

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

-
WRIT PETITION No.14430 OF 2015

ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in attempting to dispossess the petitioner from agricultural land bearing R.S.No.48/1 to an extent of Ac.1.02 cents situated at Narasingarajapuram Agraharam Village, Undi Mandal, West Godavari District and to take possession at any cost and at any time by bringing further men as illegal and arbitrary, and consequently, to direct the respondents to set aside the possession notice, dated 10.4.2015, and not to dispossess the petitioner from his immovable landed property without following the due process of law.

2. Heard.

3. A statutory effective alternative remedy of filing an appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") before the Debts Recovery Tribunal is available to the petitioner. No doubt, availability of statutory remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, but the petitioner must show that his case falls under any one of the three grounds viz., 1) violation of principles of natural justice, 2) proceedings were wholly without any jurisdiction and 3) violation of fundamental rights, as enumerated in a decision of the Apex Court reported in **WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS, MUMBAI**, wherein it was held at para No.15 as under:

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

The case of the petitioner does not fall under anyone of the aforementioned three grounds. Therefore, the Writ Petition is liable to be dismissed.

4. Accordingly, the Writ Petition is dismissed leaving open the remedy of filing an appeal under Section 17 of the SARFAESI Act before the Tribunal. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE M.S.K.JAISWAL

Date: 14.5.2015

AMD/PRV

THE HON'BLE SRI JUSTICE K.C.BHANU

AND

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