

(1993) 08 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 26672 of 1992

Jwalamala Plast Private Ltd.

APPELLANT

Vs

Karnataka State Financial Corporation and another

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

State Financial Corporations Act, 1951 — Section 10, 17, 24, 29, 3

Citation : (1996) 85 CompCas 281 : (1993) ILR (Kar) 2446 : (1993) 3 KarLJ 312

Hon'ble Judges : Shivaraj V. Patil, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; S.G. Sundaraswamy, N.B. Bhat and G. Krishnamurthy, for the Respondent

Judgement

Shivaraj Patil, J.—The petitioner has sought for the following reliefs :

(1) Declare that the takeover of the assets of the petitioner and the subsequent proceedings taken for sale of the property are null and void as being violative of the principles of natural justice.

(2) Issue of writ of mandamus directing the respondent to desist from giving effect to the alleged sale of the assets of the petitioner unit in favour of a third party.

2. The case of the petitioner briefly stated is :

That the petitioner has availed of loan from respondent No. 1; a notice dated February 10, 1990, was issued to the petitioner that it was due in a sum of Rs. 34,58,642.80 under three accounts; one more notice was issued on July 20, 1991, that the amount due was Rs. 41,70,968.80; and when the payments were not made the assets of the petitioner were taken over by respondent No. 1, on March 8, 1991, u/s 29 of the State Financial Corporations Act, 1951 (for short "the Act"). Further, the petitioner was called upon to pay the amount due, failing which it was stated that the corporation would proceed to recover the same at the risk and costs of the petitioner. The sureties were also given the notice about

the same. Respondent No. 1 had directly paid a sum of Rs. 37,60,554.95 to the persons from whom the petitioner had purchase the machinery. The transportation and erection charges including the commission amounted to Rs. 2,30,000. In the year 1987-88, the said machinery was purchased for Rs. 39,90,554.95. Taking into consideration increase in the value of the machinery over the last five years and the exchange rate the worth of the machinery now is Rs. 1,17,13,260. The value of the land about 65,000 square feet even at Rs. 100 per square feet comes to Rs. 65 lakhs. Further, several constructions have been made on the land and the value of such construction as on today is about Rs. 77 lakhs. Thus, the total asset of the petitioner is nearly two crores.

3. The petitioner challenged the action of the first respondent in taking over its assets in Writ Petition No. 24588 of 1991; in that petition the petitioner had complained that even by selling the machinery more than what was due to respondent No. 1 could be realised. On account of the locking of the unit, the petitioner was unable to sell the machinery and could not find buyers for the same. However, on October 9, 1991, the first respondent addressed a letter to the petitioner stating that the property would be advertised for sale. The public notice for sale was published in the Deccan Herald as per annexure "C". The last date for submission of the offers for land, building, plant and machinery separately or together was November 27, 1991. It was at that stage the said Writ Petition No. 24588 of 1991 was filed. Thereafter, the petitioner had not been kept informed of the further developments. However, the petitioner went to the office of respondent No. 1 several times to get information as to what happened pursuant to the public notice issued, but the petitioner was informed that after the taking over of the unit he had no say in the matter and that further developments that have taken place were of no concern to him. The petitioner made an application to respondent No. 1 on August 21, 1992, to make available to him certain documents, namely, the tenders received pursuant to the notification, the proceedings of the corporation relating to the acceptance of the tender, the letters, if any, addressed by the corporation to any of the tenders and the particulars relating to the payments made by the tenderers, if any, whose offer had been accepted by the corporation, but none of the documents sought for by the petitioner was supplied to it. Under these circumstances, the petitioner had no knowledge about the person or company which had purchased the assets of the petitioner. Thus, the petitioner was kept in the dark regarding further developments that have taken place after the tender notice was published. Section 29 of the Act confers very wide power on the corporation, but the very wide power requires the corporation to act with circumspection and that the exercise of such power must be only to effectuate the purpose of the Act. The power u/s 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the corporation to act cautiously, honestly, fairly and reasonably. The petitioner has referred to the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and has reproduced certain directions given by the Supreme Court in the said case. On the basis of the said judgment

