

HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO.18207 OF 2009

ORDER:

1. This writ petition is filed challenging the order dated 28.8.2008 passed by the 1st respondent-Tribunal in O.A.No.53 of 2005 in favour of the 5th respondent.

2. Brief facts of the case are as follows:

The 5th respondent, who is a member of the 4th respondent-Society, availed loan of Rs.1,00,000/- from the 4th respondent-Society under HIG scheme for the purpose of constructing the house, situated at D.No.3, Gopinadhnagar, Sarpavaram Village, Kakinada Rural Mandal, East Godavari District. On the ground of default in repayments of the loan amount by the 5th respondent, the 3rd respondent initiated proceedings under Section 71 of the Andhra Pradesh Co-operative Societies Act (for short, 'the Act') and obtained certificate dated 21.1.1996 against the 5th respondent. Thereafter, on 5.8.2004, CEP Proceedings were initiated against the 5th respondent basing on the certificate issued under Section 71 of the Act showing the liability of Rs.1,24,631/-, and the auction was conducted in respect of house property of the 5th respondent. The petitioner became successful bidder in the auction. A certificate was also issued in favour of the petitioner. At that stage, the 5th respondent filed the above O.A. before the Tribunal on the ground that he was not aware of the proceedings initiated against him, and no notice was issued to him and therefore, it amounts to violation of principles of natural justice. Considering the submissions made by the 5th respondent, the Tribunal has passed the order setting aside the certificate issued under Section 71 of the Act and the subsequent CEP proceedings, on the ground that

the notices were not properly served on the 5th respondent either while issuing certificate under Section 71 of the Act or while conducting CEP proceedings. While passing the order under challenge, the Tribunal also granted liberty to respondents therein to initiate fresh proceedings before the appropriate forum to settle their claims by affording proper opportunity to the 5th respondent and by observing principles of natural justice. Aggrieved by the order of the 1st respondent-Tribunal, the petitioner, who is auction purchaser, filed the present writ petition.

3. Heard and perused the material available on record.

4. It is the plea of the 5th respondent before the Tribunal that he was not given sufficient opportunity to participate in the proceedings initiated against him and that the certificate issued under Section 71 of the Act and the auction conducted by respondents 2 to 4 are against the principles of natural justice. After considering the available material on record, the Tribunal observed that the 5th respondent was not given sufficient opportunity. Therefore, this Court is of the view that the order under challenge is in accordance with law and it does not warrant any interference by this Court.

5. It is submitted by the learned Counsel for the petitioner that the petitioner deposited the price of the auctioned property.

6. In view of the above submission made by the learned Counsel for the petitioner, and in view of the fact that the Tribunal granted liberty to respondents 2 to 4 to initiate fresh proceedings before the appropriate forum to settle their claims, it is made clear that the petitioner is at liberty to file an application before the respondent concerned for return of the amount deposited by him. On such application being filed, the respondent concerned is directed to return the amount deposited by the petitioner.

7. Respondents 2 to 4 are directed to issue notice to the 5th respondent and proceed with the fresh proceedings as observed by the Tribunal, within a period of two months from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition is disposed of. No order as to costs. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Dated: 26.2.2015

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