

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**HONOURABLE MRS. JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.15245 OF 2020**

**ORDER:** *(Per the Hon'ble the Justice Ujjal Bhuyan)*

Heard Mr. N. Ramappa, learned counsel for the petitioner; Mr. P. Hari Prasad, learned counsel for respondent No.1; Mr. G. Dinesh Patil, learned counsel for respondent No.4; and Mr. V. Madhusudhan Reddy, learned Government Pleader for Revenue for respondent No.6.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the first respondent i.e., Life Insurance Corporation Housing Finance Limited to take steps for cancellation of registered General Power of Attorney (GPA) document No.5168 of 2014 dated 27.11.2014 and subsequent registered sale deed document No.3693 of 2020 dated 18.03.2020.

3. Case of the petitioner is that an auction sale notice was issued by the first respondent for sale of the schedule property by way of auction sale which was proposed on 27.02.2020. The sale notice was published in two daily news

papers, one in Telugu i.e., “Eenadu” and the other in English “The Hindu” on 25.01.2020. Auction sale was proposed by the first respondent because of failure of the borrower to repay the loan amount. Details of the schedule property put up for auction sale are as follows:

*“a semi finished house on plot No.21 part (south side), admeasuring 116 sq. Yards or 96.97 Sq.Meters in Sy.No.5/1, including with plinth area 1276 Sq. Fts. (R.C.C), situated at Cheeryal Village and Grampanchayat, Keesera Mandal, Medchal Malkajgiri District erstwhile Ranga Reddy District, Telangana State”.*

4. Accordingly, the auction was conducted on 27.02.2020 in which the petitioner participated. Petitioner’s bid amount of Rs.13,10,005.00 was found to be the highest and accordingly petitioner was declared as the successful bidder by respondent No.1 vide letter dated 02.03.2020. It may be mentioned that petitioner had deposited 25% of the bid amount as earnest money deposit (EMD) prior to the auction sale which was Rs.3,31,005.00. Thereafter, petitioner deposited the balance 75% being Rs.9,79,000.00. Thus, petitioner paid the entire sale price of the auctioned property.

5. Though petitioner had affixed the sale confirmation letter dated 02.03.2020 at a conspicuous place of the

schedule property on 05.03.2020, the same was found removed on the very next day i.e., on 06.03.2020.

6. On 16.03.2020 sale certificate was issued by respondent No.1 in favour of the petitioner. It is stated that on the advice of respondent No.1, petitioner had prepared a draft sale deed which was forwarded to the respondent No.1 but, the same was not registered.

7. On a visit to the site of the purchased property, petitioner found some unknown persons overseeing construction work there in. On being approached, they declared that they are the owners of the said property. In this connection, petitioner submitted complaints before respondent Nos.5 and 6.

8. Later on, after obtaining relevant documents in respect of the purchased property petitioner came to know that the said property was registered in favour of respondent No.4 through sale deed document No.3693 of 2020 dated 18.03.2020 executed by respondent No.3 as the GPA holder of respondent No.2. The sale deed was executed two days after issuance of the sale certificate on 16.03.2020 by the

first respondent in favour of the petitioner. By it stated that respondent No.2 is the defaulting borrower for whose default the schedule property which was mortgaged by him with respondent No.1 had to be auction sold by respondent No.1 in which petitioner became the successful bidder.

9. On 28.05.2020 petitioner represented before respondent No.1 to take steps for cancellation of the registered sale deed and to get the draft sale deed registered in favour of the petitioner and thereafter to hand over the peaceful vacant possession of the property to him. Respondent No.1 in its reply dated 09.06.2020 while accepting payment of total sale consideration by the petitioner and issuance of sale certificate, however expressed its inability to register the sale deed in favour of the petitioner. Clarifying that once property is sold under auction purchase it is the responsibility of the buyer to take care of the property. It is in such circumstances, the present Writ Petition has been filed seeking the relief as indicated above.