of the Supreme Court and keeping in view the guidelines, the petitioner has contended that taking over of the assets and subsequent sale of the assets by the first respondent are without authority of law and are liable to be set aside. The petitioner is entitled to an opportunity at several stages of the proceedings taken by the first respondent. Except notifying the petitioner that the unit will be sold if the amount is not paid and issuing of public notice calling for offers, the petitioner has not been informed of the highest offer and thus deprived the petitioner of the opportunity to have its say in regard to the adequacy of the offer. On the basis of these averments the petitioner has filed this writ petition seeking for the reliefs as aforesaid.

4. Rishi Polymech (P.) Ltd. filed I.A. No. 1 for impleading on the ground that it has quoted the highest amount of Rs. 28 lakhs pursuant to the public notice annexure "C", which was allowed on March 11, 1993. Accordingly, it was impleaded as respondent No. 2. I.As. II and III were filed by respondents Nos. 1 and 2 for vacating the interim order. Since the writ petition itself was taken up for final hearing, those I.As. were not taken up for consideration.

5. Respondent No. 1 has filed the statement of objections contending that the petitioner is not entitled for any relief as sought for in the writ petition and the writ petition itself is misconceived. The petitioner in November, 1991, filed Writ Petition No. 24558 of 1991 seeking almost identical reliefs and had sought for an interim order of stay. On November 15, 1991, this court directed counsel for the corporation to take notice; detailed statement of objections was filed on November 23, 1991, and no interim order was passed in the said writ petition. Respondent No. 1 has sought for adopting that statement of objections filed in Writ Petition No. 24558 of 1991 for the purpose of this writ petition also.

6. In response to the public notice annexure "C" offers were received from four prospective buyers. All of them were called for negotiation meeting with the managing director of the corporation on January 22, 1992. After negotiations, Rishi Polymech (P.) Ltd. made the highest offer of Rs. 34.50 lakhs; the same was accepted by the corporation and communicated it by the letter dated March 16, 1992. According to the said letter, Rishi Polymech (P.) Ltd. respondent No. 2 herein, was required to make down payment of Rs. 8.62 lakhs and the remaining amount of Rs. 25.88 lakhs was required to be paid in 24 quarterly instalments. Accordingly, respondent No. 2 has made the payment of Rs. 8.62 lakhs and an agreement of sale was executed on July 4, 1992. Since the transaction is for an amount exceeding Rs. 10 lakhs, permission of the Income Tax authorities is required u/s 269UC of the Income Tax Act. Accordingly, both the corporation and the buyer wrote to the Income Tax authorities for grant of necessary permission. The Income Tax authorities by the letter dated September 25, 1992, addressed to the respondents stated that they were unable to take further action in the matter in view of the interim order granted by this court on September 7, 1992. Having failed to obtain an interim order of stay in Writ Petition No. 24588 of 1991, the petitioner has filed the present writ petition. In this writ petition,

