

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 7154 OF 2007

ORDER :

This Writ Petition has been filed seeking a *mandamus* declaring the letter dated 26.03.2007 issued by the respondents as arbitrary and illegal.

The facts, which are not in dispute, are as follows:

The petitioner was the highest bidder in the auction conducted of an open plot admeasuring 308 square yards in Survey Nos. 15 to 18, Plot No. 52, Bahadurguda, Shalivahananagar, Saroornagar, Ranga Reddy District, for a sum of Rs.20,90,000/-. Immediately, he paid the earnest money in a sum of Rs.3,44,000/-. He was given a sale letter dated 01.03.2007. Thereafter, the petitioner paid a sum of Rs.6,46,000/- ; Rs.1,00,000/- by way of a demand draft and Rs.5,46,000/- by way of cheques drawn on Punjab National Bank, but the cheques were not encashed by the Corporation. In the interregnum, the original borrower approached the Corporation seeking redemption of the mortgaged property by settling the loan dues, which came to be accepted by the Corporation. Immediately, by letter dated 26.03.2007 impugned in the Writ Petition, the petitioner was informed that the sale of plot confirmed in his favour was cancelled on account of 1) his not remitting the balance amount in terms of the sale letter dated 01.03.2007 through demand drafts; and 2) he had carried certain civil works in the plot of land even before the same was handed over to him officially.

Learned counsel for the petitioner submits that the Corporation ought not to have cancelled the sale by citing the reasons mentioned in the letter dated 26.03.2007, for, the petitioner had already issued cheques and if only they were presented, they would have been encashed. The learned counsel disputes the allegation that the petitioner had constructed a wall in the subject plot. According to him, for the purpose of fixing the boundaries, the petitioner had cleared the shrubs and rocks in the said plot.

On the other hand, learned Standing Counsel for the Corporation Sri T. Durga Reddy contends that there was no actual sale confirmation in favour of the petitioner, but it was only the acceptance of offer made by the petitioner that was intimated through letter dated 01.03.2007. Pointing out condition No.2 of the offer letter dated 01.03.2007, the learned Standing Counsel submits that the payment ought to have been made strictly by way of either demand draft or pay order and the respondent-Corporation, as a matter of fact, returned the amounts paid by the petitioner and the un-encashed cheques on the same day. He would also submit that the original borrower has a right to redeem the property and since he has come forward by making the payments, the property, which was put to auction, was withdrawn from the sale and hence, no illegality can be attributed to the same.

In the above set of facts, inasmuch as there is no strict compliance of the conditions stipulated by the Corporation, one

cannot find fault with the action of the Corporation in cancelling the offer letter dated 01.03.2007 in principle, accepting the offer of the petitioner. Further, the borrower has an absolute right to redeem the mortgaged property before the sale is confirmed in favour of the 3rd parties. That being a valuable right, the action of the respondent Corporation in accepting the offer made by the original borrower and deciding not to proceed with the auction cannot be found fault with. Move over, the Corporation was also prompt in issuing the cancellation letter on 26.03.2007 i.e. the same day on which the cheques were handed over by the petitioner. Merely because the petitioner had made partial payments about one month prior to issuing cancellation letter, that by itself does not confer any right on him. In those circumstances, the Writ Petition is devoid of merit and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

16th November 2016

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