

## CONSTITUTIONAL WRIT

W. P. 29749 (W) of 2008

Dipak Kumar Basak &amp; Ors.

Vs

The State Bank of Bikanir &amp; Jaipur &amp; Ors.

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgement on : 12.01.2010

**Point:**

**WITHHOLDING DOCUMENT:** Bank authority failed to return the title deed despite repayment of loan – Whether justified- Constitution of India, Art 226

**Fact:** By filing the instant writ application the writ petitioners have challenged the action of the respondent Bank whether the Bank can withhold any security made by way of depositing title deed against which loan has been granted and the borrower has repaid the loan with interest in full on grounds of detection of any fraud practised by one of the borrowers.

**Held:**

When the Bank authority with the full knowledge of existence of any housing loan fraud case has issued the clearance certificate, they have forfeited their right to retain such documents after liquidation of the loan and they are estopped by their own conduct from retaining the same any more. It also appears that the matter is said to be under investigation with the CBI authorities from 2003, i.e., for last five years, but during this time they have not seized the title deed in connection with this case. Therefore, the Bank authorities are bound to return the said documents to the borrower immediately after liquidation of the entire loan and they cannot withhold such document on the ground of pendency of any investigation of CBI authorities which has apparently no nexus with the present transaction by and between the parties, which has been finally settled and in respect of which clearance certificate has been made. Withholding of such security, i.e., the title

deed by the Bank authority is creating hardship to the writ petitioners, who are unable to take loan from any other financial institution for their business purposes and the Bank authorities will be liable for such loss sustained or to be continued by the writ petitioners on account of their illegal retention of the title deed in future. By repayment of the entire loan with interest the writ petitioners have acquired a right to get back their title deed in question which was deposited by way of security only and denial on the part of the Bank authority to return such document is quite unjustified and violation of the principle of natural justice.

Paragraph – 5 & 6

For the Petitioner : Mr. Kishore Datta,  
Mr. Anjan Bhattacharya  
Mr. D. N. Maiti.

For the Respondent Nos. 1, 2 & 3: Mr. Sudeep Pal Chowdhury.

**The Court:**

1. In this writ petition the petitioners Sri Dipak Kumar Basak, Smt. Anima Basak and Smt. Bobby Basak have claimed that petitioner no. 1 Dipak Kumar Basak, respondent no. 4 Ujjwal Kumar Das and the respondent no. 5 Nandraj Kishore Goswami purchased a property measuring about 9 cottahs 19 square feet comprising premises no. 86 C Monoharpukur Road, Kolkata – 700 029 at a consideration of Rs. 62,00,000/- by a registered deed of conveyance dated 03.08.2005. By depositing the said original deed of conveyance dated 03.08.2005 the petitioner no. 1 and the respondent nos. 4 and 5 received term loan amounting to Rs. 48,00,000/- from the respondent no. 1, the State Bank of Bikanir and Jaipur from their Ballygunj Branch under a Term Loan Housing (Public) Account No. 51046566086 on 03.08.2005 for the purchase of the said property with the object of developing the same by constructing building in commercial venture. They have repaid the loan with interest on 20<sup>th</sup> August, 2007. The respondent no. 2, Chief Manager of the respondent no. 1 Bank, Ballygunj Branch issued a certificate dated 13.09.2007 regarding such payment and

closure of the said loan account. On payment of the said loan the original deed of conveyance which was deposited by way of security stood released and the Bank had no longer any lien in connection with such loan. Therefore, the title deed relating to the said property became free from any lien and encumbrances but the same has not been returned to the writ petitioners despite repeated request. In the meantime the respondent nos. 4 and 5 sold their share in the said property to petitioner nos. 2 and 3 for valuable consideration by a registered deed of conveyance dated 28.08.2008 and thereby the respondent nos. 4 and 5 ceased to have any right, title, interest and possession in the said property which now belongs to the petitioner nos. 1 to 3. Since the respondent nos. 1 to 3 had refused to give any reply to their prayer for return of the said title deed, they lodged a complaint with the Banking Ombudsman, Reserve Bank of India under the Banking Ombudsman Scheme on 17.01.2008. In response the Secretary, Banking Ombudsman informed in their letter dated 28.03.2008 that the above cannot be pursued since the respondent Bank has lodged a complaint with the Central Bureau of Investigation of Calcutta against respondent no. 4 about suspected fraudulent nature of transaction which is now under scrutiny. The petitioners have further claimed that they have not yet served with any copy of the said complaint and they are not informed anything about alleged fraudulent nature of transaction in relation to the said term loan, the liquidation of the said loan and the original title deed deposited with the Bank as security for repayment of the said loan. Therefore, they have approached this Court seeking direction upon the respondents to deliver the original deed of conveyance dated 03.08.2005 in respect of the aforesaid property to the petitioners or their authorised agent or representative forthwith since for want of the same they are not able to secure any loan from any other financial institution due to non-delivery of the said original title deed which is required to be deposited to secure the loan and they are

accordingly sustaining heavy financial loss and unable to undertake any project as originally contemplated.

