

(2011) 11 AP CK 0031

Andhra Pradesh High Court

Case No: Writ Petition No. 27072 of 2011

Smt. Naripeddi Nagavalli Devi
and others

APPELLANT

Vs

A.P. State Financial Corporation
Limited and others

RESPONDENT

Date of Decision: Nov. 14, 2011

Acts Referred:

- Andhra Pradesh State Financial Corporations Act, 1951 - Section 29, 31, 32, 32G

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: Dammalapati Srinivas, for the Appellant; M.S. Ramachandra Rao Counsel for respondent Nos.1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy

1. This Writ Petition is filed for a mandamus to declare initiation of proceedings u/s 32G of A.P. State Financial Corporations Act 1951 (for short "the Act") r/w. the A.P. Revenue Recovery Act, 1864 in respect of the properties of the petitioners, as illegal and arbitrary. The petitioner sought for a consequential relief of setting aside the demand notice vide reference No. SFC/RJY/SDT/2010-11, dated 21-3-2011.

2. The petitioners offered collateral securities for the loan borrowed by one Sri Attili Koteswara Rao, Proprietor of M/s. Goutami Textile Industries and Sales Corporation. The security offered by the petitioners comprises agricultural lands owned by them. The principal borrower failed to repay the loan amount. A demand notice prior to attachment of the immovable property in Form No. 4 and recovery certificate dated 21-3-2011, were issued. Petitioner No. 2 approached respondent No. 1 with a letter

on 2-4-2011 wherein he has undertaken to discharge the entire amounts due by 21-4-2011 and requested not to proceed further in pursuance of the demand notice. Later, the petitioners have approached respondent No. 2 on 30-6-2011 with a request to permit them to pay Rs. 16,00,000/-towards outstanding amount and have paid only Rs. 4,00,000/-towards discharge of the said liability. Thereafter, the properties of the petitioners were attached and Form No. 5 dated 6-8-2011 was issued. Apprehending that the respondents will proceed with the sale of the attached properties, the petitioners filed the present Writ Petition.

3. The main ground on which the petitioners have questioned the recovery certificate and attachment order is that the same were not preceded by a notice. At the hearing, Sri Dammalapati Srinivas, the learned counsel for the petitioners stated that u/s 32G of the Act, before the loan is recovered, procedure has to be prescribed by way of Rules and that in the absence of such Rules, recovery cannot be made. Alternatively, he has submitted that respondent No. 1 has framed guidelines and according to the said guidelines, 15 days" prior notice requires to be issued by the Managing Director of the respondents-Corporation for issue of certificate for recovering the dues of the Corporation as arrears of land revenue. The learned counsel for the petitioners submitted that no such notice has been issued.

4. Sri M.S. Ramachandra Rao, the learned Standing Counsel for the respondents-Corporation, stated that the demand notice prior to attachment of immovable property was issued in Form No. 4 on 21-3-2011 and in response thereto the petitioners approached the respondents with an offer to make payment on or before 21-4-2011 and that having not honoured such commitment, the petitioners have once again approached the respondents with a fresh offer of payment of Rs. 16,00,000/-. He therefore submitted that no prejudice is caused to the petitioners due to non-issue of notice before issuance of recovery certificate.

5. After carefully considering the respective pleas of the learned counsel for the parties, I am of the opinion that Section 32G of the Act is only an enabling provision which empowers the competent authority to prescribe procedure for recovery of loans. Even though specific Rules have not been framed, guidelines have been prescribed laying down the procedure for recovery of the loans. Undoubtedly, before the recovery certificate is issued, a notice needs to be issued to the person from whom recovery is sought to be made. In the present case, though such notice has not been given, as rightly contended by the learned Standing Counsel, no prejudice is caused to the petitioners because in response to the attachment notice issued following the issuance of recovery certificate, the petitioners have approached the respondents with an offer to make the entire payment on or before 21-4-2011. Even if notices were given prior to the issuance of the recovery certificate, that would not have made any difference in the position of the petitioners. Having undertaken to repay the entire amount, the petitioners did not stand on their undertaking.

6. In [Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others](#), the Apex Court held that Section 32G is envisaged as one more remedy other than the provisions of Sections 29, 31 and 32 of the Act for recovery of the outstanding dues and that Section 32G contemplates that where an amount is due, an officer will make an application to the State Government; the State Government or an authority appointed by them would, after following procedure as may be prescribed, issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount as arrears of land revenue. It was further held that the procedure prescribed u/s 32G is summary in nature.

7. In the absence of any dispute relating to the liability of the petitioners and in the teeth of their undertaking that they will pay the entire outstanding amount, no prejudice is caused to the petitioners by non-issue of notice prior to issuance of the recovery certificate. For the above mentioned reasons, I do not find any merit in the Writ Petition and the same is accordingly dismissed. However, the petitioners are permitted to pay the outstanding dues in two equal installments. The first of such installments shall be paid within two months from today and the second installment of the balance amount shall be paid within two months thereafter, failing which the respondents shall be free to recover the outstanding dues by selling the secured properties of the petitioners. It is made clear that till recovery of the outstanding amounts, the attachment order shall continue to be in operation.

8. As a sequel to dismissal of the Writ Petition, interim order dated 28-9-2011 is vacated and WPMP No. 33439/2011 and WVMP No. 3884/2011 are dismissed as infructuous.