THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.237 of 2004 and 14702 of 2008

COMMON ORDER:

Heard Smt M.Bhaskara Lakshmi, counsel for the petitioner in W.P.No.237 of 2004/2nd respondent in W.P.No.14702 of 2008, Sri O.Manohar Reddy, counsel for 6th respondent in W.P.No.237 of 2004/petitioner in W.P.No.14702 of 2008 and the Government Pleader for Cooperation appearing for the Deputy Registrar, Officer on Special Duty, District Co-Operative Officer, Anantapur, who is the 5th respondent in W.P.No.237 of 2004 and 3rd respondent in W.P.No.14702 of 2008.

2. The Hindupur Town Co-Op. Credit Society Limited, who is petitioner in W.P.No.237 of 2004 and 2nd respondent in W.P.No.14792 of 2008 was formerly known as Hindupur Cooperative Urban Bank Limited and had a license to undertake banking business from the Reserve Bank of India. The said Bank had been assigned, vide G.O.Ms.No.190 Development dt.27.01.1931 by the Government of Madras, a site admeasuring Ac.0.56 cents in survey No.147/2 and Ac.0.58 cents in survey No.147/7 (totaling Ac.1.14 cents) on condition that the Bank can enjoy the site and the buildings constructed therein as long as the Bank exists. This site has now come to be located in the heart of the Hindupur Town.

3. In 1984, the Bank building along with the furniture and records were burnt by a mob and the Bank became dysfunctional. Subsequently the Reserve Bank of India directed the Hindupur Town Co-Operative Bank to be wound up.

3. The then Special Category Deputy Registrar of Co-Operative Societies, Anantapur issued proceedings Rc.No.5216/88.C dt.31.05.1989 appointing the Co-operative Sub Registrar(Credit), Office of the Divisional Co-operative Officer, Hindupur as Liquidator of the said Bank and he was directed to complete the liquidation process within six months.

4. The Liquidator took over the assets of the said Bank and took pain to realize its assets and dispose of its liabilities. He also got the Bank building repaired. Thereafter the Co-operative Sub-Registrar/Liquidator sent proposals to the Special Category Deputy Registrar of Co-operative Societies, Anantapur through his letter dt.21.07.1997 for cancellation of the winding up proceedings and revival of the said Bank.

5. On 21.07.1998, the Special Category Deputy Registrar of Co-operative Societies, Anantapur issued proceedings canceling the winding up proceedings of the said Bank and accorded permission to revive the Society/Bank. As the same has fallen under the category of dormant society, the

Liquidator was appointed as the Person-in-charge of the petitioner/bank to run its affairs for a period of six months or till such time, the elections to the Managing Committee are held, whichever is earlier and the Liquidator was directed to take steps for revival of the petitioner-Bank within the stipulated time.

6. The Reserve Bank of India did not give banking license to it and so the Hindupur Town Co-Op. Bank Limited resumed the name of Hindupur Town Co-Op. Credit Society, elections were conducted on 31.05.2003 for the post of President and Vice President and a Managing Committee came into existence.

7. In 1975, the Hindupur Cooperative Urban Bank Limited was sanctioned cash credit of Rs.2,50,000/- for disbursement of jewel loans to members of the Bank by the Anantapur District cooperative Central Bank and as this amount was not repaid, Arbitration was initiated against the said Bank by the Anantapur District Cooperative Central Bank and a certificate under Section 71 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') was obtained for recovery of Rs.3,49,880/- as on 07.05.1985 with interest @ 18% per annum.

8. Thereafter, the Anantapur District Cooperative Central Bank filed CEP No.424/83-84 for execution of the said amount. It appears that during the period, when the

Hindupur Cooperative Urban Bank Limited was under liquidation, the Deputy Registrar-cum-Chief Executive Officer of District Cooperative Central Bank Limited issued demand notice dt.04.10.1983 signed on 08.05.1984 to pay the amount, and on 19.01.1987 the Cooperative Senior Inspector-cum-Arbitrator, Anantapur District Cooperative Central Bank, issued a notice of attachment of immovable property calling upon the Hindupur Cooperative Urban Bank Limited to pay the amount due before 05.02.1987 and threatening to put the property to sale otherwise.

9. When the amount was not paid, the Deputy Registrar-cum-Executive Officer of the Anantapur District Cooperative Central Bank Limited issued auction notice dt.20.01.1987 informing the Hindupur Cooperative Urban Bank Limited that its property would be put to auction on 05.03.1987.

10. Objections were filed by the Person-in-Charge to the said auction on 05.03.1987 stating that the market value of the lands belonging to the Hindupur Cooperative Urban Bank Limited is more than Rs.40,00,000/-, and the amount due to the Anantapur District Cooperative Central Bank is only Rs.8,02,295/-, and that the Hindupur Cooperative Urban Bank Limited had no saleable right and it had to discharge the other liabilities, such as fixed deposits etc.

