

(2011) 09 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 5323 of 2007

Gobinda Chandra Sahoo

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2012 Ori 91 : (2012) 3 BC 611

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : Asok Mohanty, V. Narasingh and S.K. Senapati, for the Appellant; Sankarsan Rath and Sandeep Rath, Sanjit Mohanty and S.C. Samantaray, for the Respondent

Judgement

B.P. Das, J.—The petitioner, who is the Managing Director of M/s. B.L. Roller Flour Mill (P) Ltd., has filed this writ petition with a prayer to direct the Orissa State Financial Corporation (hereinafter called "the Corporation") to consider the application filed by him for settlement of the loan account under the O.T.S. Scheme, 2007 and to declare the sale of the land and building of the said industrial unit effected by the Corporation in favour of O.P.4 by letter dated 22.2.2007 (Annexure-6) as illegal. The case of the petitioner, in short, is that he established the aforesaid Roller Flour Mill at Chandanpur in Puri district with the financial assistance provided by the Corporation by sanctioning a term loan of Rs. 75.00 lakhs as per the sanction order dated 3.8.1999, vide Annexure-1. Due to default in re-payment of the loan, the Corporation in exercise of its power u/s 29 of the State Financial Corporations Act, 1951 seized the petitioner's unit and took over possession of the same so also forfeited his collectoral security as per the orders dated 16.12.2005 in Annexure-2 series. Thereafter, the Corporation published a sale notice dated 13.1.2006 in the Oriya daily, "The Samaj" on 14.1.2006 vide Annexure-3, inviting offers for purchase of the land, building and machinery (LMB) of various industrial units including that of the petitioner at serial No. 45. The offset price of the petitioner's unit was fixed at Rs.

82,12,000/- and the E.M.D. at Rs. 4,10,600/-. The Corporation sold the plant and machinery to one Jitendra Pratap of Uttar Pradesh at a consideration price of Rs. 40,66,000/- on outright purchase basis as per the sale letter dated 23.2.2006 in Annexure-4 and after deposit of the entire sale consideration, possession of the plant and machinery was delivered to the said purchaser on 31.3.2006.

On 21.2.2007 the petitioner made a representation to the Branch Manager of the Corporation, Puri Branch, stating that by letter dated 21.1.2006 he was asked to appear in person or through accredited authorized, representative in Defect-cum-Disposal Advisory Committee (DDAC), and as he could not attend the same due to his illness, he requested to give him a chance to participate in the DDAC meeting. According to the petitioner, while the matter stood thus, the Corporation intimated the petitioner that the industrial land and building of his unit had been sold to O.P.4-Bihari Mohapatra at a consideration price of Rs. 18,60,000/- on outright purchase basis, by the sale letter dated 22.2.2007 in Annexure-6. The petitioner challenged the aforesaid action of the Corporation in this Court in W.P. (C) No. 2583/ 2007 and this Court disposed of the said writ petition by order dated 26.3.2007 with a direction that on the petitioner making an application in accordance with the O.T.S. Scheme, 2007 within a week, the Corporation would consider the same and till disposal of such application, no coercive action would be taken against the petitioner for recovery of the dues. The petitioner in terms of the said order dated 26.3.2007 offered the application in the prescribed form for O.T.S. on 31.3.2007 along with non-refundable processing charge of Rs. 10,000/- and initial deposit of Rs. 3,16,850/- but the same was not accepted by the Corporation though the petitioner was even made to wait till closure of the transaction hours on the plea of pressure of work on the last date of the financial year. Finding no other alternative, the petitioner was constrained to send the application along with the cheques on 2.4.2007 by registered post from Chandanpur along with a cheque for Rs. 3,26,850/- issued by one Satyabrata Mishra covering the processing charge and the initial deposit. According to the petitioner, though he was eligible to be considered under the OTS Scheme, 2007. his case was not taken into consideration under the said Scheme. As per the sale notice in Annexure-3, the offset price for the entire property, i.e., land, building and machinery of the petitioner's unit, was fixed at Rs. 82,12,000/-, but after sale of the plant and machinery at Rs. 40,66,000/-, the land and building was sold to O.P.4-Bihari Mohapatra at a throw-away price of Rs. 18,60,000/- as against the balance offset price of Rs. 41,46,000/-. On the own showing of the Corporation, the entire property was sold by sale letters in Annexures-4 & 6 at a total consideration price of Rs. 59,26,000/- (i.e. for the land and building at Rs. 18,60,000/- and at Rs. 40,66,000/-) when the offset price for the property was fixed at Rs. 82,12,000/- in the sale notice in Annexure-3. The petitioner has alleged that the Corporation, without giving due publicity to the sale of land and building, in order to secure best price, sold the same to O.P.4 at a throw-away price of Rs. 18,60,000/- and at a much lower

price than the balance off-set price of Rs. 41,46,000/- when the price of such property was at least Rs. 85.00 lakhs, and without affording any opportunity to the petitioner to match the offers of O.P.4. Accordingly, the petitioner has prayed to direct the O.Ps. to accept from him the price at which the land and building was sold to O.P.4, i.e., Rs. 18,60,000/- and give possession to him after cancelling such sale. Further, the fate of the amount of Rs. 40,000/- deposited towards the O.T.S. vide receipt dated 6.9.2005 issued by the Corporation in Annexure-10 is not known to him.

