

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

WRIT PETITION No.30889 of 2017

ORDER: (Per Hon'ble Sri Justice T. Amarnath Goud)

The action of respondent-bank in not handing over the original link documents bearing Nos.5641/1996 and 5784/1996 to the petitioner even after finalisation of sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act), is challenged in this writ petition.

2. The case of the petitioner, in brief, is as under:

The respondent-bank has issued auction notification on 18.01.2017 for sale of Ac.4-00 guntas of land in survey No.309/P of Bachupally Village, Qutubullapur Mandal, Ranga Reddy District. The petitioner-M/s NJR Constructions Private Limited, participated in the auction and stood as highest bidder, and the bank issued Sale Certificate in favour of the petitioner for an extent of Ac.4-00 guntas of land. However, on survey of the land, the petitioner came to know that the extent of land is only Ac.3-14 guntas, and not Ac.4-00 guntas as shown in the Sale Certificate. In those circumstances, the petitioner filed W.P.No.9982 of 2017. A Division Bench of this Court by order dated 20.04.2017 disposed of the same by directing the petitioner to return the Sale Certificate to the bank, and also directed the bank to issue a fresh Sale Certificate for an extent of Ac.3-14 guntas and to refund the difference of amount of Rs.2,34,81,250/- to the petitioner.

Accordingly, the respondent-bank issued a fresh Sale Certificate dated 04.05.2017 and refunded the differential amount to the petitioner, and thereafter the bank executed a registered sale deed dated 26.05.2017 in favour of the petitioner vide document No.5328/2017 for an extent of Ac.3-14 guntas. However, the bank has withheld the original link document Nos.5641/1996 and 5784/1996.

3. Heard learned counsel for the petitioner, and the learned counsel for the respondent-bank.

4. Learned counsel for the petitioner contends that though the bank executed registered sale deed for the land admeasuring Ac.3-14 guntas way back in 2017, till date the bank has not handed over the original link documents pertaining to the said land. It is further contended that the land of Ac.3-14 guntas purchased by the petitioner is covered by four registered sale deeds i.e., document Nos.5640/1996, 5641/1996, 5784/1996 and 5785/1996 of S.R.O. Medchal, covering an extent of Ac.1-00 guntas each, but the bank has handed over only two link documents i.e, No.5640/1996 and 5785/1996; and withheld two other link documents i.e., No.5641/1996 and 5784/1996, without there being any land left out pertaining to said documents. It is further contended that the petitioner has invested huge amounts in purchase of the subject land and intends to develop the land by making construction and is in the process of obtaining permission from the authorities, and also approaching financial institutions for

loan, and hence, the petitioner is in urgent need of the original link document Nos.5641/1996 and 5784/1996 which are not handed over to him by the bank. Learned counsel, therefore, assails the action of the bank in withholding the original link documents of the property of the petitioner as illegal and arbitrary, and seeks a direction to the bank to immediately handover the original link documents to the petitioner.

5. Learned counsel for the respondent-bank, though not disputed the factum of it withholding the original link documents that are the subject matter of this writ petition, however, submits that the bank has not parted with the land of Ac.0-26 guntas and, therefore, it has right over Ac.0-26 guntas which forms part of the Ac.4-00 land covered under the four registered sale deeds i.e., 5640/1996, 5641/1996, 5784/1996 and 5785/1996. Hence, the bank has withheld the two original link documents i.e., 5641/1996 and 5784/1996, and the bank has written to the Tahsildar, Bachupally, requesting him to indicate which of the four sale deeds actually reflect the unsold portion of Ac.0-26 guntas. It is further submitted that the bank has furnished various documents/letters to the Tahsildar, Bachupally, for identifying the land of Ac.0-26 guntas as it could not ascertain which one of the four original link documents covers the Ac.0-26 guntas.

6. The contention of the bank is that out of the total extent of land of Ac.4-00 guntas, it has sold only Ac.3-14 guntas and, therefore, it has right over the unsold Ac.0-26 guntas which forms

part of the Ac.4-00 land covered under the four registered sale deeds i.e., 5640/1996, 5641/1996, 5784/1996 and 5785/1996 and, hence, it has withheld two documents i.e., 5641/1996 and 5784/1996. The said contention cannot be countenanced for the reason that the petitioner is not claiming right over the alleged Ac.0-26 guntas. The petitioner's grievance in this writ petition is limited to the extent of original link documents connected with its sale deed document No.5328/2017 pertaining to Ac.3-14 guntas of land. It is pertinent to note, and obvious from the record, that the bank, solely relying on the recitals in the original link documents showing the total extent as Ac.4-00 guntas, has withheld two link documents to pursue with the revenue authorities to identify the alleged Ac.0-26 guntas.

7. It is pertinent to note that the Tahsildar, Bachupally, vide letter No.E/137/2017 dated 15.04.2017 has intimated to the G.P. for Revenue, High Court, that the land in Survey No.309 has been surveyed by the Surveyor and it is found that the total extent of land is Ac.5-18½ guntas only and he has also enclosed the sketch of the land.

8. It is further pertinent to note that the said report of the Tahsildar was considered by this Court in W.P.No.9982 of 2017. In W.P.No.9982 of 2017, the General Manager of the respondent-bank has filed counter affidavit dated 19.04.2017 acknowledging that the Tahsildar has filed report locating the Ac.3-14 guntas sold in favour of the petitioner, and that the shortage of land could not be

properly identified with reference to the Survey No.309, and that the report of the Tahsildar was acceptable to them.

9. It is further pertinent to note that the respondent-bank, except relying on the very same material that was taken into consideration at the time of disposal of W.P.No.9982 of 2017, could not produce any fresh material to substantiate its action in withholding the two original link documents. When there is no land left out in the subject property and when a fresh sale certificate has been issued with an understanding that the land is not Ac.4-00 guntas, but it is only Ac.3-14 guntas, the action of the bank in retaining the documents is unjust. The bank is not justified in relying upon Section 55(3) of the Transfer of Property Act, as there is no property physically retained.

10. Therefore, we direct the respondent-bank to handover the original link document Nos.5641/1996 and 5784/1996 to the petitioner. We make it clear that in view of the anomaly in the extent of land in the four original link documents and the sale deed registered in favour of the petitioner by the bank, the petitioner's right, title and interest shall be restricted to only Ac.3-14 guntas of land in Survey No.309/P, for which the bank has registered sale deed in favour of the petitioner. Further, in view of the apprehension of the bank with regard to the existence of alleged Ac.0-26 guntas of land, we make it clear that this order does not preclude the bank from pursuing its remedies in accordance with law.

11. The writ petition is allowed to the extent indicated above.
Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 20.06.2018
TJMR

