

(2004) 07 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5055 of 1995

Biswanath Rice Mill

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2004 Ori 191 : (2005) 99 CLT 100

Hon'ble Judges : A.K. Patnaik, J;A.K. Parichha, J

Bench : Division Bench

Advocate : A. Swain and S.K. Acharya, for the Appellant; B.M. Patnaik and R.N. Mishra for O.Ps. 1 to 4; P.K. Parida, B. Muduli and A.K. Beura for O.P. No. 5, P.K. Patra and Y.S.R. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The petitioner applied to the Orissa State Financial Corporation (herein after referred to as "OSFC") for a loan of Rs. 40,000/- for establishing a rice mill at Kunjabihari Prasad. The OSFC agreed to grant a loan of Rs. 27,000/- for the aforesaid purpose and, as per the terms and conditions of the loan, the petitioner was to re-pay the said loan over a period of seven years by 12 half yearly instalments with interest at the rate of 13% and rebate of 2% per annum for timely payment. After receiving the said loan of Rs. 27,000/- the petitioner installed a rice huller in his premises. Since, the petitioner defaulted in repaying the loan and interest as per the terms and conditions of the loan granted by the OSFC, the OSFC seized the unit of the petitioner and thereafter advertised in the Oriya daily "The Samaja" dated 28-2-1993 for auction sale of the said unit of the petitioner. There was no response from any purchaser pursuant to the said advertisement. In 1995, however, the OSFC negotiated for sale of the unit of the petitioner with the opp. party No. 5 and the opp. party No. 5 agreed to purchase the unit at Rs. 1,05,000/-. Aggrieved by the decision of the OSFC to sell the unit of the petitioner at Rs. 1,05,000/- to opp. party No. 5, the petitioner has filed

this writ petition under Article 226 of the Constitution with a prayer to issue a mandamus directing the opp. parties not to confirm the auction sale of the unit of the petitioner and to afford an opportunity to the petitioner to purchase the assets of the unit and to set aside the auction sale made in favour of the opp. party No. 5.

2. On 4-8-1995, the Court issued notice to the opp. parties and stayed further action relating to the transfer of the petitioner's unit and further directed that the petitioner shall deposit a sum of Rs. 40,000/- with the OSFC and the OSFC will accept the same and the balance outstanding amount shall be deposited within a month. Pursuant to the said order passed on 4-8-1995, the petitioner deposited a sum of Rs. 40,000/- but did not deposit the balance outstanding dues. The petitioner then filed Misc. case No. 4789 of 1995 praying for a direction to the OSFC not to handover the unit of the petitioner to an outsider through auction sale. The Court, however, was informed by the OSFC that the unit of the petitioner has already been sold and handed over to opp. party No. 5 by the OSFC in an outright sale. The Court passed orders on 9-2-2004, that since the unit of the petitioner had already been handed over to opp. party No. 5, the Misc. case had become infructuous. In the said order dated 9-2-2004, however, the Court observed that transfer of the unit of the petitioner and handing over the same to the opp. party No. 5 will be subject to the result of the writ petition.

3. When the matter was taken up today for hearing, Mr. Swain vehemently submitted that the unit of the petitioner has been sold at a meagre price of Rs. 1,05,000/-, though, the value of the said unit of the petitioner will be more than Rs. 2,50,000/-. He referred to the affidavit of one Budhia Sethi filed in Court as Annexure 11 to show that the local market value of the unit of the petitioner was more than Rs. 1.5 lakhs. He also relied on the affidavit of one Sri Subal Ch. Pradhan filed in Court as Annexure 11/ 1 to show that he was interested to purchase the unit of the petitioner, the market value of which will be more than Rs. 2,50,000/-. He also relied on the affidavit of one Sri Brundaban Sahoo filed in Court as Annexure 11/2 who has stated that the market of the unit of the petitioner was more than Rs. 3,50,000/-. Mr. Swain cited a decision of the Supreme Court in Haryana Financial Corporation v. Jagdamba Oil Mills 2002 (1) SCC 404 to show that the Supreme Court passed orders in that case that the Corporation should intimate the respondents therein the amount due within a month from the date of the order and within six months from the date of such intimation, the respondents shall repay the full amount and in case of failure to make the payment, it shall be open to the Corporation to dispose of the seized unit in accordance with law in such manner as would bring in the higher price. Relying on the said decision of the Supreme Court, Mr. Swain submitted that in this case also the OSFC should be directed to give an opportunity to the petitioner to repay the entire outstanding dues within six months and if the petitioner fails to make the payment, the OSFC can dispose of the unit of the petitioner at the highest price.

