

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15299 of 2019

ORDER:

This Writ Petition is filed to declare the sale notice dated 15.6.2019 issued by the District Co-Operative Officer, Khammam, as illegal and arbitrary and consequently, to set aside the same.

Heard learned counsel for the petitioner, learned Assistant Government Pleader for Co-operation appearing for respondent Nos.1 and 2 and Sri S.Chandrasekhar, learned counsel for respondent No.3.

Sri M.P.Kashyap, learned counsel for the petitioner, submits that earlier, when respondent No.2 issued sale notice dated 23.01.2019, in E.P.No.17 of 2019, the petitioner approached this Court by way of filing Writ Petition No.2526 of 2019 and this Court granted interim order on 22.02.2019 to the effect that subject to the petitioner depositing 1/3rd of the total amount quantified i.e., Rs.2,65,16,967 with respondent No.3 bank before 28.02.2019 and the balance amount of 50% of the total amount due within one week from 28.02.2019, the bank may conduct sale of the subject property but shall not confirm the sale. However, in pursuance of the said interim order, the petitioner could not deposit the said amount. As such, auction took place but the same could not be finalised as the auction purchaser has not deposited the amount. Thereafter, Writ Petition No.2526 of 2019 was dismissed as withdrawn on 18.3.2019. Subsequently, the petitioner paid an amount of Rs.65 lakhs towards EMIs and in spite of the same, the

present impugned sale notice is issued and he also complains that from March, 2019 onwards the bank authorities are not receiving the EMIs from him.

On the other hand, learned Government Pleader for Co-Operation appearing for respondent Nos.1 and 2 and Sri S.Chandrasekhar, learned standing counsel for respondent No.3, based on the averments in their respective counter affidavits, submit that since the petitioner defaulted in payment of the EMIs, after following the due procedure, as envisaged under the Telangana Co-Operative Societies Act, 1964 (for brevity 'the Act'), a certificate under Section 71 of the Act was issued by respondent No.2; that as the petitioner failed to pay the due amounts, respondent No.3 filed E.P. before respondent No.2 and still as the amount was not paid, proceedings were initiated for sale of the property; that thereafter, the petitioner filed Writ Petition No.2526 of 2019 and obtained interim order subject to his depositing certain amount; that instead of depositing the said amount, he filed Writ Appeal No.146 of 2019 and the same was dismissed as withdrawn on 29.3.2019; and that the petitioner failed to comply with the interim order granted by the learned single Judge within the stipulated time and has leisurely paid a sum of Rs.65,16,000/- on 20.3.2019.

Since the certificate, dated 19.11.2018, issued under Section 71 of the Act is valid and subsisting, the respondents have right to conduct auction of the subject property for recovery of the entire arrears and that against the issuance of certificate under Section 71

of the Act, the petitioner has alternative remedy under Section 76 of the Act before the Co-Operative Tribunal, but without availing the said remedy, the petitioner filed the present Writ Petition.

In this case, it is to be seen that the fact that certificate under Section 71 of the Act was issued in favour of respondent No.3 against the petitioner is not in dispute. However, the case of the petitioner is that he has paid the instalments up to March, 2019, and is ready and willing to pay the balance amount, but respondent No.3 bank is not receiving the same.

Further, it is to be seen that as long as the certificate issued under Section 71 of the Act is valid and subsisting, the respondents are entitled to proceed for recovery of the arrears due under the said certificate by following the due procedure and as such, EP was filed. Though the petitioner filed Writ Petition No.2526 of 2019 and obtained interim order therein, he failed to comply with the same. The respondents stated that an amount of Rs.65 lakhs was paid after expiry of the time fixed by the learned single Judge in the said Writ Petition and more over, Writ Appeal No.146 of 2019 filed against the said interim order was dismissed as withdrawn subsequently.

In view of the same, the action of the respondents in issuing the impugned sale notice cannot be faulted with. Even according to the petitioner, the certificate issued under Section 71 of the Act is still valid and subsisting. Therefore, I do not find any reason to entertain the Writ Petition and the same is accordingly dismissed.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. No order as to costs.

06th August, 2019
dr

JUSTICE A. RAJASHEKER REDDY

