

(1989) 02 KL CK 0039

In the High Court Of Kerala

Case No : Criminal Writ Petition No. 416 of 1988

Joseph

APPELLANT

Vs

Kerala Financial Corporation Ltd.

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14

State Financial Corporations Act, 1951 — Section 29, 30, 31

Citation : (1989) 1 KLJ 461

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : K. Jagadisachandran Nair, for the Appellant; Mathews P. Mathew and K.J. Chacko, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—The plaintiffs in a Suit for a perpetual injunction restraining defendants Nos. 1 and 2 (who are respondents, Nos. 1 and 2 herein) from taking any steps for transfer by sale or lease, either by private negotiations or by public auction or by tender, or otherwise, of the plaint schedule properties or any portions of the same, except by recourse to Section 31 of the State Financial Corporations Act, 1951 (for short "the Act") are the revision petitioners. The interim injunction sought for by the petitioners was denied by the trial court. The appellate court on appeal confirmed the order of the trial court. The judgment of the appellate court is under challenge in this revision petition.

2. Failure to repay the loan the petitioners had taken from the first respondent resulted in the first respondent taking over the management of the industrial concern owned by the third respondent, a public limited company, u/s 29 of the Act. The first defendant, after the taking over of the industrial concern, it is seen from the pleadings, has taken steps to sell the properties the third respondent had mortgaged to it as security for the loan. The third respondent, ever since it came to know of the steps taken by the first respondent to sell the properties,

has been trying to avert the sale and, with this in view, had instituted a suit (O. S. No. 138 of 1983) and also preferred an original petition under Article 226 of the Constitution of India (O. P. No. 6488 of 1982). The aforesaid suit has been dismissed. So is the case with the O. P. While disposing of the O. P., this court had allowed the third respondent to repay the loan in instalments. The third respondent, however, has not so far repaid the loan amount. Instead, the third respondent has made one of the shareholders (who is none other than the brother of the managing director) and two employees institute the suit from out of which this revision arises.

3. The short question arising for consideration in this revision is, could the first respondent-Corporation get the properties mortgaged to it as security for the loan sold without recourse to Section 31 of the Act ? The answer to this question depends upon the construction of Sections 29 and 31 of the Act.

4. Learned counsel for the petitioners argues that though Section 29 of the Act confers a right on the Corporation to take over the management of the industrial concern and also sell the properties which stand mortgaged as security for the loan, the said right can be enforced only by initiating proceedings contemplated u/s 31 of the Act. In support of this argument, he made reference to Clause 31 of the Report of the Select Committee of Parliament. It reads :

"We are of opinion that the rights which accrued to the Financial Corporation under Clause 29 or Clause 30 should be enforced through the intervention of a court. We have, accordingly, amended this clause to make it clear that the Financial Corporation shall have to apply to the District Judge to enforce its claim".

5. It should, in this connection, be remembered that such a report is not a material, as observed by the Supreme Court (see *R. P. Kapur Vs. Pratap Singh Kairon and Others*,) which would legitimately be taken into account while construing a statute where the provision coming up for construction is clear. There is another reason why we cannot look at what the committee recommended, or in any event, if we do look at it, we should not be unduly influenced by it because the Legislature, as remarked by Lord Denning M. R., may and often does decide to do something to cure the mischief for the removal of which the committee has made the recommendation--*Letang v. Cooper* [1964] 2 All ER 929 (CA). Let us, therefore, see whether the section is, in fact, clear. Dealing with Section 29, the Supreme Court in *Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others*, has observed that (at page 190) "it confers upon the Financial Corporation, in case of default by the industrial concern, 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 and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation, and any transfer of property made by the Corporation, in exercise of the power conferred by Section 29, shall vest in it all rights in or to the property transferred as if the transfer had been made by the

owner of the property". It is, therefore, clear from this section that the Financial Corporation has the right to convert the property into cash and adjust the same towards the loan. By such transfer, the properties would become vested in the transferees as if the transfer was made by the owner of the properties. We should, in this connection, make specific reference to Sub-section (5) of Section 29. It provides that where the Financial Corporation takes action against an industrial concern under Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern. And, therefore, as an owner of the concern, the Financial Corporation has the right to have transactions including sale of the properties of the concern for the purpose of recovery of the amounts due under the loan transaction, without the junction of the courts. This right will extend to the property of the surety also. But that right can be enforced only by taking recourse to proceedings contemplated u/s 31 or by instituting a regular suit, the reason being that the industrial concern cannot be said to be the owner of the property belonging to the surety.