The sum and substance of the petitioner's contention is that the land and building in question has been sold to O.P.4 at a price which is much less than the offset price fixed by the Corporation and the sale has been effected in favour of O.P.4 illegally and in connivance among the officials of the Corporation and O.P.4 and in a surreptitious manner and in the process he has been defrauded. Further, the Corporation had not given him any information before selling the aforesaid property to O.P.4, even though he was vitally interested in the same for which principles of natural justice had been violated.

2. While issuing notice to the O.Ps., a collateral Bench of this Court by its order dated 26.4.2007 had directed maintenance of status quo in respect of possession of the petitioner's land and building and restrained " the Corporation from taking any coercive action against the petitioner.

3. A counter affidavit has been filed by the O.P. Nos. 1 to 3, i.e. Corporation and its officials, taking a stand that the petitioner has " filed the writ petition suppressing material facts and relied upon certain documents which are forged and fabricated. The Corporation has denied to have received any application from the petitioner with the required fee of Rs. 3,26,850/- until filing of the counter affidavit. According to the Corporation, prior to the date of filing of the writ petition as well as the application for interim order, i.e. 25.4.2007, it had delivered possession of the property to O.P.4 on 14.3.2007 after realization of the entire sale consideration, basing on the sale letter in Annexure-6. The fact of delivery of possession was also intimated to the petitioner vide letter dated 19.3.2007. Thereafter, the deed of conveyance was executed by O.P.2 in favour of O.P.4 on 17.4.2007 and the same was registered. So, according to the Corporation, the interim order passed on 26.4.2007 in Misc. Case No. 5140/2007 had become infructuous as O.P.4 is in possession of the assets sold since 14.3.2007. Apart from justifying the sale, the Corporation has indicated that on 26.7.2006 the Corporation published a sale notice in the local daily, "The Samaj" inviting offers from the bidders/tenders for purchase of the land and building of the petitioner's unit on 4.8.2006 through the D.D.A.C. meeting. The loanee and the guarantors were given notice for settlement of their dues by appearing in the DDAC meeting on 4.8.2006 or to participate in the sale and purchase to match the highest offer. In response to the aforesaid notice, in the DDAC meeting held on 4.8.2006 the offers received from one Saroj Panda and O.P.4 were revised to Rs. 15.00 lakhs and Rs. 15.50 lakhs respectively. Since the said offers were

below the offset price fixed earlier, the D.D.A.C. referred the matter to the Board and the Board authorised the M.D. to explore the possibility of enhancement of the same. Accordingly, on 30.12.2006 the Managing Director of the Corporation invited Bihari Mohapatra. O.P.4. who had submitted revised offer of Rs. 15.50 lakhs, for negotiation but he did not appear. Again on 27.1.2007 another sale notice was published in Oriya daily, "The Samaj" inviting offers from the tenderers/bidders for purchase of the land and building of petitioner's unit on 7.2.2007 through DDAC meeting vide Annexure-A/2 and the petitioner and other Directors were intimated by letter dated 29.1.2007 to appear in such meeting for settlement of loan dues or to match highest offer, vide Annexure-B/2. O.P.4, who had earlier given a lesser offer, finally raised his offer to Rs. 18,60,000/-. The petitioner and his other Directors were absent on call, for which the aforesaid property was sold to O.P.4 at Rs. 18,60,000/-. According to the Corporation, the petitioner was negligent in attending the DDAC meeting and the Branch Manager had issued an intimation to him inviting OTS-07 showing the account position as on 31.12.2006 signed by him on 31.3.2006, vide Annexure-9 series. Besides this, the Branch Manager, Puri had also supplied prescribed form in three sheets to the petitioner, which was received on 31.3.2007 by Sri Manoj Sahoo, son of the petitioner, and a Director. So there is nothing to show that the Branch Manager had refused to accept the form of the petitioner. The Branch Office of the Corporation received a registered letter from the petitioner on- 3.4.2007 and when the envelope was opened, the Branch Manager, O.P.2 found only photocopy of a certified copy of the order dated 3 26.3.2007 passed in W.P. (C) No. 2583/2007. The photocopy of the cheque, which was produced before this Court, according to the Corporation, was not received. According to the Corporation, after realization of Rs. 59.26 lakhs towards the sale price, the petitioner had to deposit the balance amount outstanding against him and he was entitled to apply for the balance outstanding amount after sale for settlement under OTS Scheme, 2007 and as per the Corporation, the allegation that no sufficient publicity was given is not correct as the Corporation had published the sale notices in the newspapers and had conducted DDAC meetings on eight occasions for sale of the industrial land and building giving sufficient opportunity to the petitioner which he failed to avail.

