

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION No.38971 of 2015

ORDER:

Heard Sri V.Srinivas, learned counsel for petitioner, Sri D.Ganeswara Naidu, learned counsel for respondent Nos.1 and 3 and learned Government Pleader for Cooperation for respondent Nos.5 and 7. Notice sent to 4th respondent was returned with endorsement "not claimed". Therefore 4th respondent is deemed to be served.

2. The 1st respondent is a Cooperative Bank, which went into liquidation. The 2nd respondent had borrowed loan from the

1st respondent Bank and mortgaged property belonging to it in Sy.No.238 of Manchirevula Village, Rajendra Nagar Mandal, Ranga Reddy District. The 2nd respondent became a defaulter in repayment of the loan and was contemplating to sell some of its properties to clear off the loan.

3. The petitioner, who was a depositor in the 1st respondent Bank, came to know about the intention of 2nd

respondent and approached the 2nd respondent expressing an interest to purchase an extent of 2400 sq. yards within the specified boundaries from the 2nd respondent.

4. The 2nd respondent then addressed a letter dt.26-05-2003 to the 1st respondent seeking it's permission to sell this extent of land in favour of petitioner and pay the sale proceeds to 1st respondent.

5. The Special Officer of the Bank granted such permission on 31-05-2003.

6. Thereafter a sale deed dt.03-05-2003 in respect of the above extent of land was registered by 2nd respondent in favour of petitioner on 04-06-2003. The amounts realized from the sale were credited to 1st respondent Bank's account as payment towards the loan dues of 2nd respondent.

7. Subsequently by mistake, the extent of 2400 sq. yards sold to petitioner under the above sale deed was also put to auction by 1st respondent, in which the 4th respondent became a

successful bidder. Thereupon a sale certificate dt.18-03-2004 was issued in favour of 4th respondent for an extent of Ac.2.00 in Sy.No.238 including 2400 sq. yards already sold to petitioner.

8. Petitioner contends that once a sale deed has been executed in her favour in respect of 2400 sq. yards, the 2nd respondent/1st respondent had no right in the said land to again convey it to 4th respondent.

9. Petitioner therefore approached the A.P. Cooperative Tribunal by filing C.T.A.No.7 of 2008 for setting aside the sale certificate issued in favour of 4th respondent to the extent of the property which she had purchased under the sale deed.

10. On 02-01-2009, the Tribunal allowed the said appeal and remitted the matter back to 3rd respondent/Sale Officer directing him to conduct enquiry by recording the evidence of the parties and adjudicate the claim of petitioner.

11. The 3rd respondent then gave notice to all the parties. 2nd respondent and 4th respondent did not appear before him. So a paper publication was also made on 03-07-2009 in Andhra Bhoomi Telugu Daily

newspaper seeking their appearance on 08-07-2009, but they did not appear before him. They were set *ex parte*.

12. Then by order dt.30-09-2009, 3rd respondent held that the sale deed in favour of petitioner transferring 2400 sq. yards to her belonging to 2nd respondent was valid, and to that extent the sale certificate executed in favour of 4th respondent deserves to be set aside and the amount of consideration towards that extent of land paid by 4th respondent should be refunded to 4th respondent.

13. The petitioner has therefore filed the Writ Petition contending that 5th respondent has not applied to the 6th respondent for cancellation of sale certificate dt.18-03-2004 and consequently 4th respondent may continue to claim that the extent of 2400 sq. yards alienated in favour of petitioner still belongs to him.

14. Learned Government Pleader for Cooperation appearing for respondent Nos.5 and 7 as well as the learned counsel for respondent Nos.1 and 3 admit that there could not have been a sale in favour of 4th respondent for the extent of 2400 sq. yards, which had already been alienated in favour of petitioner under the

registered sale deed dt.03-05-2003 registered on 04-06-2003. However, they pleaded that unless 4th respondent also cooperates for execution of cancellation deed, there would be difficulty in executing a cancellation deed.

15. Thus it is clear that petitioner has purchased 2400 sq. yards under a registered sale deed dt.03-05-2003, which was registered on

04-06-2003 pursuant to the consent dt.31-03-2003 granted by

1st respondent for such sale. Once such a sale deed is executed, the title of 2nd respondent for this extent of land ceased. Therefore this extent of land could not have been sold by the liquidator of

1st respondent bank in favour of 4th respondent and he could not have issued sale certificate dt.18-03-2004 for the extent of 2400 sq. yards also. The Sale Officer/3rd respondent had rightly opined in her order dt.30-09-2009 that petitioner is not at fault and the sale certificate issued to 4th respondent on 18-03-2004 in so far as the extent of land of 2400 sq. yards sold to petitioner is concerned, is set aside and the 1st respondent Bank shall refund to 4th respondent the amount paid by 4th respondent for this 2400 sq. yards.

16. In this view of the matter, it is clear that the sale certificate

dt.18-03-2004 issued by 1st respondent in favour of 4th respondent in so far as it includes 2400 sq. yards of land purchased by petitioner under the sale deed dt.03-05-2003 registered on 04-06-2003 is null and void and that 4th respondent has no right, title or interest in this extent of land sold to petitioner.

17. The Writ Petition is allowed as above. No costs.

18. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22-01-2016

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