11. The objections filed by the Person-in-Charge were however not taken into account.

12. The matter was pending in that situation till 2001. Then the Branch Manager of the Anantapur District Cooperative Central Bank at Hindupur informed the Person-in-Charge that certain amounts were payable by the Hindupur Cooperative Urban Bank Limited to the Anantapur District Cooperative Central Bank under the certificate dt.07.05.1981 issued under Section 71 of the Act. It was also informed to the Government that in the E.P. proceedings the Sale Officer posted for auction, that no bidders came forward, that the Anantapur District Cooperative Central Bank participated in the same, and the sale was knocked down in its favour. He also stated that the said sale has not been confirmed for seven years and requested to advise the concerned for confirmation of the sale.

13. Thereupon, a Memo No.17489 Coop.III(1) 2001, dt.17.12.2003 was issued by the 1st respondent addressed to the District Cooperative Officer, Anantapur and to the Managing Director of the A.P. Cooperative Bank, Hyderabad. It is stated therein that the land and the constructions thereon of the Hindupur Town Cooperative Bank Limited, Hindupur shall be put to sale for realization of the dues payable to the Anantapur District Cooperative Central Bank

and the District Cooperative Officer, Anantapur was directed to take necessary action in the matter.

14. This is assailed by the Hindupur Town Cooperative Credit Society Limited in W.P.No.237 of 2004.

15. Smt M.Bhaskara Lakshmi, counsel for the said Society contended that the impugned proceedings were issued without giving opportunity to the said Society and therefore there is violation of principles of natural justice. She contended that as per the Act, powers are vested with the Registrar of Cooperative Societies for confirming the sale, and the State Government had no authority to confirm the sale, and so the impugned memo is without jurisdiction. She also contended that the proceedings were issued at the instance of the A.P. Cooperative Bank Limited and that the said Bank had no role to play in the transaction between the petitioner-Bank/Society and the Anantapur District cooperative Central Bank Limited. It is also pointed out that as per Rule 52 of the A.P. Cooperative Society Rules, 1964 (for short 'the Rules), sale has to be confirmed within 30 days from the date of sale, but the sale which was conducted on 05.03.1987 had not been confirmed for 16 years. It is also reiterated that the amount payable to the Anantapur District cooperative Central Bank Limited is meager, whereas the value of the above property is more than Rs.40 lakhs at the time of sale itself, and this objection was not considered.

16. In W.P.MP.No.331 of 2004 on 17.02.2004, this Court stayed the proceedings on condition of the Hindupur Town Cooperative Society opening a separate account in Nationalized Bank and depositing the rents realized from the property therein.

17. WV.MP.No.1622 of 2004 was filed by the Anantapur District Cooperative Central Bank to vacate the said order.

18. On 29.06.2005 this Court modified the order dt.17.02.2004 in W.P.MP.No.331 of 2004 and directed the Hindupur Town Cooperative Credit Society to deposit Rs.5 lakhs with the Anantapur District Cooperative Central Bank Limited. This order was complied with and the amount is lying with the Anantapur District Cooperative Central Bank.

19. In the meantime, basing on the Memo dt.17.12.2003, on 01.01.2004 in C.E.P.No.424 of 1983-84, the Deputy Registrar, Officer on Special Duty, Anantapur District Cooperative Central Bank issued the Sale Certificate in favour of the said Bank.

20. This action was questioned by the Hindupur Town Cooperative Credit Society in CTA No.97 of 2004 before the A.P. Cooperative Tribunal, Hyderabad.

21. After contest, the said appeal was allowed on 27.06.2007 holding that the Sale Officer should follow Rule

52 of the Rules when he is selling the immovable property of the defaulter and he should act in fair, impartial and transparent manner while conducting such sale, but he had conducted it in utter violation of the provisions of the Act and Rules and he also violated the principles of natural justice. It therefore set aside the confirmation of sale as well as the Sale Certificate dt.01.01.2004 in favour of Anantapur District Cooperative Central Bank by the Deputy Registrar and remanded the matter back to the Deputy Registrar for fresh disposal in three months.

22. This order is assailed by the Anantapur District Cooperative Central Bank in W.P.No.14702 of 2008.

23. It is contended that the Cooperative Tribunal erred in setting aside the sale, and that once W.P.No.237 of 2004 is filed by the Hindupur Town Cooperative Credit Society, the Society could not have filed the CTA No.97 of 2004. It also contended that the Deputy Registrar/Sale Officer had followed Rule 52 scrupulously before confirming the sale and issuing Sale Certificate.

