(2002) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17697 of 2002

A.S. Prasad APPELLANT

Vs

A.P. State Financial Corporation and Others RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Constitution of India, 1950 — Article 246
State Financial Corporations Act, 1951 — Section 29

Citation : (2003) 1 ALD 637 : (2003) 3 ALT 780 : (2003) 3 BC 207 : (2003) 46 SCL 309

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Y.N. Lohitha, SC, for the Respondent

Judgement

J. Chelameswar, J.—The writ petition is filed seeking to issue writ of mandamus or any other appropriate writ or direction declaring the action of the 1st respondent herein in invoking the powers u/s 29 of the State Financial Corporations Act, 1951 (for short, ''the SFC Act'') for seizing the lease, hold premises bearing D.No. 1-1-145, 3rd-4th Floor, Happy Trade Centre, 62, SD Road, Secunderabad, as illegal, arbitrary and contrary to the provisions of the A.P. Protection of Depositors of Financial Establishments Act and Rules, 1999 (for short, ''the Act'') and the orders passed in W.P. M.P. No. 19174 of 2002 in W.P. No. 9174 of 2002 dated 23-8-2002 and pass such other or further orders as this Court deems fit and proper in the circumstances of the case.

2. The petitioner claims to have taken the premises bearing D.No.1-1-145 to 147, 3rd-4th Floor, Happy Trade Centre, 62, SD Road, Secunderabad, on lease. The 1st respondent-A.P. State Financial Corporation, Hyderabad disputes the fact that there was a legally enforceable lease but admits that the petitioner is in possession of the property in question. The petitioner further claims that after obtaining the above mentioned lease he deposited an amount of Rs. 20,00,000/- with the owner of the property in question and thereafter petitioner entered into

partnership with some other persons the details of which may not be necessary, started running a bar and restaurant after obtaining the requisite licence. The petitioner also asserts in the affidavit that he has been paying a sum of Rs. 1,00,000/- per month towards lease to the owner of the property.

3. On the allegations that the owner of the property played fraud on a Cooperative Urban Bank i.e., Charminar Cooperative Urban Bank Limited, the property in question was attached by the Government of Andhra Pradesh by G.O. Ms. No. 119, dated 30-4-2002 u/s 3 of the A.P. Protection of Depositors of Financial Establishments Act, 1999. Challenging the said decision of the Government of Andhra Pradesh, the petitioner filed W.P. No. 9194 of 2002 in this Court. This Court while admitting the said writ petition, passed an interim order in W.P. M.P. No. 19174 of 2002, dated 23-8-2002. The operative portion of the interim order reads thus:

"There shall be interim direction not to disturb the running of the business in the premises bearing No. 1-1-145 to 147, 3rd-4th Floor, Secunderabad, on condition the petitioner depositing Rs. 1,00,000/- to the 2nd respondent on 10th of every succeeding month for a period of 3 months on the ground that the licence is existing up to 2003 to run the business.

Interim direction granted by this Court shall continue up to the end of March, 2003."

4. The petitioner asserts that he has, in fact, deposited an amount of Rs. 5,00,000/- in obedience of the above mentioned order. It appears from the pleadings that the property in question was mortgaged with the 1st respondent in connection with a loan transaction by the owner of the property. As the loanee defaulted in the repayment of instalments in terms of the agreement reached between the loanee and the 1st respondent, the 1st respondent issued legal notice dated 1-8-2002 proposing to exercise the statutory power u/s 29 of the SFC Act (an enactment made by the Parliament). On receipt of the same the petitioner gave a reply to the 1st respondent raising various contentions. The details are not necessary for the present.

5. However, the 1st respondent in exercise of its statutory power u/s 29 of the SFC Act did in fact seize the property in question on 13-11-2002. The present writ petition is filed on 13-9-2002. The matter underwent five adjournments at the request of the learned Counsel for the petitioner and in the above mentioned background the seizure took place on 13-11-2002.

6. The learned Counsel for the petitioner argued that in view of the attachment order passed against the property in question u/s 3 of the State Act the 1st respondent could not have seized the property in question, and therefore, the seizure is illegal.

7. I express my inability to accept the submission made by learned Counsel for the petitioner for the reason that the A.P. Protection of Depositors of Financial

Establishment Act, 1999 is obviously an enactment made in exercise of the legislative power conferred on the State Legislature referable to some entry either in List II or List III of VII Schedule of the Constitution. The question as to under which entry the said enactment is made is not examined as no arguments in this behalf are submitted by the learned Counsel for the petitioner but he proceeded on the assumption that the said enactment is validly made by the State Legislature of Andhra Pradesh. But the fact remains that the 1st respondent came into existence under the provisions of the SFC Act, an enactment passed by the Parliament in exercise of the power conferred on it under Article 246(1) of the Constitution with reference to the legislative field indicated in Entry 43 of List-I of VII Schedule of the Constitution. The legislative field is exclusively assigned to the Parliament by the Constitution, therefore irrespective of the source of the legislative authority under which the State enactment is made, the said law made by the State Legislature is required to give way to the mandate of the law made by the Parliament in exercise of the power conferred on it under Article 246(1) of the Constitution because within the field assigned to it, the law made by the Parliament is supreme and overrides any other law made by the State Legislatures if there is anything repugnant or inconsistent in such law made by the State Legislature.

