

Present:

Ms. Justice Nazmun Ara Sultana

and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.8642 of 2010

Nurul Amin Bhuiyan

... Petitioner

-Versus-

Bangladesh and others

... Respondents

Mr. Tanjibul Alam with Mr. Md. Anisur Rahaman,
Advocates

... for the Petitioner

Mr. Syed Sanaul Haque, Advocate

... for the Respondent

Heard on 9.2.2011

Judgment on 10.2.2011

Md. Ruhul Quddus, J:

The petitioner being a third party mortgagor obtained this Rule challenging an auction notice for sale of his mortgaged property published in the Daily Sangbad on 7.10.2010 and subsequent auctioning of the property in pursuance thereof, and also seeking direction upon Standard Bank Ltd., a private bank operating under the Bank Companies

Act, to allow him to keep possession of his property on payment of the highest amount as quoted in the auction.

Petitioner's case, in short, is that he is the lawful owner-in-possession of Plot No.80, Chandgaon Residential Area (Phase-2), Chittagong (more particularly described in schedule-2 of the impugned auction notice), which he got from the Chittagong Development Authority by way of a lease agreement dated 4.2.2006. He, as a third party, mortgaged the said property in favour of Standard Bank Ltd. (respondent No.2) to secure a loan granted to his brother Nurun Nabi Bhuiyan (herein respondent No.4). As the said Nurul Amin Bhuiyan failed to adjust the loan, the creditor-bank published an auction notice for sale of the mortgaged properties including that of the petitioner. The bank published the said notice without encashment of bank guaranties those were furnished to secure the loan as a first charge. Moreover, it did not make any formal claim or serve any prior notice upon the petitioner and as such he was in dark about the borrower's defaulting status and the consequent auction notice. He (petitioner) came to learn about the impugned auction notice for the first time on 18.10.2010. Immediately after he wrote a letter on 20.10.2010 to the creditor-bank requesting exclusion of his property from the schedule of auction notice informing that the borrower was trying to arrange a buyer to sell his property, so that he could adjust the loan. The creditor-bank did not respond to the said request and held the auction on 25.10.2010. The petitioner obtained a copy of tender opening sheet and found that the highest price for his

property was quoted Taka 44,05,000/= (Taka forty-four lac five thousand) per katha. On the following day i.e. 26.10.2010 the petitioner made another representation to the bank proposing exclusion of his property on payment of highest amount as quoted in the auction. Getting no response, the petitioner moved this Court under article 102 of the Constitution, obtained the Rule and an order of statusquo.

The highest bidder Al-haj M. A. Munsur is made respondent No.5 in the present writ petition. It appears from office note dated 6.2.2011 that the notice was legally served upon him, but he did not appear to contest the Rule.

Standard Bank Ltd., Imamganj Branch as respondent No.3 though appeared, has not filed any affidavit-in-opposition denying the material facts stated in the writ petition. The learned Advocate for the bank, however, has verbally opposed the Rule at the time of hearing.

Mr. Tanjibul Alam, the learned Advocate appearing for the petitioner with reference to the contents of writ petition and two representations annexed therewith, submits that the creditor-bank was under legal obligation to serve a prior notice claiming its outstanding dues from the third party mortgagor (herein petitioner) and also to encash the bank guarantees before publishing the auction notice. But the bank published the auction notice without encashment of bank

guarantees and service of prior notice upon the petitioner, and held the auction ignoring the proposal to sell the borrower's mortgaged property through private negotiation. The corrupt officials to the bank, with a malafide intention, initiated the impugned auction to deprive the petitioner from his lawful property and to sell the same to their chosen bidder at shockingly low price. The malafidfe actions of the bank has seriously infringed the petitioner's right to property and his right to be treated in accordance with law and as such the impugned auction notice and subsequent auctioning of the petitioner's property are liable to be declared to have been done without lawful authority.

On the other hand Mr. Syed Sanaul Haque, the learned Advocate appearing for the respondent-bank opposes the Rule and submits that the law does not require a notice to be served upon the third party mortgagor before publishing an auction notice under section 12 of the Artha Rin Adalat Ain, 2003. In the present case the borrower admittedly failed to repay the loan, therefore the creditor-bank rightly published the auction notice.

We have examined the writ petition, and two representations annexed therewith. It appears that the instant Rule is directed against a private bank, which does not fall within the definition of a person or authority under article 102 of the Constitution. Although Bangladesh is made a respondent herein, no relief has been sought against her.

Therefore, we do not consider the writ petition maintainable by impleading Bangladesh as a party.

Under the above facts and circumstances, in spite of having a bonafide case in favour of the petitioner, we are unable to give him any relief under Article 102 of the Constitution as the writ petition itself is not maintainable. But his grievance touches our anxiety. Since the purpose of publishing the auction notice is to realise loan and the petitioner made an approach to the respondent-bank for exclusion of his property on payment of the highest amount as quoted in the auction, the respondent-bank may consider his proposal.

With the above observation the Rule is discharged and the order of statusquo passed at the time of issuing the Rule is vacated.

Nazmun Ara Sultana, J:

I agree.