

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.14212 OF 2004

ORDER:

The 3rd respondent in O.A.No.79 of 2000 on the file of A.P. Co-operative Tribunal, Vijayawada filed this writ petition under Article 226 of Constitution of India challenging the order passed by the Tribunal in O.A.No.79 of 2000, whereby the sale held by the 3rd respondent herein was set aside on various grounds.

The auction schedule property was assigned by the Government to the respondent Nos.1 and 2 in the year 1980 and since then they were in possession and enjoyment of the same. The said property was mortgaged to the Co-operative Society Bank Limited, Chintalapudi, obtained loan of Rs.9,000/- and discharged the loan to the extent of Rs.2,523/-, but failed to discharge the balance loan amount together with interest. As the respondent Nos.1 and 2 failed to discharge the debt, the Co-operative Society Bank Limited, Chintalapudi brought the property to sale for realisation of the debt due to the bank. The petitioner herein became the highest bidder in the auction held by the Co-operative Society Bank Limited, Chintalapudi on 18.01.1989, sale was confirmed on 22.04.1989 and the sale certificate was issued on 07.09.1989 by the Deputy Registrar of Co-operative Societies, Eluru. After obtaining sale certificate, the petitioner filed E.A.No.32/86-89 in E.P.No.56/1989 on the file of Junior Civil Judge's Court, Chintalapudi for delivery of possession of the property, the property was delivered to the petitioner on 08.11.1989, delivery was recorded and the execution proceedings were closed on 24.11.1989.

Since the date of delivery of possession to the petitioner, she has been in possession and enjoyment of the property and cultivating the land after obtaining title deed, Pattadar Passbook from the Revenue Department.

While the matter stood thus, respondent Nos.1 and 2 tried to

interfere with the possession and enjoyment of the property by the petitioner, thereupon she filed O.S.No.134 of 1999 on the file of Junior Civil Judge's Court, Chintalapudi for permanent injunction restraining the respondent Nos.1 and 2 herein from interfering with her possession and enjoyment. She also filed I.A.No.437 of 2003 in O.S.No.134 of 1999 for temporary injunction, but the same was dismissed on 18.12.2003 with a direction to proceed according to the order in W.P.No.12237 of 1995. The said Writ Petition No.12237 of 1995 was disposed of on 21.06.1995 granting status quo order directing the respondent Nos.1 and 2 herein to approach the A.P. Co-operative Tribunal, Vijayawada within 30 days from the date of order. As directed by this Court, respondent Nos.1 and 2 filed O.A.No.79 of 2000 on the file of the A.P. Co-operative Tribunal after lapse of 5 years without filing any petition to condone the delay. Subsequently, upon hearing both the counsel and considering the material available on record the Tribunal set aside the sale by allowing O.A.No.79 of 2000.

It is the specific contention of the petitioner that she is a bonafide purchaser of the property in the auction held on 18.01.1989 and continuing in possession and enjoyment of the property and the order passed by the Tribunal is contrary to the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 i.e. A.P. Act 9 of 1977 and on erroneous appreciation of facts and law, the Tribunal set aside the sale by allowing the O.A.No.79 of 2000 and prayed to set aside the order passed by the Tribunal.

Sri K.Subrahmanyam, learned counsel for the petitioner, while reiterating the contentions urged in the writ petition, mainly drawn the attention of this Court to Section 6 of A.P. Act 9 of 1977, which exempts the mortgage in favour of the State or Central Government, any local authority, a Co-operative society, a scheduled bank and placed reliance on a judgment of this Court in "**S.Usha Rani v. Government of A.P., rep. by its District Collector, Chittoor and**

others^[1]". He also pointed out that the writ petition was allowed about 5 years prior to the filing of the O.A.79 of 2000, i.e. on 21.06.1995, but the O.A. was filed in the year 2000. Thus, there was abnormal delay of '5' years in approaching the Tribunal by respondent Nos.1 and 2 and no petition was filed for condoning the delay at the time of filing the O.A. Therefore, on this ground alone O.A. is liable to be dismissed, but without considering the delay as pointed out by the petitioner herein, the Tribunal allowed the O.A. on erroneous appreciation of law. Learned counsel for the petitioner, finally, prayed to set aside the order passed by the Tribunal in O.A.No.79 of 2000.

