is made to a co-operative land development bank for any productive

purpose the bank shall, after due enquiry as to the title of the land proposed to be improved or offered as security for loan, make such further

enquiry in connection with the application for loan as it thinks necessary, value the land, estimate to repaying in capacity etc. etc.

12. The bank authorities did not do the same simply because the respondent No. 8 was their director and he was a powerful man of the village as

well as in the bank.

13. It was submitted that even at the time of sale the respondent bank did not follow the procedure stipulated under Rules 205, 206, 207, 212 and

213. He submitted that the bank authorities are obliged to follow the rule 205 thereby directing the mortgagor to pay the amount or they can ask

any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the said property and who has

previously notified the bank or the society in writing of such interest or charge and the notice shall be in Form XXXVI and shall be sent by

registered post. In the instant case the writ petitioners are the owners of the property, which are notified.

14. It was submitted by Mr. Jana that every sale proclamation is governed by the provisions under Rule 207 sub-rule (5) which requires that every

proclamation for sale shall be made at some place on or near such property by beat of drum and a copy of the proclamation shall be affixed on a

conspicuous part of the office of the land development bank, the central co-operative bank or the apex housing society, as the case may be.

15. He also referred sub-rule (9) and submitted that the rule requires that the sale shall be held at the village or the ward, where the mortgaged

property is situated or at the nearest place of public resort, if the sale officer is of opinion that a better price is likely to be obtained thereby.

16. Mr. Jana submits that the aforesaid rule has not been followed by the bank to safeguard the interest of the respondent No. 8 as well as to get

the aforesaid property sold so that his brother, being also an influential person and a revenue inspector of the locality, can purchase the property of

about 3 lacs at a lesser price of Rs. 64,000/- only.

17. Mr. Jana submitted that at the time of execution of the sale deed of the tank of an area of 83 decimals it was not disclosed by the respondent

No. 8 that the said property was a mortgaged property. After the sale deed was executed and registered the respondent No. 8 being a powerful

man by force has got a blank paper signed by one of the writ petitioners Asis Jana and on that blank paper through someone else it was written

that Asis Jana is aware of the mortgage and he is agreeable to pay the loan amount. Against such execution the said Asis Jana lodged FIR in the

concerned Police Station but the police authorities did not take any action deliberately and the said writ petitioner could not also proceed further in

view of political pressure.

18. Mr. Jana submitted that the bank authorities, the respondent No. 8 being the director and the respondent No. 7 being the brother of the

respondent 8 who was residing with the respondent No. 7 have practised fraud and got the property sold in favour of his brother, respondent No.

7 at Henria under P.S. Khejuri which is far away from the place where the lands are situated, although rules require that the auction would be held

at the same place where the land is situated.

19. It was submitted by Mr. Jana that even several representation were made before the bank authorities they did not take any step in that regard.

20. Mr. Bhattacharya, learned Counsel appearing for the bank submits that his client, the co-operative bank did not file any affidavit. He submitted

that the writ petition is not maintainable. He also submitted that a suit was filed by one of the writ petitioners i.e. Sudarshan Patra, therefore this

writ petition is not maintainable.

21. He submitted that bank authorities have no role to play. It was stated that representation made after the auction was held therefore the

consideration of their case do not arise and moreover after the sale proclamation was issued, the bank has nothing to do with the matter.

Therefore, the writ petition should be dismissed. Actions of the bank are all lawful and valid.

22. Learned Counsel for the respondent No. 8 Nanigopal, since deceased, is representing two of his successors. The other successors are not

represented. The same learned Counsel also represented respondent No. 7, the brother of Nanigopal. He submitted that as per the sale

proclamation the respondent No. 7 has got ownership of the property. Therefore, it is the domain of Civil Court which can grant a decree after

setting aside the sale, the Writ Court cannot give a decree and declare the sale as illegal.

23. He submitted that the writ petition is also not maintainable since the suit was filed by one of the writ petitioners in respect of one plot of land.

He submitted that the respondent No. 7 has purchased the property and acquired the ownership in respect of the same and he has no role to play.

24. In reply to the submission made by the respective Counsel for the respondents, Mr. Jana submitted that the suit is barred u/s 134 of the West

Bengal Co-operative Societies Act and moreover the suit has been dismissed since that was not proceeded with by the writ petitioners.