24. Since the counsel for Hindupur Town Cooperative Credit Society Limited raised a specific contention in W.P.No.237 of 2004 that objections filed by the Person-in-Charge had not been considered by the Deputy Registrar, record was summoned on 07.08.2017 to ascertain whether

there was any consideration of the objections dt.05.03.1987 filed by the Hindupur Town Cooperative Credit Society Limited by the Sale Officer/Deputy Registrar of Cooperative Societies, and any order passed by the said Officer was also directed to be produced by the Government Pleader for Cooperation.

25. The record was produced on 21.08.2017, but it did not disclose any consideration of the objections filed by the Hindupur Town Cooperative Credit Society Limited through its Person-in-Charge on 05.03.1987 by the Deputy Registrar/Sale Officer.

26. It is not in dispute that under Clause(i) of Sub-Clause(14) of Rule 52, objections to a sale on the ground that there is material irregularity or mistake or fraud can be raised, and the Deputy Registrar is bound to consider the same under Clause(iii) of Sub-Rule (14) of Rule 52. This provision is mandatory.

27. It is precisely on this ground CTA No.97 of 2004 was allowed.

28. Therefore, the order dt.27.06.2007 in CTA No.97 of 2004 of the A.P. Cooperative Tribunal, Hyderabad setting aside the confirmation of sale as well as the Sale Certificate dt.01.01.2004 in CEP.No.424 of 1983-84 of the Deputy Registrar cannot be found fault with.

29. The contention of the counsel for Anantapur District Cooperative Central Bank that as they have filed W.P.No.237 of 2004, the Hindupur Town Cooperative Credit Society could not have maintained CTA No.97 of 2004 is without any merit in as much as the plea in W.P.No.237 of 2004 is that the Government of A.P. which issued the Memo dt.17.12.2003 had no jurisdiction to do so under the provisions of the A.P. Cooperative Societies Act, 1964. Merely because the said Writ Petition was filed, the right to prefer an appeal conferred on the Hindupur Town Cooperative Credit Society under Section 76 of the Act cannot be denied and the Hindupur Town Cooperative Credit Society is entitled to maintain CTA No.97 of 2004 also.

30. Accordingly, I find no merit in W.P.No.14702 of 2008 and it is liable to be dismissed.

31. Coming to W.P.No.237 of 2004, the State of A.P., had filed a counter affidavit stating that the property which was put to auction was originally an assigned land and that the A.P. Cooperative Bank had sought clarification as well as confirmation from the State through a proceeding dt.20.11.2003 and in view of the peculiar circumstances, the Government exercised its power under Section 131 of the Act and accorded confirmation for the sale conducted under Rule 52 and therefore, the Memo dt.17.12.2003 is valid.

32. The legal position that assigned land, which has been given as security for a loan to another society or bank, can be sold if there is a default in payment of the loan has been decided by this Court in ***Sub-Registrar, Srikalahasti, Chittoor District Vs. K.Guravaiah***[1]**.**

33. This legal position is not disputed by the Government Pleader for Cooperation or by the counsel on either side.

34. As regards confirmation of sale under the impugned Memo dt.17.12.2003 is concerned, no provision in the Act or in the Rules framed thereto is pointed out by the Government Pleader for Cooperation empowering the State Government to confirm a sale conducted under Rule 52 of the Rules framed under the Act. Therefore, to this extent the Memo dt.17.12.2003 issued by the 1st respondent is clearly without jurisdiction. I am also of the opinion that the power under Section 131 of the Act on which reliance is placed by the Government Pleader cannot be exercised to give directions in specific cases and that such a power should be exercised only to give general directions (see ***State of Punjab v. Hari Kishan Sharma***[2]). Therefore, the issuance of Memo dt.17.12.2003 cannot also be sustained under Section 131 of the Act.

35. Therefore, W.P.No.14702 of 2008 is dismissed and W.P.No.237 of 2004 is allowed. The Memo dt.17.12.2003

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[1] 2009(2) ALD 250 (DB)
[2] AIR 1961 SC 1081 (5 Judges)

issued by the State of Andhra Pradesh is set aside. The amount of Rs.5 lakhs deposited by the Hindupur Town Cooperative Credit Society with the Anantapur District Cooperative Central Bank shall be refunded by the latter bank to the Hindupur Town Cooperative Credit Society with interest thereon from the date of deposit till the date of payment at the rate fixed for fixed deposits of the said amount from time to time. The Deputy Registrar/Officer on Special Duty, Anantapur District Cooperative Central Bank, who is the Sale Officer shall issue notices to both the Society as well as the Bank afresh, consider the objections dt.05.03.1987 submitted by the Person-in-Charge of the Hindupur Cooperative Urban Bank Limited (predecessor of the Hindupur Town Cooperative Credit Society) and then pass orders either confirming the sale or rejecting the sale. This exercise shall be completed within four (04) months from the date of receipt of a copy of this order. No costs.

36. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

10th October, 2017.
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