THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10391 of 2005

Dated : 30.04.2015

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Between:

M/s.Narne Estates Pvt. Ltd.,

Rep., by its Managing Director,

Col (Retd.) N. Ranga Rao, S/o.Late N.V.Naidu,

Age : 65 yrs, Situated at No.1, Gunrock Enclave,

Kharkana, Secunderabad

.. Petitioner

And

The Government of Andhra Pradesh

Rep., by its Secretary,

Revenue Department,

Secretariat, Hyderabad & others

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10391 of 2005

ORDER :

One Late Lingala Sathaiah S/o.Kistaiah, R/o.Kondamadugu village was the defaulter of excise arrears of Rs.79,443.74 paise for the years 1354- F, 1359, 1360F & 1361 F. Several extent of lands which were hypotheciated against the said contract were attached and subsequently, put to auction on 27.05.1985 for realization of arrears. Before and after this date also, several efforts were made for conducting of auction. In the auction conducted on 27.05.1985, it was knocked down in favour of highest bidder. But the said auction was nullified on the ground that there was no clear interval of 30 days between the date of notice and the date of sale. The next auction was conducted on 25.11.1988. In the said auction the petitioner was identified as successful auction purchaser and it was knocked down in his favour for Rs.6,00,000/- and 15% of the bid amount was deposited. The persons interested in the property who are the family members of the original defaulter represented to the District Collector expressing their willingness to pay the arrears due and to cancel the auction sale of the property. The amounts due were paid as certified by the Excise Superintendent in his letter dated 19.01.1989.

2. Litigation ensued with reference to alleged sale properties. Relying on agreement of sale (claimed as sale deed) dated 15.04.1956 application was moved before the Mandal Revenue Officer, Bibinagar to validate the sale under Section 5-A of the Andhra Pradesh Rights in Land & Pattedar Pass Books Act, 1971 (for short 'the Act 1971'). There were two rounds of contest. In the first round matter was remitted to M.R.O. to conduct the issue of validation of sale based on agreement dated 15.04.1956. On remand the Mandal Revenue Officer, rejected the claim of the applicants for validation of the sale. This was assailed before the Revenue Divisional Officer in the appeal under Section 5-B of the Act, 1971. The petitioner herein also contested the said appeal. Apart from the issue of validating of agreement of sale/Sale deed, the issue of conducting of auction by the respondent-authorities under the Revenue Recovery Act, 1864 was also contested. The Revenue Divisional Officer held in favour of the persons who claimed that they have purchased the property and ordered grant of validation of sale in accordance with Act, 1971. This was further assailed by way of Revision before the District Collector by the petitioner herein as well as others in two separate Revision Petitions. Both the Revision Petitions were heard together and disposed of by order dated 15.02.2005. The District Collector held that the auction conducted on 25.11.1988 was erroneous as it was contrary to the decree passed in O.S.No.195 of 1958 by the III Assistant Judge, City Civil Court, Hyderabad.

3. The petitioner assails the order of the District Collector dated 15.02.2005 to the extent of nullifying the sale conducted on 25.11.1988.

4. Learned counsel for the petitioner contends that he has bonafidely participated in the auction conducted by the respondent authorities. He paid the entire sale consideration of Rs.6,00,000/- long ago. On account of litigation pursued by the persons interested and the family members of the original defaulter the petitioner is made to suffer all along for no fault of him; the entire amount is locked up and is unable to enjoy the property, since the sale is not confirmed in his favour

even though he was successful auction purchaser and the entire sale consideration was paid long ago.

5. Learned counsel further contends that the litigation initiated by the successors of the original defaulter as well as persons interested, is frivolous. Under the guise of the said litigation the issue is dragged on and not allowed confirmation of sale in his favour. He further contended that there was no valid sale of the property in issue by rival claimants. There could not have been sale of the property which was already seized by the Government and the dues were not paid to the Government. Thus, question of alienating the said property by third party would not arise.

6. Learned counsel for the petitioner further contends that the sale is not annulled so far, and he being a successful auction purchaser and having paid the entire sale consideration in terms of the provision contained in Section 38 (3) of the Andhra Pradesh Revenue Recovery Act, 1864, the sale has to be confirmed and possession has to be delivered to the petitioner.

