
(1997) 01 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6503 of 1996

Dina Nath

APPELLANT

Vs

The Haryana Financial Corporation

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

State Financial Corporations Act, 1951 — Section 29(4)

Citation : (1997) 116 PLR 148 : (1997) 3 RCR(Civil) 80 : (1997) 1 RCR(Criminal) 639

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : P.N. Aggarwal and Ashish Aggarwal, for the Appellant; Sanjeev Walia, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Dina Nath, Sat Pal and Dutt Raj petitioners have filed the present writ petition under Articles 226 and 227 of the Constitution of India for the issuance of appropriate writ for the quashment of notices dated 5.4.1996 (Annexures P1 and P2) issued by respondent No. 5, Tehsildar, Karnal, and the letter/order dated 27.11.1995 (Annexure P3) issued by respondent No. 2, i.e. the Managing Director Haryana Financial Corporation. They have further prayed that respondents Nos. 1 to 5 be restrained from recovering the alleged amount mentioned in Annexures P1 and P2. They have also prayed for the quash-ment and setting aside the sale of Rice Mill in question known as Singla Rice Mills in favour of respondent No. 6 M/s N.D. Enterprises, being illegal and ultra vires and without jurisdiction. Also prayer has been made to declare that the petitioners are not likable to pay any amount other than deducted on 14.2.1990, i.e., the date when the unit in question was sold to M/s Chadha and Co.

2. It is alleged by the petitioners that in the year 1986 a partnership firm under the name and style of M/s Single Rice Mills was formed by nine partners in all. Out of the nine partners, one Shri C.B. Singla son of Balak Ram was its Managing

partner. He was resident of 261, M.I.G. old Housing Board Colony, Karnal. The said firm applied for loan to the Haryana Financial Corporation (for short "the Corporation") for setting up a rice shelter in village Munak, District Karnal. A loan of Rs. 12 lacs was sanctioned by the Corporation, out of which the said firm raised a loan of Rs. 9,35,000/- for the purpose of land, building, machinery and shed. The loan was repayable in 15 half yearly instalments of Rs. 80,000/- each commencing from 1.6.1988 together with interest. Out of the above loan of Rs. 9,35,000/-, the petitioners had repaid about Rs. 2,00,000/- to the Corporation. However, the Rice Mill ran into losses due to unavoidable reasons and also due to lack of working capital. On 11.10.1989 the Managing Director Shri C.B. Singla died and the entire business of the rice mill suffered rough weather. Thereafter the Corporation exercising the powers u/s 29/30 of the State Financial Corporation Act, 1951 (for short "the Act") took over the possession of the rice mill on 27.11.1989. On 7.2.1990 an advertisement/notice for public auction of the rice mill in question set up on land measuring 24 Kanals situated at village Munak, along with its building and machinery was issued by the Corporation in the leading newspapers and the auction was to be held on 14.2.1990. The petitioner were also sent the intimation regarding the holding of the said public auction in question. On that date, i.e., 7.2.1990 a sum of Rs. 11,43,200/- was outstanding against the firm in the accounts of the Corporation. On 14.2.1990 the auction took place and the highest bid of Rs. 12,03,000/- was given by Shri S.K. Chadha, partner of Chadha and Co. carrying on business at 1226, Sector 22-B, Chandigarh. The highest bid given by M/s Chadha & Co. was accepted by the Corporation. In accordance with the conditions of the auction, 10% of the amount, i.e, Rs. 1,20,300/- was deposited at the fall of the hammer by M/s Chadha & Co.. Thereafter 15% of the amount, i.e, Rs. 1,80,150/- was deposited within 30 days of the acceptance of the bid by the said purchaser. It is submitted that on 7.2.1990 a sum of R. 11,43,200/- was due to the Corporation and it had accepted the bid of Rs. 12,03,000/- from M/s S.K. Chadha & Co. and in this manner the rice sheller was sold for a sum of Rs. 12,03,000/-, and, therefore, the entire loan of the firm stood satisfied. The petitioners were under the impression that their liability had been discharged with the auction, which took place on 14.2.1990. They did not receive any intimation after 14.2.1990. However, after a passage of six years, i.e., on 5.4.1996 petitioners Nos. 1 and 2 received notices from the office of the Tehsildar, Karnal, for the recovery of Rs. 19,23,036/- regarding the loan that had been taken from the Corporation and they were called upon to appear before the Tehsildar on 3.5.1996. On receipt of the above notices, the petitioners made inquiries from the office of the Tehsildar and came to know that the Corporation had issued a letter dated 27.11.1995 to the Collector, Karnal, i.e., respondent No. 4, for the recovery of the said amount under the Haryana Public Moneys (Recovery of Dues) Act, 1979. It has been mentioned in the letter dated 27.11.1995 issued by the Corporation that it had already disposed of the mortgaged property and credited the sale proceeds to the loan account and that a sum of Rs. 19,23,036/- was still due to the Corporation with effect from 1.12.1994. It is further alleged by the petitioners

