

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT APPEAL Nos.533 and 540 of 2019
and
CONTEMPT APPEAL No.7 of 2019

Date: 19.09.2019

Between:

W.A.No.533 of 2019

The State of Telangana,
Rep. by its Principal Secretary,
Department of Agriculture and Cooperation
Secretariat, Hyderabad and 4 others

...Appellants

And

M/s.Abid Abedi and Associates,
A firm rep.by its Partner Krishna Naik
And 2 others

.. Respondents

W.A.No.540 of 2019

The State of Telangana,
Rep. by its Principal Secretary,
Department of Agriculture and Cooperation
Secretariat, Hyderabad and 4 others

...Appellants

And

M/s.Abid Abedi and Associates,
A firm rep.by its Partner Krishna Naik
And 2 others

.. Respondents

C.A.No.7 of 2019

Smt.Aruna Devi,
The Deputy Registrar of Cooperative Societies,
Golconda Division, APHB Complex,
Exhibition Grounds Road, Nampally,
Hyderabad.

.. Appellant

And

In re....

.. Respondent

Counsel for the appellants : Mr.S.Sharath Kumar,
Special Government Pleader

Counsel for the respondents : Mr.Vedula Srinivas

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

All these appeals are filed against the common Order, dated 16.04.2019, passed by a learned Single Judge of this Court in I.A.No.1 of 2019 in/and W.P.No.27827 of 2018, I.A.Nos.2 and 3 of 2019 in/and W.P.No.59 of 2019 and *Suo Motu* Contempt Case No.77 of 2019.

2) The brief facts of the case are that the 5th appellant herein – The Kalyan Cooperative Urban Bank Ltd., (hereinafter referred to as 'the Bank'), which is under liquidation, had lent some amounts to Mr.P.Uday Kumar, Mr.K.Naveen Kumar, Mr.P.Uma Shankar, Ms.K.Indira Devi and Mr.K.P.V.Subbaiah, prior to 2003; the loans were guaranteed by M/s.Sri Sai Construction & Engineering Company by way of mortgage of the land in Sy.No.230 of Manchirevula village. These mortgages are in two parcels of Acs.5.00 gts. each. One is covered by registered sale deed No.12049 of 1990, and another by registered sale deed No.12050 of 1990. On default committed by the borrowers, the Bank had filed Arbitration Cases against the original borrowers. The Awards were passed in Case No.139/03/CUB, dated 15.04.2013, and Case No.129/03/CUB, dated 15.04.2003. Subsequently, Execution Petitions were filed for executing the said Awards. In pursuant to the same, public auction was conducted by the Bank on 13.11.2003 wherein the respondent No.1 in both the Writ Appeals had participated and became the successful bidder in purchasing Acs.5.00 gts., of land for an amount of Rs.29,30,500/- and a Sale Certificate, dated 18.03.2004, was issued; he was also put in possession of the said land. The case of the respondents in these Writ Appeals is that they have also purchased the other parcel of Acs.5.00 gts., of land through four

registered sale deeds directly from the 5th respondent-Bank and they are in possession and enjoyment of the same.

3) When the Deputy Registrar of Cooperative Societies, Golconda Division, wanted to conduct auction on 19.12.2012 for recovery of amounts due to the Bank in respect of the very same land of Acs.5.00 gts., purchased by respondent No.1 in both the Writ Appeals, the auction purchaser i.e. R.1 in the writ appeal filed W.P.No.38870 of 2012 questioning the auction proposed to be held on 19.12.2012 wherein interim order, dated 18.12.2012, was passed by this Court directing that the auction to be held on 19.12.2012 may go on, but no further steps should be taken. Subsequently, the said Writ Petition was disposed of on 25.03.2013 observing that the writ petitioner therein had paid the entire amount and as such no further adjudication is necessary.

4) Subsequently, the Deputy Registrar of Cooperative Societies has again notified Acs.5.00 gts., of land vide notice, dated 05.07.2018, in E.P.No.177/03-CUB. As against the said notice, the respondents in both the Writ Appeals have approached this Court by way of filing W.P.No.27827 of 2018 and obtained stay vide order, dated 07.08.2018. While the said writ petition was pending, the Deputy Registrar of Cooperative Societies issued another notice on 04.11.2018 seeking to sell the land in respect of Acs.5.00 gts. of land situated in Sy.No.230 of Manchirevula village in E.P.No.89/03-CUB, ignoring the order, dated 07.08.2018 passed in W.P.No.27827 of 2018. Questioning the same, the respondents in both the Writ Appeals have filed W.P.No.59 of 2019 before this Court.

