

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.28591 OF 2017

ORDER

This writ petition is filed challenging the action of the 3rd respondent in issuing auction notice dated 21.6.2017 for auctioning the properties of petitioners 2 and 3 for effecting recovery of loans sanctioned without considering the order passed by this Court in W.P.No.14729 of 2010 & batch, dated 15.12.2015.

The case of the petitioners is that they are holding small extents of lands situated at Gogullanka Village, I.Polavaram Mandal, East Godavari District. They are members of the 5th respondent Society. They applied for investment loan for construction of fish tanks and accordingly, loans were sanctioned and again sanctioned in the year 1997 for undertaking repairs to the constructed fish tanks. It is their further case that all of them belong to the same family and they repaid the instalments regularly. Though they paid an amount of Rs.18,27,329/-, the said amount was appropriated by the society towards interest,

penal interest, principal amounts and others. Thereafter, the respondents did not release proper amounts to pisci culture and thus, the petitioners committed default in payment of the instalments after 22.04.2003. While so, the Government of India announced a scheme called “Agricultural Debt Waiver and Debt Relief Scheme, 2008”. As per the said scheme, they are eligible for Debt Waiver Scheme. Though the scheme was extended from time to time and lastly upto 30.6.2010, their claims were not considered. Now, when the sale notices were issued by the 4th respondent on the basis of the sale certificate issued under Section 71 of the AP Co-Operative Societies Act, 2007, the present writ petition is filed.

Learned counsel appearing for the petitioners submits that the petitioners are entitled to get benefit under the Debt Waiver Scheme and in fact, this Court in W.P.No.14729 of 2010 & batch, dated 15.12.2015, directed the respondents therein to consider the cases of the similarly situated persons within three months.

Learned counsel appearing for the 5th respondent submits that the petitioners have not complied with the terms and

conditions of the said Scheme and in view of the same, their cases were not considered.

Be that as it may, it is apparent from the averments made in the affidavit filed in support of the writ petition that the amount was over due as on 31.12.2007, it remained unpaid as on 29.02.2008 and the sale certificate was obtained way back on 29.10.2007, whereas the debt waiver scheme came only thereafter on 18.06.2008.

Whether the Debt Waiver Scheme is applicable to the petitioners or not cannot be decided by this Court at this juncture as the properties are brought to sale pursuant to the sale certificate already issued. In order to give some relief and to ascertain *bona fides* of the petitioners, this Court by order dated 24.08.2017 granted stay of auction scheduled to be held on 28.08.2017 subject to the petitioners depositing 1/4th of the amount and now they filed a memo stating that they paid the said amount.

Learned counsel appearing for the petitioners submits that after disposal of W.P.No.14729 of 2010 & batch, dated 15.12.2015,

the petitioners submitted representation on 30.08.2016 to which the 5th respondent-society replied on 26.09.2016 insisting the petitioners to pay the amount indicated in the letters under OTS on or before 5.10.2016 and submit proposals for getting debt relief of remaining 50% as provided under the said Scheme.

It appears that petitioners 2 and 3 did not deposit the amount, but submitted another representation on 5.10.2016 stating that they have already paid over and above 50% of the amount. Now, lastly they submitted a comprehensive representation on 5.8.2017 giving details of the amounts paid and sought implementation of the Scheme.

The present writ petition is filed at the stage of bringing the property to sale and as stated above, the petitioners deposited 1/4th of the amount outstanding.

In the circumstances, the 5th respondent is directed to consider the following points.

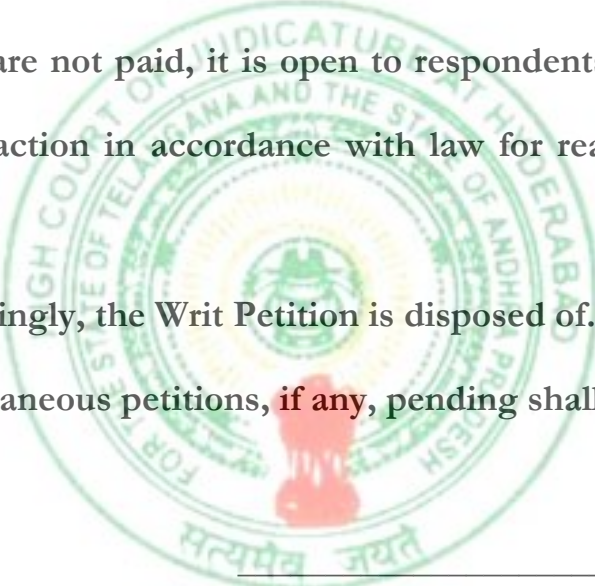
1. Whether the petitioners are entitled to be considered under Debt Waiver Scheme, if so, whether their cases can be processed, subject to the conditions of the said scheme. This

exercise shall be completed within a period of one month from the date of receipt of copy of this order.

2. If the cases of the petitioners cannot be considered, an appropriate intimation shall be given to the petitioners and it is for the petitioners to pay the balance amount outstanding in three equal monthly instalments commencing from 1st October, 2017 on or before 10th of every succeeding month. If any of the instalments are not paid, it is open to respondents 3 to 5 to take appropriate action in accordance with law for realization of the amount.

Accordingly, the Writ Petition is disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE A.RAMALINGESWARA RAO

19th September, 2017
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