

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 1258 of 2020

Bimla Dey, wife of Bishwanath Chandra Dey, resident of 1/1, Abhishek Apartment, Adarshnagar, Sonari, Near Phase 9, P.O. & P.S. Sonari, Town Jamshedpur, District East Singhbhum

.....Petitioner

Versus

1. Bihar State Financial Corporation, Frazer Road, P.O, P.S. & District Patna, through its Managing Director.
2. The Manager, Rehabilitation, Bihar State Financial Corporation, Frazer Road, P.O, P.S. & District Patna.
3. The Regional Manager, Rehabilitation, Bihar State Financial Corporation, Regional Office, Vikash Bhawan Campus, Adityapur, P.O. & P.S. Adityapur, Town Jamshedpur, District Seraikela Kharsawan.
4. The Branch Manager, Rehabilitation, Bihar State Financial Corporation, Regional Office, Vikash Bhawan Campus, Adityapur, P.O. & P.S. Adityapur, Town Jamshedpur, District Seraikela Kharsawan.
5. State of Jharkhand
6. Dy. Commissioner, Singhbhum East, Jamshedpur, having office at Sakchi, P.O. & P.S. Sakchi, District East Singhbhum
7. Sub Divisional Officer, Jamshedpur, having office at Sakchi, P.O. & P.S. Sakchi, District East Singhbhum

.....Respondents

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s)	: Mr. P.A.S. Pati, Advocate Ms. Vaishnavi Kaushiki, Advocate
For the Respondent(s)	: Mr. Vincent Marki, A.C. to A.A.G. Mr. Ashok Kr. Yadav, Advocate Ms. Ashwini Priya, Advocate Ms. Sanjana Shrestha, Advocate

ORDER

Reserved on 07.09.2026

Pronounced on: 14.10.2026

By way of filing this writ petition, the petitioner has sought for the following reliefs: -

(a) In the nature of certiorari for quashing the letter dated 11.09.2019 (Annexure-16) issued by the respondent authorities by which a sum of

Rs. 83,14,484/- has been demanded from the petitioner against repayment of dues and direct the respondents not to charge any interest/ penal interest from the petitioner.

(b) In the nature of mandamus commanding upon the respondents to show cause as to why and under what authority they are not delivering the possession of M/s Hotel Sahu to the petitioner as per the area auction sold in-spite of the fact that the husband of the petitioner has already deposited the security amount as also she has fulfilled the over requirement as per the auction - sale agreement for the purpose of delivery of possession of Hotel Sahu.

(c) For a further writ / order/ direction in the nature of mandamus commanding upon the respondents to immediately and forthwith deliver the possession of area auction sold of M/s Hotel Sahu to the petitioner in or in the alternative to refund the entire money with interest/penal interest at contractual rate being claimed by the respondent corporation.

2. M/s Hotel Sahu, a partnership firm, had availed financial assistance from the Bihar State Financial Corporation (BSFC) and mortgaged its property as security. M/S Hotel Sahu failed to repay the loan, leading to recovery proceedings in which the property was put up for auction. The order dated 27.08.2008 accepted the bid submitted by the petitioner's husband, Bishwanath Chandra Dey, as the highest responsive bid for Rs. 91 lakhs. The borrower challenged the auction proceedings before the Hon'ble Patna High Court in CWJC No. 2316 of 2008. By order dated 26.11.2015, the Court rejected the challenge and permitted BSFC to complete the sale in favour of the petitioner's husband, who had deposited Rs. 22.75 lakhs towards the sale consideration. Despite the aforesaid order, the petitioner's husband repeatedly approached BSFC to complete the sale and deliver possession, but, according to the petitioner, BSFC took no effective action. On 29.08.2016, BSFC revalidated the earlier sale order and required the submission of documents to complete the sale. The petitioner's husband complied and, thereafter, executed an agreement for sale-cum-payment of balance loan dated 28.10.2016 with BSFC. The Sub-Divisional Officer thereafter, vide order dated 26.12.2016, directed the deputation of a Magistrate and armed force to take

