IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY,THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 26593 of 2015 (Y)

PETITIONER : -

MELATH VEETTIL THAMBAYI, AGED 50 YEARS,
W/O.GANGADHARAN, KAYANADI,
PERIYA VILLAGE AND POST,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV.SRI.A.ARUNKUMAR

RESPONDENTS :-
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1. SENIOR INSPECTOR/SALE OFFICER,
   THE HOSDURG PRIMARY CO-OPERATIVE AGRICULTURE AND
   RURAL DEVELOPMENT BANK LTD.
   DEVAN ROAD, KANHANGAD, KASARAGOD - 671 315.

2. THE HOSDURG PRIMARY CO-OPERATIVE AGRICULTURE
   AND RURAL DEVELOPMENT BANK LTD, CHULLIKKARA BRANCH,
   REPRESENTED BY ITS BRANCH MANAGER, CHULLIKKARA,
   VELLARIKKUND TALUK, KASARAGOD - 671 532.

3. KRISHNAN NAIR,
   S/O.CHARADAN NAIR, MELATH VEETTIL,
   KAYANADI, P.O.PERIYA, HOSDURG TALUK, 671 552.

4. JOINT REGISTRAR (GENEAL),
   OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETY,
   CIVIL STATION, VIDYANAGAR, KASARAGOD 671 121.

R2 BY ADV.SRI.V.G.ARUN
R2 BY ADV.SRI.T.R.HARIKUMAR
BY SR. GOVERNMENT PLEADER SRI. K.C. VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26593 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : SALE NOTICE DATED 17/4/2015.

EXHIBIT P1(a): ENGLISH TRANSLATION OF EXT.P1.

EXHIBIT P2 : INFORMATION RECEIVED UNDER RIGHT TO INFORMATION ACT DATED 25.08.2015.

EXHIBIT P2(a): ENGLISH TRANSLATION OF EXT.P2.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 26593 of 2015

Dated this the 04th day of September, 2015

JUDGMENT

Heard the learned counsel for the petitioner, the learned counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. The petitioner availed himself of an agricultural loan of ₹60,000/- in 2011 by mortgaging certain immovable property. In the course of time, when the petitioner committed default, the second respondent Bank, after following the due procedure, brought the mortgaged property for sale and, in fact, sold it on 27.05.2015.

3. Ventilating his grievance that his property had been sold at auction without allowing him to pay the loan in installments, the petitioner has filed the present writ petition.

4. In response to the submissions made by the learned counsel for the petitioner, the learned counsel for the second respondent Bank has brought to my notice Section 21 of the Co-operative Agricultural and Rural Development Banks Act (the 'Act' for brevity).

5. It is evident from Section 21 of the Act that a borrower is required to file an application within thirty days from the sale of the property to have the sale set aside on his depositing with the Sale Officer the entire loan amount along with interest. In the present instance, the petitioner does not seem to have taken recourse to Section 21 of the Act. On the other hand, he has straight away come to this Court seeking a mandamus to the second respondent to permit the petitioner to clear off the loan in instalments. It needs not much cogitation to hold that the said procedure in the face of a statutory limitation is impermissible.

6. In the facts and circumstances, this Court is constrained to dismiss and accordingly dismisses the writ petition as being devoid of merit.

7. At this juncture, the learned counsel for the petitioner has persistently pleaded that the petitioner may be

permitted to file an application for setting aside the sale before the first respondent belatedly, i.e. beyond thirty days from the date of the sale. If at all the petitioner intends to file an application, he needs no express permission from the Court, for any application to be filed by him shall always be subject to its maintainability. It is axiomatic to hold that, if there is any statutory embargo against the maintainability of a petition, Article 226 of the Constitution of India cannot be used for nullifying a valid statutory mandate.

8. Having said thus, this Court further observes that if the petitioner submits any application as regards the loan or the sale of the property, the respondent Bank shall consider it strictly in accordance with law.

With the above observation, this writ petition is dismissed.

DAMA SESHADRI NAIDU
JUDGE

DMR/-