

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.A.No.3 of 2018 IN WRIT PETITION No.4965 of 2018
AND
WRIT PETITION No.4965 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner in this case, as framed initially, reads as under:

“ For the reasons stated in the accompanying affidavit the petitioners pray that it is just and necessary that the Hon'ble Court may be pleased to issue orders, direction or Writ more appropriately in the nature of Writ of Mandamus declaring that the Mortgage created by the petitioner No.1 by way of deposit of title deeds in respect of the agriculture property Sy.No.965, Ramapuram village, Kodada Mandal, Suryapet Dist., formally known as Nalgonda Dist is without jurisdiction, null and void and illegal and unforceable tan amounting to breach of Article 300A & 21 of the Constitution in view of non-permission to raise loan by deposit of title deeds of immovable Agricultural property by law under Transfer of Property Act, Stamp Act, Registration Act, because it is Agricultural small farmers property from direct the respondent not to proceed against the said property in realization of the loan given by it to the petitioners vide the loan sanction letter dated 9-8-2011 vide Ref No.AFC/PROJ-II/TEAM-2/639431 01/2011-12 in favour of the respondents No.2 to 5 and petitioner No.2 because the said loan is to be re payed by the respondent No.4 on the basis of the partners Retirement deed dated 19-8-2015 the same was informed t the respondent No.1 in the said year hence there is no liability on the partners and also the respondent No.1 breached the contract between the lender and the receiver by way of depositing the title deeds other than the urban property is null and void by invoking the provisions of the Securitization Act., and grant such other or further orders as this Hon'ble Court may be pleased to deem fit and proper in the circumstances of the case.”

2. By way of I.A.No.3 of 2018 filed in this writ petition, the prayer was sought to be amended as under:

“ In these circumstances the petitioner prays that, it is just and necessary that this Hon'ble Court may be pleased to issue order or direction or writ more appropriately in the nature of writ of mandamus declaring the action of the respondent against the property of the petitioner bearing the Sy.No.965 an extent of Acre 1.4 Guntas situated at Ramapuram (V), Kodada (M), Suryapet (Dist), formerly known as Nalgonda (dist) under this SRFA & ESI Act, 2002 nor on under Sec.32 Revenue

Recovery Act, based on deposit of title deeds is without jurisdiction and power tantamounting to breach of Article 300A of the Constitution of India and is null and void and the grant such other and further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. We are of the opinion that neither the prayer, as it stood initially, nor the prayer, as sought to be amended, can be the subject matter of resolution in a writ petition.

4. The mortgage created in favour of the Andhra Pradesh State Finance Corporation by petitioner No.1 was sought to be nullified in terms of the un-amended prayer. Having voluntarily created such a mortgage, it is not open to petitioner No.1 to seek such relief. Further, the writ petition as originally filed was directed against invocation of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act). However, upon filing of a counter affidavit by the Andhra Pradesh State Finance Corporation stating that the proceedings initiated under the SARFAESI Act have been withdrawn, the petitioners filed I.A.No.3 of 2018 seeking to amend their prayer to the effect that the Corporation should not be permitted to proceed either under the SARFAESI Act or under the Revenue Recovery Act.

5. As the Corporation has not even indicated as to which enactment it would initiate action under, the amended prayer overreaches itself and cannot be countenanced. No cause is made out for this Court to restrain the Corporation from taking recourse to any other enactment under which it can proceed. We therefore

find no grounds to entertain the writ petition, be it in the context of the initial prayer or the prayer sought to be introduced.

6. The writ petition is accordingly dismissed on this short ground. I.A.No.3 of 2018 shall also stand dismissed along with other pending miscellaneous petitions, if any. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 24.07.2018
TJMR