10. Respondent No.4 has filed counter affidavit. Stand taken in the counter affidavit is that he had purchased the property from respondent No.3 who is the GPA holder of

respondent No.2 through a registered sale deed No.3693 of 2020 dated 18.03.2020. The GPA was executed by respondent No.2 in favour of respondent No.3 vide document No.5168 of 2014 dated 27.11.2014. It is stated that after due verification encumbrance certificate was issued on 13.08.2020 and again on 04.03.2021. Therefore, it is contended that respondent No.4 is the bonafide purchaser of the aforesaid property. According to respondent No.4 he is in peaceful possession over the said property and enjoying the same. It is further stated that after purchasing the aforesaid property respondent No.4 had applied for regularization to the concerned authorities on 15.09.2020 and the concerned authorities regularized the aforesaid residential house property under the Government of Telangana Lay Out Regularization Scheme, 2020 where-after he got his name mutated in the revenue record.

11. It is indeed very surprising that despite notice and despite being represented by learned counsel, first respondent has not filed any counter affidavit. Therefore, the averments made by the petitioner in the Writ Petition as against the first respondent have remained un-controverted.

Therefore, those would be treated as admitted by the first respondent.

12. Non-filing of counter by the first respondent is all the more objectionable because respondent No.1 is privy to the relevant facts pertaining to availing of loan by respondent No.2 from respondent No.1 and the default in repayment of such loan, which had compelled respondent No.1 to go for auction sale of the schedule property. When respondent No.1 had received notice from this Court, it was its bounden duty to have filed an affidavit placing before the Court all material facts which were at its disposal. By not filing such affidavit or by not placing the material facts on record, respondent No.1 has withheld material information thereby failing to assist the Court in the discharge of its duty. Such conduct is highly deplorable.

13. Respondent Nos.2 and 3 have also opted not to file any affidavit in the present writ proceeding despite being fully aware of the seriousness of the issue. Therefore, allegations made against them in the writ affidavit having gone uncontroverted would also be construed as being admitted by the said respondents.

14. Be that as it may, from whatever facts are available on record, it is deducible that respondent No.2 was the borrower of respondent No.1. For default in repayment of loan, respondent No.1 initiated proceedings against respondent No.2 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), leading to holding of auction sale of the schedule property. We find from the translated copy of the auction sale notice that the outstanding dues of respondent No.2 was quantified by respondent No.1 at Rs.12,55,89,471.00 as on 24.01.2022. We further find that in its letter dated 02.03.2020 respondent No.1 had informed the petitioner that during subsistence of mortgage of the schedule property in favour of respondent No.1, the borrower had illegally executed GPA at Kesara Sub-Registrar Officer in favour of third party Smt. G. Yashoda (respondent No.3) vide document No.5168 of 2014 dated 27.11.2014 which however would not affect the right of the secured creditor (respondent No.1) in selling the schedule property under the SARFAESI Act to recover the dues from the borrower. This also finds mention in the sale certificate

dated 16.03.2020 issued by the first respondent in favour of the petitioner. It was mentioned therein that during subsistence of mortgage of schedule property in favour of respondent No.1, the borrower had illegally executed GPA at Kesara SRO in favour of third party Smt. G. Yashoda (respondent No.3) vide document No.5168 of 2014 dated 27.11.2014. We further find that auction sale had taken place on 27.02.2020 and on payment of sale price first respondent had issued the sale certificate dated 16.03.2020 in favour of the petitioner. The sale deed on the strength of which respondent No.4 claims to be the owner and possessor of the property is dated 18.03.2020, which is after the date of auction sale i.e., 27.02.2020 and also after the issuance of sale certificate dated 16.03.2020.