interim order was granted on September 7, 1992. In regard to the valuation made by the petitioner totally at Rs. 2 crores the respondent asserts that the said valuation is untrue, unreasonable and highly exaggerated and that there is no basis for the valuation made by the petitioner. This respondent has got the property valued by its technical officer. He has given a detailed valuation report as per annexure "3". The corporation had received the petitioner's letter dated August 21, 1992 (annexure "D"), but by then the agreement of sale dated July 4, 1992, was executed in favour of respondent No. 2, In September, 1992, the brother of the managing director of the petitioner-company met the officers of the corporation for a discussion. At that time, the corporation conveyed the required information. After annexure "C" was published in several leading dailies this respondent sent reply on December 21, 1991, to the firm which held the free hold rights over the land taken on lease by the petitioner company and also to all partners of the said firm who happen to be the directors of the petitioner company. A copy of the same was sent to the petitioner company also. It was informed that the corporation was very keen to get the highest possible price for the said property and, therefore, they may in their own interest and in the interest of the company bring prospective buyers with their offers. Thus, ample opportunity was given to the petitioner and all its directors to get buyers so that the property could be sold for the highest possible price. No efforts were made by the petitioner company or its directors in that regard. The petitioner has not mentioned about this fact in the writ petition. As a matter of fact the petitioner had brought a prospective buyer, who had made an offer for taking over the entire liability of the petitioner and also to make a down payment of Rs. 17 lakhs. The corporation gave consent for the said proposal and gave time to make down payment by November 30, 1990. When such payment was not made even extension of time was given for making payment. However, the proposed buyer was not in a position to mobilise funds for making down payment of Rs. 17 lakhs. When the prospective buyer made his offer to take over the entire liability of the petitioner, the petitioner was due in a sum of Rs. 40 lakhs. This fact would go to show that the petitioner was prepared at that point of time to part with its entire asset for about Rs. 40 lakhs. If the property was really worth about Rs. 2 crores, he would not have agreed to part with the property for about Rs. 40 lakhs in November, 1990. It was only after the prospective buyer backed out, the corporation decided to proceed in the matter. In view of these facts it is contended by respondent No. 1 that its action cannot be construed as arbitrary or unreasonable.

7. Respondent No. 1 pleaded that in view of the execution of the agreement of sale dated July 4, 1992, in favour of Rishi Polymech (P.) Ltd. it would be necessary to implead it to the proceedings. The action of the corporation taken u/s 29 of the Act is fair and reasonable. Since the petitioner committed persistent defaults, the corporation had to proceed to recover the amount by selling the secured assets. On this basis, respondent No. 1 prayed for dismissal of the writ petition.

8. Respondent No. 2 has also filed a detailed statement of objections stating that the writ petition itself is misconceived and no relief can be granted as sought for by the petitioner. The petitioner had deliberately omitted to implead this respondent. Without impleading this respondent and suppressing the fact of sale in its favour, the petitioner has obtained an interim order on September 7, 1992. This respondent has become purchaser prior to filing of the writ petition. On this ground itself the writ petition is liable to be rejected.

9. The writ petition filed on September 5, 1992, is highly belated as it was filed after one and half years after the order u/s 30 of the Act was passed and after the sale had been effected pursuant to the public notice as long back as in November, 1991. This writ petition is liable to be dismissed on the ground of delay and laches as well. This respondent has also given the details with regard to obtaining of loan by the petitioner; its failure to repay the loan amount; about the action taken by the corporation u/s 29 of the Act and has referred to various letters and notices. It is unnecessary to repeat them, as they are already stated by respondent No. 1 in the objection statement. This respondent has also pleaded certain facts to show the conduct of the petitioner in regard to his default in making payments due to the corporation and its inability to bring better offers or prospective buyers. It is stated that ample opportunity was given to the petitioner before action was taken by respondent No. 1 for sale of the assets pursuant to annexure "C". Respondent No. 2 has referred to the decision of the Supreme Court dated March 2, 1993, in the case of U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408 SC to state that the administrative decisions taken by the financial corporations in such matters should not be interfered with by the courts. According to this respondent, the earlier decision of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, has been adverted to and the said decision is confined to the peculiar facts of that case, where the debtor was anxious to pay off the debt and has taken steps to discharge his obligation; the position here is otherwise and, therefore, the decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, has no application. Thus, this respondent also has prayed for the dismissal of this writ petition.

10. Writ Petition No. 24588 of 1991, in which the petitioner has challenged the taking over of the assets by respondent No. 1 was also posted on July 22, 1993, along with this writ petition for hearing. The said writ petition was dismissed as not pressed by learned counsel for the petitioner.

