

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1016 of 2007

ORDER:

1. The petitioner claims that she is the absolute owner and possessor of house property bearing plot No.28, HIG Phase-IV, Vanasthalipuram, Hyderabad, having purchased the same under a registered sale deed dated 12.01.1989. A building was constructed on the said plot and it was named as Mallikarjuna Complex. It was given on lease to the tenants. She came to know that the 3rd respondent was going to conduct auction of the property without issuing any notice to her. She filed W.P.No.15806 of 2006 and the same was disposed of by this Court on 28.07.2006 giving liberty to her to file an appropriate claim petition under Rule 52 (21) (a) of the A.P. Cooperative Societies Rules 1964 and the respondents 1 to 3 were directed to conduct a detailed enquiry. Accordingly, the petitioner filed claim petition before the 3rd respondent on 04.08.2006 and since the 3rd respondent was not available, she was asked to file claim petition on 08.08.2006 and accordingly it was filed on 08.08.2006. She states that in spite of her several visits, no information was given to her by the respondents with regard to her claim petition. However, when she noticed that a notice of public auction was published in Eenadu daily on 31.12.2006, she filed Contempt Case No.23 of 2007. It is her case that after receiving notice in the Contempt Case, an order was prepared by the 3rd respondent on 16.10.2006 with an ante-date and communicated to

her by letter dated 06.01.2007 and it was served on her on 17.01.2007. She further states that the order dated 16.10.2006 was passed without hearing her and without conducting any enquiry. Challenging the order of the 3rd respondent dated 16.10.2006, the present writ petition was filed.

2. A counter-affidavit is filed by the 1st respondent stating that the petitioner failed to appear before the Sale Officer on 03.10.2006 though a notice was given to her on 22.09.2006 and it was adjourned to 12.10.2006. On 12.10.2006 the petitioner and the respondent were present. After hearing both the parties and verifying the records, the Sale Officer concluded that the petitioner's photograph on the voter I.D. card was found perfectly tallied with the photograph available with the bank, whereas the photo on the ration card seems to have been tampered with. The property documents available with the bank were found to be genuine. In those circumstances, the claim petition was dismissed.

3. Learned Counsel for the petitioner submits that the petitioner did not sign on any paper and after publication of the sale notice when she searched the house, she found the original document missing and only Xerox copies of the sale deeds were available. He further submits that the petitioner verified the original record of the bank before filing the writ petition and she was shocked to see the photograph of some other lady affixed against her name.

4. The order of the 3rd respondent reads as follows:

"I have fixed date for hearing on 03.10.2006 at 11.30 A.M. by informing all concerned. On that day, the petitioner called absent, respondent filed counter. Since the petitioner is not appeared, to give an opportunity the case is adjourned to 12.10.2006 and also informed the same to all concerned through my notice dated 03.10.2006.

Further the respondents stated in their counter that the respondent bank holding original sale deed which was deposited with the bank by the claim petitioner herself and the photographs on the voter I.D. card and the photographs available with the bank on record perfectly tallied. Obviously, the photograph on the ration card seems to have been tampered with. The petitioner failed to convincingly assert as to how her property documents came into the possession of any authorized person. If at all the documents are fraudulently used the petitioner would have lodged a criminal complaint against the culprits. And also the respondents produced original loan file for verification.

On 12.10.2006 when the case was taken up, the respondents present and stated that she has not signed any documents.

As per orders of the Hon'ble High Court dated 28.07.2006 in W.P.No.15806 of 2006, I have disposed of the claim petition."

5. A perusal of the above order shows that the contentions of the petitioner were not properly considered and no sufficient opportunity was given to the petitioner. In the present case, the

notice to the borrower, 4th respondent, was not served and it was dismissed for default by orders of this Court dated 23.06.2011. However, in order to give one more opportunity to the petitioner to put forward her case, the impugned order dated 16.10.2006 passed by the Sale Officer, 3rd respondent, is set aside and the matter is remanded to the 3rd respondent for conducting fresh enquiry after giving due notice to the petitioner and complete the same within a period of three months from the date of receipt of a copy of this order. If the petitioner could not be served, the 3rd respondent shall publish a notice in the newspaper circulating in Ibrahimpatnam and Vanasthalipuram areas and take appropriate steps for disposal of the case. It is needless to observe that the learned Counsel for the petitioner also should communicate the orders to his client for cooperating with the disposal of the claim petition.

6. The Writ Petition is accordingly allowed. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

03-11-2016
Gsn