

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

W.P.No.13577 of 2007

ORDER:

Heard Sri D.Linga Rao, learned counsel for the petitioner and the learned Government Pleader for Cooperation appearing for the respondents.

2. The petitioner is a widow whose son by name Balgonda has worked as President of DRDA Employees Cooperative Credit Society Limited, Nizamabad. It appears that during his tenure, as President, some amount was allegedly misappropriated by him resulting in surcharge proceedings being issued for realization of sum of Rs.10,88,043/- under the provisions of A.P. Cooperative Societies Act, 1964.

3. Since the said amount was not paid by the petitioner's son, a notice of sale on immovable property was issued invoking Rule 52 (11) (e) of Rules framed under the Act on three items of property including two items which were her personal property.

4. Petitioner got issued a legal notice to 3rd respondent stating that two items i.e. Ac.1.00 cts of land in Sy. No.1145/E and house bearing No.2-30 situated in Kotagiri village and Mandal, which were shown therein in the name of petitioner's son, actually belonged to the petitioner; that they are her exclusive property in her possession; and the said property cannot be sold by treating it as property of her son. She also submitted title deeds of land apart from

house tax receipts of the house and asked 3rd respondent to verify the same and delete the same from sale notice.

5. Subsequently, 4th respondent issued another notice, this time, showing the two items, referred to above, as property belonging to the petitioner and another property belonging to her son which would be sold for realization of the dues of the petitioner's son.

6. Petitioner contends that for any liability of the petitioner's son, the petitioner's property cannot be sold and without verifying whether the property in question actually belongs to the petitioner's son or not in spite of objection being raised by the petitioner, the respondents cannot conduct the sale.

7. On 29-06-2017, this Court granted stay of the sale of the property of the petitioner referred to above and the same was later extended.

8. Counter affidavit is filed by 1st respondent stating that the petitioner's son had misappropriated funds of the above Society to a tune of Rs.10,88,043/- and that surcharge orders were issued by the 3rd respondent vide Rc.No.210/2004-B dt.02-07-2004 under Section 73 of the Act. It is contended that the sale is only consequential to attachment notice and so the Writ Petition is not maintainable. However, it is stated that the sale could not take place since no bidders participated in the open auction on the date fixed for the auction. It is contended that Sri Balgonda, being the legal heir of the petitioner,

petitioner's properties were also conditionally attached under Section 73 and included in the sale notice by 3rd respondent. It is stated that 4th respondent proceeded for open auction on 30-05-2007 on the directions of the 3rd respondent for which properties had already been attached conditionally by 3rd respondent. It is denied that 4th respondent received any notice from the petitioner. It is stated that the petitioner should challenge the conditional attachment order passed by 3rd respondent and without doing so, she cannot approach this Court.

9. The learned Government Pleader for Cooperation reiterated the contents in the counter affidavit.

10. It is indeed strange that the petitioner's personal properties are being proceeded with to recover the dues payable by the petitioner's son on the pretext that he is her legal heir. Such a course of action is totally illegal and in anticipation of the petitioner's son succeeding to the petitioner's property on her death, petitioner's properties could not have been attached to recover the dues payable by the petitioner's son. The objection of the respondents that the petitioner should challenge the conditional attachment order passed by the 3rd respondent cannot be countenanced since the said order, having been passed without issuing a notice to her, is a nullity.

11. Since the respondents have acted in gross violation of principles of natural justice and they also ignored the petitioner's request to exclude her properties from the auction sale and have committed a grave illegality, the Writ Petition is allowed and the

respondents are directed to delete the property of extent Ac.1.00 cts in Sy. No.1145/E and house bearing No.2-30 situated at Kotagiri village and Mandal, Nizamabad District from the sale proceedings as per Notification dt.29-05-2007 issued by the respondents. It is directed that her property shall not be put to sale for recovery of any amount payable by her son to the District Cooperative Central Bank, Nizamabad. The respondents shall also pay costs of Rs.2,000/- (Rupees Two Thousand only) to the petitioner.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 02-08-2017
kvr

JUSTICE M.S.RAMACHANDRA RAO