25. He submitted that the facts of the case will reveal that there is a fraud practised by three parties and the writ petitioners are not literate persons

but they only know to sign in Bengali. He submitted that the entire action of the bank authorities should be cancelled and/or set aside and the

auction held by the bank authorities should also be cancelled and the writ petitioners be allowed to pay the amount of money to the bank so that

they can get back their land since they are the lawful owners of the properties purchased upon payment of lawful consideration.

26. Heard the learned Counsel representing the parties including the bank and considered the relevant materials placed before this Court. The

learned Counsel for the bank authorities appears and submits that they have not used any affidavit controverting the allegations made by the writ

petitioners against the bank. In effect the bank authorities have accepted all the allegations made by the writ petitioners. On behalf of the bank

authorities no document and/or records were produced showing that they have acted in compliance with the essential requirement under the

relevant provisions of the aforesaid Act as well as the rules framed thereunder. It is evident that they have not examined before taking the aforesaid

plots under mortgage nor they have followed the rules at the time of holding auction and selling the properties and the properties were sold far away from the locale where the lands are situated. The land was auctioned at Henria far away from the plots and that too four plots were sold at a

meagre sum of Rs. 64,000/- only and the aforesaid four plots if sold in market will have got a market value of at least Rs. 3 lacs or more. In this

regard Mr. Jana, learned Counsel referred a judgement reported in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, on point of

drawing adverse inference. Mr. Jana referred relevant portion of paragraph 5 wherein the Supreme Court was pleased to hold as follows:

5............Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his

possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of

facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely

upon the abstract doctrine of onus of proof.

27. I find the above principle clearly applies in the instant case. The bank authorities did not only use any affidavit-in-opposition but also did not

disclose any document showing that the action taken by them are strictly in accordance with the provisions of law applicable in the instant case as

mentioned hereinbefore.

28. I do not accept the submission of the learned Counsel for the bank authorities as well as the private respondents that writ is not maintainable

since the writ petition was filed against the Co-operative Land Bank.

29. In this regard the learned Counsel Mr. Jana has referred the judgement reported in Arjed Ali Gazi Vs. State of West Bengal, In that judgement

the Hon''ble Division Bench of this Hon''ble High Court has decided that when there is violation of principle of natural justice in that event writ is

available and it was also held that when a duty flows from the statutory rule in the matter of employment, although such employment may be at the

inception a product of private contract between the parties, in the matter of regulation of the condition of service of such employment a duty of a

public nature comes into operation. Accordingly, for breach of such obligation under statutory rules, a writ petition for appropriate writs and/or

directions are maintainable.

30. I do accept the submission made by Mr. Jana that when there is an obligation under the statute and the concerned bank is obliged to follow the

statutory obligation under rules and the Act and it was not followed by the bank concerned, in that event this Court in its extraordinary writ

jurisdiction can exercise the power of judicial review under Article 226 of the Constitution of India for redressing the grievance of the writ

petitioners.

31. Mr. Jana cited other judgement in support of his contention that the writ is maintainable against the Co-operative Society. He also referred a

decision reported in The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, . Mr. Jana submitted that in that

judgement again the Supreme Court has held that writ against co-operative society is maintainable.

32. Mr. Jana further submitted that in case of Sri Sunil Kumar Banerjee vs. South Eastern Railway Co-operative Credit Society & ors. reported in

1979 (1) CHN 158 (paragraph 7) and contended that the mandamus can issue, for instance, to an official of a society to compel him to carry out

the terms of the statute under or by which the society is constituted or governed and also the companies or corporation to carry out duties placed

on them by the statutes authorising the undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of

fulfilling public responsibilities and he submitted that in the event it is found that the statutory obligations are not fulfilled and carried out by the

concerned co-operative and the writ petitioners who are the owner of the property having not been served with the statutory notice, this writ

petition is maintainable.

33. In my opinion the writ petition is maintainable against the co-operative society in the facts and circumstances of the case specially when the

concerned bank has not followed the statutory provisions as well as the provisions under the rules which are all statutory in nature and further did

not follow rules of natural justice.

