

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No.29829 of 2016

06.09.2016

Between:

Akunuri Veera Raghavaiah

..Petitioner

And

The Union of India,
represented by the Secretary to Government of India,
Ministry of Law and Justice, New Delhi and others

..Respondents

Counsel for the petitioner: Mr.B.Sesi Bushan Rao

Counsel for the respondents: --

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed assailing the validity of an undated e-auction notice fixing '14.09.2016' as the date for auction of the properties insofar it pertains to 416.66 sq.yds. of land forming part of plot No.94 of Ward No.30, Block No.70 of Sasikanth Nagar, Suryaraopeta, Kakinada, is concerned.

2. The petitioner pleaded that he purchased the aforementioned plot in the name of his wife – respondent No.6; that respondent No.6 is the friend of one Sunku Rani, one of the principal borrowers along with her husband – Sunku Ramesh; that the principal borrowers mislead respondent No.6 into believing that they incorporated a company *viz*, M/s.Suncrop Life Styles Limited at Hyderabad and that they would open a retail outlet of the said company in the house of respondent No.6 and the petitioner; that believing their version as true, respondent No.6 handed over the title deeds of their house to the principal borrowers in connection with the purported commencement of the retail outlet and that later, the petitioner came to know that the principal borrowers misused the title deeds and created a mortgage in favour of respondent No.3 and that in order to enforce the said security, respondent No.3 has issued the impugned auction notice. The petitioner further averred that as he purchased the subject property in the name of respondent No.6 - his *benami*, with his own funds, respondent No.6 had no right to mortgage the said property.

3. The facts pleaded by the petitioner principally raise two issues, *viz*, (1) whether the principal borrowers mislead respondent No.6 into believing that they require the title deeds in connection with opening of a

retail outlet and that respondent No.6 has not created mortgage in favour of respondent No.3 and (2) even if respondent No.6 has created a mortgage, whether she is not the lawful owner and that she is holding the said property as an ostensible owner, while the petitioner is the real owner. In our opinion, these issues need to be adjudicated before a proper *forum* based on the oral and documentary evidence that may be adduced by the parties. This Court, under Article 226 of the Constitution of India, cannot decide such disputed questions of fact.

4. In the above view of the matter, we decline to entertain this writ petition and the petitioner is relegated to appropriate *forum* for adjudication of the aforesaid disputed questions of fact. The Writ Petition is, accordingly, dismissed.

5. As a sequel to dismissal of the writ petition, W.P.M.P.No.36909 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

06th September, 2016
GHN