7. Learned counsel for the petitioner contends that the auction was properly conducted. The entire property of the original defaulter was in the custody of the Government and therefore it was permissible for the Government to conduct auction of any extent of property. The original defaulter having huge extent of agricultural land and what was put to auction was a small extent, therefore, what was auctioned was within 1/18th of the share as is sought to be contested. This aspect was not considered by the District Collector before passing the orders impugned in the writ petition.

8. As seen from the order of the District Collector as well as the order passed by the Revenue Divisional Officer, both extensively discussed on the decree passed by the III Assistant Judge, City Civil Court, Hyderabad in O.S.No.195 of 1958. As seen from the said orders, in terms of the decree passed in the said suit, 17/18 shares were asked to be kept aside and only 1/18th share was directed to be put for auction. Whereas in the auction notice issued, the entire extent of land in four survey numbers was put to auction. The District Collector held that such decision to conduct auction to the entire extent of land in four survey numbers was erroneous as it is contrary to the decree passed in O.S.No.195 of 1958. As elaborately discussed by

the District Collector in the order impugned in this writ petition, the authorities were aware the auction of the property of the defaulter can be conducted only on 1/18th share of the property. Accordingly, earlier auctions were conducted by confining the sale to 1/18th share from the year 1965 onwards and several attempts were made to sell the property but there were no prospective buyers for long time. Suddenly in the year 1985, the Mandal Revenue Officer has notified the entire extent of land and the same was continued. The 2nd auction was conducted on 25.11.1988. No explanation was forthcoming as to why the entire property was put to auction when the earlier auction notice was issued only to 1/18th share. Having noticed these facts the District Collector found fault in conducting auction to the entire extent of property.

9. As seen from the orders of the Mandal Revenue Officer, as well as the Joint Collector the crucial issue on conducting of the sale was the nature of decree passed in O.S.No.195 of 1958. This fact was known to the petitioner. The decree is not filed by the petitioner though the learned counsel sought to contend that the purport of the decree was not to confine to 1/18th share. The matter was adjourned earlier to enable the counsel to secure the copy of decree and to file it. Learned counsel submits that the decree is not available. Passing of decree in O.S.No.195 of 1958 was known to the petitioner atleast at the stage of appeal before the Revenue Divisional Officer but no effort is made by the petitioner to obtain a copy of the decree, which according to him supports his contention that the civil Court never confined conducting of auction to 1/18th share of the land in issue. Even in the grounds raised in support of prayer in the writ petition, no such contention is raised. The entire attack on the orders passed by the District Collector was on merits of conducting of auction and the role played by the successors of the defaulter as well as third party interested persons. Thus, there was no averment regarding the nature of decree passed and the view taken by the Collector in nullifying the sale conducted on 25.11.1988.

10. As discernable from the orders of R.D.O. or District Collector, the civil Court in O.S.No.195 of 1958 categorically held that only 1/18th share of the property can be put to auction, where as more than 1/18th share was put to auction when the sale was conducted on 25.11.1988. The District Collector was right in holding that the said sale is vitiated. Furthermore even by now, the petitioner is only an auction purchaser and sale was not confirmed in his favour. Even according to the petitioner

there was no stay finalising the sale. The petitioner has not made any effort to get the sale confirmed nor sought for any relief against delay in confirmation of sale. A well reasoned order is passed by the District Collector in exercise of power vested in him under Section 9 of the Act 1971; he was competent to pass such orders; and there is no error much less patent error in the decision taken to nullify the sale conducted on 25.11.1988 warranting interference by this Court. Hence, the writ petition fails.

11. Accordingly, the writ petition is dismissed. However it is made clear that it is open to the petitioner to work out his remedies against the authorities concerned for subjecting the petitioner to undue hardship and suffering from 25.11.1988 in conducting illegal auction contrary to the mandate of competent court, in receiving full sale consideration and keeping him waiting for almost two decades. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

__________________ **P.NAVEEN RAO,J**

30th April, 2015

Rds