
(2000) 08 MP CK 0089

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 185 of 2000

Dogar Tools Private Limited and Others

APPELLANT

Vs

Madhya Pradesh Financial Corporation and Another

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 3, 5

State Financial Corporations Act, 1951 — Section 29, 31, 32

Citation : AIR 2002 MP 53 : (2001) ILR (MP) 1520 : (2001) 4 MPHT 315 : (2002) 4 MPLJ 314

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Advocate : Ajit Singh and Alok Aradhe, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

Petitioners/appellants filed writ petition under Articles 226/227 of the Constitution of India for quashing communication dated 10-4-2000 (Annexure P-30) whereby the petitioners have been informed that their mortgaged assets shall be sold for recovery of outstanding dues in exercise of the powers conferred u/s 29 of the State Financial Corporations Act (hereinafter referred to as "the Act") by the respondent M.P. Financial Corporation.

The petitioners were advanced a term loan of Rs. 28.45 lacs in the year 1980. The amount was disbursed in between the period 1981 to 1983. The M.P. Financial Corporation took possession of the mortgaged assets on 7-4-2000 in exercise of powers u/s 29 of the Act. The dues against the petitioners as on 1-1-2000, according to the M.P. Financial Corporation, is Rs. 2.40 crores, inclusive of interest. The sale of the mortgaged assets was advertised in daily

news papers Dainik Bhaskar and Nav Bharat on 4-6-2000. The prospective purchaser has offered Rs. 22.5 lacs. Thereafter, the M.P. Financial Corporation vide letter dated 6-7-2000 informed the petitioner about the said offer and asked them that in case they were willing to offer better price and terms, then can furnish the same. The petitioners were granted 10 days" time to do so.

The learned Single Judge has granted time to the petitioners to submit their offer on or before 27th of July, 2000. The order was passed on 18th July, 2000. This order passed by the Single Judge in W.P. No. 2717/2000 has been assailed in the present Letters Patent Appeal.

The petitioners" unit became sick in the year 1984. Proceedings u/s 31 of the M.P. Financial Corporations Act were initiated by the Corporation. However, the Corporation also invoked the provisions of M.P. Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987. It is further stated in the appeal that the M.P. Financial Corporation filed an application to withdraw the application filed u/s 31 of the Act reserving the right to take action u/s 29. The application was allowed in part and against the Directors proceedings u/s 31 was kept pending by the District Judge. Thereafter, in Civil Revision No. 1032/96, this Court on 11-10-96 ordered that the application shall stand withdrawn even against the Directors. Thus, the application u/s 31 of the Financial Corporations Act filed by the Corporation stood withdrawn and the order passed in C.R. No. 1032/96 has attained finality.

Negotiations for settlement failed. Thereafter, notices of demand were issued under the provisions of M.P. Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987. Challenging the notices, W.P. No. 3634/99 was filed before this Court, Proceedings under the Revenue Recovery Certificate commenced by the Tahsildar, Raipur were stayed on 8-9-1999.

Learned counsel for the petitioners/appellants submitted that Proviso to Section 5 of the M.P. Lokdhan Adhiniyam, 1987 provides that the authority to which the sum is due shall take recourse to the provisions of only one law at a time for recovery of the dues. It is contended that once the proceedings under the Adhiniyam is pending, recourse to proceedings under the provisions of State Financial Corporations Act is not permissible. It is also submitted that efforts should have been made to revive the unit as it is viable and the proceedings u/s 29 and consequent action of putting the unit to sale and asking for better offer are bad in law as the value of the petitioners" assets is more than one crore rupees and the action taken by the respondents violates the guidelines laid down by the Supreme Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . It is submitted that the proceedings are initiated in order to thwart the effect of . stay granted by this Court in W.P. No. 3634/99.

The respondent M.P. Financial Corporation in its reply submitted that the petitioners were asked to submit a concrete proposal, if any, for liquidation of dues of the Corporation and running of the unit, and it was informed that