Per contra, learned counsel for the respondent Nos.1 and 2 argued totally in support of the findings recorded by the Tribunal and contended that no date or time was fixed for filing the O.A., hence the respondent Nos.1 and 2 can approach the Tribunal at any time and it is not a ground to set aside the order of the Tribunal. Learned counsel further contended that once the land is assigned, the alienation of which is prohibited under the A.P. Act 9 of 1977. The sale of the property by the 3rd respondent in the auction is not legal and valid and the petitioner being the purchaser would not acquire any valid title to the property in view of Section 3 of A.P. Act 9 of 1977.

On consideration of the rival contentions and on perusing the material available on record, the points that arose for consideration are follows:

- (1) Whether the sale of assigned land by the respondent No.3 is hit by Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, if so, whether the sale in favour of the petitioner herein is valid under law?***
- (2) Whether the delay in filing O.A.No.79 of 2000 before the Tribunal in pursuance of the directions issued by this Court in W.P.No.12237 of 1995 dated 21.06.1995 is fatal to entertain the O.A. if not, the order of the Tribunal setting aside the sale, is in accordance with law?***

P O I N T No.1:

The main contention of the petitioner is that the sale of property by the 3rd respondent is valid as Section 3 of A.P. Act 9 of 1977 has no application in view of exemption of application of Section 3 under Section 6 of the Act, but the Tribunal only based on Section 3 of the A.P. Act 9 of 1977 set aside the sale of the property.

Undisputedly, the property purchased by the petitioner was assigned by the Government in favour of respondent Nos.1 and 2 in the year 1980. In paragraph No.2 of the affidavit filed in support of the writ petition, the petitioner categorically asserted that the property was assigned by the Government to the respondent Nos.1 and 2 in the year 1980 and they were in possession and enjoyment of the same and that in the year 1984, respondent Nos.1 and 2 mortgaged the property and obtained loan of Rs.9,000/- from Co-operative Society Bank Limited, Chintalapudi. This assertion of the petitioner is suffice to conclude that the property is assigned land.

The only ground on which the Tribunal set aside the sale is that the alienation of the assigned land is hit by Section 3 of A.P. Act 9 of 1977. Sub-section (1) of Section 3 of A.P. Act 9 of 1977 prohibits the transfer of land assigned to landless poor for the purpose of cultivation or as a house-site. According to sub-section (2) of Section 3 of the Act no landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage exchange or otherwise. According to sub-section (3) of Section 3 any transfer or acquisition made in contravention of the provision of sub-section (1) of sub-section (2) shall be deemed to be null and void. The paragraph No.12 of Order 15 of A.P. Board Standing Orders is also similar to that of Section 3 of A.P. Act 9 of 1977.

Undoubtedly, Section 3 of the Act 9 of 1977 prohibits the alienation of assigned land in favour of 3rd parties and such alienation is *void abinitio*, but Section 6 exempts application of provisions of A.P.

Act 9 of 1977 to a mortgage in favour of any local authority, a Co-operative Society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government as may be notified by the Government. Thus, mortgage in favour of Co-operative Society Bank Limited, Chintalapudi is permitted as per Section 6 of the Act, as the bar under Section 3 of the Act has no application. Therefore, the finding of the Tribunal that the sale is void in view of the contravention of Section 3 of the Act is contrary to Section 6 of the A.P. Act 9 of 1977. In an unreported judgment in “**M/s Ganesh Modern Rice Mill, Medak v. Government of A.P. (W.P.No.7066 of 1984 dated 20.06.1988)**” similar question came up for consideration and held that the provisions of the Act have no application to mortgage of assigned lands in favour of the Co-operative Society, Scheduled Bank etc.

Learned counsel for the respondent Nos.1 and 2 mainly contended that in view of the bar under Section 3 of the A.P. Act 9 of 1977, the sale in favour of 3rd party is invalid and drawn the attention of this Court to only Section 3 of the A.P. Act 9 of 1977.

As discussed above, in view of the exemption under Section 6 of the Act, the sale of the land for realisation of mortgage debt by Co-operative Society Bank Limited cannot be invalidated on account of bar contained in Section 3 of the Act.

