

THE HON'BLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No.11739 of 2008

Between:

Chilakala Lakshmi Devi

PETITIONER

AND

1. Debts Recovery Tribunal, rep. by its Presiding Officer, Visakhapatnam, and others.

RESPONDENTS

ORDER:

The petitioner initially filed this writ petition under Article 226 of the Constitution of India, challenging the auction of the property admeasuring Ac.3.00 in D.No.142, out of total extent of Ac.6.93 situated in Agathavarappadu Village, Pedakakani Mandal, Guntur District as illegal and arbitrary. Subsequently, by way of amendment vide orders in W.P.M.P.No.46285 of 2013 this Court permitted the petitioner to assail proclamation of sale-cum-e-auction notice dated 28.10.2013 as being violative of Debt Recovery Act, SARFASI Act, Income Tax Act, Rules and Clauses 4.23 and 4.24, Guidelines for Valuation of Immovable Properties issued by the Directorate of Income Tax Department in 2009.

2. The case of the petitioner, as per the pleadings available on record, is as under.

The 3rd respondent is a partnership firm and respondents 4 and 5 are its partners. They borrowed in all a sum of Rs.12,30,000/- from the petitioner on different dates, and expressed their inability to pay the same and agreed to sell the property admeasuring Ac.3.00 cents situated in D.No.142, Agathavarappadu Village Pedakakani Mandal Guntur District. They executed an agreement of sale dated 10.06.1998 in favour of the petitioner and delivered the possession on the said date, but failed to execute the sale deed. Therefore, the petitioner instituted O.S.No.148 of 2007 on the file of the Court of the II Additional District Judge, Guntur for specific performance of agreement of sale on 30.08.2007 and after issuing legal notice dated 17.07.2007, she obtained an order of injunction in I.A.No.1598 of 2007 restraining the defendants from alienating the property and the said suit is pending. It is the her further case that she being a resident of Mahanandi village, Kurnool District, is not in a position to visit the property, which is in Guntur District. During the first week of

June, when she went to see the property she found the officials of the 6th respondent-Andhra Bank undertaking the process of measurement of the petitioner's property and on enquiry she came to know that respondents 4 & 5 obtained a loan by mortgaging the subject property to 6th respondent and failed to pay the amount, which resulted in filing of O.A.No.40 of 2002 by the 6th respondent on the file of the Debt Recovery Tribunal, Visakhapatnam for recovery of a sum of Rs.59,93,526.08 p.s. with future interest and the same was decreed on 14.03.2008. The petitioner also came to know of the initiation of recovery proceedings on 9.05.2008 in R.P.No.77 of 2009 in O.A.No.40 of 2002 by the 2nd respondent-Recovery Officer, Debt Recovery Tribunal. The grievance of the petitioner is that though she approached the 2nd respondent-Recovery Officer by way of a claim petition, the 2nd respondent did not accept the same and decided to hold auction of the property on 10.06.2008. Challenging the said auction, the present writ petition has been filed.

3. A counter affidavit is filed on behalf of respondents 3 to 5, opposing the sale of the subject property while practically supporting the case of the writ petitioner herein. A counter affidavit and also additional counter affidavit are filed on behalf of the 8th respondent, denying the averments in the writ affidavit and justifying the impugned action.

4. Heard Sri P.V. Raghu Ram, learned counsel for the petitioner, Sri M.A.V.S. Bhagwan, learned counsel appearing for respondent Nos.3 to 5, and Sri V. Raghu, learned counsel appearing for respondent No.8 and perused the material on record.

5. This Court on 20.11.2013 granted interim direction, directing the respondents not to auction the property.

6. The case of the petitioner is that the 2nd respondent is auctioning the property by completely giving a go-bye to the mandatory provisions of the Recovery of Debts Due to Banks and Financial Institutions, Act, 1993 and the clauses in the II & III Schedules to the

Income Tax Act. In support of his contentions and submissions, the learned counsel for the petitioner places reliance on the Guidelines for Valuation of Immovable Properties, 2009 issued by the Directorate of Income Tax. The learned counsel for the petitioner also relies on the judgments reported in **Syndicate Bank v. Andhra Pradesh Steels Limited and Anr**^[1]; **State Bank of India v. Venkataramana Reddy**^[2]; judgment of Punjab & Haryana High Court in **CW.P. No.21862 of 2012 dated 26.12.2013**; and **Dhanalakshmi Bank Ltd., v. Saritha Furniture Mart**^[3].

8. In the instant case, the petitioner is claiming the right over the subject property basing on agreement of sale said to have been executed by respondents 3 to 5 in her favour and also on the ground that she instituted a suit in O.S.No.148 of 2007 for specific performance of the agreement of sale, which is pending on the file of the Court of the II Additional District Judge, Guntur. According to her, she filed a claim petition before the 2nd respondent, who declined to receive the same.

9. As per the provisions of Section 29 of the Debt recoveries Act, 1993, the provisions of the II and III Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax.

10. Clause 11 of II Schedule, which deals with the procedure for recovery of tax under the Income Tax Act imposes obligation on the Tax Recovery Officer to investigate the claim or objection where any claim is preferred to, or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property, is not liable to attachment or sale.

11. Another significant aspect, which is canvassed by the learned counsel for the petitioner is that as per Guidelines for Valuation of Immovable Properties 2009 issued by the Directorate of Income Tax, the

Tax Recovery Officer is required to sell whole or part of the attached immovable property as may seem necessary to satisfy the certificate and before the sale is actually authorised the Tax Recovery Officer has to consider whether he should sell the entire property or only a part of it and for determining this, he can seek the help of the Valuation Officer.

12. The complaint precisely in the present writ petition is that by completely giving goby to the provisions of the Income Tax Act and the above mentioned guidelines, the 2nd respondent has contemplated to hold auction.

13. During the course of arguments, the learned counsel for the petitioner has placed on record a copy of the claim petition, which the petitioner wanted to file before the 2nd respondent. It is the allegation of the petitioner that the 2nd respondent did not accept the same.

14. In the considered opinion of this Court the right created under Clause 11 of the II Schedule to the Income Tax Act is a valuable right and cannot be denied to a claimant in a routine and mechanical manner. In fact, the said clause imposes an obligation on the Recovery Officer to adjudicate upon such claim and come to a conclusion by taking into consideration the material placed on record. In view of these reasons and in view of the involvement of substantial rights of the parties, this Court deems it appropriate to give an opportunity to the petitioner to agitate her claim before the 2nd respondent-Recovery Officer.

15. For the aforesaid reasons and having regard to the nature of controversy in the present writ petition and keeping in view the law laid down in the above referred judgments, this writ petition is disposed of permitting the petitioner herein to submit claim petition before the 2nd respondent-Recovery Officer within a period of one month from the date of receipt of a copy of this order and on receipt of such claim petition, the 2nd respondent-Recovery Officer shall consider the same in accordance with law. It is also made clear that if no such claim petition is filed within the time stipulated, it shall be open for the respondents to proceed in

accordance with law. This entire exercise shall be completed within a period of four months from the date of submission of the claim petition. Till the claim of the petitioner is considered and appropriate orders are passed, interim order granted by this Court on 20.11.2013 shall continue to operate. No order as to costs.

JUSTICE A.V. SESHA SAI.

29th April, 2014
Js.

[1] 2002 (6) ALD 662

[2] 2005 (1) B.C 113

[3] AIR 2006 Kerala 75