

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22368 of 2019

ORDER:

This Writ Petition is filed seeking to issue a writ of *Mandamus* declaring the sale notice dated 18.9.2019 issued in E.P.No.290/SMKT/2016-17 by respondent No.2 as illegal and arbitrary.

In the affidavit, filed in support of the Writ Petition, the petitioner averred that pursuant to the notice sent to his mother under Section 71(2) of Andhra Pradesh Co-Operative Societies Act (for short 'the APCS Act'), he appeared before respondent No.2 on 11.6.2015 and requested him to provide the loan details; that no information was provided to him; that later, his mother received another notice under Section 71(2) of the APCS Act from respondent No.2 with a direction to appear before him on 21.7.2019; that subsequently, the petitioner produced certain documents before respondent No.2 to the effect that his father cleared the loan and some amounts were waived under the Debts Waiver Schemes introduced by the Government; that respondent No.2 informed the petitioner that he will verify the records and send the same, but so far, no documents were received from the respondents; and that on 10.10.2019, respondent No.2 called the petitioner to his office and informed about the impugned sale notice. Aggrieved by the said sale notice, the present Writ Petition is filed.

In the counter-affidavit filed on behalf of respondent No.4, at para-3 thereof, the details of the loan availed by the father of the petitioner, the part payments made by him, the outstanding due payable for the said loans, etc., were elaborately stated. However, there is no reply to the averment of the petitioner regarding the death of his father and the procedure followed before issuing the impugned sale notice.

Learned counsel for the petitioner submitted that the impugned sale notice was issued against the father of the petitioner who died on 31.3.2004; that without there being any Certificate of Award, the impugned sale notice was issued and as such, respondent No.2 did not follow the due procedure under law before issuing the impugned sale notice and hence, the same is liable to be set aside.

Learned Standing Counsel for respondent No.4 reiterated the contents in the counter.

All the above facts would go to show that there is no Award or Certificate prior to issuance of the impugned sale notice. Though the Government Pleader for Co-Operation submits that the petitioner has an alternative remedy against the impugned sale notice, when the petitioner alleges that due procedure was not followed prior to issuing the impugned sale notice, the same is not answered in the counter-affidavit filed by respondent No.4-society.

Therefore, in spite of availability of alternative remedy, there is no bar for entertaining the Writ Petition when the procedure envisaged

under the statute is not followed before issuing the impugned sale notice, that too, when it was issued against a dead person.

In view of the aforesaid facts and circumstances, when the impugned sale notice is not in accordance with the provisions of the statute, the same is liable to be set aside.

The Writ Petition is accordingly allowed setting aside the impugned sale notice. However, this order will not preclude the competent authority from taking appropriate steps in accordance with law.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

29th October, 2019
dr

A.RAJASHEKER REDDY, J