that they had not received any intimation regarding the alleged cancellation of the sale in favour of M/s Chadha & Co., as ordered by the Corporation on 6.3.1991, The petitioners also made inquiries and came to know that on 15.9.1994 after a period of about 4-1/2 years from the previous sale, which took place on 14.2.1990, the Corporation without issuing any notice to the petitioners and without issuing and other public notice/advertisement in any newspaper had invited tenders for the sale of the rice mill in question. The Corporation received only two tenders and on 28.9.1994 those tenders were opened. The tenderers were called and further negotiations took place on 25.10.1994 and on" the same day the rice sheller in question was sold in favour of respondent No. 6 M/s N.D. Enterprises for a paltry sum of Rs. 7,05,000/-. This action on the part of the Corporation is not a bona fide one. No fair or reasonable opportunity had been given. On 14.2.1990 the rice sheller was auctioned for a sum of Rs. 12,03,000/- and after a lapse of 4-1/2 years it could not be sold in favour of respondent No. 6 for a small amount of Rs. 7,05,000/-. The vacant land under the rice sheller is 24 Kanals and its value is Rs. 7,05,000/-. The value of the building and the shed, according to the petitioner is Rs. 10,00,000/- and the total value of the entire unit is Rs. 28,00,000/- and it could not be sold for a sum of Rs. 7,05,000/-. This action on the part of the Corporation is against the recognised provisions of law as laid down by the Hon"ble Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . The challenge in the present writ petition has been given by the petitioners on the grounds that being the partners of M/s Singla Rice Mills, they did not receive any notice from the Corporation regarding the sale allegedly made in favour of M/s N.D. Enterprises and the unit could not be sold for a small sum of Rs. 7,05,000/- in the year 1994 when it was auctioned for a sum of Rs. 12,03,000/- as on 14.2.1990. Further it has been pleaded that with the auctioning of the unit on 14.2.1990 the liability of the petitioners had been fully discharged as on that day a sum of Rs. 11,43,200/- was due to the Corporation and in this manner the alleged demand of Rs. 19,36,023/- made by the Corporation through the Tehsildar is totally illegal and against the provisions of law and against the principles of natural justice.

3. With the above main allegations, the petitioners have prayed for the issuance of the writs/directions as prayed for in the writ petition.

4. Notice of the writ petition was given to the respondents. The writ petition has been contested by respondents Nos. 1 to 3, i.e., by the Corporation and its officers and they have denied the averments in the writ petition. It has been pleaded by these respondents that, in fact, the petitioners paid a sum of Rs. 1,28,838/- only after availing the amount of Rs. 9.35 lacs and not Rs. 2 lacs as alleged by them. It has been admitted by the Corporation that though the unit was auctioned for a sum of Rs. 12,03,000/- on 14.2.1990 but the bidder M/s Chadha & Co. only paid 25% of the bid amount and later on it backed out from the bargain and for this reason the remaining 75% amount was not recovered from the auction - Purchaser. The amount of Rs. 3,00,000/- which was received

