

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 30 of 1996

Friday, this the 16th day of February, 1996

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR S P BISWAS, ADMINISTRATIVE MEMBER

K.N. Sreedharan,
Senior Store Keeper (retired) from
Central Institute of Fisheries Nautical
Engineering Training,
S/o Late K.K. Neelan, residing at
Tharal house, Thoppumpady,
Cochin- 682 005. .. Applicant

By Advocate Mr M. Girijavallabhan.

Vs

- 1 Union of India, represented by Secretary, Ministry of Agriculture & Co-operation, (Department of Agriculture), Government of India, New Delhi-110 001.
- 2 The Director, Central Institute of Fisheries Nautical Engineering Training, Diwan's Road, Ernakulam, Cochin-682 016.
- 3 The Deputy Director, Central Institute of Fisheries Nautical Engineering Training, (Madras Unit), Royapuram, Madras-600 013.

.. Respondents

By Advocate Mr S. Radhakrishnan, Addl.CGSC(represented).

The application having been heard on 16th February 1996, the Tribunal on the same day delivered the following :

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant a retired Government employee, seeks a direction to respondents to reconvey a property mortgaged by him as security for a loan. There is also a prayer to direct respondents to finalise disciplinary proceedings, pending against him.

2. Applicant availed of a loan of Rs.30,000.00 under the House Building Advance Rules. The loan was secured by the mortgage of land in survey No.597/2 of Poonithura village and appurtenances thereon. Applicant states that the entire amount, with interest thereon were repaid by him by October, 1994, and that the property is still not reconveyed.

3. Respondents would submit that disciplinary proceedings are pending against applicant, that he has caused a loss of Rs.1,09,074.10 to the Government, that his retiral benefits would only be Rs.78,200.00, and that the Government will have no means of recovery in case the property is reconveyed. The matter cannot be decided on the expediency, which Government finds.

4. The question for consideration is whether the relationship between the respondent-Government and the applicant-employee is that of a mortgagor and mortgagee, or anything more than that, for purposes germane to the context. Standing counsel appearing for respondents, admits that the relationship is only that of a mortgagor and mortgagee. In that event nothing other than what the law of mortgage permits can be resorted to. It must also be remembered that on default, the remedy is only of that of enforcing a mortgage. Applicant has discharged his obligations under the mortgage by paying the full amount with the stipulated interest. It is stated in paragraph 4 of the application that:

"As per the terms of the mortgage, the entire amount together with interest thereon were fully and completely repaid by the applicant by October 1994, i.e. eight months prior to his retirement."

This statement is not denied and the statement stand uncontroverted.

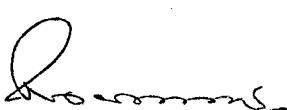
5. The relationship between the Government servant and the Government, is only that of mortgagor and mortgagee. May be the fact that the applicant was a Government servant, would have enabled him to obtain the loan. But, the mortgage must be governed by the law of mortgage and only that. On payment of the full mortgage amount, applicant is entitled to get the mortgage discharged, and the property reconveyed.

6. The lame excuse put forward for not reconveying the property is that other amounts may be found due from applicant, on a future date. Unascertained and unrelated liabilities, cannot create a charge on the property. The law of mortgage does not create any special rights in the Government. The retention of the property is illegal and the property has to be reconveyed to applicant.

7. As far as the disciplinary proceedings are concerned, we do not propose to go into the merits. We would only direct respondents to finalise the proceedings within two months from today.

8. The Original Application is allowed and respondents are directed to reconvey the property to applicant within three weeks from today. Respondents will also pay the costs of applicant, which we fix at Rs.2,000.00(Rupees two thousand).

Dated, the 16th day of February, 1996.


SP BISWAS
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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