

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 11386 of 2015 (W)

PETITIONER(S):

1. ANIL KUMAR P.,
S/O. LATE A.N. PURUSHOTHAMAN, AGED 41 YEARS,
THAZHATHUPARAMBIL HOUSE (PERUMOOZHICKAL),
MUTHOLAPURAM P.O., KOOHATTUKULAM-686665.
2. SMT. KOUSALYA PURUSHOTHAMAN,
W/O. LATE A.N. PURUSHOTHAMAN, AGED 63 YEARS,
THAZHATHUPARAMBIL HOUSE (PERUMOOZHICKAL),
MUTHOLAPURAM P.O., KOOHATTUKULAM-686665.

BY ADVS. SRI. JAMES ABRAHAM (VILAYAKATTU)
SRI. P. BALAN (VYTTILA)

RESPONDENT(S):

1. THE JOINT REGISTRAR (GENERAL),
CO-OPERATIVE JOINT REGISTRAR'S OFFICE, CIVIL STATION,
KAKKANADU, ERNAKULAM-30.
2. THE ASSISTANT REGISTRAR, CO-OPERATIVE SOCIETY,
MUVATTUPUZHA-686661.
3. THE KOOHATTUKULAM FARMERS SERVICE CO-OPERATIVE BANK LTD,
NO. E-45, KOOHATTUKULAM, REPRESENTED BY ITS
MANAGING DIRECTOR-686 662.

R1 & R2 BY GOVERNMENT PLEADER, SRI. SOJAN JAMES
R3 BY ADV. SRI. M. G. KARTHIKEYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: A TRUE COPY OF THE FINAL ORDER DATED 25.1.2008 PASSED BY KERALA STATE FARMER'S DEBT RELIEF COMMISSION.
- EXT.P2: A TRUE COPY FO THE REPLY DATED 8.3.2011 ISSUED BY THE 3RD RESPONDENT.
- EXT.P3: A TRUE COPY OF THE DECISION DATED 21/5/2008 TAKEN BY THE BOARD OF DIRECTOS OF THE 3RD RESPONDENT.
- EXT.P4: A TREU COPY OF THE RESOLUTION DATED 14/2/2009 PASSED BY THE GENERAL BODY OF THE 3RD RESPONDENT.
- EXT.P5: A TRUE COPY OF THE DECISION DATED 28/02/2009 TAKEN BY THE BOARD OF DIRECTORS OF THE 3RD RESPONDENT.
- EXT.P6: A TRUE COPY FO THE REPRESENTATION DATED 14/06/2012.
- EXT.P7: A TRUE COPY FO THE JUDGMENT DATED 17/12/2014 IN W.A.NO.1774/2014.

RESPONDENT(S)' EXHIBITS:

- EXT.R3(A): PHOTOCOPY OF THE JUDGMENT DATED 13.2.2009 IN O.P.NO.663/2007 PASSED BY THE FAMILY COURT, KOTTAYAM.
- EXT.R3(B): PHOTOCOPY OF THE PROJECT REPORT SUBMITTED BY THE FATHER OF THE FIRST PETITIONER AND HUSBAND OF THE SECOND PETITIONER ALONG WITH THE LOAN APPLICATION.
- EXT.R3(C): PHOTOCOPY OF THE RELEVANT PORTION OF SALE DEED DATED 6.07.2006.
- EXT.R3(D): PHOTOCOPY OF THE LETTER DATED 12.11.2009 ISSUED BY THE JOINT REGISTRAR (GENERAL), ERNAKULAM.
- EXT.R3(E): PHOTOCOPY OF THE JUDGMENT DATED 24.10.2014 IN W.P.(C) NO.14455/2013 PASSED BY THE HONOURABLE HIGH COURT OF KERALA.

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C)No.11386 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

This writ petition is filed by the petitioners seeking direction to the Respondents to permit the petitioners to remit the amounts specified in Ext.P1 and for a further writ of mandamus commanding Respondents to re-convey the property comprising in Survey Nos.97/6A/2 and 97/6C/2 of Koothattukulam Village to the 1st petitioner after receipt of the amount specified in Ext.P1.

2. Brief facts for the disposal of the writ petition are as follows:

3. The 2nd petitioner who is the mother of 1st petitioner and her husband had availed an over draft facility for Rs.1,00,000/- each on 12.10.2000 and 06.10.2000 respectively from the 3rd Respondent Bank. The loan was granted by the 3rd Respondent on the strength of mortgage executed by the 1st petitioner over 31.25 cents of landed property along with residential building in the survey numbers referred to above, of Koothattukulam Village. The 2nd

petitioner's husband expired on 26.10.2003.

4. It is the contention of the petitioners that consequent to the death of 2nd petitioner's husband, the loan could not be repaid in time and thereupon the 3rd Respondent proceeded with coercive steps to recover the amount after obtaining an award. Pursuant to the award, the property mortgaged was put in auction in the year 2006 and since there were no bidders, the property was auctioned by the 3rd Respondent in its favour for an amount of Rs.4,48,154/-, which according to the learned counsel for the 3rd Respondent, is the amount as per the award. Thereafter, the said auction was confirmed by the 2nd Respondent and sale deed was registered in favour of the 3rd Respondent on 31.05.2006. Subsequently, the 3rd Respondent issued an eviction notice asking the petitioners to vacate the property in question within 30 days from the date of receipt of the notice.