8. The scheme under Article 246 of the Constitution makes this position clear. Clause (1) of Article 246(1) states that notwithstanding anything contained in Clauses (2) and (3), the Parliament shall have the exclusive power to make laws. In the case of legislative power, under Clause (2) of Article 246(1) which conferred legislative power with regard to the matters enumerated in the List III of the VII Schedule both the Parliament as well as on the State Legislatures, the said clause makes an express declaration that the grant of the legislative power therein to the Legislatures is subject to Clause (1) of Article 246(1). Article 254 of the Constitution declares that if a conflict arises between two laws i.e., a law made by the Parliament and another law made by the State Legislature, with reference to one of the subject matters enumerated in any one of the entries in List III of the VII Schedule, the law made by the Parliament prevails over the law made by the State Legislature, unless the law made by the State Legislatures is saved as provided under one of the two provisos to the said Article. Clause (3) of Article 246(1) makes the legislative power granted to the State Legislatures subordinate to the powers granted under the preceding two sub-articles of Article 246(1).

9. Entry 43 of the List I of the VII Schedule authorises the Parliament to make laws providing for the incorporation etc., of trading corporations including banking, insurance and financial corporations. In exercise of the said power the SFC Act was enacted and the 1st respondent is one such body created under the said Act. The 1st respondent in the cause of carrying on its business entered into a transaction of mortgage with the owner of the property in issue. Such a transaction is an integral part of the activity authorised to be carried on by the 1st respondent by law. Therefore, a legal burden is created on the said property

creating a legal obligation in favour of the first respondent. No doubt the State law seeks to create another legal burden against the same property in connection with some other transaction between the I owner of the property and another person who are amenable to the authority of'' the State Legislature. These two obligations are conflicting. In such a case having regard to the scheme of Article 246(1) where the Constitutional limitations on the grant of legislative powers are expressed, the obligation created by the law of the Parliament overrides the obligation created by the law of the State.

10. In fact the Supreme Court was dealing with similar problem in Indu Bhushan Bose Vs. Rama Sundari Debi and Another, , the facts are that "Rama Sundari Debt, the first respondent in the appeal by special leave, instituted a suit for the ejectment of Indu Bhusan Bose appellant who was a tenant in premises No. 18, River side road, owned by respondent No. 1, situated within the cantonment area of Barrackpore. The agreed rent was Rs. 250 per mensem; but there was a dispute as to whether the owner or the tenant was liable to pay rates and taxes. On an application presented by the appellant, the Rent Controller fixed fair rent u/s 10 of the West Bengal Premises Tenancy Act No. XII of 1956 at Rs. 170/- per month inclusive of all cantonment taxes, and, in appeal, the amount was enhanced to Rs. 188/- per month inclusive of all cantonment taxes. Respondent No. l in December 1960, served a notice on the appellant to quit and on failing to get vacant possession, filed a suit in the Court of the Munsif. In the plaint respondent No. l claimed that regulation of house accommodation including control of rents being a subject in Entry No. 3 of List I of the Seventh Schedule to the Constitution the State Legislature could not completely enact a law on the same subject for cantonment areas, so that the appellant was not entitled to protection under the Act which had been extended to that area by the State Government, It was urged that the extension of that State Act to the cantonment area was ultra vires and void". The Supreme Court in the said case held as follows:

"Article 246(1) of the Constitution confers exclusive power on Parliament to make laws with respect to any of the matters enumerated in the List I, notwithstanding the concurrent power of Parliament and the State Legislature, or the exclusive power of the State Legislature in Lists III and II respectively. The general power of legislating in respect of relationship between landlord and tenant exercisable by a State Legislature either under Entry 18 of List II or Entries 6 and 7 of List III is subject to the overriding power of Parliament in respect of matters in List I, so that the effect of Entry 3 of List I is that, on the subject of relationship between landlord and tenant insofar as it arises in respect of house accommodation situated in cantonment areas, Parliament alone can legislate and not the State Legislatures, The submission made that this interpretation will lead to a conflict between the powers conferred on the various Legislatures in Lists I, II and III has also no force, because the reservation of power for Parliament for the limited purpose of legislating in respect of cantonment areas only amounts to exclusion of this part of the legislative power from the general powers conferred on State Legislatures in the other two Lists. This kind of exclusion is not confined only to legislation in respect of house accommodation in cantonment areas. The same Entry gives Parliament jurisdiction to make provision by legislation for local self-government in cantonment areas which is clearly a curtailment of the general power of the State Legislatures to make provision for local self-government in all areas of the State under Entry 5 of List II. That Entry 5 does not specifically exclude cantonment areas and but for Entry 3 of List I, the State Legislature would be competent to make provision for local Government even in cantonment areas. Similarly power of State Legislature to legislate in respect of (i) education, including Universities, under Entry 11 of List II is made subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III; (ii) regulation of mines and mineral development in Entry 23 of the List II is made subject to the provisions of List I with respect to regulation and development under the control of the Union; (iii) industries in Entry 24 of List II is made subject to the provisions of Entries 7 and 52 of List I; (iv) trade and commerce within the State in Entry 26 of List II is made subject to the provisions of Entry 33 of List III; (v) production, supply and distribution of goods under Entry 27 of List II is made subject to the provisions of Entry 33 of List III; and (vi) theatres and dramatic performances; cinemas in Entry 33 of List II is made subject to the provisions of Entry 60 of List I. Thus the Constitution itself has specifically put down Entries in List II in which the power is expressed in general terms but is made subject to the provisions of Entries in either List I or List III. In these circumstances, no anomaly arises in holding that the exclusive power of Parliament for regulation of house accommodation including control of rents in cantonment areas has the effect of making the legislative powers conferred by Lists II and III subject to this power of Parliament."