possession of the auctioned property. However, according to the petitioner, BSFC officials failed to appear on 29.12.2016 and subsequently arrived late on 16.02.2017, resulting in non-delivery of possession. The petitioner subsequently approached the authorities, including the Chief Minister, seeking delivery of possession. The SDO, Dhalbhum, by Letter No. 1870 dated 15.05.2017, allegedly recorded that BSFC was delaying the process of delivery of possession. A dispute also arose over the extent of the auctioned property, as 6,278 sq. ft. had been auctioned, whereas the documents available with BSFC related to a smaller area. Despite a further representation dated 31.05.2019, possession was allegedly not delivered. The petitioner states that she had fulfilled the requirements for completion of the sale, but BSFC issued a letter dated 11.09.2019 demanding Rs.83,14,484/- towards outstanding dues. Aggrieved, the petitioner approached this Court seeking quashing of the demand dated 11.09.2019, delivery of possession of the auctioned property, or alternatively refund of the amount paid with interest/penal interest.

3. The learned counsel for the petitioner submits that the auction sale in favour of the petitioner's husband stood affirmed by the Patna High Court and the necessary sale formalities were subsequently completed with BSFC, including execution of the agreement dated 28.10.2016. Despite this, possession of the auctioned property has not been delivered for several years, although the petitioner has repeatedly approached the authorities and the District Administration has also initiated steps to take possession. It is contended that BSFC itself acknowledged the issue regarding the area of the mortgaged property and sought clarification on demarcation. The impugned demand of Rs.83,14,484/- is therefore arbitrary, especially when possession has not been handed over despite the petitioner complying with

the sale requirements. The petitioner accordingly seeks quashing of the demand and prays for delivery of possession of the auctioned property, or alternatively refund of the amount deposited with applicable interest.

4. Learned counsel for respondent-BSFC submits that the auction was conducted pursuant to the Corporation's statutory powers on account of the persistent default of M/s Hotel Sahu, and the sale was made subject to the terms and conditions of the auction sale order. The impugned demand of Rs.83,14,484/- was raised in terms of the revalidated auction sale order and the agreement dated 28.10.2016 and cannot, therefore, be termed arbitrary. It is further submitted that the Corporation took steps to deliver possession by requisitioning the assistance of the District Administration, but the process could not be completed due to the non-availability of the Magistrate/police force and resistance at the site. The property was auctioned on an "as is where is" basis and possession would be handed over only of the mortgaged area covered by the agreement. It has also been submitted that BSFC, having no coercive machinery of its own, could not forcibly dispossess the person occupying the property.

5. After hearing the parties and perusing the records, it appears that the petitioner's husband, Bishwanath Chandra Dey, was accepted as the highest bidder in the auction held in the year 2008 and he deposited Rs. 22.75 lakhs (25% of sale consideration) towards the sale consideration. The respondent-BSFC received a letter dated 30.09.2008 from the petitioner's husband regarding the deposit of the said amount, with a remark that the sale was subject to the decision of CWJC No. 2316 of 2008, which was pending before the Patna High Court. The Court rejected the aforesaid case on 26.11.2015 and permitted respondent-BSFC to complete the sale in favour of the petitioner's husband. After which respondent-

BSFC revalidated the earlier sale order on 29.08.2016 in the following terms:

1. *The auction purchaser shall make payment of Rs.17,06,250/- being 25% of the balance consideration money within one month from the date of issue of order.*
2. *Legal formalities by the auction purchaser and hand over of the assets by the R.O.-Cum-Branch I/c, Ranchi shall be completed within one month from the date of deposit of amount mentioned in para 1 above.*
3. *Balance of sale consideration money shall be paid by the auction purchaser in one year by four quarterly instalments, out of which three instalments of Rs.12,79,700/- each and last of Rs.12,79,650/- commencing after three months from the date of issue of order.*
4. *The purchaser shall be bound to abide with the conditions of the sale as aforesaid failing which the amount of earnest money and other subsequent deposit, if any shall be forfeited without making/entertaining any reference in this regard.*
5. *Other terms and conditions of sale order No.250/-IV dated 03.09.2008 shall remain unchanged.*
6. From the aforesaid, I find that while revalidating the auction sale, the respondent-BSFC, without any basis, unilaterally imposes the additional condition of depositing 25% of the balance sale consideration amount, that too, without taking possession of the property. The petitioner's husband also paid the said amount through Bank Draft Nos. 128023 and 128024 dated 14.09.2016 and, thereafter, executed an agreement for sale-cum-payment of balance loan dated 28.10.2016 with BSFC. Despite this, BSFC did not take any proper, bona fide steps to take possession of the mortgaged assets. The defaulter remained in possession because of the mercy shown by some BSFC officers. These officers gave the defaulter undue, illegal benefits at the cost of this auction

purchaser. Only when the Court intervened could BSFC take possession.

