

(2006) 03 KAR CK 0094
In the Karnataka High Court
Case No : Writ Petition No. 9834 of 2004

Davangere Harihara Urban Co-operative Bank Niyamitha	APPELLANT
Vs	
Minister for Co-operation and Others	RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2006) ILR (Kar) 2174 : (2006) 2 KCCR 1017

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : Jayaraj Associates, for the Appellant; Akkamahadei M.C., Government Pleader for Respondents-1 to 3 and N. Dinesh Rao and Associates for Respondent-4, for the Respondent

Judgement

V.G. Sabhahit, J.—This writ petition under Articles 226 and 227 of the Constitution of India is filed bring aggrieved by the order passed by the first respondent dated 9-5-2004 as per Annexure-G setting aside the order dated 12-5-2000 passed in Appeal No. 1 of 1999-2000 and order dated 12-11-1999 passed by the third respondent in the revision petition insofar as the decided value of the Arbitrator and fixing the value of the property at Rs. 22,97,600/- with liberty to the revision petitioner to approach the first respondent-Bank and make application accordingly for realisation of its dues and directing the petitioner-Bank to take all appropriate actions and make necessary changes in the calculation of the interest of the loan dues of the petitioner and after realisation of the loan dues remaining amount after due deduction be credited to the petitioner's account.

2. It is averred in the petition that the fourth respondent had borrowed loan of Rs. 6,00,000/- (Rupees six lakhs only) from the petitioner-Bank on 23-3-1993 and mortgage deed was executed on 6-4-1996. Since the fourth respondent committed default on the repayment of the amount, a dispute was raised u/s 70 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") and the

Joint Registrar of Co-operative Societies forwarded the same to the Assistant Registrar of Co-operative Societies-the third respondent in the writ petition and the award was passed on 9-2-1998 as per Annexure-C. The award became final and in execution of the award the properties which had been mortgaged in favour of the petitioner-Bank were auctioned and the auction was conducted on 17-5-1999. Since there were no bidders, the property was purchased by the petitioner-Bank and sale deed was executed on 20-10-2000 for a consideration of Rs. 11,50,000/-. Respondent 4 being aggrieved by the order passed in the Execution Petition No 382 of 1998-99 preferred appeal No. 1 of 1999-2000 and the same was dismissed by order dated 12-10-2000 as per Annexure-E and being aggrieved by the said order passed in appeal, the fourth respondent preferred revision before the first respondent and the same came to be numbered as CMW 30 CAP 2001 and the first respondent by order dated 9-5-2004 has passed the impugned order and being aggrieved by the said order, the petitioner has preferred this writ petition.

3. The fourth respondent has filed objections statement stating that valuation of the property has not been properly done while fixing the auction and the petitioner-Bank has not shown the valuation properly and the order passed by the first respondent u/s 108 of the Act is justified and the first respondent has rightly held that the value of the property is Rs. 22,97,600/- and wherefore the first respondent has rightly set aside the order insofar as it relates to valuation of the property and has issued necessary directions to the petitioner-Bank and Exs. iv. 1 to R. 10 have been filed along with the objections statement.

4. The respondent-State has filed the objections statement stating that the valuation made by the first respondent at Rs. 22,97,600/- is justified and the valuation of the property was not properly shown by the petitioner-Bank and the order passed in revision by the first respondent is justified and does not call for interference.

5. I have heard the learned Counsels appearing for the parties.

6. The learned Counsel appearing for the petitioner submitted that the award passed against the fourth respondent has become final and the order passed in execution was challenged in appeal and appeal was also dismissed and the order passed by the first respondent as per Annexure- G, dated 9-5-2004 is clearly erroneous, perverse and arbitrary and the first respondent has fixed the valuation on the basis of the material which was not put to the petitioner-Bank and on the basis of the valuation made by the private valuer and on the basis of the information received by the first respondent and the orders have been passed by the Competent Authority, in accordance with law. The first respondent in exercise of the revisional jurisdiction would not have set aside the order passed by the second and third respondents and could not have revised the value of the property at Rs. 22,97,600/-.

