
(2003) 07 MP CK 0003
In the Madhya Pradesh High Court
Case No : L.P.A. No. 330 of 2003

Aadesh Kumar Patel

APPELLANT

Vs

Managing Director, M.P. Financial Corporation and Another

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Madhya Pradesh Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987 — Section 3
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2004 MP 253 : (2005) 2 MPJR 15 : (2004) 3 MPLJ 121

Hon'ble Judges : Bhawani Singh, C.J.; S.L. Jain, J

Bench : Division Bench

Advocate : R.K. Samaiya, for the Appellant;

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Being aggrieved by the order dated 5-5-2003 passed by the learned single Judge in writ petition No. 665/2002, the appellant has filed this appeal under Clause 10 of the Letters Patent.

A brief resume of the facts required to be stated for the disposal of the appeal is as follows : The appellant filed above referred writ petition alleging that Central Food Technological Research Institute, Mysore introduced a scheme of Mini Rice Mills. The appellant being impressed by the scheme decided to establish a Mini Rice Mill at Anchalkheda, District Hoshangabad. He approached respondent 1, Madhya Pradesh Financial Corporation (hereinafter referred to as the "Corporation"), for grant of loan. The Corporation sanctioned a loan of Rs. 1,82,000/-, which was repayable in specified instalments along with interest. A sum of Rs. 1,25,000/- was released to the appellant by Corporation and he had also invested a sum of Rs. one lac from his own sources.

Appellant also alleged that the scheme of Mini Rice Mill as introduced by the Central Food Technological Research Institute, Mysore was not viable and from

the very inception the machines installed in the Unit were not functioning properly and the defects in the machine could not be rectified even by the experts sent by the dealer. This landed the Unit into rough weather and defaults in payment were committed, interest went on mounting and within a few months the operation of the Unit ceased and ultimately the appellant had to close down the Unit. The appellant could not make repayment as stipulated in the agreement, therefore, the Corporation took over the possession of the Unit u/s 29 of the M.P. Financial Corporation Act, 1951 (hereinafter referred to as the "Act") for recovery of the amount due to it.

The appellant requested the Corporation for settlement. Accordingly respondent 1 agreed to settle the accounts on one time payment of Rs. 1,25,000/- by the appellant. The appellant could not pay the said amount, therefore, he requested respondent 1 to hand over the Unit to him to enable him to sell the same and pay the proposed amount of settlement of Rs. 1,25,000/- but the Corporation did not accede to his request and refused to hand over the Unit to the appellant and got it valued at Rs. 40,000/- only and sold it to one Mahesh Kumar Tiwari who agreed to purchase the Unit for Rs. 40,000/-. The proposal of Mahesh Kumar was accepted on 24-12-94, and in exercise of the powers u/s 29 of the Act, Unit was sold to him and subsequently registered sale deed was also executed.

Appellant also averred that before selling the Unit to Mahesh Kumar Tiwari no notice or any kind of opportunity was given to him. The Unit was sold on a throw away price. The solicitous attitude of the Corporation in selling the Unit at a very low price is unjust and unfair. No prudent businessman with the least acumen would have sold the Unit for a meagre amount of Rs. 40,000/-. A reasonable approach was not only desirable but necessary on the part of Corporation while dealing with such matters. The Corporation adopted an attitude which was contrary to the spirit and scheme of the Act. Before accepting the tender of M. K. Tiwari an opportunity should have been given to the appellant as to why such an offer be not accepted. According to the appellant the Act of Corporation smacked of absence of bona fides or responsibility or reasonableness as an ordinary prudent man. Thus, the sale of the Unit is vitiated by unjust and unreasonable act on the part of the Corporation or its officers and is liable to be set aside.

It is further alleged by the appellant that above referred atrocity did not satisfy the Corporation and it issued a revenue recovery certificate to respondent No. 2 for recovery of Rs. 1,97,760/- which according to the respondent No. 1 was still due against him. Accordingly, the respondent 2 called upon the appellant to pay the said amount. In this regard the appellant has alleged that an amount of Rs. 1,97,760/- is not due against him.

Appellant aggrieved by the sale and recovery proceedings initiated by respondent 2 on the basis of recovery certificate issued by respondent 1 u/s 3 of the M.P. Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam 1987 (hereinafter referred to as "Adhiniyam") filed a writ petition for quashing the recovery certificate and for restoration of possession of the unit sold by respondent 1.

Combatting the allegations made in the writ petition, the respondent No. 1 by filing return pleaded that appellant offered primary security of factory land measuring 3600 sq. feet along with plant and machineries to be installed. A loan of Rs. 1,80,000.00 was sanctioned on the security of mortgage of entire Unit but the appellant had availed the benefit of Rs. 1,25,000/-only. As the appellant could not pay the instalments, it took possession of the mortgaged unit in exercise of the power u/s 29 of the Act. It advertised sale of the industrial Unit through publication of notice in daily news papers but even after publication on six occasions the sale could not take place as the industrial Unit was in a remote area and the plant was not in working condition.

Respondent No. 1 also pleaded that it informed the appellant by letter dated 19-11-1996, Annexure R-1/3 that it has fixed the price of Unit at Rs. 40,000.00 and it would sell the same as and when the offer was received. The appellant was given a choice to bring better offer or some purchaser of higher price. In spite of the above intimation, the appellant did not bring any purchaser but offered settlement of Rs. 1,25,000.00 by his letter dated 13-12-1996 -- Annexure R-4/1 which was accepted by the respondent No. 1 and the appellant was granted time till 25-3-1997 to pay the settled amount. It was clarified to the appellant that if he failed to pay the amount of settlement, within the stipulated time, the offer of settlement would be treated as withdrawn.

