

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
&
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
Writ Petition Nos.19998, 20180, 20395 and 20630 of 2023

COMMON ORDER:*(per Sri Justice D.V.S.S.Somayajulu)*

Heard learned for the petitioners and learned counsel for the respondents.

2. These four writ petitions are filed by the petitioners to claim to be agreement of sale holders and also who have filed suits for Specific Performance. The properties mentioned in these four writ petitions, in which, the petitioners claim some right are mortgaged to the 1st respondent-Bank. In W.P.Nos.19998, 20180 and 20630 of 2023, the primary borrower is a firm called Amrutha Traders. In W.P.No.20395 of 2023, the primary borrower is Haripriya traders. The unofficial respondents are common. The writ petitioners in 3 cases claim to have an agreement of sale and some claim to have approached the Courts for Specific Performance. In W.P.No.20395 of 2023 the petitioner is a lease holder. The petitioners in W.P.Nos.20180 and 20630 of 2023 claim to have interim orders in their favour granted by the respective Courts.

3. Therefore, when a publication was made for sale of the property under the provisions of SARFAESI Act, the petitioners approached this Court. It is also stated that all the petitioners are willing to pay the reserve price that has been fixed for the same, but the 1st respondent -Bank is not accepting the said request. Therefore, the writ petitions have been filed.

4. In reply, Sri B.Hanumanth Rao, learned counsel appearing for the respondents submits all the four agreements of sale are created for the purpose of litigation. It is his contention that the Bank has a charge over the property and security interest was created in favour of the Bank. It is also stated that at the time of loan being sanctioned, the mortgage deed being executed, due diligence was considered and there was no sign of any property agreed to be sold. It is also reiterated at more than one place that the borrower in collusion with his acquaintances has created the scenarios and fake documents.

5. There is no dispute seriously about the fact that the bank has to be paid and that there is a debt outstanding.

Whether the agreements on which the petitioners have relied are valid agreements or sham agreements, is not a matter that can be decided by this Court particularly while exercising the jurisdiction under Article 226 of the Constitution of India. It is also settled law that the agreement of sale does not confer any rights on the party. Therefore, whether a mandamus is maintainable at the instance of an agreement of sale holder whose rights are not crystallized into a decree etc., is a debatable issue.

6. However, in view of the recent judgments of the Hon'ble Supreme Court of India including the Judgment reported in ***South Indian Bank Ltd. v. Naveen Mathew Philip***¹ this Court is of the opinion that writ petition under Article 226 of the Constitution of India is not a remedy. In the opinion of this Court if any of the actions taken by the 1st respondent-Bank are contrary to the statute, petitioners will have to pursue their statutory remedies. The comment of the Hon'ble Supreme court that they are constrained to take judicial notice of the fact that High Courts continue to interfere in such matters is leaving this Court with no

¹ 2023 SCC Online SC 435

option but to hold, the petitioners have wrongly approached this Court. Whether, they have superior right to the interest of the bank and/or the auction purchasers is not a matter that can be decided in the course of this writ petition.

7. Therefore, these writ petitions are dismissed, leaving it open to the writ petitioners to pursue their remedy before appropriate and proper forum. As far as the payment of money and other offer made by the writ petitioners is concerned the law is also settled with reference to redemption of the property. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending shall also stand dismissed.

JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE DUPPALA VENKATA RAMANA

Date: 21.09.2023.
AG/KGR

140

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
&
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

Writ Petition Nos.19998, 20180, 20395 and 20630 of 2023

Dated: 21.09.2023

AG/KGR