11. Sri T.S. Ramachandra, learned counsel for the petitioner, submitted that there is not much controversy on the facts of this case; in that he submitted that the petitioner does not dispute its liability and about various events that have taken place and referred to by respondent No. 1 up to taking over of the assets of the petitioner company. Learned counsel strongly relied on the decision of the Supreme Court in the case of Mahesh Chandra v. U.P. Financial Corporation

[1993] 78 Comp Case 1 SC and submitted that the directions given by the Supreme Court in para. 22 of the said decision are not observed by the corporation while exercising the power u/s 29 of the Act. Hence, the petitioner is entitled for the reliefs to the extent of setting aside of further actions taken by the corporation pursuant to annexure "C". He made it clear that the petitioner does not challenge the taking over of the assets of the petitioner company by respondents No. 1 and it is for that reason Writ Petition No. 24588 of 1991 was not pressed. He contended that the unit of the petitioner ought to have been sold by public auction; valuation of a unit for the purpose of determining adequacy of offer should have been intimated to the petitioner to enable him to file objections, if any, as he is vitally interested in getting the maximum price. In the case on had when the tenders were invited, the highest price on which tender was to be accepted ought to have been intimated to the petitioner. In short, he submitted that the directions given by the Supreme Court in para 22 of the aforementioned case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, were not observed by respondent No. 1. Hence, the petitioner may be granted reliefs as sought for in the writ petition.

12. On the other hand, Sri S.G. Sundaraswamy, the learned senior counsel for respondent No. 2, argued that the action taken by respondent No. 1 to sell the assets in favour of respondent No. 2 is fair and reasonable. He referred to sections 3, 9, 10, 17, 24 and 29 of the Act to explain the scheme, scope and purpose of the Act; in that he stated that the public money advanced by the corporation to various entrepreneurs cannot be allowed to be locked up; there ought to be speedy recovery of public money advanced as loans, when the persons who have borrowed loans commit default in making payment; section 29 of the Act gives power for realising the amount due, speedily; such recovery is necessary so that the amount available could be advanced to the new loaners to meet the object and purpose of the Act. Sufficient opportunity was given to the petitioner for repayment of loan amount and to bring better offers. It was only when petitioner failed to do so, action was taken by respondent No. 1 u/s 29 of the Act. At this belated stage the petitioner is not entitled for any relief that too under article 226 of the Constitution of India. Keeping in view the conduct of the petitioner, the writ petition also is liable to be dismissed on the ground of delay and laches. The Supreme Court decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, is on the facts and circumstances of that case. The Supreme Court in the case of U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408 SC having referred to in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, has observed that the High Court, while exercising jurisdiction under article 226 of the Constitution, cannot act as a court of appeal as an appellate authority over the corporation. Learned counsel drew my attention to para 10 of the said judgment to state that the relationship between the corporation and the borrower is that of creditor and debtor and in a matter between the corporation and its debtor a writ court has no say except under two situations : (1) there is a

statutory violation on the part of the corporation, or (2) where the corporation acts unfairly.

13. He submitted that the observations made in a judgment or a judgment cited as a precedent cannot be construed and equated to interpretation of a statutory enactment. On this point, he cited *Rajeswar Prasad Misra v. State of West Bengal* AIR 1965 SC 1887 and *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*,

14. Sri. N.B. Bhat, learned counsel for respondent No. 1, urged that sufficient opportunity was given to the petitioner before was taken u/s 29 of the Act by the corporation. The petitioner could not bring prospective buyers with better offers although it made an unsuccessful attempt by bringing one such prospective buyers, which could not make payment. When there are no allegations of mala fides made against the corporation, the corporation has acted reasonably and fairly in taking action u/s 29 of the Act and in executing the agreements to sell the assets to respondent No. 2. He also contended that on the facts of this case, the decision in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, does not help the petitioner.