Learned counsel for the petitioner while refuting the contention of the learned counsel for the respondent Nos.1 and 2 drawn the attention of this Court to a judgment rendered in S.Usha Rani's case (referred supra) and contended that the mortgage in favour of the Co-operative Society is valid and the purchase made by the petitioner in the auction conducted by the Co-operative Society is not illegal and it does not amount to contravention of Section 3 of Act 9 of 1977. This Court specifically held in S.Usha Rani's case (referred supra) that once the assigned lands are sold by bank on account of default

committed by assignees who borrowed loan by mortgaging them, they lost the character as assigned land and those lands became the private patta lands of the purchaser in auction, to be dealt with by him as he intends.

Earlier the Division Bench of this Court in “***Sub-Registrar and another v. K.Guravaiah, s/o.Chalamaiah and another***”^[2] expressed a view that the Provisions of Section 5 would not operate because the prohibition is on registration of any document relating to transfer or creation of any interest in assigned land. When the transaction in pursuance of which the land had been purchased by the petitioner was valid and not contrary to the provisions of the Assigned Lands Act, the bar under Section 3 or 5 would not come in the way of registration of document. Though the decision of Division Bench and Single Judge of this Court are on different contexts, but still the view expressed by the Single Judge and Division Bench of this Court is that when once the assigned lands are sold by bank on account of default committed by assignees who borrowed loans by mortgaging them, the sale is valid.

The Tribunal lost sight of Section 6 of A.P. Act 9 of 1977 and passed an erroneous order. The order passed by the Tribunal is totally based on Section 3 of the Act and therefore, in view of the law declared by this Court referred supra, the order passed by the Tribunal that the sale is hit by Section 3 of the Act is liable to be set aside. Accordingly, set aside. Therefore, the point is held in favour of the petitioner and against the respondents.

P O I N T No.2:

The second ground urged by the learned counsel for the petitioner is that the respondent Nos.1 and 2 have to approach the Tribunal within the limitation period prescribed under the A.P. Co-operative Societies Act, 1964 challenging the sale held by the respondent No.3 herein, instead of approaching the Tribunal, they filed W.P.No.12237 of 1995, which ended in dismissal vide order dated

21.06.1995 directing the petitioners therein to approach the Tribunal within 30 days from the date of order, but the petition was filed before the Tribunal after lapse of '5' years from the date of order of this Court without filing any petition for condonation of delay.

As per the Section 76 (3) of the A.P. Co-operative Societies Act, 1964 an appeal under sub-section (1) shall be preferred within 60 days from the date of communication to the appellant of the decision, refusal or order. But, in view of the direction issued by this Court in W.P.No.12237 of 1995 dated 21.06.1995 the respondent Nos.1 and 2 are entitled to approach the Tribunal within the stipulated time i.e. 30 days from the date of order, but not at their whim. In fact, in the counter affidavit filed by the 3rd respondent therein (petitioner herein) in O.A.No.79 of 2000, a specific plea was raised that the O.A. is liable to be dismissed as it is barred by limitation since it was filed after expiry of statutory period and that the O.A. was filed on 12.04.2000 i.e. almost after expiry of '11' years, '2' months and '24' days. Even in the writ petition also it is contended that the respondent Nos.1 and 2 were directed to approach the Co-operative Tribunal by filing an appeal within 30 days from the date of passing the order by the High Court and that the O.A. is barred by limitation. The order in the writ petition fixed the time limit for filing the O.A. before the Tribunal as 30 days, the respondent Nos.1 and 2 have to file the O.A. within the time frame fixed by this Court, instead of doing so, they leisurely approached the Tribunal after lapse of '5' years. On this ground also the order of the Tribunal is liable to be set aside since the respondent Nos.1 and 2 approached the Tribunal in utter disregard to the directions issued by this Court in W.P.No.12237 of 1995. Therefore, on the ground of limitation also, the order under challenge in O.A.No.79 of 2000 passed by the Tribunal is liable to be set aside. Accordingly, set aside. The point is held in favour of the petitioner and against the respondents.

In view of the findings on point Nos.1 and 2, the writ petition is

allowed by setting aside the order dated 26.02.2004 in O.A.No.79 of 2000 passed by the A.P. Co-operative Tribunal, Vijayawada. No order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.07.2016

Ksp

[\[1\]](#) 2015 (1) ALT 196

[\[2\]](#) 2009 (3) ALT 85 (D.B.)