

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

[Special Original Jurisdiction]

MONDAY THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 22272 OF 2008

-

Between:

Bomma Sarveswara Rao ... Petitioner

V/s.

The Registrar of Co-operative Societies,
Eluru, West Godavari district & Ors. ... Respondents

Counsel for the Petitioners : Sri Subrahmanyam Kurella

Counsel for the Respondents: GP for Co-operation

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

-
WRIT PETITION NO. 22272 OF 2008

ORDER:

-

The petitioner prays for mandamus declaring the action of respondents in auctioning agricultural property in an extent of Ac:4-71 cents in R.S.No. 171/AA, 171/2B and 171/C situated at Koyyalagudem village and Mandal of West Godavari District pursuant to notice dated 06/9/2008 in Form No.9 issued under section 51 of the Act as illegal, violative of principles of natural justice and prays for setting aside the notice dated 06/9/2008.

2. The impugned notice refers to case No.CBCEP.No.18/08-09 issued under Rule 52 [3] of A.P. Co-operative Societies Rules.

3. The writ is filed on the premise that the respondents without issuing notice to petitioner and without conducting enquiry as contemplated by the Act determined the surcharge amount and the subject matter of the writ petition is sought to be sold. The other submission of petitioner is that even assuming without admitting that under surcharge proceedings the petitioner is liable to pay the amount determined by the second respondent, the second respondent can call upon the petitioner to pay the balance

amount after giving due credit to payment made through demand draft dated 10/7/2007 marked as Ex.P-5 and but not for the amount determined in the surcharge proceedings. On 14/10/2008 stay of all further proceedings on the condition of the petitioner depositing Rs.one lakh was granted and learned counsel appearing for the parties admit that the condition has been complied with.

4. The respondents filed WVMP.No. 2977 of 2009 to vacate the interim order dated 14/10/2008. In the counter-affidavit it is categorically asserted that on 28/9/2004 and 29/9/2004 enquiry under section 51 was conducted against the petitioner and two other similarly situated employees. The petitioner attended the enquiry and accepted his guilt. Likewise in the proceedings under section 60 of the Act, the second respondent issued notice dated 10/4/2006. In response to the notice, the petitioner attended on 28/9/2006, 23/10/2006 and 24/2/2007. The petitioner as evidenced through enclosures has admitted the liability determined by the authorities. Though the vacate stay petition was served on the petitioner on 16/9/2009 the petitioner could not and did not file reply to the assertions set out in the counter-affidavit. Therefore, the first premise on which writ petition is filed fails and accordingly

rejected. The other submission of learned counsel for the petitioner is that the amount paid by the petitioner by way of demand draft on 10/7/2007 in the name of Managing Director, A.P. Housing Federation is not given due credit is explained by the respondents by contending that the demand drafts are in favour of Managing Director, A.P. Housing Federation and the petitioner has to file proof of payment and if proof is placed on record, the respondents will consider and determine the actual amount paid and payable by the petitioner. The second submission of learned counsel for the petitioner is more in the nature of verification of accounts for determining the actual amount payable by the petitioner. Therefore, having regard to the payments made prior to the filing of the writ petition and also Rs. One lakh pursuant to the interim order dated 14/10/2008, I am satisfied the writ petition can be disposed of by this order.

5. The petitioner is given four weeks time from the date of receipt of a copy of this order to make representation setting out details of payment made in favour of A.P. Housing Federation and other payments if any made during the pendency of the writ petition and the second respondent on receipt of such

representation is directed to examine the accounts and within four weeks thereafter inform the actual amount payable by the petitioner pursuant to the surcharge proceedings. On receipt of such information the petitioner shall pay the amount so determined in three equal instalments. Till the payments as directed above are completed the interim stay granted on 14/10/2008 shall be in operation. It is made clear that if the petitioner commits two defaults in payment of instalments, the stay granted on 14/10/2008 shall be deemed to have been vacated.

6. With the above direction, the writ petition is disposed of.

No costs.

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

JUSTICE S.V. BHATT

ISL

—

[illegible]

—
—
—
—
—
—
—
—
—
—
—

-
-
-
-
-

Date: 14/03/2016
Circulation No.
Court Master: I s L