

(1996) 10 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 9436 to 9443 of 1996

Abhay Kumar Pandey and

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 29(1), 29(2)

Citation : AIR 1997 Patna 160 : (1997) 45 BLJR 313 : (1999) 95 CompCas 41 : (1996) 2 PLJR 803

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Shashi Shekar Dwivedi, V.K. Sinha and Ratan Kumar Singh, for the Appellant; A.K. Singh, P.K. Shahi, Sunil Kumar, O.P. Agarwal, SC II, Binod Kumar, J.C. to S.C. II, Arvind Kumar, J.C. to S.C. II, Nirja Shrivastava, J.C. to S.C. II, Sangha Mitra Ghosh, J.C. to S.C. II and Abha Verma, J.C. to S.C. II, for the Respondent

Judgement

M.Y. Eqbal, J.—In all the writ petitions the solitary question involved is as to whether the respondent No. 2, Bihar State Financial Corporation (hereinafter referred to as the "Corporation's) has any authority under the land to forcefully evict the petitioners from the shop and premises which are in their occupation as tenant particularly in purported exercise of power u/s 29 of the State Financial Corporation Act, 1951.

2. The brief facts of the case are that a marketing complex was created within the premises of Nilayasa Hotel belonging to one Naresh Chandra Karn of Tilkamanjhi, Bhagalpur. He inducted the petitioners as tenant in respect of respective shop premises on a monthly rent. According to petitioners although initially a lease for a fixed period of five years was created but nevertheless the petitioners were allowed to continue as monthly tenant on payment of monthly rent which was regularly paid by the petitioners. This owner of the premises, namely, Naresh Chandra Karn took a loan from the respondent No. 2, Bihar State Financial Corporation. On account of nonpayment of loan the Corporation auction

sold the entire premises, namely, Nilanjasa Hotel taking recourse of Section 29 of the said Act and respondent Nos. 5 to 10 who are the partners of M/s. Baba Complex purchased the said premises. It was further stated that the Corporation realised its loan dues by the said auction sale and the title stands transferred in favour of respondent Nos. 5 to 10 in whose favour possession was also delivered on 6-4-1995 in respect of part of the premises where Hotel business is being run and with respect to the shop premises a symbolical delivery of possession was made. Pursuant to the steps being taken u/s 29 of the Bihar State Financial Corporation Act, respondent No. 2 the Corporation sealed the entrance gate of the hotel excluding the tenanted premises in occupation of the petitioners and the petitioners and other shop-keepers were threatened that if they refused to vacate the premises they shall be forcefully evicted. Being apprehensive of the power of the Corporation as also the private respondents the petitioners jointly filed Title Suit No. 179 of 1992 in the court of 2nd Munsif, Bhagalpur, for declaration that the plaintiffs are the tenants of the suit premises under defendant Nos. 1 and 2 and they cannot be evicted from the said premises without any order of decree of the competent court. They have further sought an order of permanent injunction restraining the defendants not to disturb the peaceful enjoyment of the premises of the petitioners and restraining them from peaceful dispossession. It was further stated in the writ application that an application under Order 39 Rules 1 and 2 of the CPC was also filed by the petitioners which were heard and the learned Munsif passed an order for maintaining status quo. Final hearing in the injunction matter has not been done and in the said suit defendant No. 2 admitted the tenancy of the petitioners as well as their possession as a lessee. However, it was submitted that the petitioners ought to have handed over the vacant possession of the entire building. It was further stated that all of a sudden on 7-9-1996 at about 12.30 p.m. the respondent No. 4 along with Executive Magistrate arrived at the shop of the petitioners and ordered them to vacate the shop with immediate effect which they refused to do. The police force accompanying respondent No. 4 started ransacking process and threw some of the articles of the shop of the petitioners as well as other shop-keepers on the road and on protest assaulted the petitioners. The petitioners, thereafter rushed to the office of the Corporation and demanded certain papers but they refused to supply any papers. The petitioners learnt that by Memo No. 2805 dated 6-9-1996 issued by the Superintendent of Police Bhagalpur police force was deputed along with an Executive Magistrate on the demand of respondent Nos. 3 to 5 for removing these petitioners from the shop premises. The petitioners therefore seek protection by filing these writ applications.

3. Mr. Shashi Shekhar Dwivedi learned senior counsel appearing on behalf of the petitioners in all writ applications has challenged the authority of the respondents who forcefully tried to remove the petitioners from the shop premises which are in their occupation as tenant. Learned counsel submitted that the action of respondent Nos. 3 and 5 by putting the petitioners' shop under lock and seal is

absolutely illegal, arbitrary and without jurisdiction. Learned counsel submitted that respondents have no authority to evict the petitioners without taking recourse to an appropriate legal proceeding in accordance with law.

4. On the other hand, Mr. P.K.Shahi, learned counsel appearing on behalf of the respondent-State Financial Corporation very fairly submitted that although respondent-Corporation was not justified to put seal in the shop premises but because of wrong legal advise it was done, the action of respondents-Corporation was not mala fide. Learned counsel further submitted that the Corporation took possession of the premises long back but even thereafter these petitioners were allowed to continue possession as tenant in respect of part of the premises. Learned counsel submitted that Corporation unlock the premises to enable the petitioner to continue their occupation as tenant.