7. In the order dated 29.07.2026, this Court noticed that the respondent-BSFC has not taken possession of the property till date and the property is still with the borrower. Paragraph Nos.5 to 7 of the order dated 29.07.2026 read as under:

5. This prima-facie gives an impression to this Court that the Officers of the BSFC, including the Recovery Officer-cum-Branch I/C is hand in gloves with the borrower and has given undue benefit to the borrower by allowing him to remain in possession of the premises.

6. This impression is fortified and cemented by Letter No. 1870 dated 15.05.2017 of the Sub-Divisional Officer, Dhalbhum at Jamshedpur. The letter is addressed to the Recovery Officer-cum Branch I/C Bihar State Financial Corporation, Ranchi wherein he has clearly highlighted the attitude of the Officers of the BSFC. In the letter it has been mentioned that the Magistrate was deputed along with force on two dates but none of the officers of the BSFC appeared in one date and in another date, they appeared belatedly without the documents. The Sub-Divisional Officer also in the said letter mentions that knowingly and deliberately the officers want to delay the matter.

7. Whether the petitioner is entitled to be handed over the possession of the property or not, is a question to be decided later on, but the fact remains that the defaulter cannot go on possessing the property in spite of the fact that the same has been auctioned.

8. It is an undisputed fact that the Sub-Divisional Officer by order dated 26.12.2016 directed deputation of a Magistrate and armed force for taking possession of the auctioned property. However, respondent-BSFC officials failed to appear on 29.12.2016 and subsequently arrived late on 16.02.2017, resulting in non-delivery of possession. This Court is of the considered view that the respondent-BSFC took no effective action and showed no willingness to take possession of the auction property. Thus, the respondent-BSFC is not performing its part of the agreement, i.e., taking possession of the auction property.

9. As noticed above, the petitioner's husband has already deposited 25% of the sale consideration amount on 29.08.2008, but

while revalidating the auction sale, without obtaining the possession of the auction property, unilaterally added the additional condition of deposition of 25% of the balance amount to the tune of Rs.17,06,250/-, which is not fair and unlawful. The petitioner also paid this amount, and thereafter, an agreement for sale-cum-payment of the balance loan dated 28.10.2016 was executed with BSFC.

10. It is not denied and disputed that the petitioner's husband was always ready and willing to perform the terms of agreement, which also appears from the averment made in paragraph Nos.18 to 20 of Counter-affidavit dated 28.07.2026 of the respondent-BSFC, which reads as under:

"18. That the Corporation thereafter advised the purchaser concern to submit the papers necessary for carrying the revalidated sale order into effect, namely the acceptance letter regarding the terms and conditions of the revalidation order, residential proof, details of the moveable and immoveable properties owned by the purchaser and passport-sized photographs, vide letter No. 166 dated 29.08.2016, and issued a further reminder pointing out then on-submission of the acceptance letter and the non-deposit of the amount within the time stipulated, which expired on 24.09.2016, vide letter No. 184 dated 14.09.2016.

19. That the drafts of the legal documents, namely the Agreement for Sale cum Payment of Balance Loan, the Letter of Hypothecation and the Guarantee Bond, were forwarded to the purchaser concern for transcription upon stamp paper of requisite value and for completion of the legal formalities vide letter No. 204 dated 29.09.2016 and letter No. 206 dated 30.09.2016, pursuant where to the purchaser concern submitted the required papers for execution of the legal documents on 03.10.2016, and reminders were further issued to the purchaser concern for the said purpose vide letter No. 214 dated 13.10.2016 and letter No. 225 dated 19.10.2016.

20. That the purchaser concern thereafter executed the necessary legal documents, namely the Agreement Deed, the Letter of Hypothecation, the Power of Attorney and the Guaranty Bond, on 28.10.2016, whereupon the legal formalities in respect of the sale stood completed at the end of the Corporation, and nothing thereafter remained to be done by the Corporation save and except the physical delivery of possession."

