



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 18206 OF 2022 (LA-RES)

BETWEEN:

M/S D C B BANK LIMITED.,
HAVING ITS BRANCH OFFICE AT
NO.650, B E M AVENUE, 2ND STAGE,
D BLOCK, DR. RAJKUMAR ROAD,
RAJAJINAGAR, BANGALORE -560 010
REP BY ITS ASSISTANT MANAGER.
THE PETITIONER BANK INCORPORATED U/S 21
OF THE COMPANIES ACT, 1956

...PETITIONER

(BY SMT. SREEDEVI K B, ADVOCATE FOR
SRI. PATIL J M.,ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER,
CHITRADURGA SUB DIVISION,
CHITRADURGA -577 501.
2. SPECIAL LAND ACQUISITION OFFICER,
TUMKUR-CHITRADURGA-DAVANAGERE,
NEW DIRECT RAILWAY LINE PROJECT,
CHITRADURGA -577 501.
3. CHANNAKESHAVAREDDY,

...RESPONDENTS

(BY SRI. R SRINIVASA GOWDA.,AGA FOR R1 & R2;
R3 SERVED AND UNREPRESENTED)

Digitally signed
by SHARADA
VANI
Location: HIGH
COURT OF
KARNATAKA



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-1 AND 2 TO CONSIDER THE REPRESENTATION DATED 25.07.2022 VIDE ANNEX-G AND ALSO DIRECT THE R-2 TO DEPOSIT THE COMPENSATION AMOUNT TO THE LOAN ACCOUNT BEARING NO.2074560000569.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner -Bank is grieving before the Writ Court against non-consideration of its representation dated 25.07.2022 a copy whereof avails at Annexure-G wherein it has requested the 2nd Respondent - SLAO to deposit the compensation amount to the loan account of 3rd Respondent - borrower, toward repayment that was secured by the mortgage of the property in acquisition. Learned counsel for the Petitioner vehemently argues that mortgage is one of the five traditional modes of transfer recognized by the provisions of the Transfer of Property Act, 1882 and therefore, his client has a vested interest in the subject property, which entitles it to the payment of compensation for its appropriation to loan account of the borrower. She expresses anguish against the 2nd



Respondent in not considering her client's Representation in terms of Sections 64 & 73 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. After service of notice, the Respondent Nos. 1 & 2 are represented by the learned AGA and the 3rd Respondent – borrower who happens to be the mortgager, has chosen to remain unrepresented despite service of notice; however, that will not deter the Court from adjudging the cause brought before it, in accordance with law. Learned AGA contends that the Petitioner can approach the Civil Court for the redressal of its grievance since disputable fact matrix emanates from the case papers, writ remedy not being much suitable. Having so contended, he now fairly agrees to instruct his clients to look into the grievance of the Petitioner in accordance with law, should a reasonable timeline be prescribed and legal norms be stated.



3. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

a) Petitioner apparently is a scheduled Bank and the 3rd Respondent happens to be its borrower. He has availed certain sum of money as loan having mortgaged the subject land vide registered instrument dated 28.09.2017 for securing the repayment of said loan. The mortgaged land having been acquired, the Petitioner – Bank had made a representation requesting the SLAO to remit the compensation amount to the loan account of the 3rd Respondent, which has since been declared NPA. Except some exchange of notices, nothing concrete appears to have been done in the matter from the side of the SLAO.

b) It is pertinent to mention that where the mortgaged property has been acquired, the amended provisions of Section 73 of the Transfer of Property Act



1882 Act becomes invocable. Subsections (2) & (3) of this Section read as under:

“(2) Where the mortgaged property or any part thereof or any interest is acquired under the Land acquisition Act, 1894, or any other enactment or the time being in force governing the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of mortgage money, in whole or in part, out of the amount due to mortgagor as compensation.

(3) Such claim shall prevail against all other claims except those of prior encumbrances and may be enforced notwithstanding that the principal money on the mortgage has not become due.”

This section is an instance of incorporation application of the “*doctrine of substituted security*”, viz that the mortgagee is, for the purpose of his security, entitled in lieu of only to the mortgaged property, to anything that is substituted for it. If, by a process of law or by a compelling situation sanctioned by law, the security given to a creditor for the repayment of debt is changed into something other than the property, the mortgagee gets rights over the substituted security namely, the changed one i.e., the compensation or the like.



c) The *doctrine of substituted security* as an applied idea to protect the interest of secured creditors was treated by the Privy Council nine decades ago in MOHAMMAD AFZAL vs ABDUL RAHMAN, AIR 1932 PC 235, with the following observations:

"Their Lordships are of opinion that where one of two or more co-sharers mortgages their undivided shares in some of the properties held jointly by them, the mortgagee takes the security subject to the right of the other co-sharers to enforce a partition and thereby, to convert what was an undivided share of the whole into a defined portion held in severalty. If the mortgage therefore, is followed by a partition, and the mortgaged properties are allotted to the other co-sharers, they take those properties, in the absence of fraud, free from the mortgage, and the mortgagee can proceed only against the properties allotted to the mortgagor in substitution of his undivided share..."

d) Learned counsel for the Petitioner is more than justified in heavily banking upon the provisions of Section 64 of the 2013 Act to contend that her client being the person interested has sent a Representation in terms of which the SLAO ought to have referred the dispute to the jurisdictional court, for adjudication since the mortgage is



shifted to the compensation in lieu of the mortgaged property. Even Section 76 of the 2013 Act from which support can be drawn by the Petitioner reads as under:

"76. Dispute as to apportionment: When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority."

It hardly needs to be stated that this provision is substantially texted on par with Section 30 of the erstwhile Land Acquisition Act, 1894.

e) The State Government being the appropriate Government vide Notification dated 10.01.2017 issued under Section 51 of the Act has designated the I Additional District Judge of every District as & to be the "Authority" *inter alia* for the adjudication of disputes of the kind. That being the position, the SLAO ought to have referred the matter to the said Judge for adjudication, especially when Section 63 of the Act excludes the jurisdiction of ordinary Civil Courts. This having not been done, there is



justiciable right availing to the Petitioner to seek appropriate writ for its enforcement. In matters like this, driving the mortgagee to the ordinary Civil Court would only amount to the Writ Court shirking its responsibility to do justice in plain cases of the kind.

In the above circumstances, this Writ Petition succeeds; a Writ of Mandamus issues to the 2nd Respondent - SLAO to refer the claim of Petitioner - Bank forthwith to the Court of I Additional District Judge, Chitradurga, with all necessary papers, with intimation to the Petitioner.

On such reference being made, the Court after notice to all the stakeholders, shall adjudge the claim of Petitioner-Bank, within an outer limit of one year . All contentions of the parties are kept open.

Till the Reference is decided, the compensation amount shall be kept in the interest earning scheme of



some Nationalized Bank as a short time deposit of one year and that, the compensation shall follow its outcome.

Now, no costs.

**Sd/-
JUDGE**

Bsv

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