5. On the other hand, Mr. Sunil Kumar, learned counsel appearing on behalf of the private respondents, auction purchasers tried to convince this court that in exercise of power u/s 29 of the said Act the purchasers are entitled to take possession of the entire property auction purchased by dispossessing all the persons including the tenants. Learned counsel submitted that power conferred by Section 29 is an independent to Section 31 of the said Act and Corporation has wider power u/s 29 to take possession of the property belonging to the industrial concern even when they are found in possession of the third parties. Learned counsel relied upon a decision in the case of Dhirajlal Jasmatbhai Viradiya, Rajkot v. Gujarat State Financial Corporation reported in : AIR 1991 Guj 98. In the case before the Gujarat High Court the fact was that the petitioners took on lease a shop from its owner M/s. R.R. Engineering Works and the petitioners claimed to be in possession since Oct. 1985. In 1987, Officer of the Corporation came to their shop and told him to vacate the shop and hand over possession. On a request made by the petitioner time was given to him to consult his advocate. They came to know that his landlord took a loan from the Corporation and had agreed not to let or transfer its industrial establishment to any person. The Corporation therefore locked the shop which action was challenged by the writ petitioners. The Corporation filed its counter affidavit stating, inter alia, that the industrial unit was auction sold u/s 29 of the said Act and possession was taken on 17-1-1987. The possession of the shop for which the petitioners are claiming tenancy rights was also taken over in presence of the petitioner No. 2 and at that time he had not claimed any tenancy right. The Corporation in the said case denied that the petitioners were tenants of the said shop. The High Court after considering the facts and circumstances of the case held that the Corporation was entitled to take possession even from the petitioners who were said to be tenant. However, in paragraph 13 of the judgment observed as under:-

"Considering the nature and extent of the right, it will have to be held that the State Financial Corporation can validly take over possession of properties belonging to the Industrial concern even when they are found in possession of third parties. If third party has any right, it can get the same established in a

court of law and obtain a proper relief for recovery of possession or can sue the Financial Corporation for the damage or loss caused to it thereby. As stated earlier, if the third party is able to satisfy the Financial Corporation when it takes over possession of the industrial concern that it has a valid right to retain possession of the property belonging to the industrial concern, then the Financial Corporation will have to release the said property in favour of that party. In all other cases of doubt or dispute, the third party will have to go to the Court of law and establish its right to recover possession of the property taken over by the Financial Corporation."

6. In my opinion the aforesaid decision of the Gujarat High Court is of no help to the private respondent for two reasons. Firstly, from Annexure 5 to the reply filed by the petitioner to the counter affidavit it appears that by letter dated 10-2-1994 the Corporation requested the petitioners to negotiate the monthly rent as they have been coming in possession of the shop premises as tenant for a long time. The extract of the letter is reproduced hereinbelow :--

Bihar State Financial Corporation.

M/s. Yashoda Auto Centre C/o Shri Shishu Pandey, M/s. Baba Engineering Works C/o Shri Shanker Sah, M/s. General Store C/o. Shri Sunil Pandey M/s. National Store C/o. Shri Arbind Bahu M/s. Rohit Hardware C/o. Shri Phulchi Pandey M/s. Manish Hardware C/o Shri Pappu Bhatat Hotel Nilanjasa Building, Tilkmanjhia, Bhagalpur Dear Sir (S),

Re : Payment of monthly rent to B.S.F.C. from 24-12-1993.

Kindly refer to the subject noted above. You are fully aware that the Hotel Nilanjasa Building has been taken over by E.S.F.C. on 24-12-1993 and all of you are doing your business in the name and Style as mentioned above since long.

In view of the facts stated above, all of you are hereby requested to pay/negotiate monthly rent to B.S.F.C. from 24-12-1993 at an early date.

Kindly treat it most urgent.

Yours faithfully.

Sd/- (R. N. Ram) Branch Manager.

7. Secondly, learned counsel appearing for the Corporation realising the mistake committed by the Officer of the Corporation and appreciating the fact that the petitioners were recognized as tenant even by the Corporation, fairly took the stand that they will continue in occupation of the shop premises as tenant.

8. Besides the above the most important evidence is the document (Annexure 6) executed by Branch Manager of the Corporation whereby delivery of possession of M/s. Nilanjasa Hotel was handed over to the private respondents auction purchaser at "as is where is basis." The private respondent also acknowledged the recovery of possession. This document proves beyond any doubt that the

auction purchasers were put in possession as is where is basis and the petitioners who were the tenants were allowed to continue as tenants.

9. It is relevant to refer Sub-sections (1) and (2) of Section 29 of the said Act also reads as under :--

Section 29(1) :-- Where any industrial concern, which is under a liability in the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligation, in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

Section 29(2) :-- Any transfer of property made by the Financial Corporation, in exercise of its powers (xxxx) under Sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

10. From Sub-section (2) of Section 29 it is clear that in case of transfer of property by the Corporation in exercise of power under Sub-section (1) of Section 29 the transferee shall be vested with the rights in the property transferred as if the transfer had been made by the owner of the property. In that view of the matter also a person in rightful occupation of the premises as a tenant cannot be dispossessed merely because of the transfer of the property by the Corporation u/s 29 of the said Act. I have no hesitation to hold that Section 29 of the said Act will not prevail upon the law under which a person in occupation of the premises as a tenant cannot be evicted without due process of law. It is well settled that without any decree or order of eviction from a demise premises a tenant cannot be dispossessed from the premises without any due process of law.

11. Having regard to the facts of the case and also the discussion made above. I am of the opinion that the petitioners are entitled to get protection by this Court inasmuch as the action of the respondent-Corporation and the other respondents putting lock in the tenant's premises was illegal and unjustified. Learned counsel for the Corporation very fairly submitted that the premises so locked by the Corporation shall be unlocked and they shall be allowed to continue possession unless evicted in due process of law. I, therefore, direct the Corporation to remove the seal and unlock the shop premises in occupation of the petitioners and further hold that the petitioners are entitled to continue possession as tenants unless evicted in due process of law.

12. With the above direction and observation this writ application is disposed of.