

Smt. Pushpa Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-13-2006

Judge : Navaniti Pd. Singh, J.

Appellant : Smt. Pushpa Devi

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Judgement :

Navaniti Pd. Singh, J.

1. Heard the parties.
2. By the present Writ application the petitioner has challenged the action being taken in Certificate Proceedings No. 588/1994-95 pending before the Certificate Officer, Katihar in so far as it relates to the petitioner and her property.
3. A counter affidavit has been filed on behalf of the Certificate Officer and a separate counter affidavit has been filed by the Central Co-operative Bank Ltd., Katihar, who are the requisitioning authorities and the certificate holders.
4. With the consent of the parties this application has been heard and is being disposed of at the admission stage itself.

5. The petitioner asserts that certain loan was taken by one Om Prakash Monka. The respondent- Co-operative Bank alleges that the petitioner stood gurantor in the said loan and mortgaged her property to the bank as security for the said loan. This 1s straneously denied by the petitioner. For the present 1t 1s not for this Court to resolve this dispute as the question 1s entirely different. The said Om Prakash Monka defaulted and as such the present certificate proceedings were Initiated on basis of a requisition filed by the Managing Director of the respondent- Co-operative Bank. A copy of the said requisition is Annexure 3 to the Writ application. Neither party disputes the said document. The said requisition 1s undisputedly only against Om Prakash Monka and the petitioner's name or her property does not find therein.

6. The petitioner submits that notwithstanding the aforesaid the steps are now being taken to sale the petitioner's property. This Court is not going into various other controversies who have taken steps in between.

7. The submission is that 1f the petitioner is not a party to the proceedings, she cannot be proceeded against nor her property.

8. Having heard the parties and perused the counter affidavit as filed by the Certificate Officer as well as the respondent- Corporation bank, its stand admitted that the requisition (Annexure 3) was only as against the said Om Prakash Monka. It 1s not disputed that the petitioner or her property was not the subject matter of the proceedings. In ray view, without going into other controversy admission of these facts are enough to dispose of the present writ application.

9. As the petitioner was never made a party she cannot be proceeded against 1n any respect of the matter. As she has not been a party her property cannot be proceeded against, for, it is elementary that the property that can be proceeded against can only be the property of the person who 1s a party to a litigation.

10. In the present case, petitioner not being a party and never having been made a party to the present proceedings her property cannot be touched. In the result, I hold that the steps being taken to sale the property of the petitioner allegedly being the property mortgaged to the respondent-Corporation bank 1s wholly without

jurisdiction and the respondent-bank and the Certificate Officer, Katihar are [Brmanently restrained from interfering and/or selling the said property of the petitioner who has not been made a party 1n the present proceedings.

11. In the result, this writ application 1s allowed and the order/direction for proceedings against the petitioner and/or her property 1n the present certificate proceedings are quashed.

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