15. I have considered the submissions made by learned counsel for the parties. At the outset, it must be made clear that the petitioner is not disputing its liability in respect of the amount due to respondent No. 1 and it does not challenge the action taken by respondent No. 1 corporation up to issuing of public notice dated November 11, 1991 - annexure "C" inviting tenders. Thereafter, there was no communication from the corporation to the petitioner in regard to the developments that have taken place pursuant to public notice-annexure "C". The petitioner made an application to respondent No. 1 on August 21, 1992, to make available to it certain documents including the proceedings of the corporation relating to acceptance of tenders. This fact is admitted in para 6 of the statement of objections filed by respondents No. 1 corporation. Pursuant to that application the petitioner did not get any information. The agreements for sale of the assets was entered into between the respondents on July 4, 1992, and the writ petition was filed on September 5, 1992. Under the circumstances, this writ petition filed on September 5, 1992, cannot be dismissed on the ground of delay and laches alone.

16. The conduct of the petitioner in not making repayment of the amount due to the first respondent and not availing of the opportunity in spite of the indulgence shown by the corporation was justified in taking over the unit u/s 29 of the Act and the challenge to the same is also given up by the petitioner. What is to be considered is providing of opportunity to the petitioner and its conduct subsequent to November 11, 1991, that is after issuing of public notice-annexure "C". From the undisputed facts narrated above, it is clear that no intimation was given about the further developments that had taken place pursuant to annexure "C" in respect of the sale of assets of the petitioner company. In this writ petition, the petitioner has confined its challenge only to the further proceedings

pursuant to annexure "C" that too without disputing its liability and taking over the unit by respondent No. 1. Hence, I am of the opinion that the writ petition cannot be dismissed looking to the conduct of the petitioner prior to November 11, 1991.

17. In my opinion, the important question to be considered is whether the directions given by the Supreme Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, are to be observed in the case on hand.

18. In the aforementioned case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, the Supreme Court has dealt with the scope of the power conferred on the corporation and as to how it should exercise the power given to it. The Supreme Court referring to Fertilizer Corporation, Kamgar Union v. Union of India [1981] 59 FJR 237; AIR 1981 SC 344, Ram and Shyam Company Vs. State of Haryana and Others, , Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, , has stated thus in para 21 (page 16) :

"The sale by public auction or tender or private negotiation should be a bona fide action. The first is universally recognised to be the best and most fair method. It is expected to fetch the best competitive price and is beyond reproach. The second should be resorted to rarely only if the first is an impossibility. Generally, tenders would be calling for quotation to execute public work or to award contracts, etc. And the third should always be avoided as it cannot withstand the public gaze. It casts a reflection on the corporation and its officials and is against social and public interest. In case transfer cannot be effected by public auction and it is necessary to resort to sale by tender it is both fair and necessary to inform the unit holder, if the unit has been got valued for purposes of transfer of the estimated value for sale as he is as much interested as the corporation. Sale of public property by calling for tenders escapes the attention of many an intending participant. Every endeavour should therefore, be made to give wide publicity and to get the maximum price. Bureaucracy feels that accountability is an impediment to efficient discharge of the duty. Accountability is no more and no less than, the concept of accountability of a private concern to their shareholders. There is a distinction between praying into the details of day to day administration and of the legitimate actions or resultant consequences thereof. To infuse efficiency into administration, a balance between accountability and autonomy of action of management in public enterprises should be carefully maintained. Over emphasis on either would impinge upon public efficiency. But undermining the accountability would give immunity or carte blanche power to deal with the public property or of the debtor at whim or vagary. Whether the public authority acted bona fide and in the best interest as prudent owner in the given facts would do, would be gauged from the impugned action and attending circumstances. The authority should justify the action assailed on the touchstone of justness, fairness, reasonableness and as a reasonable prudent owner."

19. In para 15 of the same judgment it is stated that (page 12) :

"Power u/s 29 of the Act to take possession of defaulting unit and transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably. Default in payment of a loan may attract section 29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any guideline framed by the corporation was placed, yet the basic philosophy enshrined in section 24 has to be kept in mind. The rationale of action and motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid."

20. From what is extracted above it follows that the corporation has to act fairly and reasonably at both the stages : (1) at the stage of taking possession of a defaulting unit, and (2) at the stage of transferring it by sale.

