HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.10651 OF 2008

ORDER:

The petitioners seek a writ of mandamus declaring the notice dated 14.12.2006 issued by the respondent No.1 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFEASI Act') and consequential sale notice dated 27.10.2007, published on 29.10.2007 in Eenadu Prakasam District Edition, as illegal, arbitrary and violative of principles of natural justice and consequently set aside all further proceedings pursuant to the sale notice dated 27.10.2007 published on 29.10.2007 and to pass any other order deemed fit in the circumstances of the case.

2. The petitioner's case is that 1st petitioner's husband, late Ranga Raju, was the absolute owner of agricultural land admeasuring Acres 1.07 cents in S.Nos.19/A and 23/8 situated at Gundlapalli Village, Addanki Mandal, Prakasam District, which was purchased by him through registered sale deed dated 09.12.1987 and he died on 03.10.2000. While so, in the last week of February, 2008, the respondent bank authorities along with 4th respondent came and tried to take possession of the same, for which, the petitioners objected. Then the respondents informed that the Debt Recovery Tribunal, Visakhapatnam, passed a decree in favour of the bank in O.A.No.117 of 2002

against the 3rd respondent and others, in which, they impleaded the late husband of the 1st petitioner as a party, since he stood as guarantor for the loan taken by the 3rd respondent from the bank. The petitioners filed M.A.No.29 of 2008 to set aside the *ex parte* decree along with the delay petition, which is pending enquiry. In the meanwhile, respondent No.1 initiated the proceeding under SARFAESI Act, by issuing notice dated 14.02.2006 under Section 13(2) of the said Act and also consequential sale notice dated 27.10.2007, published on 29.10.2008. All the aforesaid proceedings were taken behind the back of the petitioners. The respondents 1 and 2, without providing any opportunity, allegedly sold away the property to 4th respondent, which is illegal and arbitrary. The subject land is an agricultural land and the bank has no authority to put the subject land in sale.

Hence, the instant writ petition.

3. The respondents filed counter and opposed the writ petition.

4. In W.P.M.P.No.13920 of 2008, this Court on 27.06.2011 passed interim order to the effect that earlier an order dated 07.05.2008 was passed by this Court granting conditional stay and the petitioners were unable to state whether said condition was complied with by them or not and as the said order dated 07.05.2008, contained a default clause, failure of the petitioners, if any, to comply with the condition imposed therein

would enable respondent Nos.1 and 2 to take necessary steps for sale of property in question. With the said observation, this Court disposed of W.P.M.P.No.13920 of 2008.

5. When the matter came up for hearing today, learned counsel for 4th respondent would submit that subsequently, sale was conducted on 03.12.2007, wherein, the 4th respondent became the successful bidder and on 08.01.2008, sale certificate was issued in favour of 4th respondent and the respondents 1 and 2 executed registered sale deed in favour of 4th respondent on 08.05.2008 and ever since, the 4th respondent has been in possession and enjoyment of Acres 1.07 cents of the land and further, the M.A.No.29 of 2008 filed by the petitioners was dismissed on 14.05.2008 by the Debt Recovery Tribunal, Visakhapatnam and in view of these facts, the present writ petition is not maintainable. The counsel for petitioner is present and not controverted those facts.

6. In view of the above factual position submitted by the counsel for 4th respondent, this writ petition is dismissed as infructuous. No costs.

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

U.DURGA PRASAD RAO, J

01.10.2018
SS