(2015) 11 KL CK 0096

In the High Court Of Kerala

Case No : WP(C) No. 11386 of 2015 (W)

Anil Kumar P. and Others — APPELLANT

Vs

The Joint Registrar (General), Co-operative Joint Retgistr''s Office and Others — RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:
Right to Information Act, 2005 — Section 5

Citation : (2015) 11 KL CK 0096

Hon'ble Judges : S.P. Chaly, J.

Bench : Single Bench

Advocate : James Abraham and P. Balan, Advocates, for the Appellant; Sojan James, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.P. Chaly, J.—This writ petition is filed by the petitioners seeking direction to the Respondents to permit the petitioners to remit the amounts specified in Ext. P1 and for a further writ of mandamus commanding Respondents to re-convey the property comprising in Survey Nos. 97/6A/2 and 97/6C/2 of Koothattukulam Village to the 1st petitioner after receipt of the amount specified in Ext. P1.

2. Brief facts for the disposal of the writ petition are as follows:

3. The 2nd petitioner who is the mother of 1st petitioner and her husband had availed an over draft facility for Rs. 1,00,000/- each on 12.10.2000 and 06.10.2000 respectively from the 3rd Respondent Bank. The loan was granted by the 3rd Respondent on the strength of mortgage executed by the 1st petitioner over 31.25 cents of landed property along with residential building in the survey numbers referred to above, of Koothattukulam Village. The 2nd petitioner''s husband expired on 26.10.2003.

4. It is the contention of the petitioners that consequent to the death of 2nd petitioner''s husband, the loan could not be repaid in time and thereupon the 3rd

Respondent proceeded with coercive steps to recover the amount after obtaining an award. Pursuant to the award, the property mortgaged was put in auction in the year 2006 and since there were no bidders, the property was auctioned by the 3rd Respondent in its favour for an amount of Rs. 4,48,154/-, which according to the learned counsel for the 3rd Respondent, is the amount as per the award. Thereafter, the said auction was confirmed by the 2nd Respondent and sale deed was registered in favour of the 3rd Respondent on 31.05.2006. Subsequently, the 3rd Respondent issued an eviction notice asking the petitioners to vacate the property in question within 30 days from the date of receipt of the notice.

5. It is the further case of the petitioners that aggrieved by the said notice, 1st petitioner approached the Kerala State Farmers'' Debt Relief Commission and the Commission had granted an interim order staying the operation of the eviction notice. Thereafter, Commission passed a final order holding that the petitioner is eligible for debt relief and accordingly, the Commission in exercise of the powers under sub-section (3) of Sec.5 of the Act, debt relief of Rs. 75,000/- was granted and directed the petitioner to remit the balance amount as provided under Ext. P1 order.

6. On passage of Ext. P1 order, 1st petitioner approached the 3rd Respondent to remit the balance amount as specified in Ext. P1, but the 3rd Respondent did not permit the petitioners to remit the amount and it is contended that it was orally replied that the 3rd Respondent alone cannot take a decision in the matter.

7. It is also contended that pursuant to an application filed under the Right to Information Act, seeking reply as to whether Rs. 75,000/- granted by the Commission was accounted in the loan account of the 2nd petitioner and whether the 3rd Respondent took a decision to return the mortgage property to the petitioners and requesting also for a copy of the resolution of the General Body meeting of the 3rd Respondent, Ext. P2 reply was issued stating that the amount granted by the Commission was accounted in the petitioner''s loan account on 09.07.2009 and the copies of the resolution taken by the Bank were also provided to the petitioners.

8. It is the contention of the petitioners that the Board of Directors of the 3rd Respondent Bank as per its decision dated 21.05.2008 decided to re-convey the property on the petitioners remitting the entire amount due to the 3rd Respondent Bank as on that date, subject to the sanction and approval of the 1st Respondent. Thereafter, as per Ext. P4 resolution dated 14.02.2009, General Body of the 3rd Respondent has approved the action of the Board of Directors as per Ext. P3. Thereafter vide an order dated 28.02.2009, the Board of Directors of the 3rd Respondent as per Ext. P5 has taken a decision authorizing the Managing Director to seek approval of the 1st Respondent through the 2nd Respondent to re-convey the property to the petitioners on condition that the entire award amount plus interest and other charges are paid by the petitioners to the 3rd Respondent Bank. But no action was taken accordingly and it is thus aggrieved

by the inaction of the Bank pursuant to Exts. P3 to P5, petitioners have approached this Court by filing this writ petition.

9. 3rd Respondent Bank has filed a counter affidavit refuting the statements and claims made by the petitioners and contended that the entire actions of the Bank are justified. So also, it is contended that the petitioners are not entitled to get the benefit provided under Ext. P1 order of the Debt Relief Commission due to efflux of time and for the reason that the 3rd Respondent is a Co-operative Society functioning for the benefit and empowerment of the members of the Society. It is also contended that as per Ext. R3(d), the Registrar has declined permission to Ext. P5 decision of the Board as early as in 2009 holding that the Bank cannot re-convey the property but can only sell the same through public auction.

10. Heard the learned counsel for the petitioners, Sri. James Abraham, learned Senior Government Pleader, Sri. Sojan James for Respondents 1 and 2 and the learned counsel for the 3rd Respondent, Sri. M.G. Karthikeyan.

11. Having considered the rival submissions, the question that arises for consideration is whether the petitioners are entitled to re-conveyance of the mortgaged property in view of the refusal of sanction by the 1st Respondent to the 3rd Respondent Bank to re-convey the property to the petitioners.

12. Learned counsel for the petitioners has invited my attention to a judgment of a Division Bench of this Court produced along with the writ petition as Ext. P7 in Writ Appeal No. 1774 of 2014 dated 17.12.2014, wherein a similar contention was considered by a Division Bench of this Court and allowed the claim of the petitioner for re-conveyance of the property. I have gone through the said judgment and in my view, the facts and circumstances in the said case considered by this Court was similar in all respects. There also, the Joint Registrar did not grant permission to the Bank to re-convey the property in spite of the decision of the Bank to re-convey the property to the party concerned. In that circumstances, I am of the considered opinion that, petitioners in this writ petition are also entitled to get similar treatment. Moreover, on an evaluation of the facts, law and circumstances involved in the case, judicial discipline requires me to follow the said judgment and accordingly I do so.

13. Therefore, there will be a direction to the 3rd Respondent Bank to re-convey the property to the petitioners within a period of 15 days from the date of receipt of the entire award amount with interest and cost as claimed by the Bank. In order to enable the petitioners to make the payment, the Bank shall calculate the amount due to it inclusive of interest and other charges, from the petitioners and communicate the same to the petitioners within 30 days from the date of receipt of a copy of this judgment. The petitioners shall pay the said amount to the Bank within 30 days thereafter. On payment of the said amount by the petitioners, the Bank will execute necessary documents in favour of the petitioners at the expense of the petitioners within 15 days thereafter.

The writ petition is allowed accordingly.