21. In the case on hand, since the learned counsel for the petitioner submitted that the petitioner does not challenge the taking over of the possession of the unit, its liability and all other actions taken by the corporation up to the issuing of public notice-annexure "C" dated November 11, 1991, it is necessary only to examine as to the validity of further proceedings taken by the corporation pursuant to annexure "C".

22. The Supreme Court in the aforementioned decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, keeping in view the various factors giving rise to conflicting interest; in the back drop of discussion made and decisions referred to in paragraphs 15 to 20 of the said judgment, has proceeded to issue directions in para 22 to be observed by the corporation, while exercising the power u/s 29 of the Act, the said para reads (page 16) :

"Keeping these various factors giving rise to conflicting interests the following directions are necessary to be issued to be observed by the corporation while exercising the power u/s 29.

Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable :

(1) Sale of unit should always be made by public auction.

(2) Valuation of unit for purposes of determining the adequacy of the offer or for determining if the bid offered was adequate, should always be intimated to the unit holder to enable him to file his objections if any, as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered the same facility and the 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 the last instalment fixed under the agreement entered into as a result of the tendered amount.

(b) If he brings third parties with higher offers they would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs into very huge amounts for which the ordinary buyer may not be available or the industry itself may be of such nature that the normal buyers may not be available. But before taking such steps, there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that the sale proceeds shall be deposited in the loan account."

23. Learned counsel for the respondents did contend that the above directions given by the Supreme court govern the facts of that case alone; that such directions were given as the corporation refused to release the amount at a time when the unit was nearing completion without any explanation and that the appellant in that case wrote repeated letters to the corporation requesting it to release plot No. 220, so as to enable him to negotiate for private sale of it along with his two more plots to pay off the debts. Thus, considering the conduct on the part of the appellant and the unreasonableness on the part of the corporation in not releasing the full amount by it, such directions were given. But, in the present case, the conduct of the petitioner shows that it was not anxious to pay off the debt. They sought to distinguish the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, in regard to its application to the facts of this case drawing attention to para. 13 of the judgment of the Supreme Court in the case of U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408 SC; AIR 1993 SC 1435, which reads (page 417) :

"On behalf of the appellant reliance has been placed upon the decision of this court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, We have perused the decision. That was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular case, it was found that the corporation was acting unreasonably. In that context certain observations were made. The decision also deals with the procedure to be adopted by the corporation while selling the units taken over u/s 29. That aspect is not relevant in this case. We are, therefore, of the opinion that the said decision is of no help to the appellant herein.

24. Looking to the underlined portion, it is clear that as regards the procedure to be adopted by the corporation while selling the units taken over u/s 29 of the Act, the Supreme Court has stated that that aspect was not relevant in that case.

25. Further, the Supreme Court in the same case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, dealing with the exercise of the power conferred u/s 29 of the Act on the corporation in para. 15 has stated thus (page 11) :

"Section 29 confers very wide power on the corporation to ensure prompt payment by arming it with effective measures to realise the arrears. But the simplicity of the language is not an index of the enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far-reaching repercussions, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislation enacted of general benefit and common good, the responsibility is far graver. It demands a purposeful approach. The exercise of discretion should be objective. The test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. Power u/s 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably. Default in payment of a loan may attract section 29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any guideline framed by the corporation was placed, yet the basic philosophy enshrined in section 24 has to be kept in mind. The rationale of action and motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid. Unfortunately, the corporation was guilty of not acting in accordance with law either at the stage of take over or in transferring the unit. Admittedly, the entire loan was not disbursed. The need of the capital in the last stages cannot be doubted. If the corporation refused to release the amount at a time when the unit is nearing completion or is ready to start functioning, then it falls short of capital and it is bound to land itself in trouble. This is what happened in this case. The partners did not co-operate and the corporation without any explanation refused to release the full amount. The result was the appellant stood pressed on the one hand from absence of capital and on the other by recovery proceedings. The corporation, therefore, should honour their commitments of releasing the entire loan timely except for very good reasons which should be intimated before hand to enable the unit holder to comply with

