

(2000) 02 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 12845/95

J. Sathyanesan

APPELLANT

Vs

The Kerala State Co-operative Agricultural Development Bank
Ltd. and Others

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Citation : (2000) 02 KL CK 0011

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : B.S. Swathikumar, for the Appellant; T.R. Ramachandran Nair and M. Rajasekharan Nair, for the Respondent

Judgement

M.R. Hariharan Nair, J.—Petitioner is a debtor of the first Respondent bank. For recovery of the amounts due from the Petitioner his properties were notified for sale. In Ext. P-7 it is mentioned that 1.4 acres of land comprised in survey No. 362/1 of Detamangalam Village would be sold in auction on 17th August 1995. The contention of the Petitioner is that for recovery of the amounts due, which is actually less than Rs. 20,000 the entire property need not be sold and that such sale is also violative of Sections 16(3) and 18 of the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 as also Rule 18 framed thereunder.

2. I have heard learned Counsel for the Respondent. It is stated that pursuant to the interim order of this Court in C.M.P. 22945/95 the Petitioner has paid Rs. 15,000 that even after crediting the amount further amounts are due and that the sale has to be conducted.

3. Section 16(3) of the aforesaid Act provides that the sale officer appointed by the Registrar can conduct sale of the land of the defaulter, but cautions that the distraint shall not be excessive and the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of the sale. Section 18(1) further directs that in case the defaulter

does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may, in his opinion be necessary to satisfy the demand together with the expenses of the distraint and the costs of the sale. Rule 11 of the Kerala State Co-operative Agricultural Development Bank Rules, 1986 further provides that as far as practicable no larger section or portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest, and expenses of sale.

4. In view of the aforesaid provisions and also considering the principles laid down by the Supreme Court in *Ambati Narasayya Vs. M. Subba Rao* and another, it is imperative that the sale officer should bring to sale only such portion of the distrained property as would meet the needs of the decree-holder to fetch sufficient amount to cover the balance of the decree debt. It is clear from Ext. P-7 that there was no application of mind in this regard and that, that is why the entire 1.4 acres was notified for sale. The proposal is unsustainable and it is accordingly set aside. Third Respondent is directed to consider the objections referred to above, apply his mind and decide as to what extent and which portion of the distrained property should actually be sold to meet the balance of the debt and costs in this case; issue fresh notification for sale as required by law and proceed to conduct the sale thereafter.

O.P. is allowed to this extent.