

(1988) 08 KAR CK 0027
In the Karnataka High Court
Case No : W.P. No. 11343/1988

Shantharam Vajrappa Andagi

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-08-1988

Acts Referred:

Karnataka Co-operative Societies Rules, 1960 — Rule 38a

Citation : (1989) 1 KarLJ 125

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-This writ petition is by an auction purchaser of a house property sold at a public auction in execution of a decree or award obtained by the 4th respondent-Co-operative Bank towards recovery of the loan advanced by it to the 5th respondent. The petitioner was the successful bidder at the auction held on 10-4-1981. The property in question is situate in Malagi village, Mundagodu Taluk, Uttara Kannada District. He made an application under the relevant provisions namely. Rule 38A of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as the Rules) for setting aside the sale But that was rejected on the ground that he tendered the dues to the Bank beyond the time specified in that behalf An appeal filed to the Deputy Registrar of Co-operative Societies also did not succeed. Against that he preferred a revision petition to the Joint Registrar of Co-operative Societies. That also did not succeed. Therefore, a petition was presented under Sec. 108 of the Karnataka Co-operative Societies Act, 1959, to the Government. The Government after considering all aspects of the case passed the impugned order dated 14-6-1988 by which the sale has been set aside.

2. In the meanwhile, the auction purchaser through the process of the Civil Judge's Court took delivery of the house which he had purchased on 18-4-1987. Therefore, aggrieved by the order at Annexure-E passed by the Government in exercise of its power under Sec. 108 of the Act, he has approached this Court under Art. 226 of the Constitution inter alia contending that the order is a nullity; that it is passed without notice to him and that he having been put in possession,

the sale cannot be set aside.

3. In so far as the first of the contentions concerned, the Court finds itself in some difficulty to accede to it. It is seen from the order, *ex facie*, that notice issued to him about the revision petition pending before the Government was returned with the postal shara or endorsement that the same had been refused. Normally, it is now well settled law that if service of notice is refused, it is deemed sufficient service on the person who has refused it. That he had no notice of the proceeding cannot be accepted by this Court. He has, however, alleged in the petition that the 5th respondent, the original debtor and former owner of the house in collusion with the postal department had manoeuvred to get such an endorsement on the notice and had it returned. He came to know of the order only when the order was communicated to him just before filing the writ petition. But, in that averment, there is no specific allegation that who in the postal department was in collusion with the 5th respondent. It is a very vague charge and cannot be accepted at its face value unless there are persons specifically named, this Court must reluctantly refuse to accede to such contentions in the writ petition and hold that he had notice, If he had notice and chose to remain absent then he cannot now contend that he has been denied an opportunity and there has been violation of rules of natural justice.

4. In so far as the last contention is concerned, i.e., that once the sale was completed and he had been put in possession. the sale could not be set aside, it has to be rejected. What is contained in Rule 38A of the Rules is no different than the provisions made in regard to the sale of immovable properties under Order 21 of the C.P.C. The auction purchaser has the right to have the sale confirmed in his name and if for any reason the sale is set aside then he is entitled only to the solatium that is required to be paid to him. The mere fact that the sale Officer under the provisions of the Act and the Rules confirmed the sale does not pass absolute title to him as the order of confirmation is subject to appeals and revisions. If as an out come of the appeal and revision, the sale comes to be set aside, the auction purchaser acquires no title to the property auctioned. Therefore, he has to be content with what is directed to be paid back to him that is the sale price with 6 per cent solatium which is one per cent more than the solatium which he is entitled to.

5. In the final analysis, this Court while exercising its extraordinary jurisdiction under Art. 226 of the Constitution refuses to issue a writ in its discretion having regard to all the circumstances. In the instant case, the debtor of a Co-operative Bank suffered loss of his house but as evidenced by the impugned order, he has paid back all the amounts due to the Bank though belatedly. He should not be deprived of his house. After all the auction purchaser had only temporary loss of his money which he had deposited in the Bank. That has been directed to be now returned to him by the Bank with interest at 6 per cent per annum from date of deposit till date of payment. Therefore, he should be content with that. Added to this he has had the use of the house from April, 1977 till he is dispossessed for

nothing. Substantial justice has been done.

6. In the result, this petition is dismissed.

Writ petition is dismissed.