shortcomings, if any. In the absence of its completion, the proceedings for recovery u/s 29 may not be justified. Similarly, various situations may arise which may hamper the start of the unit-delay in electric supply or delayed delivery of machinery vital for the functioning of the unit. Such difficulties do require rescheduling of payment of instalment because, if the unit, for reasons beyond the control of unit holder, could not start, then how will the amount be repaid ? Endeavour should be to adjust and accommodate as business considerations require the unit to function for the benefit, both of the general public and the corporation. It is not mandatory, as a matter of law, to observe the process of taking over strictly. But if there is no option left and the unit is taken over then its transfer requires not only sincere effort but to act reasonably and fairly."

26. In addition to this, the Supreme Court proceeded to say in para 16 (page 13) :

"Equally, sub-section (4) of section 29 treats the corporation "to be a trustee" of the debtor or person claiming title through him. It saddles the corporation or the officer concerned with in-built duties, responsibilities and obligations towards the debtor in dealing with the property and entails him to act as a prudent and reasonable man standing in the shoes of the owner."

27. Learned counsel for the petitioner drew my attention to passage at page 533 in Administrative Law, 6th edition, by H.W.R. Wade. The following is the said passage :

"Many cases cited in this Chapter illustrate the way in which the principles of natural justice are used to supplement statutory procedures which themselves provide for a hearing or inquiry, with or without detailed regulation of the procedure. As Lord Reid said :

For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation.

Or, in the words of Lord Bridge :

In particular, it is well-established that when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

28. In para 15 of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, it is also stated (page 12) :

"Even though no rules appear to have been frame nor any guideline framed by the corporation was placed, yet the basic philosophy enshrined in section 24 has to be kept in mind."

29. Thus, I understand that the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, particularly on the aspect of the procedure to be followed by the corporation in regard to taking over of the defaulting units and selling them u/s 29 of the Act, holds the field as that aspect of the case is neither considered nor distinguished in the case of Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408 (SC) . I have yet another reason to say that the directions contained in para 22 of the judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, are general in nature and that they were not confined to that case alone because those directions are with reference to sale of a unit and a unit holder. In particular, looking to directions 4(a)(b) and (5) it is clear that such directions would not have been given, if they were confined to the facts of that case alone. The specific directions given in that case with reference to the appellant, Mahesh Chandra, are contained in para 24 of the said judgment. Thus, I have not hesitation to hold that the directions given in para 22 of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, are applicable to the case on hand, so far they are applicable.

30. Sri S.G. Sundaraswamy, learned counsel, cited : Rajeswar Prasad Misra v. State of West Bengal AIR 1965 SC 1887 and Amar Nath Om Prakash and Others Vs. State of Punjab and Others, on the points that the judgments of courts are not to be construed as statutes; the observations made in the judgment must be read in the context in which they appear and that a case is an authority only for what it actually decides and not for what may logically follow from it.

31. In the view I have taken that the directions given by the Supreme Court in para 22 of the judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, are of general application, and the said case being directly on the point with regard to exercise of the power u/s 29 of the Act and the procedure to be followed thereunder for taking the possession of the defaulting unit and sale of the same thereafter, the aforementioned decisions cited by learned counsel for respondent No. 2 do not help the respondents.

32. In this view of the matter, I do not think it is necessary to refer to other other decision, referred to by learned counsel for the respondents.

33. In the result, for the reasons stated and discussion made above, keeping in view the facts and circumstances of the case, reliefs sought for in this writ petition and the submissions made by learned counsel for the parties, I think it is appropriate to pass the following order :

(1) The writ petition is allowed in part.

(2) All the proceedings subsequent to receipt of tenders pursuant to the public notice - annexure "C" dated November 11, 1991, are quashed. It is made clear

that the tenders so received shall remain undisturbed.

(3) Respondent No. 1-corporation shall observe the directions (2), (3) and (4) contained in para 22 of the judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others,

34. No costs.