5) Insofar as the Contempt Case is concerned, the learned Single Judge having felt that the interim order, dated 07.08.2018, passed in I.A.No.1 of 2018 in W.P.No.27827 of 2018 was deliberately violated by the Deputy Registrar of Cooperative Societies, taken up the Contempt *suo motu*.

6) The learned Single Judge, after going through the entire record, was of the opinion that the land, which was sought to be auctioned vide notices dated 05.07.2018 and 04.11.2018, was already purchased by the writ petitioners in two parcels i.e., an area of Acs.5.00 gts., of land in Sy.No.230 of Manchirevula village directly from the bank through four registered sale deed; the other parcel of Acs.5.00 gts., of land in Sy.No.230 of Manchirevula village was purchased in public auction by the petitioner No.1 and on his depositing the entire sale consideration, a sale certificate under Rule 52 (14)(v) of the Rules framed under the Telangana Cooperative Societies Act, 1964, was also issued in favour of the petitioner No.1. As such, the authorities cannot again put the very same land for auction, which was sold earlier through auction. If any amounts are due to the Bank from the original borrowers, they can proceed against some other property of the borrowers/guarantors, but cannot proceed against the lands which were already sold to third parties, and thereby allowed the writ petitions by setting aside the notices.

7) The official respondents, aggrieved by the order of the learned Single Judge, have assailed the same on several grounds:-

Firstly, the disputed questions of fact regarding identity of the property was not addressed properly by learned Single Judge. Without ascertaining the same, the Writ Petitions were allowed;

secondly the borrower/guarantor were still due some amounts, and the earlier sales did not discharge the loan amounts totally.

8) Heard Sri S.Sharath Kumar, the learned Special Government Pleader, appearing for all the appellants, and Sri Vedula Srinivas, the learned Counsel appearing for the respondents.

9) After perusing the order passed by the learned Single Judge and the record, it is seen that vide sale certificate, dated 18.03.2004, issued under Rule 52 (14)(v) of the Telangana Cooperative Societies Rules, the then Divisional Cooperative Officer, Golconda Division, pursuant to E.P.No.90 of 2003 in Award No.139/03/CUB, and E.P.No.93 of 2003 in Award No.129/03/CUB, dated 15.04.2003, the liquidator had auctioned the property admeasuring Acs.5.00 gts., in Sy.No.230 of Manchirevula village, Rajendra Nagar Mandal, Rangareddy District, and the petitioner No.1, being the successful bidder in the public auction, had deposited the entire bid amount of Rs.29,30,500/-, and the sale was confirmed. It is pertinent to note that in the said Sale Certificate, which was issued on 18.03.2004, the boundaries of the property sold in the said auction were mentioned as follows:-

North : Owners land

South: Government Land

East : Owners land

West : Land belonging to Sri Kalicharan.

A perusal of the notice, dated 05.07.2018, issued under Rule 52(11)(e) of the Telangana State Cooperative Societies Rules, 1964, shows that the boundaries of the property admeasuring Acs.5.00 gts. in Sy.No.230, that is sought to be now auctioned, are as follows:

North : Owners land

South: Government Land

East : Owners land

West : Land belongng to Sri Kalicharan.

10) Learned Special Government Pleader appearing for the appellants failed to answer the query of this Court as to how the property, which was already sold in the year 2003 and having issued the Sale Certificate on 18.03.2004 in favour of the highest bidder, could be put to auction again, after a lapse of fourteen years. He tried to justify the same on the ground that since the original borrowers were still due to repay some amounts, the sale notice was issued for recovery of the said unpaid loan amount.

11) This argument of the learned Special Government Pleader cannot be countenanced in view of the fact that the lien over the property, admeasuring Acs.5.00 gts., in Sy.No.230, came to an end with the issuance of the Sale Certificate, dated 18.03.2004, in favour of the highest bidder, namely the petitioner No.1. Once having parted with the said property, the borrowers do not have any right to sell the very same property to make up for the unpaid loan amount, if any, which is due to the bank. It is an admitted fact that the land which was sold in public auction in 2003 is covered by the link document bearing No.12049 of 1990. The boundaries of the land sold in public auction in 2003 and the land which is sought to be sold now are one and the same.