otherwise the Corporation shall advertise sale of the assets. Letter was issued on 10th of April, 2000 but the petitioners have not submitted any proposal for liquidation of their dues. After waiting for two months, advertisement was issued on 4-6-2000. The amount is due for the last two decades and the petitioners have no intention to repay the loan amount which is Rs. 2,39,54,141.75 p. including interest as on 1-1-2000. In W.P. No. 3634/99, vires of the provisions of M.P. Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 was challenged. The Division Bench of this Court on 13-8-99 has upheld the validity of provisions of the Adhiniyam. SLP was filed before the Supreme Court which has been dismissed on 16-12-1999 (Annexure R-2). The matter with respect to examining the merit in the challenge made to the advertisement dated 4-6-2000 was remitted to the Single Judge after deciding the question of vires which was required to be decided by Division Bench as per M.P. High Court Rules and Orders. On 8-9-99, the learned Single Judge has stayed the recovery proceedings. This order was modified on 8-4-2000. After hearing the counsel for the parties, the Single Judge of this Court clarified that interim order dated 8-9-99 shall not stand in the way of the respondent for proceeding against the petitioners under the provisions of State Financial Corporation Act. Along with the return, notice dated 4th February, 1987 issued by M.P. Financial Corporation to the petitioners making the demand of the outstanding dues has been placed on record. The revival attempts made in 1985 in the shape of Annexures R-8 and R-9 have also been placed on record, but the petitioners failed to comply with them. It is thus submitted that the petitioners were given ample opportunity to clear their dues and the petitioners were called for negotiations. It is submitted that proceedings under Sections 29 and 31 of the Act have different scopes and can be resorted to independently by the Corporation. It is submitted that the Corporation was well within its right to recover the amount u/s 29 of the State Financial Corporations Act.

After hearing the counsel for the appellants, we are of the opinion that the appeal deserves to be dismissed. It appears that it is a case where borrower is clearly interested in delaying the repayment. The unit is lying closed since the year 1982-83 and all efforts for settlement have come to an end. It is a case of long drawn litigation. Initially proceedings u/s 31 were started. Ultimately they were withdrawn long back in the year 1996. Still the petitioners did not pay any amount to the Corporation. Liberty was given to proceed u/s 29 though no such liberty was required or called for as the scope of proceedings u/s 29 of the State Financial Corporations Act to recover dues in case of default, by sale of mortgaged property is an independent right. u/s 29 of the Act, the Financial Corporation has 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 the industrial unit and realise the amount of loan and such a transfer shall be treated as if it had been made by the owner of the property. Section 31 contains the special provision for enforcement of claims by Financial Corporation. An application can be made to the District Judge praying for the reliefs of an order

for the sale of the property pledged, mortgaged or hypothecated or assigned as security for the loan or advance, or for enforcing the liability of any surety, or for transferring the management of the industrial concern to the Financial Corporation, or for an ad-interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board where such removal is apprehended. There is no effect on proceedings u/s 31. The matter came up for consideration by the Apex Court in the case of Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills and Anr and Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, . It has been candidly laid down by the Apex Court that the Financial Corporation has a remedy available to it u/s 29 of the Act even after having obtained an order or a decree after invoking the provisions of Section 31 of the Act but without executing that decree/order. The legislature has left the choice to the Corporation to act u/s 31 of the Act in the first instance and save its rights and remedies u/s 29 to be availed at a later stage. However, the Corporation cannot simultaneously pursue two remedies at the same time. The reach and scope of the two remedies is essentially different. A decree u/s 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order u/s 31 of the Act. Similarly, if the Corporation has taken recourse to the provisions of Section 29 of the Act, there is no bar for it without taking recourse proceedings to their logical conclusion to abandon them and approach the Court u/s 31 of the Act. It is also open to the Corporation to proceed u/s 31 in the first instance and to proceed subsequently u/s 29 of the Act. In the instant case, proceedings u/s 31 have been withdrawn in the year 1996 to start the proceedings u/s 29. Hence there is no impact of the withdrawal of the proceedings u/s 31 of the Act.

8-A. In the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , it has been observed by the Apex Court that the unit should be sold when it becomes unworkable and the sale of unit should always be by public auction. Valuation should be intimated to the unit holder to enable him to file objection, if any. If tenders are invited then the highest price must be intimated to the unit holder. If the unit holder is willing to offer the sale price, as the tenderer, then he should be offered the 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 or if the unit holder brings third parties with higher offer it would be tested and may be accepted. These safeguards have been followed in the instant case by the M.P. Financial Corporation. It has made public auction, informed the bid to the unit holder and asked for better offer and the action taken in the facts and circumstances of the case cannot be said to be unfair or unreasonable.

The scope of interference by this Court in proceedings u/s 29 of the State

Financial Corporations Act in writ jurisdiction is not to sit over it as an appellate authority. The jurisdiction of the Court is limited and can be exercised in two situations, namely, (i) where there is a statutory violation on the part of the Corporation, or (ii) where the Corporation acts unfairly, i.e., unreasonably. The Apex Court has cautioned the High Courts not to convert the Writ Courts into appellate authorities over administrative authorities. In the case of *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.* AIR 1993 SC 1435, the Apex Court has observed that the Corporation, no doubt, has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required 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 street. In the present case, the conduct of the petitioners goes to show that they are not serious about their unit. Considering the period passed and the fact that the amount is due for the last about two decades, it cannot be said that the petitioners intention is to pay off" the public money to the Corporation. In any case, the action of the Corporation cannot be said to be unfair or unjust or arbitrary. Prolonging the proceedings in these circumstances is not going to serve any useful purpose.

