

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos.10401 & 10416 OF 2016

COMMON ORDER

Since the issue involved in both the writ petitions is one and the same, they are disposed of by this common order.

W.P.No.10401 of 2016 is filed by the nephew, where as WP No.10416 of 2016 is filed by his paternal uncle. Both the petitioners are judgment debtors in Award Case Nos.812/2011-12 & 877/2011, dated 29.12.2011 obtained by the 5th respondent-Society.

It is the case of the petitioners that they paid the entire amount covered by the Awards and the 5th respondent-Society has also issued no due certificates on 10.12.2015 in their favour and executed registered cancellation deeds of mortgaged bonds on 15.12.2015. When the petitioners received the sale notices, pursuant to the alleged Awards obtained by the Society, they filed the present writ petitions.

The 5th respondent-Society filed a detailed counter-affidavit stating that the petitioners are members of the Society, they obtained loans and interest portion was waived under Debt Waiver Scheme. They have also taken long term loans for purchasing vehicles. Since the petitioners have committed default in paying the installments of the long term

loans, an Award was passed under Section 71 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act'), on 29.12.2011 for the amounts of Rs.53,213/- & Rs.1,15,716/- respectively. The property was brought to sale on 21.3.2016 & 6.4.2016. When one of the petitioner paid an amount of Rs.34,214/-, the auction was postponed. However, the balance amount was not paid. The property, which is mortgaged to the society at the time of obtaining loan, was brought to sale by proposing to conduct auction on 21.3.2016. When the sale notices dated 22.1.2016 were issued to the petitioners, the present writ petitions were filed.

The father of the petitioner in W.P.No.10401 of 2016 also obtained long term loan for his agricultural operations and borrowed a sum of Rs.25,000/- on 18.6.1999, but failed to pay the instalments. The principal amount and interest is pending realization. Thus, the writ petitioner, his father and his paternal uncle, obtained long term loans for purchase of tractors.

Since the amounts were due to the society, Awards under Section 71 of the Act were obtained and sale notices were issued on 22.1.2016 proposing to conduct auction on 6.4.2016. The said sale notices are under challenge. It is alleged that the petitioners with a fraudulent intention created

No-due certificates by forging the signatures of the President of the Society as well as Secretary. The petitioner in W.P.No.10401 of 2016 also created the letter heads of the society and fabricated the documents to the effect that there are no dues. On the basis of the said documents, when the petitioners approached for cancellation of the mortgaged bonds, the same were cancelled on 15.12.2015. The said documents were placed in between the other documents pertaining to the loans cleared and signatures of the President and Secretary were obtained. When the writ petitioners approached the society seeking No-due certificates for the said long term loans and when the documents were verified, the fraud has come to light, and an appropriate action was taken by the Sub-Registrar, Mylavaram, for reversal of cancellation of the mortgaged deeds. The petitioner in W.P.No.10401 of 2016 gave a complaint before the G.Konduru Police Station on 10.4.2016 and the same was registered as FIR No.50 of 2016, in which the President of the society and the Secretary were shown as accused. The society also gave a complaint and the same was registered as FIR No.53 of 2016 under Sections 465 and 471 IPC against the petitioner in W.P.No.10401 of 2016. The said crimes are pending investigation. It is stated that the present writ petitions are

filed based on the forged documents and also on the No-due certificates issued by the President of the Society.

All these details and the circumstances, under which the Awards were obtained, were not clearly stated by the petitioners. The petitioners stated that in spite of clearing the loan amounts, the properties were brought to sale and hence, they filed the present writ petitions.

In view of the allegations mentioned above, the issues as to whether the petitioners were due to pay any amount under the Awards and whether the properties of the petitioners mortgaged to the society can be brought to sale, require investigation by an appropriate authority and such investigation cannot be undertaken in a proceeding under Article 226 of the Constitution of India, more so, when criminal proceedings are pending between the petitioner in W.P.No.10401 of 2016 and the office bearers of the society.

In the circumstances, this Court is not inclined to exercise its discretion in the present writ petitions.

Accordingly, both the Writ Petitions are dismissed. However, it is open to the petitioners to take appropriate proceedings in accordance with law, if they so choose. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

27th October, 2017
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