As the appellant did not pay the settled amount, it accepted the offer dated 30-7-1997, Annexure R-1/6 submitted by Mahesh Kumar Tiwari, who was resident of Anchal Kheda. He deposited a sum of Rs. 40,000.00 till 24-12-1997 and the industrial unit was sold to him vide registered sale deed dated 20-2-1998, Annexure R-1/7, in exercise of powers u/s 29 of the Act. The respondent No. 1 not only kept the appellant informed regarding different offers but did its best to obtain maximum possible price of the industrial Unit. Machinery of the Unit was lying idle and became rusty by 1998, therefore, the value of the machinery had gone down considerably. Moreover, the unit was in a remote area, therefore, the valuation cannot be said to be unreasonably low.

The respondent No. 1 further alleged that appellant being local person had information about the sale and it also gave intimation to him vide letter dated 25-8-1999, Annexure R-1/8, but he did not bother to repay the balance amount and the Corporation was forced to issue recovery certificate u/s 3 of the Adhinyam for a sum of Rs. 1,97,755.28 together with interest @ 15% per annum from 1-12-1993 for recovery of debts as arrears of land revenue. Respondent No. 2 is executing the same under Chapter XI of the M.P.L.R. Code, 1959.

Learned single Judge by the impugned order dismissed the writ petition holding that the unit was properly sold by respondent No. 1 in exercise of statutory powers. The challenge to the sale is extremely belated. With respect to objection of appellant regarding correctness of the amount due as shown in revenue recovery certificate the learned single Judge held that if the amount of Rs.

1,97,755.28 is really not due against the appellant, he is free to approach the respondent/Corporation and satisfy it in the matter. With this liberty, the learned single Judge declined to interfere.

It is against this order of the learned single Judge that the appellant has come up in appeal.

We have heard Shri Samaiya, learned counsel for the appellant and gone through the record of the case.

The first contention of the learned counsel for appellant is that in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , the Apex Court has issued directions for observance by the Corporation while exercising the powers u/s 29 but the directions have not been followed in the present case. In order to appreciate the contention of Shri Samaiya it will be apposite to reproduce the directions given in the aforesaid judgment :--

"Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable :

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by (sic many) normal buyers may not be available. But before taking such steps there should be advertisements not only in daily news papers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

These directions are the natural guidelines for exercise of the powers u/s 29 of the Act.

In the facts of the present case, the said directions have been substantially applied by the respondent 1. A number of efforts were made to sell the Unit of appellant by issuance of advertisement from time to time but no offer whatsoever was received in response to the advertisements. Ultimately, respondent No. 1 got the machinery valued and the valuation was suggested to be Rs. 40,000.00.

The appellant was also given an opportunity to bring better offer but he failed to do so. On the request of the appellant respondent No. 1 accepted the proposal of appellant to settle the claim for a sum of Rs. 1,25,000.00 but the appellant failed to pay this amount within the stipulated time and no prayer was made for extension of the time. The valuation was intimated to the appellant to enable him to file objection, if any. Appellant never expressed his willingness to offer the sale price more than the one which was offered by Shri Tiwari.

The respondent No. 1 acted broadly in consonance with the guidelines. In the facts and circumstances of this case we are of the opinion that directions 2, 3 and 4 have been substantially complied with by Corporation.

In the matter of sale by State Financial Corporation in exercise of powers conferred on it u/s 29 of the Act the scope of judicial review is confined to two situations, namely, where there is a statutory violation on the part of the Corporation or where the Corporation acted unfairly or unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as a Supervisory Authority over the acts and deeds of the Corporation. In the present case, it has not been pointed out that there is any statutory violation on , the part of the respondent No. 1 in accepting the offer of Shri M. K. Tiwari nor it can be said that the respondent No. 1 acted unfairly and unreasonably. The learned single Judge was, therefore, justified in declining, to interfere with the action of the respondent No. 1 in accepting offer of Shri M. K. Tiwari.

Fairness of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. Fairness is not a one way traffic. The appellant did not honour the commitments undertaken by him. He has no intention to repay any part of the debt. He is merely putting forward one or the other play to keep the Corporation at bay. Approaching this Court through writ petition and L.P.A. is but a part of this game. The Corporation too borrows money from Government or other financial corporations. It has to pay interest thereon. It is to recover loan so that it can give fresh loans to others promoting industrialisation. Fairness required of it must be determined in the light of the circumstances of a particular case. When the Corporation had more than one choice it had certain amount of discretion to choose between more than one possible course of action. The action of the Corporation cannot be said to be so unfair or unreasonable that no reasonable person would have taken that action. Therefore, the learned single Judge rightly did not interfere. In the instant case challenge to sale-deed is extremely belated. The sale took place on 24-12-1994 and the same was

challenged by filing the writ petition on 26-1-2003.

So far as the revenue recovery certificate is concerned the appellant made persistent defaults in repayment of the loan amount, therefore, respondent No. 1 had no choice but to issue revenue recovery certificate.

Learned counsel for the appellant submitted that the claim in the revenue recovery certificate is too large and the same is not due against the appellant. No material has been placed before us that the amount described in revenue recovery certificate is not due against the appellant. In this connection, the learned single Judge has rightly said that if the appellant has any such genuine grievance, he can approach respondent No. 1 and pray for redressal of his grievance and if his grievance is not redressed he will be at liberty to take recourse to law.

Considering all the submissions made by the learned counsel appearing for the appellant and the facts and circumstances of the case as well, we hardly find good reason to take any different view of the matter from the one taken by the learned single Judge. In the result, the appeal fails and is accordingly dismissed in limine.