11. In the background of the legal position, the fact remains that the action initiated against the property in question in this case under the provisions of the Act enactment by the State Legislature does not bar the 1st respondent to invoke the statutory power conferred on it by the law made by the Parliament i.e., the SFC Act. Therefore, the writ petition is meritless.

12. When the matter was taken up on 21-11-2002 realising the above mentioned difficulty, learned Counsel for the petitioner submitted that even if the action of the 1st respondent in seizing the property in question and proposed action of the 1st respondent to bring the property to sale u/s 29 of the SFC Act is to be accepted to be legal the Court may consider the fact that admittedly the petitioner is in possession of the property in question and running his business in the said premises and therefore the petitioner be permitted to continue his business in the premises in question until the 1st respondent in fact brings the property in question to sale. Learned Counsel for the petitioner also submitted that the petitioner may also be permitted to participate in the proposed sale of the property in question as and when it is brought to sale by the 1st respondent.

13. Learned Counsel for the 1st respondent, on the other hand submitted that in view of the pendency of the other writ petition i.e., W.P. No. 9194 of 2002 and the interim order passed therein, the petitioner has been depositing the lease amount payable by him to the 2nd respondent herein and if the petitioner is permitted to continue to be in possession as prayed for by him, the 1st respondent would be deprived of the rental income. In this background, learned Counsel for the petitioner sought time in the present writ petition to enable him to withdraw the Writ Petition No. 9194 of 2002 and seek appropriate remedies in the other writ petition.

14. Today when the matter is listed, the learned Counsel for the petitioner represented that he has in fact withdrawn the Writ Petition No. 9194 of 2002. With the withdrawal of the Writ Petition No. 9194 of 2002, the interim order passed therein at the instance of the writ petitioner would normally lapse, but in the matter like this as certain amount is deposited by the petitioner pursuant to the said interim order, unless appropriate order is passed, the amounts already deposited by the petitioner cannot be withdrawn. The petitioner is, therefore, at liberty to seek such direction as he deems fit and necessary in the said Writ Petition No. 9194 of 2002 by making appropriate application.

15. Having regard to the overall situation that the petitioner is admittedly in possession of the property in question, I deem it appropriate to direct the respondents to permit the petitioner to continue in possession of the property in question until such time the 1st respondent brings the property to sale. However, the petitioner is permitted to continue in possession of the property subject to condition that he pays the lease amount of Rs. 1,00,000/- commencing from November, 2002 to the 1st respondent within one week from today and on paying the lease amount on or before 10th of every succeeding month for the future months. The petitioner is also directed to deposit an amount of Rs. 5,00,000/- with the 1st respondent within a period of five weeks from today, and in default to pay any of the amounts mentioned above by the petitioner, the 1st respondent is at liberty to take action as is permissible for the 1st respondent under law. However, on payment of Rs. 1,00,000/- towards the lease amount for the month of November, 2002, the 1st respondent is directed to permit the petitioner to run the business in the premises in question subject to other conditions mentioned earlier. Learned Counsel for the petitioner also submits that the petitioner intends to participate in the proposed sale of the premises in question as and when it is conducted by the 1st respondent. Learned Counsel farther submits that if the petitioner does not become the highest bidder in the proposed sale, he may be given some reasonable time to vacate the premises in question. Learned Counsel for the 1st respondent submits that unless the premises to be sold is free from all encumbrances and the possession of the property in question is ready to be handed over, no prospective bidder would come forward to purchase the property in question. In the circumstances, I deem it appropriate to direct the petitioner to vacate the premises in question within 25 days from the date on which the 1st respondent calls upon the successful

bidder to deposit the sale consideration, in case the petitioner is not the higher bidder.

16. With the above direction, the Writ Petition is disposed of. No costs.

