

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

WRIT PETITION No.33568 of 2015

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

This writ petition is filed seeking Mandamus to declare the action of the 1st respondent in conducting auction on 14.09.2015 in respect of the secured asset, which is the land admeasuring 0.50 cents covered by Sy.No.321/B situated at Mandagiri Village, Adoni Mandal, Kurnool District, as illegal.

Respondent Nos.3 and 4 are the borrowers of certain loan amount from the 1st respondent – Bank and they have committed default in repayment, as such, the Bank has initiated measures under the SARFAESI Act. Questioning the sale notice dated 09.11.2014 issued by the Bank, respondent Nos.3 and 4/original borrowers have filed S.A.No.821 of 2014 before the Debts Recovery Tribunal, Hyderabad. In the said S.A., the original borrowers have obtained an interim order on 16.12.2014 on condition of depositing 25% of the amounts claimed by the Bank in its sale notice, in three instalments of 5%, 10% and 10%. It is stated that as respondent Nos.3 and 4

have paid only the first instalment and committed default in paying the other two instalments, the property was put to auction on 14.09.2015 and it appears the 2nd respondent has emerged as the highest bidder. Questioning the auction held on 14.09.2015, this writ petition is filed.

During the course of hearing, it is fairly submitted that S.A. filed by respondent Nos.3 and 4 is still pending consideration before the Tribunal.

On the other hand, it is submitted by learned counsel for the respondent Bank that respondent Nos.3 and 4 have acquired title over the property by way of gift from their mother on 05.11.2009 and the property was mortgaged to the Bank on 19.03.2010. The petitioners claimed property by way of gift pursuant to the revocation of gift deed, dated 18.11.2010. It is submitted that as the charge is created over the property on 19.03.2010 i.e., prior to revocation, the petitioners have not acquired any rights to claim the property.

In view of the pendency of S.A.No.821 of 2014, this Court is of the view that it is not necessary to go into the aspects raised by the petitioners at this stage. If the petitioners claim any interest over the property, they can

either question the auction independently or file an implead application in the said S.A seeking their impleadment as party respondents to the S.A. In view of availability of remedy under Section 17 of the SARFAESI Act and the stand taken by learned counsel for the respondent –Bank that sale certificate is also issued in favour of the 2nd respondent, who has paid the entire bid amount, this Court does not find any reason to entertain this writ petition.

Granting liberty to the petitioners to approach the Debts Recovery Tribunal, this Writ Petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

**JUSTICE R.SUBHASH
REDDY**

**JUSTICE A.SHANKAR
NARAYANA**

07.12.2015

v v