(2002) 04 MP CK 0098

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 5705 and 5707 of 1998

Dr. Lakhan Agrawal and another — APPELLANT

Vs

M.P.F.C. and others — RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 146, 147, 155, 156
Madhya Pradesh Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 3(2)
State Financial Corporations Act, 1951 — Section 29

Citation : (2003) 1 MPLJ 133

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : A.M. Mathur, with Sanjay Agrawal, for the Appellant; V.K. Shukla, for the Respondent

Judgement

Arun Mishra, J.

Heard on question of admission.

Petitioners in these two writ petitions are seeking the relief quashment of demand notice Annexure P. 1 and P. 2 issued under Madhya Pradesh Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 (hereinafter referred to ''Adhiniyam'', 1987) and the rules framed thereunder read with section 146 of M.P. Land Revenue Code, 1959 (hereinafter referred to ''Code, 1959'').

One M/s Bhopal Foods Pvt. Ltd. a Company registered under the provisions of the Companies Act, 1956, started its business as a Bread manufacturing Unit at Raipur. In that connection, loan of Rs. 26,75,000/- was granted to the Unit way back in the year 1986 by M.P. Financial Corporation through Nirmal Kumar Agrawal, the Managing Director of the said unit. M/s. Bhopal Foods Pvt. Ltd. Raipur is alleged to have become defaulter in the matter of repayment of the loan. Therefore, M.P.F.C. invoked its power u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to ''the Act''). The M.P.F.C. took over the unit on 18-1-1995 and sold the same to M/s Savitri Foods Pvt. Ltd. on 16-1-1996 for a sum of Rs. 31,00,000/-. After having sold the unit by public auction for a sum of Rs. 31,00,000/-, the third respondent Regional Manager/ Addl. Tehsildar (Recovery), M.P.F.C. Jabalpur, sent a notice of demand to the petitioners in case no. 5 of 1997 RRC No. 84 purported to have been issued by virtue of Notification dated 22-3-1996 issued by the State Govt. in exercise of powers conferred upon Deputy General Manager under sections 146 and 147 of the Code, 1959. The State Govt. had issued a notification Annexure P. 4 on 22-3-1996 conferring powers of recovery of Tehsildar under sections 146 and 147 of the Code, 1959, u/s 32G of the State Financial Corporation Act, 1951 and sub-section (2) of section 3 of the Adhiniyam, 1987 upon Deputy General Manager and in his absence, the acting or incharge Deputy General Manager not below the rank of Asst. Branch Manager of M.P.F.C. for the purpose of realising under sections 155 and 156 of the Code.

Petitioners submit that probably the Deputy General Manager of the first respondent at Raipur did not have the jurisdiction to proceed against the petitioners residing at Jabalpur. He sent the case for recovery to his counter part at Jabalpur, who in turn, issued the demand notice on 3-12-1997 as Annexure P-2. The petitioners after receiving the demand notices, approached the Managing Director of M/s Bhopal Foods Pvt. Ltd. to find out the truth in sub-section (2) of section 3 of the Adhiniyam, 1987 which cannot be invoked against the guarantors in view of section 4(1)(b) of the Adhiniyam, 1987. The recovery of the amount due as arrears of land revenue can only be made against the person to whom the loan is advanced or grant is given and not from the guarantors.

Section 3 of Adhiniyam, 1987 provides for recovery of certain dues of land revenue. Section 3 says that when any person fails to comply with the terms of the agreements then under clause (b) the Managing Director of M.P.F.C. may send certificate in prescribed form and consistent with provisions of sub-section (2) of section 4 to the Collector of the District or to such other subordinate officer of the Collector as the State Govt. or the Collector may by an order specify in this behalf.

