

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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WRIT PETITION No.3353 OF 2015

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

This Writ Petition, under Article 226 of the Constitution of India, is filed to declare the action of respondent Nos.1 and 2 in taking possession of petitioners' plot admeasuring 245 square yards in Sy.No.797 situated at Miryalguda Revenue village and Mandal, Nalgonda District, bounded by North: Plot of Jampala Narsimha Rao, now held by Voleti Uma Shankar, South: Plot of Gunda Venkaiah, now held by Kukkadapu Raja Shekhar, East: Road (internal Road) and West: PWD Road, as illegal and arbitrary.

2. Brief facts that are necessary for disposal of the present writ petition may be stated as follows:

Petitioners claim to be the owners of the land admeasuring 245 square yards in Sy.No.797 situated at Miryalguda Revenue village having purchased the same under a registered sale deed, dated 06.03.1981. Thereafter, they have been in continuous possession and enjoyment of the property. It seems that one borrower by name Kanaparthi Shiva Prasad obtained loan of Rs.1,00,000/- from respondent No.1-bank and committed default in payment of the loan to the bank. Therefore, the loan account of said Shiva Prasad was declared as Non-Performing Asset and proceedings were initiated under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). Since the notice issued under Section 13(2) of the SARFAESI Act has not been complied with, bank issued notice under Section 13(4) of the SARFAESI Act for sale of the mortgaged asset and the bank also approached the Chief Metropolitan Magistrate-cum-Senior Civil Judge, Nalgonda under Section 14(1) of

the SARFAESI Act for taking possession of the property. Accordingly, the Chief Metropolitan Magistrate has passed an order to take possession of the secured asset by appointing respondent No.2 as Advocate-Commissioner. In pursuance of the said order, Advocate-Commissioner erected a notice board. Challenging the action of the respondents, the present writ petition is filed.

3. Learned counsel for the petitioners contended that instead of taking possession of the secured asset, respondent No.2/Advocate-Commissioner erected a sign board in the property of the petitioners without even got measured the property, therefore, he prays to admit the writ petition.

4. Learned Standing Counsel appearing for the 1st respondent bank contended that as the borrower failed to pay the loan taken, the bank has invoked the provisions of the SARFAESI Act, therefore, the bank is at liberty to sell the property covered under the secured asset viz., the property mortgaged by Shiva Prasad in favour of the bank and hence, the bank is at liberty to proceed to auction the secured asset in terms of the publication and that the remedy of the petitioners is to file an application under Section 17 of the SARFAESI Act.

5. There is a serious dispute with regard to identity of the property with reference to the sale deed, extent of the land owned by the petitioners and the extent of the secured asset and the said dispute cannot be determined by this Court exercising the powers under Article 226 of the Constitution of India.

6. No doubt, availing of statutory alternative remedy is not a bar for invoking the jurisdiction of this Court under Article 226 of the Constitution of India. But, at the same time, the petitioners must show that their case falls under any of the three grounds as contemplated by the Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar**

of Trade Marks, Mumbai and others ^[1] viz., i) violation of principles of natural justice, ii) violation of fundamental rights and iii) the authority, which issued the proceedings lacks jurisdiction. But, the case of the petitioners does not fall under any one of the three grounds as mentioned above. The petitioners can as well approach the Debts Recovery Tribunal to seek redressal of their grievance. Therefore, the Writ Petition is devoid of merit and the same is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed leaving open the remedies available to the petitioners under law. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE M.SEETHARAMA MURTI

Date:24.02.2015
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^[1] (1988) 8 SCC 1