7. On the other hand, the learned Counsel appearing for the fourth respondent

submitted that the fourth respondent had made a representation to the petitioner-Bank stating that the value of the property has not been properly stated and having regard to the fact that the value of the property is more than Rs. 22,97,600/- the sale deed was executed in favour of the petitioner-Bank for Rs. 11,50,000/- has caused prejudice to the fourth respondent and the valuation arrived at by the fourth respondent at Rs. 22,97,600/- is justified and the modification is only in respect of valuation and in view of the same, necessary directions have been issued to the petitioner-Bank.

8. The learned High Court Government Pleader, submitted that the order passed by the first respondent is in accordance with law and does not call for interference in this writ petition.

9. I have considered the contentions of the learned Counsels appearing for the parties.

10. It is clear from the perusal of the material on record and the finding of the first respondent that the fact that the fourth respondent had borrowed amount from the petitioner-Bank and did not repay the amount and award was passed against the fourth respondent and the same has become final is not in dispute. The fourth respondent also does not dispute that his property was liable to be sold in auction as he did not repay the amount. However, the only contention of the fourth respondent in the revision before the first respondent was that the valuation of Rs. 11,50,000/- was not the proper value of the property as on the date of the auction fixed by the petitioner-Bank and the proper valuation was Rs. 22,97,600/-. The first respondent has also observed in the order that since the fourth respondent himself has expressed his consent for sale of the property for realisation of the dues payable to the petitioner-Bank in view of the amount borrowed by him, the question of sale is not in dispute. However, the first respondent has only modified the valuation and according to the first respondent the valuation of the property is Rs. 22,97,600/-. The said valuation is arrived at by the first respondent on the basis of the documents produced by the fourth respondent-revision petitioner before the first respondent comprising of the report submitted by the private valuer and also Superintendent Engineer, Shimoga, PWI) Circle and Ex. R. 4 is the valuation made by the Bank on the basis of the report of the residential building property at Rs. 11,50,000/-. However, it is clear from the perusal of the material on record that the first respondent has proceeded only on the basis of the documents produced by the fourth respondent and there is no material on record to show that the said documents were confronted to the petitioner-Bank. Further, it is also clear from the documents produced by the petitioner that the first respondent himself had sent a recommendation to the petitioner-Bank through his secretary on 28-8-2001 to consider the representation given by the fourth respondent fixing the valuation at Rs. 16,55,000/- and to settle the matter and this recommendation of the first respondent has been sent when the revision petition was pending before him. In any view of the matter, apart from the valuation

based upon the documents produced by the fourth respondent which were not put to the petitioner-Bank could not have been relied upon by the first respondent in arriving at the valuation of Rs. 22,97,600/- and the said valuation is based upon the report submitted by the private valuer. The first respondent has not assigned any other reason for setting aside the valuation and has not considered the valuation made by the petitioner-Bank and under the circumstances, it is clear that the reasoning assigned by the first respondent in passing the order dated 9-2-2004 is clearly perverse and arbitrary as it is based upon the documents produced by the fourth respondent which has not been proved and without affording opportunity to the petitioner-Bank to substantiate its contention regarding the valuation made by it at Rs. 11,50,000/- and apart from the valuation of the property, no other reasons has now been arrived at by the first respondent in the revision petition and order is passed without holding proper enquiry, it is clear that the order passed on the basis of the said reasoning is perverse and arbitrary and cannot at all be sustained in the eye of law and the same is liable to be set aside as sought for in the writ petition. However, the matter is liable to be remitted to the first respondent for fresh disposal of the revision petition, in accordance with law after affording opportunity to the parties to substantiate their contention. Accordingly, I pass the following order:

The writ petition is allowed in part. The order dated 9-2-2004 passed by the first respondent as per Annexure-G is set aside and the matter is remitted to the first respondent for fresh disposal of the revision petition No. CMW 30 CAP 2001 in accordance with law, in the light of the observations made in the body of the order.