15. Let us now consider the relevant legal provisions.

16. Section 55 of the Transfer of Property Act, 1882 lays down the rights and liabilities of buyer and seller. As per Section 55 the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is and the buyer is not aware and which the buyer could not with ordinary care discover; to produce to the

buyer on his request for examination of documents of title relating to the property which are in the seller's possession or power; to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto; on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place; between the date of contract of sale and delivery of the property to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take in respect of such property and documents etc.

17. Section 13 of the SARFAESI Act provides for enforcement of security interest. Sub-section (1) says that notwithstanding anything contained in Section 69 or Section 69 (A) of the Transfer of Property Act, 1882 any security interest accrued in favour of any secured creditor may be enforced without the intervention of the Court or Tribunal by such creditor in accordance with the provisions of the SARFAESI Act. Sub-section (2) provides for issuance of demand notice in case of default by the borrower in

repayment of secured debt and his account in respect of such debt is classified by the secured creditor as non-performing asset (NPA). As per the said provision 60 days time is required to be given to the borrower to make payment. Contents of the demand notice are referred to sub-section (3). As per sub-section (3A), if the borrower makes any representation or raises any objection upon receipt of the demand notice under sub-section (2), the secured creditor shall consider such representation or objection and if the same is not acceptable or tenable he shall communicate the reasons for non acceptance of the representation or objection to the borrower within 15 days. The proviso clarifies that the reasons so communicated and the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application before the jurisdictional Debts Recovery Tribunal under Section 17 of the SARFAESI Act or to the Court of District Judge under Section 17 (A). As per the mandate of sub-section (4), in case the borrower fails to discharge his liability in full within the period specified in the demand notice, the secured creditor may take recourse to one or more of the

measures as mentioned in sub-section (4) to recover the secured debt, which includes taking over possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset.

18. Sub-section (13) of Section 13 is relevant and the same is extracted hereunder:

*“(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor”.*

18.1. Thus, what sub-section (13) of Section 13 says is that no borrower shall after receipt of notice referred to in sub-section (2) transfer by way of sale, lease or otherwise (other than in the ordinary course of his business), any of his secured assets referred to in the notice without the prior written consent of the secured creditor. If this provision is applicable post Section 13 (2) of the SARFAESI Act, it would be doubly applicable after the secured asset is put to auction sale and thereafter sold for realization of the outstanding dues.

19. Section 35 of the SARFAESI Act clarifies that provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent there with contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. Thus, this provision clarifies that the SARFAESI Act will have over riding effect over other laws.

20. Rule 8 of the Security Interest (Enforcement) Rules, 2002 deals with sale of immovable secured assets.

21. Rule 9 deals with time of sale, issue of sale certificate and delivery of possession etc. Sub-rule (6) of Rule 9 says that on confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the prescribed form. As per sub-rule (10), the certificate of sale issued under sub-rule (6) shall specifically mention whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

22. As already mentioned above, we find that in the sale certificate dated 16.03.2020 respondent No.1 had clearly mentioned that during subsistence of mortgage of the schedule property in favour of respondent No.1, the borrower i.e., respondent No.2 had illegally executed a GPA at Kesara Sub-Registrar Office in favour of third party Smt. G. Yashoda (respondent No.3) vide document No.5168 of 2014 dated 27.11.2014 though execution of GPA by the borrower during subsistence of mortgage of schedule property by itself had not affected the right of the secured creditor to sell the schedule property under the SARFAESI Act to recover the outstanding dues. The same also did not materially affect the auction purchaser (petitioner). It affected the auction purchaser when on the strength of the GPA, the sale deed was executed by respondent No.2 through his GPA holder respondent No.3 in favour of respondent No.4 on 18.03.2020 i.e., two days after issuance of the sale certificate.

