

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

WRIT PETITION No.14787 of 2015

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

This writ petition is filed by the petitioner challenging the e-Auction notice dated 20.4.2015, including the sale of the properties on 27.5.2015 pursuant to the sale notice dated 20.4.2015 and e-Auction notice dated 6.3.2015, proposing to sell the land admeasuring Ac.1.00 cents and further extent of Ac.1.00 cents, out of Acs.3.60 cents in D.No.401/1 of Chinnachowk Village, Kadapa District, covered by registered sale deeds bearing document Nos.4071/2000 and 4072/2000, respectively, both dated 10.8.2000.

2. It appears that respondent Nos.3 and 4 have availed loan from the 2nd respondent-State Bank of India, Chinnachowk Branch, Kadapa District, by mortgaging certain properties. As respondent Nos.3 and 4 have defaulted in repayment of loan amount, proceedings were initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the SARFAESI Act'), and accordingly, e-Auction notice dated 20.4.2015, including the sale of the properties on 27.5.2015 pursuant to the sale notice dated 20.4.2015 and e-Auction notice dated 6.3.2015, proposing to

sell the land admeasuring Ac.1.00 cents and further extent of Ac.1.00 cents, out of Acs.3.60 cents in D.No.401/1 of Chinnachowk Village, Kadapa District, covered by registered sale deeds bearing document Nos.4071/2000 and 4072/2000, respectively, both dated 10.8.2000, was issued.

3. It is the case of the petitioner that she is the absolute owner and possessor of the aforesaid Acs.2.00 cents, out of Acs.3.60 cents of agricultural land in D.No.401/1 of Chinnachowk Village, Kadapa District, having purchased the same vide registered sale deeds bearing document Nos.4071/2000 and 4072/2000, respectively, both dated 10.8.2000. However, respondent Nos.3 and 4 have played fraud and mortgaged the said property illegally, which actually belongs to her, and the same is accepted by the 2nd respondent-Bank without examining the documents and title over the said property. It is further submitted that though respondent Nos.3 and 4 are claiming title over the said property basing on Agreement of Sale-cum-Irrevocable General Power of Attorney, bearing document No.4837/2009, dated 21.10.2009, there is no transfer of property in their favour. In spite of the same, without noticing the same, the 2nd respondent-Bank has sanctioned loan to respondent Nos.3 and 4 basing on the legal opinion rendered by its panel advocate and, as a result, the petitioner is being dispossessed from the subject property.

4. In the counter affidavit filed on behalf of respondent

Nos.1 and 2, while denying various allegations made by the petitioner, it is stated that the 2nd respondent-Bank has accepted the registered document dated 21.10.2009 (Document No.4837/2009) along with original Gift Settlement Deed dated 30.10.1979, bearing document No.5157/1979, and Gift Settlement Deed dated 31.10.1979, bearing document No.5170/1979. It is categorically admitted that the document dated 21.10.2009, which is an Agreement of Sale-cum-Irrevocable General Power of Attorney executed by Sri N.S. Ghouz Mohiuddin in favour of Sri Shaik Sultan Baba, who are close relatives, is a concluded transaction of sale.

5. Heard Sri G. Ram Gopal, learned counsel for the petitioner, as well as Sri B.S. Prasad, learned Standing Counsel for respondent Nos.1 and 2, and Sri V.R. Reddy Kovvuri, learned counsel appearing for respondent Nos.3 and 4.

6. It is not in dispute that against the e-Auction notice dated 20.4.2015, the petitioner has already approached the Debts Recovery Tribunal, Andhra Pradesh, Hyderabad, by way of filing an appeal in S.A.No.319 of 2015, as contemplated under Section 17 of the SARFAESI Act. Along with the appeal, the petitioner has also filed I.A.No.2047 of 2015 in S.A.No.319 of 2015 seeking interim stay of all further proceedings pursuant to the e-Auction notice dated 20.4.2015. It is submitted that as there is no Presiding Officer for the Tribunal, neither appeal nor interlocutory application is being

taken up for consideration and in view of the urgency in the matter, the petitioner has approached this Court. This Court, while ordering notice before admission, by order dated 21.5.2015, granted interim stay, as prayed for, and the said order is being continued till date.

7. When the document dated 21.10.2009 itself is an Agreement of Sale-cum-Irrevocable General Power of Attorney, prima-facie, it is not open to the 2nd respondent-Bank to plead that such document is a concluded sale transaction. The petitioner claims ownership on a part of the subject land, based on the registered sale deeds dated 10.8.2000, vide document Nos.4071/2000 and 4072/2000. In any event, as the appeal being S.A.No.319 of 2015 filed by the petitioner is pending before the Debts Recovery Tribunal, Hyderabad, it is a matter to be decided by the Tribunal, subject to establishing prima-facie title over the subject land by the petitioner. The Tribunal shall also consider the further contention raised by the petitioner that as the subject land is an agricultural land, the authorities cannot proceed under the provisions of the SARFAESI Act.

8. In view of the pendency of the appeal before the Debts Recovery Tribunal, Hyderabad, we deem it appropriate to direct the Tribunal to dispose of S.A.No.319 of 2015, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Till disposal of appeal by the Tribunal, respondent Nos.1 and 2

are directed not to take any steps for sale of the subject land.

9. Subject to the above directions, this writ petition is disposed of, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

06.07.2015.

Msr

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