5. It is the further case of the petitioners that aggrieved by the said notice, 1st petitioner approached the Kerala State Farmers' Debt Relief Commission and the Commission had granted an interim order staying the operation of the eviction notice. Thereafter, Commission

passed a final order holding that the petitioner is eligible for debt relief and accordingly, the Commission in exercise of the powers under sub-section (3) of Sec.5 of the Act, debt relief of Rs.75,000/- was granted and directed the petitioner to remit the balance amount as provided under Ext.P1 order.

6. On passage of Ext.P1 order, 1st petitioner approached the 3rd Respondent to remit the balance amount as specified in Ext.P1, but the 3rd Respondent did not permit the petitioners to remit the amount and it is contended that it was orally replied that the 3rd Respondent alone cannot take a decision in the matter.

7. It is also contended that pursuant to an application filed under the Right to Information Act, seeking reply as to whether Rs.75,000/- granted by the Commission was accounted in the loan account of the 2nd petitioner and whether the 3rd Respondent took a decision to return the mortgage property to the petitioners and requesting also for a copy of the resolution of the General Body meeting of the 3rd Respondent, Ext.P2 reply was issued stating that the amount granted by the Commission was accounted in the petitioner's loan account on 09.07.2009 and the copies of the resolution

taken by the Bank were also provided to the petitioners.

8. It is the contention of the petitioners that the Board of Directors of the 3rd Respondent Bank as per its decision dated 21.05.2008 decided to re-convey the property on the petitioners remitting the entire amount due to the 3rd Respondent Bank as on that date, subject to the sanction and approval of the 1st Respondent. Thereafter, as per Ext.P4 resolution dated 14.02.2009, General Body of the 3rd Respondent has approved the action of the Board of Directors as per Ext.P3. Thereafter vide an order dated 28.02.2009, the Board of Directors of the 3rd Respondent as per Ext.P5 has taken a decision authorizing the Managing Director to seek approval of the 1st Respondent through the 2nd Respondent to re-convey the property to the petitioners on condition that the entire award amount plus interest and other charges are paid by the petitioners to the 3rd Respondent Bank. But no action was taken accordingly and it is thus aggrieved by the inaction of the Bank pursuant to Exts.P3 to P5, petitioners have approached this Court by filing this writ petition.

9. 3rd Respondent Bank has filed a counter affidavit refuting the statements and claims made by the petitioners

and contended that the entire actions of the Bank are justified. So also, it is contended that the petitioners are not entitled to get the benefit provided under Ext.P1 order of the Debt Relief Commission due to efflux of time and for the reason that the 3rd Respondent is a Co-operative Society functioning for the benefit and empowerment of the members of the Society. It is also contended that as per Ext.R3(d), the Registrar has declined permission to Ext.P5 decision of the Board as early as in 2009 holding that the Bank cannot re-convey the property but can only sell the same through public auction.

10. Heard the learned counsel for the petitioners, Sri. James Abraham, learned Senior Government Pleader, Sri. Sojan James for Respondents 1 and 2 and the learned counsel for the 3rd Respondent, Sri. M.G.Karthikeyan.

11. Having considered the rival submissions, the question that arises for consideration is whether the petitioners are entitled to re-conveyance of the mortgaged property in view of the refusal of sanction by the 1st Respondent to the 3rd Respondent Bank to re-convey the property to the petitioners.

12. Learned counsel for the petitioners has invited my attention to a judgment of a Division Bench of this Court

produced along with the writ petition as Ext.P7 in Writ Appeal No.1774 of 2014 dated 17.12.2014, wherein a similar contention was considered by a Division Bench of this Court and allowed the claim of the petitioner for re-conveyance of the property. I have gone through the said judgment and in my view, the facts and circumstances in the said case considered by this Court was similar in all respects. There also, the Joint Registrar did not grant permission to the Bank to re-convey the property in spite of the decision of the Bank to re-convey the property to the party concerned. In that circumstances, I am of the considered opinion that, petitioners in this writ petition are also entitled to get similar treatment. Moreover, on an evaluation of the facts, law and circumstances involved in the case, judicial discipline requires me to follow the said judgment and accordingly I do so.

13. Therefore, there will be a direction to the 3rd Respondent Bank to re-convey the property to the petitioners within a period of 15 days from the date of receipt of the entire award amount with interest and cost as claimed by the Bank. In order to enable the petitioners to make the payment, the Bank shall calculate the amount due to it inclusive of interest

and other charges, from the petitioners and communicate the same to the petitioners within 30 days from the date of receipt of a copy of this judgment. The petitioners shall pay the said amount to the Bank within 30 days thereafter. On payment of the said amount by the petitioners, the Bank will execute necessary documents in favour of the petitioners at the expense of the petitioners within 15 days thereafter.

The writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
16.11.2015