

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.6223 of 2016

Date:28.9.2016

Between:

K.Srinivas,
S/o Late K.Laxminarayana
And two others.

..... Petitioners

And.

The Agrasen Co-Operative Urban Bank
Ltd, Hyderabad, reptd by its Authorized
Officer-Preetham Singh and nine others.

....Respondents

Counsel for the petitioners: Mr. Akkam Eswar
For Mr. B.Chandrasen Reddy

Counsel for respondent No.1: Mr. Sharad Sanghi

The Court made the following:

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

This Writ Petition is filed for a *Mandamus* to set aside order, dated 11.12.2012, in CrI.M.P.Nos.3655 and 3657 of 2015 and the consequential order, dated 12.02.2016, passed by the learned Chief Metropolitan Magistrate, Hyderabad.

We have heard Mr. Akkam Eswar, learned counsel representing Mr. B.Chandrasen Reddy, learned counsel for the petitioners and Mr. Sharad Sanghi, learned counsel for respondent No.1.

Respondent No.1 has advanced a loan to respondent Nos.4 and 5. As the borrowers have committed default in repayment of the loan amount, respondent No.1 has initiated securitization measures for recovery of the loan under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Accordingly, it has filed application under Section-14 of the SARFAESI Act before the Chief Metropolitan Magistrate, Hyderabad. Under the impugned orders, the Chief Metropolitan Magistrate, Hyderabad appointed respondent Nos.2 and 3 as Advocate-Commissioners for taking possession of the properties bearing Nos.3-5-1015/1

and 3-5-1016/1 situated at Narayanaguda, Hyderabad. Feeling aggrieved by these orders, the petitioners filed this Writ Petition.

It is their pleaded case that petitioner Nos.1 and 2 have purchased the property bearing No.3-5-1015 from its lawful owner under registered sale deed, dated 01.02.1991; that petitioner No.3 has purchased the property bearing No.3-5-1016 from its lawful owner under the sale deed executed and registered as far back as 31.01.1966; and that the property bearing No.3-5-1015 was leased out to respondent No.10. The petitioners have further pleaded that the Chief Metropolitan Magistrate, Hyderabad, has passed two separate orders on 11.12.2015 and 12.02.2015 appointing respondent Nos.2 and 3 as Advocates-Commissioner for taking possession of the properties bearing Nos.3-5-1015/1 and 3-5-1016/1 and that the two Advocates-Commissioner have come to the petitioners' houses claiming that the order passed by the Chief Metropolitan Magistrate, Hyderabad pertains to the properties belonging to them. It is their further case that respondent No.1 has added an additional number '1' to both the properties and has wrongly claimed that the properties belonging to the petitioners are the same properties which are mortgaged by respondent Nos.4 and 5.

On behalf of respondent No.1, a counter-affidavit has been filed, wherein it has addressed the title of the two properties, which are the subject matter of the dispute, a detailed reference to which is not necessary. It will suffice to note that respondent No.1 has taken the stand that the house properties were originally assigned the numbers of '3-5-1015' and '3-5-1016' and they were subsequently changed to '3-1-1015/1' and '3-1-1016/1'; that the properties which the petitioners claim are not owned by them; and that respondent Nos.6 and 8, who are the Proprietors of respondent Nos.4 and 5, respectively, are the true owners of the said properties.

From the respective pleadings of the parties, it is evident that there is a serious title dispute over the subject properties. Such a title dispute cannot be adjudicated by this Court under Article-226 of the Constitution of India. It is, therefore, appropriate for the petitioners to approach the Debts Recovery Tribunal under Section-17 of SARFAESI Act for adjudication of this dispute.

Accordingly, without expressing any opinion on the merits of the case, the Writ Petition is dismissed with liberty to the petitioners to avail the afore-mentioned remedy.

As a sequel to dismissal of the Writ Petition, interim order,
dated 25.02.2016, is vacated and WPMP.No.7921 of 2016
WVMP.No.2706 of 2016 are dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

28th September 2016

DR