4. Mr. B. M. Patnaik, learned counsel for the OSFC, on the other hand, submitted relying on the averments in paragraph 4 of the counter-affidavit filed on behalf of opp. parties 1 to 4 that in response to the advertisement made in daily "The Samaj" dated 28-2-1993 fixing the auction date on 11-3-1993 no offer was received by the OSFC except the representation of the petitioner that on payment of Rs. 3,000/-, the unit may be released in his favour and thereafter suitable instalments may be fixed to enable the petitioner to repay the loan, but the competent authority who was holding the auction on behalf of the OSFC refused to accept the said offer of the petitioner. He further submitted that it will be clear from the averments made in paragraph 5 of the counter-affidavit filed by the opp. parties 1 to 4 that the petitioner was asked to attend the negotiation meeting to be held on 26-5-1995 for sale of the unit of the petitioner and in the intimation sent to the petitioner, the petitioner was expressly informed that the OSFC has failed to dispose of the unit of the petitioner as no suitable offerers were available nor the petitioner has secured any such proposal of the Corporation so far. After receiving the said intimation, the petitioner appeared before the Committee at the meeting held on 26-5-1995 and offered no amount to get the unit released in his favour and instead, requested the authority of the OSFC to release the unit in his favour and fix up suitable instalments for repayment of the amount but the Committee rejected the same. In the said paragraph 5 of the counter-affidavit filed on behalf of the opp. parties 1 to 4, it is also stated that the petitioner was aware of the decision of the Committee to sell the unit of the petitioner in favour of opp. party No. 5 for an amount of Rs. 1,05,000/- and in fact the negotiation was made in presence of the petitioner and finally on 19-6-1995 the sale letter was issued in favour of the opp. party No. 5 with a copy to the petitioner. Copies of the minutes of the meeting held on 26-5-1995 and the sale letter dated 19-6-1995 have been annexed to the counter-affidavit of opp. parties 1 to 4 as Annexures A and B. Mr. Patnaik submitted that on these facts and circumstances, this is not a fit case in which the Court should interfere with the sale made by the OSFC in favour of opp. party No. 5. Mr. Muduli, learned counsel appearing for the opp. party No. 5 adopted the arguments of Mr. Patnaik and also referred to the affidavits filed by Sri Brundaban Sahoo and Sri Budhia Sethi in Court in which they have stated that they have no intention nor capacity to purchase the unit of the petitioner at the rate of Rs. 3,50,000/- and Rs. 1,50,000/- respectively.

5. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, the Supreme Court after considering its earlier decisions in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and other cases held at Page 842; of AIR:

"17. The aforesaid guidelines issued in Mahesh Chandra's case place unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The

procedure indicated in Mahesh Chandra's case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible."

6. It would be clear from the aforesaid law laid down by the Supreme Court in the aforesaid case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, that the Corporation while exercising its power u/s 29 of the State Financial Corporation Act, 1951 need not follow the strict procedure laid down in the earlier decision of the Supreme Court in Mahesh Chandra's case as the Supreme Court was of the view that the procedure indicated in Mahesh Chandra's case will only further delay in realization of the dues by the Corporation by sale of assets. The Supreme Court further observed that it is always expected of the Corporation to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible. In paragraph 22 of the said judgment in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Supreme Court quoted Lord Denning who has said that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect and in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another.

