(2006) 02 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (C) No. 3336 of 2005

Jugal Kishore Sahoo APPELLANT

Vs

Orissa State Financial Corporation and Others RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2006 Ori 101 : (2006) 1 OLR 430 Supp

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : K.K. Mishra and G. Agarwal, P.K. Lenka, F. Mohapatra, A.K. Mohapatra, S.R. Nayak and Sulachana Sahoo, for the Appellant; R. Sharma and S.R. Singh Samanta, P.R. Patnaik, P. Behera and B.K. Tripathy, (for No. 1), N.K. Deo, B.G. Mishra, R.K. Rout, P.K. Routray and A. Routray, (for Nos. 2 and 3) and P.K. Mohanty, M.K. Panda, P.R. Lenka and F. Mohapatra, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The petitioner in the present writ petition has prayed for quashing the letter dated 3-3-2005 under Annexure-4 by which the opp. party No. 1- Orissa State Financial Corporation (for short "the O.S.F.C.") required the petitioner to pay the entire outstanding dues and has further prayed to declare the action of the said opp. party No. 1 taken u/s 29 of the State Financial Corporation Act, 1951 (for short, "the Act") as illegal.

2. An advertisement was made by the Deputy General Manager, O.S.F.C.- opp. party No. 2 for sale of an industrial unit situated at Jagatpur, Cuttack, pertaining to IDCO Plot No. D-21, Phase-II, New Industrial Estate on 21-3-2002. The petitioner participated in the said auction sale held by the O.S.F.C. and being the highest bidder, the O.S.F.C. negotiated with him for raising the price. The petitioner ultimately agreed to purchase the said property for a sale consideration of Rs. 9,51.000/- with a down payment of Rs. 2,51,000/-. The

petitioner alleges that by letter dated 26-3-2002, the O.S.F.C. agreed to sell the property on "as is where is basis" with the conditions that the total sale price would be Rs. 9,51,000/- , out of which Rs. 2.15.000/- shall be paid as down payment and the balance amount shall be paid on deferred payment basis.

The O.S.F.C. enumerated the conditions of sale in its letter dated 26-3-2002 (Annexure-1). The relevant conditions mentioned in the said letter are quoted below:

XXX XXX XXX 3. In consideration of the above, undersigned is directed to inform you that it has been decided to sale the above Industrial concern in your favour on as is where is basis subject to the following terms and conditions and other usual terms and conditions of the sale/loan agreement.

3.1. The total sale price of the above assets shall be Rs. 9,51,000.00 (Rupees Nine lacs Fifty One thousand) only with a down payment of Rs. 2,15,000.00 on deferred payment basis.

3.2. The Corporation shall not be liable for any statutory dues lying outstanding against the above industrial concern for the period prior to or after the sale,

3.3. The Industrial concern shall be re-leased in your favour by this branch after deposit of the entire down payment by Cash/ Pay Order/Bankers cheque/ Demand Draft favouring OSFC payable at Cuttack prior to execution of legal agreement.

4. The sale formalities should be completed within 15 days from the date of issue of this letter. The sale shall lapse and the earnest money deposited as above shall be forfeited, if the sale formalities are not completed by the above time.

5. The balance outstanding of Rs. 7,36,000.00 (Rupees Seven lacs Thirty Six thousand) shall be repaid in 3 years including 2 months moratorium from the date of agreement.

6. The interest at current rent shall be charged on quarterly rest payable in 31st March, 30th June, 30th September and 31st December in each year during the currency of the loan.

7. That a penalty of @ 2% per annum shall be charged on defaulted amount of Principal and Interest for the period of default. 1% of rebate shall be allowed for payment of Interest and repayment of Principal in time.

8. The required amount of processing charge shall be deposited before documentation.

9. The Industrial unit shall be insured comprehensively including earth quake and flood in the joint names of the Corporation and the industrial concern and the insurance policy for the 1st year should be submitted with OSFC within 15 days from the execution of documents.