6. The right recognised u/s 29 is different from the right the Financial Corporation can enforce under the provisions of Section 31 of the Act. Section 31 enables the Financial Corporation, without having recourse to the provisions of Section 29 of the Act or Section 69 of the Transfer of Property Act, to have its right emanating from the agreement enforced by initiating the proceedings contemplated thereunder, namely, applying to the District Judge within the limits of whose jurisdiction the industrial concern, i.e., the borrower concern carries on the whole or a substantial part of its business. The reliefs that can be prayed for in such proceedings are :

"(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance ; or

(aa) for enforcing the liability of any surety ; or

(b) for transferring the management of the industrial concern to the Financial Corporation ; or

(c) 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".

7. These sections thus indicate in absolutely clear terms that they are mutually exclusive.

8. The Corporation has yet another mode of recovery of the loan and that is the one contemplated u/s 32G of the Act. Under this section, the Corporation can apply to the State Government to enable it to recover the amounts due under the loan transaction in the same manner as an arrear of land revenue. The recovery thus can be had by initiating proceedings under the Revenue Recovery

Act also.

9. From what is stated above, it is clear that the right enjoyed by the Corporation u/s 29 is a replica of the right enjoyed by the owner himself. If the owner has thus the right to sell his property without the junction of the court, the Corporation which has been conferred with the said right by Section 29 can also sell the property without the junction of the court. It, therefore, follows that the argument of learned counsel that the Corporation can get the rights conferred on it by Section 29 enforced only by initiating the proceedings contemplated u/s 31 is without substance and hence liable to be rejected. It is relevant in this context to note the words used in Section 31, namely, "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act". These words are significant. The doubt whether the Corporation shall have recourse to Section 31 to have its rights u/s 29 enforced, is removed by the legislature by adding these words in Section 31, by Section 15 of the Amending Act 56 of 1956.

10. It is by now well established that the Legislature, in an enactment, can provide more than one procedure covering the same field. Such provisions, however, are not liable to be struck down even if it is found that one of the procedures is more drastic than the other. The question as to whether Section 29 is violative of Article 14 of the Constitution arose before High Courts and the judicial pronouncements in this regard are that the said provision is not hit by the prohibition contained in Article 14 of the Constitution of India. (See *Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others*, and *Surendranathan v. Kerala Financial Corporation* [1988] 2 KLT 186 ; [1991] 70 Comp Cas 801.

11. The petitioner has raised another contention in the suit namely that the Corporation is debarred by the doctrine of promissory estoppel from getting the properties sold in enforcement of the loan agreement. Dilating on this point, learned counsel submits that the Corporation made a proposal for revival of the unit and, accepting the said representation, the company has made huge investments. The Corporation, therefore, shall not be permitted to go back upon that representation and proceed to sell the properties. Before we go into the merits of this case, we shall see what right a shareholder has in the property of the company. That a company is a juristic person, distinct and different from its shareholders, is no more a moot point. It is by now well-established that a shareholder has got no interest in the property of the company. His only right is to participate in the profits of the company. He has no doubt a further right to participate "in the assets of the company which would be left over after winding up but not in the assets as a whole". (See *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, ;. So is the case with the employees of the company. The petitioners, therefore, have no manner of right to press into service the doctrine of promissory estoppel to maintain the suit. From the defence set up by the Corporation, discernible from the following facts, I am of the view that even the

company cannot develop a case on the basis of the doctrine. The proposal for revival was subject to certain conditions. The revival project, however, had to be dropped as the third respondent failed to comply with the said conditions. I am inclined to accept the above argument of learned counsel for the Corporation. That means this ground of attack is not available even for the third respondent, leave alone the petitioners, in order to see that the steps taken by the Corporation to recover the loan amount are thwarted.

12. From the above discussion, it is clear that the courts below have rightly rejected the application for a temporary injunction.

13. From the facts stated in the preceding paragraphs, it is clear that the third respondent, under some pretext or other, has not repaid the amounts due under the loan transaction in spite of repeated demands. It is also clear from the facts stated that the third respondent has been, by itself or by setting up its own people, successfully thwarting all steps so far initiated by the Corporation to recover the amounts due under the loan transaction. A reference in this connection, though it is a repetition, to the suit and the O. P. under Article 226 of the Constitution of India referred to above (both filed in the year 1982) is profitable. In short, not only that the loan is not repaid so far, but, on the other hand, the third respondent, through its agencies, has effectively been avoiding repayment of the loan since the year 1982. Even proceedings initiated by the company so far, in my view, are nothing but vexatious, and hence an abuse of the process of the court. The Corporation, accountable to the public, has thus suffered heavy damages and loss. The C. R.P., therefore, is liable to be dismissed with exemplary costs.

14. The C. R.P., accordingly, is dismissed with costs which, under the circumstances, I fix at Rs. 5,000.

15. The trial court shall dispose of the suit, taking into account the observations contained in this order, as expeditiously as possible, in any event, within one month from the date of receipt of a copy of this order.

Issue photostat copy on usual terms.