34. However, the other decision cited by Mr. Jana is reported in Shri Bhabani Adhikari Vs. West Bengal State Co-Operative Bank Ltd. and

Others, This judgement also reiterated the proposition of law as held by the Division Bench already referred by me hereinbefore.

35. Thus, there is no doubt that this writ petition is maintainable against the co-operative society.

36. It appears from the facts of this case that out of four lands three lands were sold before the loan was taken and the three properties were

mortgaged. So far the fourth property is concerned which was sold suppressing the facts of mortgage to the concerned purchaser being the writ

petitioner herein, are definitely an illegal act on the part of the private respondents as well as on the part of the bank authorities who under Rule

199 of the West Bengal Co-operative Society Rules, 1987 is obliged to make an enquiry in connection with the application for loan and it is an

obligation of the bank to enquire about the title of the land proposed to be offered as security for loan but in the instant case the bank authorities

deliberately did not do that. They have in collusion and in connivance with the private respondent No. 8 who is their director at the relevant time as

well as Gram Pradhan and the teacher of the locality, being a very influential person, did not conduct the enquiry and kept the properties as

mortgaged properties for sanctioning the loan.

37. It also appears that as per Rule 205 of the aforesaid Rules the bank is obliged to issue a notice to the mortgagor, any person who has any

interest in or charge upon the property mortgaged or in or upon right to redeem the said property but in the instant case no such notice was issued

or no such offer was made by the bank authorities upon the writ petitioners who are the owners of the property in question, rather they have

adopted a procedure for selling the property in question which is clear contravention of the provision under Rule 207 of the aforesaid rules.

38. It was also important to know under sub-rule (6) of Rule 207 the sale shall be made by public auction to the highest bidder.

39. In the instant case, I find that none of the Rules were followed rather the property was sold at Henria, far away from the locale and without

compliance with the aforesaid provisions and a property of Rs. 3 lacs (approximately) was sold at a meagre price of Rs. 64,000/- only without

holding auction in a proper manner.

40. It appears from the writ application that this sale was conducted at Henria and only the brother of the respondent No. 8 who has done all the

mischief, was the only bidder and he has purchased the property at a price of Rs. 64,000/- only and the bank authorities have allowed the sale

although they have reserved the price of the aforesaid plots at Rs. 1,50,000/-. Although it appears from the notice dated 10th May, 2002 that a

total claim of Rs. 25,567/- for which the bank authorities have taken step but it appears from the auction sale notice being page 39 to the writ

petition that a claim was made for Rs. 64,047/-.

41. In my view the bank authorities as well as the respondent No. 8 being the mortgagor and the respondent No. 7 being the brother of the

respondent No. 8 have colluded and practised fraud for grabbing the properties of the writ petitioners most illegally, unfairly and mala fide and

therefore, the entire action of the respondent bank as well as sale proclamation issued by the bank being annexure P1 to the writ petition is liable to

be set aside. It is settled principle of law that fraud knows no finality and therefore all the impugned actions of the bank are vitiated by fraud and

not reached any finality as claimed by the bank authorities. The suit filed for one of the plots is not maintainable u/s 134 and moreover the same is

dismissed for default. Therefore the same is no bar to maintain the writ petition.

42. It appears from the annexure of the writ petition that after the sale was conducted the writ petitioners came to know about the sale on 17th

May, 2003 and issued representation to the Chief Executive Officer of the bank but the bank authorities did not take any step in that regard nor do

they have replied to the said representation made by the writ petitioners and the writ petitioners finding no other alternative had to file this writ

petition before this Hon''ble Court.

43. In view of the aforesaid finding I hold that the action of the respondent bank as well as the private respondent Nos. 8 and 7 are all illegal, unfair

and mala fide and contrary to the provisions of the aforesaid Act and the rules framed thereunder and therefore all the actions taken by the respondents including the sale proclamation is set aside.

44. I direct writ petitioners to make payment of the amount of Rs. 64,047/- to the bank authorities and the bank authorities will release the

property in favour of the writ petitioners and further the bank authorities are directed to return the money they have got from the private respondent

No. 7. The bank authorities would execute all papers and documents in favour of the writ petitioners who would be the owners of the properties in

question and the private respondent No. 7 would have no right, title and interest over and in respect of the aforesaid four plots of lands. This writ

petition is, thus, disposed of. There would be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.