10. You should give the personal guarantee for repayment of the dues of the

Corporation.

11. OSFC shall have the right to vary the rate of interest in case there is any modification made by SIDBI/RBI/Govt. of India of imposition of any surcharge, levies taxes, etc. as interest (sic) either by Govt. of financial institution(s).

12 to 16 xxxxxx xxx

17. The Corporation reserves the right to recalling the entire loan outstanding together with interest and other dues in case any condition is not fulfilled In time.

18 to 23 xxx xxx xxx

3. The petitioner has alleged that he was given to understand that there is no financial dues against the said unit/property. However, the supply of electricity was disconnected due to non-payment of electricity dues which was outstanding against the said unit and the petitioner wrote to the O.S.F.C. in this regard. It has been further alleged that the opp. party No. 4-IDCO also had dues against the said unit as the land belonged to the said IDCO. The thrust of allegations made by the petitioner is that without issuing notice to him, the O.S.F.C. exercised power u/s 29 of the State Financial Corporation Act, 1951 (for short, ''the S.F.C. Act'') and seized the unit of the petitioner behind the back of the petitioner and also advertised the same for sale by inviting offers. The sole question, therefore, raised by the petitioner is that the O.S.F.C. has taken action u/s 29 of the S.F.C. Act without notice to the petitioner and has also failed to publish the advertisement for sale in a widely circulated newspaper thereby has not obtained the actual market value of the property while trying to sell the same.

4. By interim order dated 14-3-2005 passed in this case, it was directed that the sale of the unit of the petitioner shall not be finalized. In Misc. Case No. 3847 of 2005, one Shri Rama Chandra Pradhan sought to intervene in the present writ petition and the said Misc. Case was allowed by order dated 16-8-2005.

5. A counter-affidavit has been filed by the O.S.F.C. denying the allegations made in the writ petition and further averring that due notice was issued to the petitioner on several occasions to repay the outstanding dues with interest as was found due on the date of issue of such demand notices, which have been annexed to the counter-affidavit as Annexure-A series. From Annexure-B to the counter-affidavit, it appears that the sale notice was published in the daily, "The Samaja" dated 24-2-2005. The opp. parties 1 to 3 have also stated in the counter-affidavit that pursuant to the said sale notice, the intervenor Shri Rama Chandra Pradhan became the highest bidder and on negotiation, he offered a price of Rs. 8,75,000/- on outright purchase basis and has also deposited the entire amount with the O.S.F.C. The intervenor in his application has also stated that he has deposited the entire amount of Rs. 8,75,000/- with the O.S.F.C. on 15-3-2005, i.e. the next day of the date on which the interim order was passed by this Court. The O.S.F.C. has stated that in view of the interim orders passed by this Court, the sale has not been completed and possession of the property

has not been handed over to the intervenor.

6. We have perused the notice under Annexure-A series to the counter-affidavit filed by the O.S.F.C. It is revealed from the said notice dated 14-9-2004 that the O.S.F.C. recalled the loan advanced to the petitioner by way of deferred payment of the sale price and demanded payment of outstanding dues further notifying the petitioner that if the said payment is not made by 28-9-2004, the unit/ properties/assets may be seized by the O.S.F.C. by exercising power u/s 29 of the S.F.C. Act. As it appears, on the petitioner''s failure to comply with the said notice, the O.S.F.C. seized the unit/property on 16-2-2005.

7. We, therefore, find no infirmity in the action of the O.S.F.C. in seizing the unit/ property of the petitioner by exercising power u/s 29 of the S.F.C. Act and putting the same to sale after publishing the notice inviting offers.

8. In view of the above, the writ petition holds no merit and is accordingly dismissed. However, it is made clear that we have not expressed any opinion on the amount alleged to be outstanding against the petitioner. There shall be no order as to costs.

9. The interim order dated 14-3-2005 stands vacated.

Sujit Barman Roy, C.J.

10. I agree.