11. Surprisingly, the respondent-BSFC vide impugned letter dated 11.09.2019 (Annexure-16) has been demanded a sum of Rs.83,14,484/- from the petitioner against repayment of dues. The learned counsel for the BSFC is now trying to justify this demand

by arguing that the value of the property has increased. This justification is not at all accepted.

12. It is well-settled that a party who does not perform their part of an agreement cannot take advantage of their own inaction. This foundational legal concept dictates that when two or more parties enter into a contract, they assume reciprocal responsibilities. If one party deliberately delays or fails to meet its obligations, the law will not allow it to use that self-created failure as a loophole to gain an advantage and put the other party at a disadvantageous position.

13. In “**Municipal Committee Katra v. Ashwani Kumar**”, **2024 SCC OnLine SC 840** the Hon’ble Supreme Court held as under:

“18. The situation at hand is squarely covered by the latin maxim ‘nullus commodum capere potest de injuria sua propria’, which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav¹ observing as below: –

“28. ...In this behalf, the maxim nullus commodum capere potest de injuria sua propria – meaning no man can take advantage of his own wrong – squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

“... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [[L.R.] 8 Q.B. 757 : 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that “it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned”. At p. 195, it is further stated that “a wrong doer ought not to be permitted to make a profit out of his own wrong”. At p. 199 it is observed that “the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed”.

19. *It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition."*

14. Further, the Hon'ble Supreme Court in "**Eva Agro Feeds (P) Ltd. v. Punjab National Bank**", (2023) 10 SCC 189 held that mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only cause avoidable expenses but also erode the credibility of the auction process itself.

15. In "**Golden Food Products India v. State of U.P.**", 2026 SCC OnLine SC 24 the Hon'ble Supreme Court observed as under:

"23. In the present case, the main contention of learned senior counsel for the appellant was that in an arbitrary manner, GDA - respondent No. 2 cancelled the appellant's bid on the ground that it was lower than the rates fetched for smaller plots of different dimensions of the same Scheme. That the technical bid of the appellant was accepted and the price quoted by the appellant was Rs. 29,500/- per square metre which was higher than Rs. 25,600/- per square metre which was the reserve price. The appellant's financial bid was also accepted. Therefore, the decision to subsequently cancel the financial bid of the appellant owing to "a low rate" quoted by the appellant as compared to the "other smaller plots" is an arbitrary and extraneous reason. That once the auction has been held in accordance with law and there had been no fraud, collusion or any other infirmity in the holding of the auction and the earnest money has been validly deposited, there could not have been any subsequent cancellation of the bid. In the instant case, merely because a higher rate could have been achieved then what was accepted and declared by the auctioning authority could not be the reason for setting aside the auction itself. That the price quoted by the appellant herein was 15.23% above the reserve price. Further, without any issuance of the notice to the appellant herein, the financial bid had been cancelled. Returning of the earnest money deposited by the appellant herein would not legitimize an arbitrary cancellation. Hence, it was contended that the impugned orders of the High Court may be set aside and a direction may be issued to the respondents herein to issue a letter of allotment of the subject plot in the name of the appellant herein."

16. Considering the aforesaid judgments and the fact that respondent-BSFC failed to perform his part of agreement, I hold

that it cannot penalize the auction purchaser who is always ready and willing to perform the terms of agreement. Thus, the impugned letter dated 11.09.2019 (Annexure-16 of the writ petition) is quashed.

17. Respondent-BSFC is directed to hand over the possession of the property to the petitioner immediately within 3 weeks from today. The BSFC and the petitioner will be governed by the Agreement for Sale-cum-Payment of Balance Loan dated 28.10.2016, whose terms and condition will be strictly adhered to by the parties. The timeline in the said agreement dated 28.10.2016 will be calculated taking the base date from today i.e. 14.10.2026.

18. The tenants occupying the property from now onwards will be the tenants of the petitioner and will pay rent to the petitioner. The petitioner will be at liberty to deal with them as the landlord.

19. Accordingly, this writ petition is **allowed**.

20. Pending Interlocutory Application(s), if any, stand disposed of.

(ANANDA SEN, J.)

High Court of Jharkhand, Ranchi
Dated : 14/10/2026
Tanuj/cp-2

Uploaded on 14.10.2026