12) Another contention advanced by the learned Special Government Pleader is that earlier four sale deeds, which were executed by the Bank directly in favour of the purchasers, are illegal and sham documents.

13) A perusal of the record reveals that the writ petitioners have purchased different parcels of land in Sy.No.230 vide four registered sale deeds, which are as follows:-

Sl. No.	Registered Sale Deed No.	Date	Purchaser name	Extent purchased
1.	6774/2002	16.08.2002	Mr.Abid Abedi	Ac.1.00 gts.
2.	7007/2002	16.08.2002	Mr.Viswa Mohan Mandalapu	Ac.3.00 gts.
3.	7377/2002	02.09.2002	Mr.N.Satyanarayana	Ac.0.20 gts.
4.	7378/2002	02.09.2002	Mr.N.Satyanarayana	Ac.0.20 gts.
			Total	Ac.5.00 gts.

In all these four registered sale deeds, the link document is shown as registered document No.12050 of 1990, dated 14.09.1990. All these sale deeds are executed by M/s.Kalyan Co-operative Urban Bank Limited directly, that too after the full amount was deposited into the account of the Bank. When it is the case of the appellant that the original amount borrowed by the borrowers were guaranteed under two registered sale deeds bearing Nos.12049/1990 and 12050/1990 for a total area of Acs.10.00 gts., and the said land had already been sold to different purchasers, it is not understandable as to how the very same property can be put to auction again after a lapse of fourteen years. *In spite* of posing persistent questions, the learned Special Government Pleader for the appellants could not answer the query of the Court satisfactorily. But on the other hand, he was vehemently arguing that the borrowers still owed certain amounts, thus the auction is being conducted to clear off the outstanding loan amounts. It is a settled proposition of law that once a person has sold or parted with a property through a registered sale deed, or any other legally valid document, he loses all rights over the same, and he does not have any right, or title to the said property. Admittedly, the

appellants have already sold the property in question way back in the year 2002 and 2003. Therefore, the question of putting the very same property for auction on the ground that loan amounts are outstanding from the original borrowers, is not only illegal, but the same is also against the law. If any amounts are due from the original borrowers, the authorities are free to proceed against any other properties of the borrowers. But they do not have any right to put the property, which is already sold, again for auction. Hence, the Writ Appeals filed by the appellants are devoid of merit. The same are hereby dismissed.

14) Insofar as the Contempt Appeal is concerned, having felt that the Deputy Registrar of Co-operative Societies, Golconda Division, has deliberately violated the Orders of the Court, the learned Single Judge has *suo motu* taken up the Contempt Case, and sentenced the contemnor to pay fine of Rs.2,000/-. It is seen from the affidavit filed by concerned Officer i.e. Smt.Aruna Devi, the Deputy Registrar of Co-operative Societies, Golconda Division, the appellant-contemnor, that she has taken charge of the office on 02.05.2018 and was also appointed as Nodal Officer for Hyderabad District for the Assembly Elections of the State of Telangana by order, dated 27.10.2018, and she worked as such till 16.12.2018. Therefore, the order, dated 07.08.2018, passed in I.A.No.1 of 2018 in W.P.No.27827 of 2018 was not brought to her notice. When the papers were put before her she has simply signed the sale notice in good faith, and by oversight due to the pressure of work. Thus, there is no deliberate or intentional violation of the orders of the High Court. She has further submitted that mistake has occurred inadvertently, for which, she has tendered an unconditional apology.

15) Having gone through the record, we are of the opinion that when an Officer is transferred and a new Officer is appointed to a particular post, the new Officer may not be aware of all orders passed by various Courts, and it is for the Subordinates Officers, who are working there, to bring the same to the notice of the Officer the orders passed by the Courts from time to time. Moreover, it is not the case where the writ petitioners have averred any overt acts or malafides against the concerned Officer. In view of the same, the Contempt Appeal filed by the Contemnor is hereby allowed and the punishment imposed is set aside and the Contemnor is discharged.

The miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

19th September, 2019
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