

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.15241 OF 2007

Date 15.12.2017

Between:

Smt Bandi Vijayalakshmi and others.

... Petitioner

AND

A.P.State Financial Corporation, Chirag Ali Lane,
Hyderabad rep. by its Managing Director and others.

.....Respondents



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.15241 of 2007

ORDER:

The Writ Petition is filed for declaring the action of respondent Nos.1 and 2, in trying to dispossess petitioners from land admeasuring Ac.0.19 gts. in Sy.No.180/AA situated at Kanteshwar Shivar, Nizamabad, as being illegal and arbitrary.

Brief facts of the case, according to the petitioners, are that they purchased land admeasuring Ac.0.19 gts. in Sy.No.180/AA situated at Kanteshwar Shivar, Nizamabad from respondent No.3 under registered sale deed Nos.828 to 830/1993 dated 09.02.1993; respondent No.1 – Andhra Pradesh State Financial Corporation (APSFC) issued tender notice dated 08.01.2007 for sale of plot in Sy.No.180/AA pledged as collateral security by Sri K.Rajeshwaraiah, who defaulted repayment of loan; One Bandi Sai Sudha issued legal notice dated 05.04.2007 to respondent No.1 – APSFC stating that her grandmother, Chinnamma, gifted plot admeasuring 115.3 sq. yards in Sy.No.180/A under a registered deed dated 28.09.2005, and the petitioners purchased the land in Sy.No.180/AA admeasuring 0.19 gts. situated at Kanteshwar Shivar, Nizamabad from respondent No.3 under registered sale deed Nos.828 to 830/1993 dated 09.02.1993, to which, respondent No.1 – APSFC sent a reply dated 21.04.2007 along with panchanama and location of

mortgaged open plot surveyed by Survey and Land Records, Nizamabad, stating that collateral mortgaged plot of an extent of 222.66 sq. yards situated in Sy.No.180 and the boundaries are not tallying either with the mortgaged plot dated 31.05.1993 by respondent No.3 or with the boundaries of petitioners land purchased on 09.02.1993; petitioners, after verifying mortgage deed dated 31.05.1993, got issued legal notice dated 15.06.2007 stating that they purchased land in Sy.No.180/AA admeasuring Ac.0.19 gts. situated at Kanteshwar Shivar, Nizamabad from respondent No.3 under registered sale deed Nos.828 to 830/1993 dated 09.02.1993; the purchase was much earlier to mortgage executed by respondent No.3 dated 31.05.1989; the boundaries mentioned in the collateral security dated 31.05.1993 were not tallying with petitioners lands; and the APSFC has to verify the relevant documents, records, transactions before mortgaging the property as collateral security.

Respondent No.1 – Andhra Pradesh State Financial Corporation filed counter *inter alia* stating that, in the year 1972, loan was sanctioned to M/s.K.V.Kumar Industries, Nizamabad, and he mortgaged the property belonging to respondent No.3 as collateral security; the mortgage created was registered under document No.2647/93; when the plot in Sy.No.180/AA was proposed for sale towards recovery of outstanding by K.V.Kumar Industries, Nizamabad, legal notice dated 05.04.2007 was given by one B.Sai Sudha, which

was replied by APSFC stating that respondent No.3 mortgaged the property situated in Sy.No.180/AA; they are unaware of the fact that petitioners purchased the property in Sy.No.180/AA admeasuring Ac.0.19 gts; and, only where there is statutory violation or the Corporation acts unfairly, the Courts may interfere. Reliance is placed **on Haryana Financial Corporation v. Jagadamba Oil Mills**¹

Heard the learned counsel for petitioners and learned Standing Counsel for APSFC.

While admitting the Writ Petition on 20.07.2007, this Court directed the APSFC not to alienate, create charge over the land of petitioners in Sy.No.180/AA admeasuring 0.19 cents situated at Kanteshwar Shivar, Nizamabad.

During the pendency of the writ petition, respondent No.3 died and proposed respondent No.4 was impleaded as respondent No.4 in the writ petition on 22.12.2004. By order dated 05.07.2017, this Court ordered notice to respondent No.4. Notice sent by petitioners to respondent No.4 returned with the endorsement 'addressee refused' and notice sent by the Court has been served on respondent No.4. Respondent No.4, however, did not choose to appear either in person or through advocate.

Learned counsel for the petitioners submits that, as the petitioners purchased properties vide sale deed dated 09.02.1993, and the mortgage was executed by respondent

¹ 2002(2) SCC 496

No.3 on 31.05.1993, the petitioners got better title than respondent No.1 and the said mortgage deed is not valid in the eye of law; and, as on the date of mortgage, petitioners are owners of the said property. It is further submitted that APSFC, without enquiring into the fact who is the real owner, proceeded to auction the subject property by way of advertisement in the newspaper.

Section 31 of the State Financial Corporations Act, 1951 (the Act) deals with Special provisions for enforcement of claims by Financial Corporation. Under sub-section (1) thereof, whoever makes any default in repayment of any loan or advance or any instalment thereof, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the whole or a substantial part of its business for one or more of the following reliefs, namely, for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance.

Learned counsel for the respondents does not dispute the same.

Respondent No.1 without verifying the title to the property proceeded to sell the property which the petitioners claim to be owners thereof and, as such, advertisement published in the Eenadu newspaper on 08.01.2007 is set aside; and respondent No.1 is given liberty to follow the

procedure stipulated under Section 31 of the Act. However, it is made clear that, before proceeding under Section 31 of the Act, respondent No.1 is directed to make the petitioners herein as parties to the suit which would be filed before the District Judge as the petitioners claim to be owners of the subject property, and proceed in accordance with law.

The Writ Petition is, accordingly, allowed. However, in the circumstances, without costs.

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

Dt:15.12.2017
usd



KONGARA VIJAYA LAKSHMI, J