2. Though no affidavit-in-opposition has been filed, the learned lawyer for the respondent nos. 1, 2 and 3 has opposed the move and claimed that the CBI authority may require the aforesaid document in connection with the complaint lodged by the Bank and for this purpose the Bank authorities have rightly retained the document which has been communicated to the petitioners. Therefore, at this stage they cannot claim for return of the said document which may be required by the CBI authorities at any time for scrutiny, verification of signature etc. Therefore, there is no merit in this writ petition which is liable to be dismissed.

3. Having heard learned lawyer for the contending parties and on perusal of the petition with connected documents I find that the writ petitioner no. 1 and the respondent nos. 4 and 5 took loan from the respondent nos. 1 to 3 by depositing the title deed in question as security on 03.08.2005. On 13.09.2007 the Chief Manager of the Ballygunj Branch of the respondent no. 1 Bank has forwarded a statement of account in respect of closure of Term Loan Account No. 51046566086 which has been liquidated on 20.08.2007 (annexure P to the writ petition). It further appears from the intimation bearing no. BO(Kol)4009/2007-08 dated 28.03.2008 of the Secretary, Banking Ombudsman that since the respondent Bank has lodged complaint with the CBI Kolkata about suspected fraudulent nature of transactions they expressed their inability to pursue the matter and treat the complaint as disposed of in terms of Clause 9(3)(d) of the Banking Ombudsman Scheme, 2006. From the said letter it also transpires that an investigation was conducted by the vigilance department of the said Bank and in course of such investigation it was revealed that one of the co-borrowers have direct or indirect involvement in housing loan fraud case. Taking into

account the seriousness of the case the Bank had lodged an FIR in the matter with the CBI, EOW, Kolkata on 30.10.2003 and the matter is under investigation with the CBI Kolkata and all documents relating to Shri Ujjwal Kumar Das, i.e., the respondent no. 4 are under close scrutiny of the investigating officials.

4. In this context the relevant issue for my determination is to see whether the Bank can withhold any security made by way of depositing title deed against which loan has been granted and the borrower has repaid the loan with interest in full on grounds of detection of any fraud practised by one of the borrowers.

5. From the circumstances disclosed in the correspondences by and between the parties it further appears that the Bank authority lodged the complaint on 30.10.2003 on the basis of investigation conducted by their vigilance department. If the vigilance department is satisfied regarding the alleged involvement of respondent no. 4 in any housing loan fraud case it is very much within the knowledge of Bank authorities who ought not to have issued any clearance certificate in favour of the writ petitioners at a much later stage on 13.09.2007 informing that their loan has been liquidated on 20.08.2007. When the Bank authority with the full knowledge of existence of any housing loan fraud case has issued the clearance certificate, they have forfeited their right to retain such documents after liquidation of the loan and they are estopped by their own conduct from retaining the same any more. It also appears that the matter is said to be under investigation with the CBI authorities from 2003, i.e., for last five years, but during this time they have not seized the title deed in connection with this case. Therefore, the Bank authorities are bound to return the said documents to the borrower immediately after liquidation of the entire loan and they cannot withhold such document on the ground of pendency of any investigation of CBI

authorities which has apparently no nexus with the present transaction by and between the parties, which has been finally settled and in respect of which clearance certificate has been made. Withholding of such security, i.e., the title deed by the Bank authority is creating hardship to the writ petitioners, who are unable to take loan from any other financial institution for their business purposes and the Bank authorities will be liable for such loss sustained or to be continued by the writ petitioners on account of their illegal retention of the title deed in future.

6. Therefore, I hold that by repayment of the entire loan with interest the writ petitioners have acquired a right to get back their title deed in question which was deposited by way of security only and denial on the part of the Bank authority to return such document is quite unjustified and violation of the principle of natural justice. Under the circumstances of the present case and for violation of such right they have rightly approached the Writ Court for return of the said documents and I hold that this Court has jurisdiction to entertain such prayer on account of violation of the principle of natural justice and denial of right accrued in favour of the present petitioner. In the result the Writ Petition succeeds.

7. The respondent nos. 1 to 3 are directed to return the said title deed in original with other connected papers, if any, within fifteen days from the date of this order to the writ petitioners retaining a photostat copy of the same in custody for future reference to CBI, if required.

8. The writ petition is thus disposed of.

9. Certified photostat copy of this order, if applied for, be supplied to all the parties upon compliance of requisite formalities.

**(S. K. Chakrabarti, J.)**