

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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WRIT PETITION No.31883 OF 2015

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ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed seeking to declare the action of respondents in seizing the petitioners' residential house along with movables, though the same is not covered by the mortgage, as illegal, arbitrary and violative of the rights guaranteed under Articles 14, 21 and 300A of the Constitution of India.

The petitioners, having borrowed certain amount from the respondent – Bank, have defaulted in repaying the same. Therefore, the respondent – Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and after issuing necessary Demand Notice under Section 13 (2) of the Act, Possession Notice, dated 10.04.2015, was issued mentioning the amount due as Rs.74,62,457/- together with interest, other expenses and charges thereon from 01.12.2014.

In this Writ Petition, it is the grievance of the petitioners that though only an extent of Ac.0-45 cents of land covered by R.S.No.48/1 situated at Narsingaraju Agraharam, Undi Mandal, West Godavari District, was mortgaged, the respondents have illegally taken possession of the house, which is not mortgaged and is not constructed within Ac.0-45 cents of land mortgaged.

On instructions, it is brought to our notice by Sri B. Harinath Rao, learned counsel for respondent – Bank, that questioning the Possession Notice, petitioners have already approached the Debts Recovery Tribunal, Visakhapatnam, by filing S.A.No.219 of 2015 and in I.A.No.664 of 2015 filed in the said S.A., the Tribunal, by order, dated 23.09.2015, has passed conditional interim order. It is further submitted that such passing of conditional order is not disclosed in the affidavit filed in support of the Writ Petition. It is also submitted that at the time of mortgage, the land was vacant and thereafter, the petitioners have constructed the house within the boundaries of Ac.0-45 cents of land, which was mortgaged to the respondent – Bank.

In view of the pendency of S.A.No.219 of 2015 before the Debts Recovery Tribunal, Visakhapatnam, we are not inclined to record any finding on merits, but we deem it appropriate to dispose of the Writ Petition by directing the Debts Recovery Tribunal, Visakhapatnam, to dispose of the S.A. as expeditiously as possible, preferably within a period of two (2) months from the date of receipt of a copy of this order. It is open to the petitioners to raise all their contentions before the Tribunal in the pending S.A..

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 06, 2015

MD

