

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.27391 OF 2007

ORDER:

This writ petition is filed challenging the order of the first respondent in No.F2/8985/2007, dated 03.11.2007, confirming the order of the second respondent in case No.D/1676/06, dated 18.07.2007, whereunder the second respondent directed the third respondent to mutate the name of the fifth respondent in the revenue records in respect of land admeasuring Ac.2-10 guntas in Sy.No.55, situated at Panthangi Village, Choutuppal Mandal, Nalgonda District by deleting the name of the petitioner.

2. The petitioner purchased the subject property from the fourth respondent under a registered sale deed dated 16.12.1995 vide document No.1766/1995 for a valid sale consideration. Thereafter, on approach by the petitioner, the third respondent mutated the name of the petitioner in the revenue records. Prior to execution of sale deed in favour of the petitioner, the fourth respondent obtained loan to a tune of Rs.4.50 lakhs and created equitable mortgage over the property in favour of the Andhra Pradesh State Financial Corporation (for short, the Corporation). When the fourth respondent failed to repay the loan, the subject land was put to auction. In the auction, the fifth respondent became highest bidder and accordingly, the Corporation executed a sale deed dated 28.07.2005 vide document No.2115/2005 in favour of the fifth respondent. Thereafter, when the fifth respondent approached the third respondent to mutate his name in the revenue records, the third respondent rejected the same by his Memo No.B/4496/2006,

dated 22.08.2006, on the ground that the name of the petitioner is already recorded in the revenue records in respect of the subject land; that his document cannot be implemented and directed him to approach competent Civil Court. In those circumstances, the fifth respondent filed a civil suit in O.S.No.33 of 2006 on the file of the Court of the I Additional District Judge, Nalgonda, seeking declaration that he is the owner and possessor of the subject land and to declare the registered document dated 16.12.1995 made in favour of the petitioner as null and void apart from seeking perpetual injunction. Thereafter, for want of pecuniary jurisdiction, the said suit was transferred to the Court of Junior Civil Judge, Ramannapet and it was re-numbered as O.S.No.93 of 2009 and the same is pending.

3. Apart from filing the aforesaid suit, the petitioner filed an appeal before the second respondent challenging the memo issued by the third respondent. The second respondent, by order dated 18.07.2007, allowed the appeal stating that the fourth respondent should have cleared the loan amount and obtained the no-due certificate from the Corporation before disposing the land in favour of the petitioner and that the petitioner should have demanded the fourth respondent to get clearance certificate from the Corporation before purchase of the subject land. As they have failed to do so, the second respondent found fault with their action and directed the third respondent to mutate the name of the fifth respondent in the revenue records in respect of subject land by deleting the name of the petitioner. Challenging the said order, the petitioner filed a

revision petition before the first respondent. The first respondent, by his impugned order dated 03.11.2007, dismissed the revision by confirming the order of the second respondent.

4. Respondent Nos.1 and 3 filed a counter-affidavit stating that as the fourth respondent defaulted in payment of loan amount, the Corporation seized the subject land and sold the same in an auction in favour of the fifth respondent. It is further stated that the first respondent is competent to decide the case on merits under Section 9 of the ROR Act and accordingly sought to dismiss the writ petition.

5. The fifth respondent filed a counter-affidavit stating that he purchased the subject land from the Corporation in the auction and the Corporation executed a registered sale deed dated 16.12.2005 in his favour. He further stated that the fourth respondent has given the subject land as security prior to the alleged purchase made by the petitioner on 16.12.1995 and that the petitioner had to verify the encumbrance details of the subject land before purchase. He further stated that the second respondent rightly exercised the power conferred under the provisions of the A.P. Rights in Land and Pattadar Passbook Act, 1971 (for short, ROR Act) and passed the order dated 18.07.2007 and that the first respondent also rightly rejected the revision of the petitioner.

6. Sri P.Venugopal, learned counsel for the petitioner, submitted that the petitioner is a bonafide purchaser and purchased the

subject property for a valid sale consideration without knowing the fact that the fourth respondent obtained loan and kept the property under collateral security in favour of the Corporation. He further submitted that the petitioner is in possession of the subject land and that when the National Highways Authority acquired part of the subject land for the purpose of toll gate, the petitioner was paid compensation. He further submitted that when there is a title dispute with regard to a property, the parties have to approach a competent civil Court and there is bar to the Revenue Authorities to decide the same, under Section 8 of the ROR Act. In spite of the same, the second respondent passed the order and it is liable to be set aside. The first respondent also confirmed the order of the second respondent in a mechanical manner and hence both the orders of respondent Nos.1 and 2 are liable to be set aside.

7. Sri K.Chidambaram, learned counsel for the fifth respondent, submitted that the fifth respondent purchased the subject land in the auction conducted by the Corporation for a valid sale consideration. As per Section 29(2) of the State Financial Corporation Act, 1951, the Corporation is competent to transfer the property under mortgage by way of sale for recovery of loan amount under the Revenue Recovery Act and hence, as per the same, the Corporation conducted the auction and accordingly, executed a sale deed in favour of the fifth respondent, who stood as highest bidder. He further submitted that the petitioner, before purchasing the property, should have verified the encumbrances over the

subject land, but he cannot now claim the subject property and sought to dismiss the writ petition.

8. It is admitted by both the parties that the suit is pending in O.S.No.33 of 2006 on the file of the Court of the I Additional District Judge, Nalgonda between the same parties and it is at the stage of trial. In view of the pendency of the civil dispute which plays a vital role regarding the rival claim of the petitioner and the fifth respondent about their right and title upon the subject land, this Court feels it is not appropriate to interfere in the matter at this stage. Insofar as the action of the first respondent in passing order dated 03.11.2007 in the revision by confirming the order of the second respondent dated 18.07.2007 is concerned, it was not warranted for him to adjudicate the matter and to issue necessary declaration in favour of the parties, while it is pending adjudication before the competent civil Court.

9. Insofar as the contention of the fifth respondent that it was the *prima facie* duty of the petitioner to verify the encumbrances over the subject land before purchase is concerned, the fact of keeping the subject land under collateral security in favour of the Corporation was not reflected in the encumbrance certificate and the name of the vendor of the petitioner i.e., the fourth respondent, was reflected in the revenue records. Therefore, it can be said that there was no occasion for the petitioner to draw any inference with regard to the mortgage of the subject land and to suspect the title.

10. For the reasons indicated above, this writ petition is allowed setting aside the order of the first respondent in No.F2/8985/2007, dated 03.11.2007, confirming the order of the second respondent in case No.D/1676/06, dated 18.07.2007. It is left open to the petitioner and the fifth respondent to get their rights adjudicated in the aforesaid pending suit. No costs. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 05-10-2018
TJMR

