



WEB COPY

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 20.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A. No.372 of 2018
and C.M.P.No.3090 of 2018

The Authorised Officer,
Canara Bank,
Formerly Syndicate Bank,
Regional Office- 1,
166, T.V.Samy Road (West),
R.S.Puram,
Coimbatore - 641 002.

... Appellant/ Respondent

versus

Smt.Sarala Bardia

... Respondent/ Petitioner

(Cause title amended vide Court order dated 03.08.2021 by
TRJ and VSGJ in C.M.P.No.11662 of 2021 in W.A.No.372/2018)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to allow the above Appeal and thereby set aside the
order dated 20.01.2017 in W.P.No.15311 of 2013.

Prayer in WP.No.15311 of 2013: Petition filed under Article 226
of the Constitution of India Praying for issuance of a Writ of
Mandamus, to direct the respondent bank to refund the sum of
Rs.11, 50, 000/- with interest @ 18% per annum from 02.12.2012
to the petitioner.

For Appellant :Mr.P.Sreenivasulu

For Respondent :Mr.S.Thamizharasan

JUDGMENT

(Judgment of the Court was delivered by T.RAJA,J.)

The Authorised Officer, Syndicate Bank has brought this
appeal against the order dated 20.01.2017 passed in W.P.No.15311
of 2013, wherein the learned Single Judge, finding fault with
the appellant bank in selling 6.50 cents instead of 3.70 cents,



imposed costs of Rs.50,000/- for the lethargic attitude in making the writ petitioner believe that the land in question is having an extent of 6.50 cents instead of 3.70 cents.

2.The case of the respondent/writ petitioner is that on seeing the notice inviting the public to take part in the public auction, she participated in the said auction held on 02.02.2012 believing that the property situated at Door Nos.2/393 & 394, Kengari Revenue Village Panchayat, comprised in S.No.193, Kilkotagiri, Nilgiris District is having 6.50 cents. After she was declared as a successful bidder, she has also deposited the entire amount of Rs.11,15,000/- by way of Demand Draft and cash she was issued an interim certificate by the appellant bank on 02.02.2012. Immediately, on payment of the entire amount, she was issued the sale certificate and the possession of the property was also handed over to her on the same day. After taking possession, she applied for scrutinizing the revenue records and she was informed that the old Survey No.193 has been changed into new Survey No.404/8, which in turn, has been subdivided as Survey Nos.404/8A, 8B, 8C and one Veerabadrasamy, whose property was brought for auction by the bank, was the owner of Survey No.404/8B and the extent of the property that belonged to him, was only 0.01.5 hectares, which works out to 3.70 cents. On receipt of the said information, she made a physical measurement of the property and to her shock and surprise, she found that the total extent of the property measures only 3.70 cents and not 6.50 cents as represented by the appellant bank at the time of bringing the property for auction and at the time of giving interim certificate on 02.02.2012. Therefore, she approached the appellant bank on number of occasions to clarify the same and requested the bank to either physically convey the 6.50 cents or to refund Rs.11,15,000/- with interest from 02.02.2012. The appellant bank bent upon to pressurize her to receive the sale certificate by showing the total extent as 6.50 cents. On the other hand, the respondent had insisted the bank to refund a sum of Rs.11,15,000/-, which was paid by her during the auction sale on 02.02.2012 along with interest from that day onwards till the date of actual payment. The respondent issued a legal notice to the appellant bank on 08.04.2013 and requested the appellant bank to refund the sum of Rs.11,15,000/- with interest from 02.02.2012. Since the appellant bank has not come forward to resolve the issue, the respondent filed the writ petition under Article 226 of the Constitution of India, seeking a direction to the appellant bank to refund the sum of Rs.11,15,000/- with interest @ 18% per annum from 02.02.2012.

3.A detailed counter affidavit has been filed by the appellant bank justifying the stand that the bank cannot be held responsible for selling 6.50 cents on the premise that as per



the sale by inviting tenders by public auction in the Hindu dated 02.01.2012, the property was sold as is where is condition. Moreover, before submitting the tender to purchase the property in public auction, the respondent duly inspected the property and verified the extent, boundaries, measurements and nature of the property and after satisfying herself about the correctness of the property in question, participated in the auction held on 02.02.2012. Therefore, the appellant bank cannot be found fault with.

4.Learned counsel for the appellant submitted that when the original owner of the property, at the time of approaching the appellant bank, has mortgaged the property by mis-representing that the property in question was having only 6.50 cents, the appellant Bank, accepting the same, has come forward to sell the said property in public auction held on 02.02.2012 to the extent of 6.50 cents to the respondent. When the appellant Bank invited the tenders from the public for purchase of the land to the extent of 6.50 cents, the respondent, after verifying the land in question, came forward to participate in the public auction, where, he was declared as the highest bidder. Therefore, the contention made by the respondent that the property sold away in public auction by the appellant bank to the extent of 3.70 cents and not 6.50 cents is un-justified.

5.We do not find any merit or justification whatsoever in the submission made by the learned counsel appearing for the appellant for the reason that when there was a dispute on the extent of the land in question, the Tahsildar, Kothagiri has surveyed the land with the Assistant of the Surveyor and addressed a letter dated 01.03.2013 to the Bank Manager, Syndicate Bank, Kothagiri stating that the land in S.No.404/8B having an extent of 0.01.5 hectares, which works out to 3.70 cents, belonged to Mr.Veerabadhirasamy. Therefore, when the Bank Manager, Syndicate Bank, Kothagiri was fully aware of the fact by the letter dated 01.03.2013 issued by the Tahsildar, Kothagiri that the land in question is having only 3.70 cents, the appellant, being the public institution, ought to have mentioned in the auction notice correctly the extent of the land as 3.70 cents, but not 6.50 cents, which they have miserably failed to do. Learned Single Judge, considering the report of the Advocate Commissioner that subject property situated at Door Nos.2/393 and 394, Kengari Revenue Village Panchayat, Old Survey No.193 and New Survey No.404/8B, Kilkotagiri, Nilgiris District is only 3.70 cents, but not 6.50 cents and considering the fact that the appellant bank, being a public institution, ought to have measured the property before bringing the property in the public auction and finding fault with the lethargic attitude of the appellant bank, has allowed the above writ petition by imposing costs of Rs.50,000/-, which, in our view, cannot be found fault with.



6. When the learned Single Judge has minutely dealt with the issue and exposed the wrong stand taken by the appellant bank that they committed serious mis-conduct by misleading the public, for which imposed a cost of Rs.50,000/-, the appellant bank, being a public institution, as an ordinary litigant has un-necessarily filed this appeal by wasting valuable public money and by wasting the precious time of this Court, for which, we are inclined to enhance the costs imposed by the learned Single Judge. Accordingly, this writ appeal is dismissed and the appellant bank is directed to pay a sum of Rs.1,00,000/- to the respondent towards costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

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Formerly Syndicate Bank,
Regional Office- 1,
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Coimbatore - 641 002.

+1cc to Mr.P.Sreenivasulu, Advocate, S.R.No.54050

W.A.No.372 of 2018
and C.M.P.No.3090 of 2018

BR(CO)
NSK(03/12/2021)