from M/s Chadha & Co. was duly credited to the account of the petitioner since the same was forfeited from Shri S.K. Chadha. The loan amount qua the petitioner was never fully satisfied even after the sale of the unit to Shri S.K. Chadha on 7.2.1990 and the possession was never delivered to him. The unit was again put for sale and various efforts were made to recover the balance amount from Shri S.K. Chadha and thereafter it was again sold in the open market. For this reason no recovery notice was issued or demand was made from the petitioners prior to 1994. The petitioners were duly informed in August 1994 that the Corporation was going to sell the property in question by inviting tenders. Two notices which were sent to the petitioners are Annexures R1 and R2. Later on another notice dated 20.10.1994 was issued to the petitioners informing the highest bid received from the prospective buyers and asking the petitioners to bring a better buyer. Since nothing was done by the petitioners in the matter, therefore, ultimately, the unit was sold for a sum of Rs. 7,05,000/- in favour of respondent No. 6 as his tender was the highest. This amount was adjusted in the account of the petitioners and, thereafter the recovery certificate was issued for the shortfall amount due to the Corporation. Registered notice were duly issued to the petitioners informing them that the highest bid received was Rs. 5,00,000/- and they could bring better buyers, if available. There was no response from the side of the petitioners. After hectic bargaining and negotiations, ultimately the highest offer was brought up at Rs. 7,05,000/- . Due publicity was given in the newspaper while inviting the tenders. The sale was made in favour of respondent No. 6 at the best available price. Less price was received due to the fact that firstly the condition of the building and machinery had deteriorated during this period and moreover the prices of properties in Haryana had come down very much in view of the improvement of the Punjab situation with effect from 1992. On" 25.10.1994 when the sale was made in favour of respondent No. 6 the prices of the properties in Haryana were at the lowest ebb and it is for this reason better price could not be obtained by the Corporation. As on 1.2.1990 a sum of Rs. 12,47,982.22 was due from M/s Singla Rice Mills plus further interest at the rate of 12-1/2 % with effect from 1.12.1989. Since the sale made to M/s Chadha & Co. did not materialise, therefore, the amount remained due from the petitioners, who are the partners of M/s Single Rice Mills, and now the amount has increased to Rs. 20 lacs., justifying the auction on the part of respondents Nos. 1 to 3. They have further prayed for the dismissal of the writ petition.

5. The petitioners filed a rejoinder to the written statement, in which they reiterated their allegations made in the writ petition by denying those* of the written statement. In para No. 13 of the rejoinder it has been stated that the petitioners had not received any intimation, i.e., notices R1 to R3, as alleged by the respondents. The Corporation had sent these notices deliberately at the wrong address. The notices relied upon by the Corporation were addressed at H.No. 261, M.I.G. Housing Board Colony, Karnal, which is not the address of the petitioners. That is the address of Shri C.B. Singla, Managing Partner of the firm,

who died on 11.10.1989. The petitioners have also alleged that the notice R1 to R3, which were sent by the Corporation, were received back with the reports that the addressees were not residing at the given address and that Shri C.B. Singla had expired.

6. I have heard Shri P.N. Aggarwal, Advocate, appearing on behalf of the petitioner and Shri Sanjiv Walia, Advocate, appearing on behalf of the respondents Nos. 1 to 3, and Shri Azad Singh, A.A.G., Haryana, appearing on behalf of respondents Nos.4 and 5. Nobody has appeared on behalf of respondent No. 6, and with their assistance have gone through the record of this case.

7. During the course of arguments learned counsel for the petitioners raised the following points, which require adjudication and determination at the end of this Court:-

8. The first contention of Shri Aggarwal was that the Corporation did not serve any notice upon the petitioners and other partners before finalising the sale in favour of respondent No. 6. Secondly the notice: which have been relied upon by the Corporation were sent on the wrong address intentionally so that the petitioners may not become aware of the proceedings which happened in the office of the Corporation with regard to the auction of the land. Thirdly, the petitioners were not informed about the proceedings from 14.2.1990 onwards when the unit was put to auction for a sum of Rs. 12,03,000/- and on that day a sum of Rs. 11,43,200/- was due to the Corporation and in this manner the amount of the petitioners stood fully adjusted.