As to deposit of Rs. 40,000/- by the petitioner, the O.Ps. have stated that the fact of adjustment of the said amount towards the loan amount was intimated to the petitioner by letter dated 3.11.2005 (Annexure-G/2). As against the balance offset price of Rs. 39,19,000/-, it is stated in para-15 of the counter affidavit that the Corporation could not get a buyer beyond the sale price of Rs. 18,60,000/- in spite of repeated attempts, for which with the approval of its Board, the Corporation sold the land and building at a lesser price than the offset price on 7.2.2007 vide Annexure-6.

4. O.P.4 has filed his separate counter affidavit supporting the stand taken by the other O.Ps. in their counter affidavit justifying the sale of the land and building in his favour. O.P.4 has also stated therein that on enquiry he found that the cheque

obtained by the petitioner from Sri Satyabrata Mishra for Rs. 3,26,000/- was not genuine and a false affidavit has been filed in that respect.

5. It may be stated here that this Court issued notice for personal appearance in this regard. It is admitted that the cheque was given by Satyabrata Mishra but there was no balance in his bank account. Additional affidavit to that effect has been filed by Sri Pankaj Kumar Mahapatra, son of O.P.4.

6. Be that as it may, on perusal of the entire gamut of the facts and circumstances of the case, we find that the Corporation at different points of time had given opportunity to the petitioner to appear before the DDAC meeting for settlement of the loan account or to participate in sale and purchase to match the highest offer but the petitioner did not avail the same and on the contrary has taken a plea before this Court that he had not received any such notice. Apart from that, when an opportunity was afforded to the petitioner to avail the benefit of O.T.S. Scheme, 2007. he submitted such application along with a cheque covering the amount of processing charge and the initial deposit issued by one Satyabrata Mishra without having cash balance in his account. This being the conduct of the petitioner, we are of the view that the petitioner was not financially equipped to avail the benefit of O.T.S. Scheme and was even not in a position to deposit only a sum of Rs. 3,26,850/- and therefore, he tried his best to see that the effort of the Corporation to sell the property and realize its dues gets frustrated.

7. Apart from that, questions arise whether with all the defaults and omissions on the part of the borrower, could the Corporation sell the property below the offset price or less than its market value and whether the Corporation had any responsibility to find out the best buyer and get the best deal and whether any effort has been made by the Corporation in that respect.

8. Admittedly, the off set price of the land, building and machinery of the petitioner unit was fixed by the Corporation at Rs. 82,12,000/- in its sale notice dated 13.1.2006 in Annexure-3. The plant and machinery was sold to one Jitendra Pratap as is shown in the letter dated 23.2.2006 at a consideration price of Rs. 40,66,000/- on outright purchase vide Annexure-4. After the sale of plant and machinery at Rs. 40,66,000/-, the balance amount of Rs. 41,46,000/- remained to be realized as on 23.2.2006. This is the offset price of land and building. In other words, the Corporation could not have sold the land and building below the offset price. But fact remains that the same was sold to O.P.4 at a much lesser price of Rs. 18,60,000/- vide Annexure-6 on 22.2.2007, i.e. nearly one year after the publication of the sale notice dated 13.1.2006. Annexure-4 is the letter dated 23.2.2006 issued to one Jitendra Pratap by the Branch Manager, Puri Branch, wherein it was indicated the sale price of the assets would be Rs. 40,66,000/- on outright purchase basis. Annexure-6, which is the letter dated 22.2.2007 issued by the same Branch to Sri Bihari Mohapatra, O.P.4, shows that the same had been issued one year after issuance of Annexure-3 thereby reducing the purchase of the assets to Rs. 18,60,000/-.