Shri Mathur, learned Sr. Counsel submits that Govt. has not lawfully specified any officer u/s 3 of the Adhiniyam, 1987 to effect the recovery and only subordinate officer to the Collector could be authorised to effect the recovery. The Deputy General Manager cannot be said to be an officer subordinate to the Collector, learned counsel further submits that the provisions of section 24 of the Code, 1959 is not applicable. It is also submitted that a fresh proposal has been submitted for consideration by M.P.F.C. for reschedulement. It is also submitted that remedy against the guarantors is only u/s 31(1)aa of State Financial Corporation Act. The learned counsel appearing for the respondents Shri Shukla submits that action is proper and is in accordance with law and no interference is called for by this Court in these writ petitions.

The first question for consideration is whether the Deputy General Manager can be said to be an authorised person to effect the recovery of the dues as per section 3 of the Adhiniyam, 1987. The Deputy General Manager is clearly authorised to sign the certificate for recovery of the dues to the Collector of the District. Section 3 says that when any person fails to comply with the terms of the agreements then under clause (b) the Managing Director of the M.P.F.C. may send certificate in prescribed form and consistent with provisions of sub-section (2) of section 4 to the Collector of the District or to such other subordinate officer of the Collector as the State Govt. or the Collector may be an order specified in this behalf. Sub-section (2) of section 3 provides that the Collector or his subordinate officer specified under sub-section (1) on receiving the certificate shall take steps to recover the amount stated therein as arrears of land revenue under the Code, 1959.

This Court in Dr. Ravindra Choudhary vs. Shri Shrivastava and others, 2001 R.N. 102, considered similar question of appointment of Deputy General Manager, M.P. Financial Corporation/Addl. Tehsildar (Recovery), Indore, u/s 146 of the Code, 1959 and this Court held that such an officer can effect the recovery. A bare reading of sub-section (1) of section 24 makes it clear that the State Govt. can confer powers of a Revenue officer on any person. Thus, in my opinion, the Dy. General Manager or such an officer as mentioned in the notification are clearly empowered to effect the recovery as per Adhiniyam, 1987 as per notification Annexure P. 4.

This Court considered the validity of the provisions of section 3 and other provisions of Adhiniyam, 1987. This Court in New Laxmi Oil Mills, Barwaha Vs. Bank of India, Barwaha and Others, held:

The Act nowhere restrains or bars raising of a dispute either before the Officer empowered to issue the recovery certificate or before the Recovery Officer with regard to the validity of demand or its maintainability. The Officer empowered to issue the recovery certificate and the ''Recovery Officer'', both, discharge functions under the Statute and cannot invade the rights of the citizens without adherence to the basic principle of permitting the persons likely to be effected to represent against the intended action. The fact that Arbitration even where an arbitration agreement exists and remedy in a Civil Court are, both, barred, leads to irresistible conclusion that before the functionaries under the Act, the affected party can raise objections going to the root of the proceedings such as the debt being not legally due on account of it having become barred by the period of limitation, the transaction being not of loan or advance or grant under any ''State Sponsored Scheme'' or under any ''Socially Desirable Scheme'' or the debt having been waived or wiped out under any provision of law or a provision enforceable under law and the like, and such officer is duty bound to consider and decide all such questions at least summarily though formal notice to show cause may not be necessary. This will check the misuse of the provision and provide the necessary safeguards.

From above it is clear that disputes could be raised before the Revenue Officer or the Recovery officer. On such objections being raised, the question has to be decided. Petitioner submits that he is a guarantor first borrower, should be asked to pay and recovery was first to made from borrower. Petitioner also invokes section 31(1) as for his protection. Petitioner has to raise such objections before the Recovery officer concerned. On such objections being raised, the same shall be considered and decided. Petitioner has not so far raised objections before the Recovery Officer. It was also submitted that proposal has been submitted before the M.P.F.C. The M.P.F.C. shall consider the said proposal expeditiously within the period of four weeks from the date of submitting certified copy of the order and only thereafter to proceed the recovery in lawful manner. With the aforesaid directions, the petition is disposed of. Cost on the parties.