9. I have considered the submissions raised by the Itemed counsel for the petitioners with the help of the record relied upon by both the parties and have come to the considered view that these contentions are devoid of any merit. In. Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , wherein the Hon''ble Supreme Court was pleased to issue certain guidelines while dealing with the cases of State Financial Corporation which advances loan. It was held by the Hon''ble Supreme Court that the Corporations are like trustees of the debtor or the person claiming title through him. The provisions of Section 29 of the State Financial Corporation Act saddle the Corporation or the other officer concerned with in built duties, responsibilities and obligations towards the debtor in dealing with the property and entails him to act as a prudent and reasonable man standing in the shoes of the owner. Hon''ble the Supreme Court was further pleased to lay down the following guidelines/directions which are necessary to be issued to be observed by the Corporation while exercising powers u/s 29 of the State Financial Corporation Act:-

"Every endeavor should be made to make the unit viable and be put to working conditions. If it becomes unworkable:

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

2) Valuation of a unit for purpose 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. But before taking such steps there should be advertisements not only in daily newspapers 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."

This case is to be examined in the light of the above guidelines. As I submitted above, the entire account of the petitioners was with the Corporation, which kept the petitioners in dark and did not issue notices with regard to the auction/sale, which took place on 25.10.1994 in favour of respondent No. 6. In this regard para No. 8 of the writ petition, which states that the petitioners were also sent the intimation regarding the holding of the said public auction of the mill in question, pertains to the auction which took place on 14.2.1990. It clearly suggests that the petitioners received intimation from the Corporation when their unit was going to be sold through public auction on 14.2.1990 and it was sold to M/s Chadha & Co. for a sum of Rs. 12,03,000/-. The petitioners and others were to pay a sum of Rs. 11,43,200/-. It is the common case of the parties that from M/s. Chadha & Co. a sum of Rs. 3,00,000/- was received by the Corporation and this amount was credited to the account of the petitioners. Thereafter M/s Chadha & Co. backed out and did not pay the remaining bid amount. In this manner the transaction dated 14.2.1990 when the unit was put to auction did not materialise. Litigation started between M/s Chadha & Co. and the Corporation. The record is absolutely barren from the side of the petitioners that after 14.2.1990 they never informed the Corporation about the change of their address or that in future the correspondence would be addressed at a different address than the one mentioned in the notices RI/1 to RI/3. If for the auction dated 14.2.1990 the petitioners can receive notice at 261, M.I.G. Housing Board Colony, Karnal, why they did not receive the notices which were

sent by the Corporation under registered covers for the subsequent bids. The reports on the registered envelopes are nothing but a manipulated affairs on the part for the petitioners and they cannot take the benefits of those reports on the registered envelopes, when they had been earlier receiving letters at the address, i.e., 261, MIG Housing Board Colony, Karnal. After 14.2.1990 the petitioner never took interest to ascertain from the office of the Corporation whether the auction in favour of M/s Chadha & Co. had materialised or not. They did not ask or called upon the Corporation to get the clearance certificate that their account had been adjusted fully. In fact the petitioners and other partners were aware that their liability had not been discharged with the auction of the unit to M/s Chadha & Co. No fault can be attributed to the Corporation for the alleged delay between 14.2.1990 to 25.10.1994 when the Corporation remained on litigation with M/s Chadha & Co., which backed out from its bid of Rs. 12,03,000/- and only deposited Rs. 3,00,000/- which were given due credit in the accounts of the petitioners R1 is the notice dated 8.8.1994 given by the Corporation to the partners of M/s Singla Rice Mills at 261 M.I.G. Housing Board Colony, Karnal and it was duly intimated to all the partners that their unit is going to be sold through public auction and in case they had any buyer, they were advised to participate in the proceedings. For the first time the Corporation made an effort for the sale of the unit on 24.8.1994. The Corporation never wanted to conceal anything from the petitioners or their partners. Regarding this proposed auction, publicity, was given in the Tribune of 8.8.1994. Second time the Corporation made effort for the auction of the unit on 13.9.1994. Notice (Annexure R2) was given to all the partners of the unit and again publicity was given in the Tribune on the same day and it was proposed that the unit would be put to auction on 28.9.1994. It is not believable that the petitioners were not aware of the proposed auctions which were to take place on 24.8.1994 and 28.9.1994. The Corporation did its best to inform the partners. In spite of that the partners did not prefer to come forward with any counter proposal or objection. On 20.10.1994 another intimation was given to the partners that the unit has been proposed to be sold and the highest bid was for a sum of Rs. 5,00,000/-. The Corporation wanted to work for the best interest of the loanee and it raised the bid amount from Rs. 5 lacs to Rs. 7,05,000/-. No mala fides can be inferred on the part of the Corporation that after a lapse of four years, the unit had brought less price. The Corporation has given cogent reasons and it is a matter of judicial notice that from 1992 onwards the law and order situation in Punjab improved, as a result of which the prices of the property in Haryana came down. It is not the case of the petitioners that the staff of the Corporation had put up its own persons like respondent No. 6 in finalising the deal. Once the principles of natural justice have been complied with and the loanee has been informed of the proceedings taken in the office of the Corporation, it is not open to the loanee to put the blame on the Corporation and its staff. During the course of arguments this Court has also come to know that the Corporation made another effort for the sale of the unit on 23.4.1991 and notices were sent to the petitioners on 18.4.1991 vide despatch No. 1481 to 1494 and these notices were