There is nothing in the counter affidavit filed by the Corporation to show how the property worth Rs. 41,46,000/- was sold to O.P.4 at a drastically reduced price of Rs. 18,60,000/-. The counter affidavit filed by the Corporation shows that prior to the sale notice dated 13.1.2006 published in Oriya daily "The Samaj" on 14.1.2006 (Annexure-3) notice was issued to the petitioner for " settlement of the loan dues but he was absent on call. This was disputed by the petitioner. In response to the sale notice dated 27.1.2007 (Annexure-A/2), no new offer was received in the DDAC meeting held on 7.2.2007 and Sri Bihari Mohapatra, O.P.4, being represented by his son, Sri Pankaj Mohapatra, took part in the negotiation and offered Rs. 18,60,000/-. It is also indicated therein that in the DDAC meeting held on 4.8.2006, two offers were received- one from Saroj Panda, who initially offered Rs. 5.00 lakhs and revised his offer to Rs. 15.00 lakhs, and the other from Bihari Mohapatra (O.P.4), who initially offered Rs. 10.25 lakhs and subsequently revised to Rs. 15.50 lakhs. As both the revised offers were below the offset price fixed earlier, the Committee decided to refer the matter to the Board of the Corporation for appropriate decision. After the Board authorized the Managing Director to explore the possibility of enhancing the offer price further, the Managing Director of the Corporation invited O.P.4 for negotiation on 30.12.2006. But O.P.4 was absent on that date, for which the sale notice dated 27.1.2007 was re-advertised in "The Samaj" on 28.1.2007 (Annexure-A/2), in which it was indicated that the E.M.D. would be Rs. 1,96,000/- but no offset price had been fixed. There is no explanation as to when the Corporation went for the second advertisement for sale of the property in question after the bidder, Bihari Mohapatra, did not turn up to participate in the negotiation. It would have been open to everybody to participate in the bid and there is nothing in the counter to show if there was any depreciation in the value of the property for which it went below the offset price so indicated in the sale notice dated 13.1.2006 and was reduced to Rs. 40,66,000/-vide Annexure-4 and later on no offset price was indicated in the sale notice. As it appears the O.P.-Corporation had not acted fairly in effecting sale of the land and building to O.P.4. There is nothing on record to show as to how the property worth Rs. 41,46,000/- came down to Rs. 18,60,000/- and was settled in favour of O.P.4.

In this regard, we may refer to a decision in the case of Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, , wherein the Supreme Court held that in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at a public auction. In that event, any other suitable mode for selling

of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units.

The aforesaid decision has been relied upon by the Supreme Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .

9. It is true that in the present case the petitioner was neither able to re-pay the loan dues nor availed the opportunity offered by the Corporation to participate in the bid to match the best offer. But at the same time, the Corporation should not have sold the petitioner's property at a throwaway price. The last sale notice dated 27.1.2007 in Annexure-A/2 to the counter affidavit was published on 28.1.2007. The date of the Default-cum-Disposal Advisory Committee (DDAC) meeting was fixed to 7.2.2007 at 11 a.m. at the Bhubaneswar Branch of the Corporation. This shows that ten days' time was given to collect the prescribed tender application form from the concerned Branch Office on payment of Rs. 400/- and to submit the same by 5 p.m. of 6.2.2007. That means, only nine days were left for the intending bidders to submit their bids. At the same time, as the affidavit shows, the Corporation had also invited the previous bidders, who had failed to increase their offers, to participate in the sale and compete with the bidders. We are unable to understand how in an open tender, negotiation was made and that too without re-assessing the market value of the property in question at that point of time and how the same was sold at Rs. 18,60,000/-, when the offset price of the property was fixed at Rs. 41,46,000/-. In our considered opinion, in a most arbitrary and illegal manner the Corporation has sold the land and building of the industrial unit of the petitioner at a rate, which is less than 50% of the offset price. The notice for auction sale of the property should have been published by the Corporation giving sufficient time to the intending bidders to participate in the bid and negotiation should not have been held behind the back of the petitioner. It, therefore, appears that favour has been shown to O.P.4 by some of the Corporation officials to sell the property of higher value at a meagre amount of Rs. 18,60,000/-. Hence, we declare that the sale of the land and building of the industrial unit of the petitioner made by the Corporation in favour of O.P.4 is contrary to the interest of the Corporation as well as the petitioner, who is the loanee, and it has been done in an illegal manner, as indicated above. Accordingly, we set aside the said sale, vide Annexure-6.

Since the said sale has been made on 7.2.2007, a chance should be given to O.P.4 to deposit the balance amount of Rs. 22,86,000/-, which is the differential value of the property in question, i.e., offset price minus the price paid by O.P.4, within a period of one month from today. If the said amount is deposited by O.P.4, the Corporation shall execute a fresh deed in favour of O.P.4, failing which the Corporation shall take over possession of the property and put the same to

auction afresh by giving wide publication within a period of two months thereafter.

With the aforesaid observations/directions, the writ petition is disposed of. No cost.

B.K. Nayak, J.

- I agree.