Thus, the petitioners in view of their dilatory conduct are not entitled to any sympathy. Similar was the situation obtaining in the case of *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, . In the said case, the unit was closed down between 1981 and 1988 and the machinery of the establishment was lying idle and became rusty. The value of the machinery had gone down. Revival of the unit was considered to be problematic and the Corporation thought that it would stand to lose whatever little it could retrieve towards its dues. The High Court ordered to restore the possession of the establishment to the company. The Apex Court set aside the order of the High Court and held that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by and functions and obligations to discharge. Unless its action is malafide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision. In matters commercial, the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. In the instant case, the action cannot be said to be suffering from the vice of malice in any way.

10-A. It has been held by the Apex Court that where the borrower is found to be interested in delaying repayment such borrower is not entitled for a direction for repayment of the loan. In the instant case, it has been categorically stated by the Corporation that no offer whatsoever has been submitted by the petitioners for revival of the industry in spite of sufficient opportunity to do so.

The learned counsel for the petitioners have submitted that recovery of the amount to the Financial Corporation as arrears of land revenue is under challenge before this Court in W.P. No. 3634/99, hence recourse to the proceedings u/s 29 of the Act is bad in law. It is significant to quote Section 32G of State Financial Corporations Act, 1951 which reads thus:

"32-G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.-- Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

In the instant case a Certificate has been issued for recovery of the dues as arrears of land revenue under the M.P. Lokdhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987. Section 3 of the said Adhiniyam provides that where any person is a party to any agreement relating to a loan, advance or grant given to him and fails to comply with the terms of the agreement, then in the case of a Corporation or a Government Company, the Managing Director thereof by whatever name called may send a certificate to the Collector and the Collector shall recover the amount as arrears of land revenue. Section 5 of the Adhiniyam states that "nothing in this Act shall debar the recovery of dues under any other law for the time being in force and the Proviso to the said Section makes it clear that the authority to which the sum is due shall take recourse to the provisions of only one law at a time for its recovery. Section 32G of the State Financial Corporations Act clearly provides that without prejudice to any other mode of recovery, the amount due to the Financial Corporation can be recovered as arrears of land revenue. Recourse to the proceedings under the M.P. Lokdhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987, has been taken as contemplated u/s 32G of the State Financial Corporations Act, 1951.

W.P. No. 3634/99 was filed challenging the validity of the provisions of Section 3 of the M.P. Lokdhan (Shodhya Rashion Ki Vasuli) Adhiniyam. The Division Bench of this Court held that Section 3 of the Adhiniyam is not ultra vires of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and that so far as Financial Corporation dues are concerned, those can be protected under the Act of 1987. Thereafter, the learned Single Judge vide order dated 8-9-99 stayed the proceedings for recovery under R.R.C. However, it has been clarified in the order dated 8-4-2000 that it is open to the respondent/Corporation to take recourse to recovery under the State Financial Corporation Act. In view of the order dated 8-4-2000 it cannot be said that the proceedings u/s 29 of the Act are

without jurisdiction as the order passed in the matter arising out of M.P. Lokdhan Vasuli Adhiniyam, 1987 clearly gives a right to the Corporation to proceed u/s 29 of the State Financial Corporations Act. The proceedings under the Lokdhan Vasuli Adhiniyam are still stayed and in view of the clarification contained in the order dated 8-4-2000 passed in W.P. No. 3634/99 the submission raised by the learned counsel for the appellants/petitioners cannot be accepted. Still any further dues remains after sale of the industrial unit, the amount can be recovered as arrear of land revenue.

In the result, we find no merit in the above submissions raised by the petitioners/appellants. However, a last submission has also been made that the learned Single Judge has decided the matter on 18-7-2000 and the appellants had been directed to give the offer till 25-7-2000 i.e., within seven days. As some time was consumed in obtaining the copy and the petitioners were not able to find a suitable buyer for such a big industrial unit, it is prayed that two months' time may be granted as sale has not been finalized by M.P. Financial Corporation so far. We grant a period of two months from the date of this order to the petitioners/appellants to find out a suitable buyer and to make the offer, if any.

The appeal is without any merit. The same is accordingly dismissed summarily with the above modification.

L.P.A. dismissed.