sent at 261, M.I.G. Housing Board Colony, Karnal. There is no challenge to these notices but the challenge has been given to notices R1, R2 and R3 of 1994 in pursuance of which the unit has been sold on 25.10.1994 in favour of respondent No. 6. The petitioners cannot take the advantage of their own wrongs. They did not inform the Corporation that in future the correspondence would be entertained at a different address. The petitioners have no reply to the publicity/advertisement given in the newspapers. After the tentative acceptance of the highest offer of Rs. 5,00,000/-, the petitioners were informed. The Corporation still did its best and asked the highest bidder, i.e., respondent No. 6, to come to the negotiation table and the price was increased from Rs. 5,00,000/- to Rs. 7,05,000/-. The Corporation credited a sum of Rs. 3,00,000/- in the account of the petitioners which amount was received from M/s Chadha & Co. All these acts on the part of the Corporation go to show that they were not acting in a biased manner; rather they (Corporation) were discharging the duties as a trustee as contemplated in Section 29(4) of the Station Financial Corporation Act. Learned counsel for the petitioner has not been able to cite any case law that the Corporation was duty bound to inform day to day proceedings, which happened in its office, to the petitioners before confirming the sale in favour of respondent No. 6. The Corporation was supposed to act in a reasonable manner securing the best interests of the loanee and this Court has not been able to come to a different conclusion than the one that the Corporation acted bona fide and in the best interests of the petitioners and other partners.

10. It was lastly submitted by Shri Aggarwal that if none of his contentions prevailed on the mind of this Court, some directions should be given to the Corporation to see the viability if the penal interest imposed upon the petitioners and their partners can be waived, so that the petitioners may be in a position to discharge their obligation, if any.

11. So far as the merits of the writ petition are concerned, my above discussion would show that it lacks merits. However, while disposing of the present writ petition, I would like to say that the Corporation deals with public money for the public benefit, and, therefore, its approach should be public oriented, helpful to the loanee, without loss to itself. In the present case the loan advanced was Rs. 9.35 lacs. Admittedly, the Corporation had received a sum of Rs. 1.88 lacs and thereafter a sum of Rs. 3,00,000/- was given credit after receiving it from M/s Chadha & Co. It is expected from the Corporation that it should see if its Board of Directors can give any concession in the matter of interest, so that the liability of the petitioners and other partners maybe reduced to the minimum, but at the same time the Corporation has to watch its interest because it also pays interest while receiving amounts from the Industrial Development Bank of India. The Corporation may consider the request of the petitioners and other partners sympathetically, if moved for the reduction/waiving of the interest, but so far as the merits of the present writ petition are concerned it is hereby held that the same is devoid of any merit as none of the contentions of Shri Aggarwal could cut ice so as to set aside the notices or the sale in favour of respondent No. 6.

12. Resultantly, the writ petition is hereby dismissed with no order as to costs.