23. Evidently, such transfer of mortgaged property by way of sale after issuance of sale certificate is wholly illegal being in contravention of sub-section (13) of Section 13 of the SARFAESI Act. Respondent No.2 i.e., the borrower was fully

aware that the schedule property was mortgaged by him with respondent No.1 as a security for availing the loan, which he defaulted. It was thereafter that respondent No.1 initiated steps under the SARFAESI Act for recovery of dues which ultimately led to auction sale of the schedule property. Despite knowing the fact that the schedule property was mortgaged with respondent No.1, respondent No.2 had executed GPA in favour of respondent No.3 to sell the schedule property. Interestingly, the GPA was executed on 27.11.2014. For more than five years thereafter the GPA holder i.e., respondent No.3 did not do anything. It was after the schedule property was auction sold on 27.02.2020 whereafter sale confirmation letter was issued by first respondent on 02.03.2020 followed by sale certificate on 16.03.2020, that the same plot was sold by the GPA holder to respondent No.4 by way of the sale deed two days thereafter on 18.03.2020. The sequence of events as noticed above clearly reflects that the action of respondent Nos.2 and 3 is not at all bonafide. There is clearly an element of fraud in what respondent Nos. 2 and 3 did. In the circumstances, the sale of the schedule property already auction sold is nothing

but a fraudulent act. Respondent No.2 has not only defaulted in repayment of loan to respondent No.1 but has also played fraud by resorting to illegal sale of the schedule property through respondent No.3 which was already auction sold by respondent No.1 in favour of petitioner, following which the sale certificate was issued. The sale deed dated 18.03.2020 being in violation of the law and being a fraudulent act can have no legal consequence and therefore would be construed to be a nullity in the eye of law.

24. Respondent No.1 being the secured creditor who had conducted the auction proceeding for sale of the schedule property for realization of outstanding dues cannot simply sit back and allow an unscrupulous borrower to play fraud and defeat the auction sale by selling the schedule property to a third party (respondent No.4) post auction who may be aware or may not be aware of the status of the said property. If he was aware then the third party i.e., respondent No.4 becomes a party to the fraudulent act and if he was not aware then he becomes a victim. In either way there is clearly an element of criminality involved which needs to be investigated and thereafter taken to its logical conclusion. It is not enough for

respondent No.1 to auction sale the schedule property and thereafter contend that it has nothing more to do. It must take corrective steps to get the sale certificate registered. It is well settled that an act or a result of fraud is a nullity and nobody should be allowed to reap the benefit of such fraudulent action.

25. That being the position, and upon thorough consideration of all aspects of the matter, we issue the following directions:

(i) Respondent No.1 shall move respondent No.6 for cancellation of sale deed dated 18.03.2020 entered into between respondent Nos.2 and 3 on the one hand and respondent No.4 on the otherhand.

(ii) Respondent No.1 shall also simultaneously move respondent No.6 for registration of sale certificate dated 16.03.2020 issued by it in favour of the petitioner.

(iii) Upon receipt of the above, respondent No.6 shall deal with both the aspects i.e., cancellation of sale deed dated 18.03.2020 and registration of sale certificate dated 16.03.2020 in accordance with the law expeditiously and at

any rate within a period of 60 days from the date of receipt of a copy of this order.

(iv) Thereafter respondent No.1 shall hand over the peaceful vacant possession of the schedule property to the petitioner within 30 days of the decision taken by respondent No.6 in terms of direction No.(iii) above.

(v) Authorized officer of respondent No.1 shall lodge a criminal complaint/first information before the jurisdictional Police Station against respondent Nos. 2 and 3 whereafter the competent police authority shall investigate the matter and proceed in accordance with law.

26. With the above directions, the Writ Petition is allowed. However, there shall be no order as to costs.

27. Miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

---

**UJJAL BHUYAN, J**

---

**SUREPALLI NANDA, J**

Date:07-06-2022

**VRKS**

**HONOURABLE SRI JUSTICE UJJAL BHUYAN  
AND  
HONOURABLE MRS. JUSTICE SUREPALLI NANDA**

**W.P.No.15245 of 2020**

**(Per Hon'ble Sri Justice Ujjal Bhuyan)**

Date:07-06-2022

**VRKS**