7. Bearing in mind the aforesaid principles laid down by the Supreme Court, we may now examine the facts of the present case. It is not disputed by the petitioner that he defaulted in making payments of the instalments towards the repayment of the loan as well as the interest. Hence, the OSFC in exercise of its power u/s 29 of the Act was justified in taking over the unit of the petitioner. It is also not disputed that in fact an advertisement was published in daily "The Samaja" on 28-2-1993 for the sale of the unit of the petitioner, fixing the auction date on 11-3-1993. Mr. Swain, learned counsel for the petitioner, however, submitted that by the said advertisement only the plant and machinery of the petitioner was proposed to be sold. But it appears from Annexure 4/ 1 that the OSFC issued an Addendum to original sale notice in which it is stated that the industrial unit proposed to be sold by the sale notice dated 28-2-1993 should be read as "land, building, plant and machinery" instead of "plant and machinery". Since, the land, building, plant and machinery of the unit of the petitioner had been advertised by the notices dated 28-2-1993 and 4-3-1993, due publicity was given for sale of the unit of the petitioner. But unfortunately, there appears to have been no response from any purchaser to the said sale notice. It further appears that the petitioner was intimated by a letter in Annexure 5 to the writ petition by the OSFC that the OSFC has failed to dispose of the unit of the petitioner since no suitable competitive offerers were available and the petitioner has also not secured any such proposal for the OSFC. By the said letter in Annexure 5 to the writ petition, the petitioner was also requested to attend a

negotiation meeting held on 26-5-1995 and although the petitioner appeared at the said negotiation meeting held on 26-5-1995 he expressed his inability to pay any amount to release the unit of the petitioner and instead requested for release of the unit in his favour and for fixing up the instalments for repayment of the amount, but the Committee rejected the said request. Only after the OSFC failed to get a purchaser in response to his advertisement and the petitioner failed also to get a purchaser for the unit that negotiation was made with opp. party No. 5 who agreed to purchase the unit of the petitioner on payment of cash of Rs. 1,05,000/- and the OSFC issued the sale letter dated 19-6-1995 in favour of the petitioner. The aforesaid facts show that the OSFC has sold the unit of the petitioner at the highest possible price that it would get and that the sale was made in favour of the opp, party No. 5 on a down payment of Rs. 1,05,000/- by the opp. party No. 5. Further Sri Brundaban Sahoo and Budhia Sethi on whose affidavits Mr. Swain has heavily relied in support of his submission that, the unit of the petitioner would have fetched much higher price than Rs. 1,05,000/- themselves have filed affidavits in this Court to say that they have no intention to purchase the unit of the petitioner. In any case, if any purchaser was willing to purchase the unit of the petitioner at a price higher than Rs. 1,05,000/-, it was always open for him to have made an offer to the OSFC for purchase of the unit of the petitioner at a higher price than Rs. 1,05,000/- in response to the advertisement published by the OSFC for sale of the unit of the petitioner. On these facts, it is difficult to hold that the OSFC has not tried to realize the maximum sale price and has not followed a procedure, which is transparent and acceptable.

8. For the aforesaid reasons, we are not inclined to interfere with the sale made by the OSFC in favour of opp. party No. 5 and we accordingly dismiss the writ petition. The sum of Rs. 40,000/- deposited by the petitioner with the OSFC pursuant to the order passed by this Court will be refunded to the petitioner forthwith and, in any case, within one month from today by way of an A/C Payee Draft. The amount of sale proceeds in excess of the dues of the OSFC will be dealt with in the manner provided in Section 29 of the S.F.C. Act and if any surplus amount is payable to the petitioner, the same shall be refunded to the petitioner within three months from today.

A.K. Parichha, J.

9. I agree.