(2009) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3184 of 2007

Millennium Structurals (India) Ltd. APPELLANT

Vs

Commercial Tax Officer, Indore and others RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 46B

Citation : (2009) 2 MPLJ 584

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant; Anand Pathak, Dy. Government Advocate for respondent Nos. 1 to 3, Ritu Bhargava, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.

This order shall dispose of W.P. No. 3184/2007 and W.P. No. 2107/2007, as the controversy in both these cases is identical. Both the writ petitioners have purchased their respective properties from M.P. Financial Corporation, auctioned u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as Act), and have felt aggrieved against the recovery proceedings initiated against the said properties, by the Commercial Tax Department of the State Government, for recovery of the Commercial Tax due from the erstwhile owner of the properties. For the sake of convenience, the facts are borrowed from W.P. No. 3184/2007.

The petitioner M/s Millennium Structurals is a Company incorporated under the Companies Act, 1956. One M/s Beta Securities Limited, having its Industrial Unit at Industrial Area, Pithampur had raised some financial assistance from M.P. Financial Corporation (hereinafter referred to as Corporation). Since the liabilities towards the Corporation were not discharged by the borrower Company, M/s Beta Securities Limited, provisions of section 29 of the Act were invoked by the

Corporation. Ultimately, the properties of the defaulter Company-were put to sale. The petitioner-Company was the highest tenderer for the aforesaid properties, and as such, the offer made by the petitioner-Company was accepted by the Corporation.

Originally an agreement dated January 6, 2007 was executed between the petitioner-Company and the Coiporation, with regard to the sale of the properties. The entire consideration amount was paid by the petitioner-Company to the Corporation. On payment of the sale consideration, the Coiporation executed a sale deed in favour of the petitioner-Company on May 23, 2007. The Corporation entered into a separate agreement for sale of plant and machinery, with one M/s Vikas Traders, vide agreement dated January 6, 2007. The petitioner-Company, through a private sale, purchased the aforesaid plant and machinery'' also from Vikas Traders, for a substantial consideration. Thus, the petitioner claims, that after the purchase of the immovable properties of the erstwhile borrowers, and also on the purchase of the plant and machinery from M/s Vikas Traders, it had acquired absolute ownership of the properties of the erstwhile borrowers, and as such, acquired the properties in question free from all encumbrances.

However, an advertisement was published on June 5, 2007 in the News paper at the instance of the Commercial Tax Officer-cum- Additional Tehsildar, Indore, whereby the erstwhile immovable properties of M/s Beta Securities, were proposed for auction, for recovery of the arrears of commercial tax. The petitioner claims that since the aforesaid properties had vested in it, free from all encumbrances, and it had purchased the said properties from the Corporation, therefore, no recovery of any arrears of commercial tax from erstwhile owners, could be effected from the properties in question. Various other facts have also been pleaded to support the said pleas.

It is in these circumstances, that the petitioner has approached this Court through the present petition. The claim of the petitioner-Company has been contested by the Commercial Tax Department. Although various pleas on facts, raised by the petitioner-Company have not been denied, but the Commercial Tax Department has taken a plea of protection of section 53 of the M.P. Commercial Tax Act, 1994.

6-7. After hearing the learned counsel for the parties and having gone through the pleas raised by them, I find that the controversy in question is squarely covered by a judgment of this Court in the case of Mahaveer Enterprises vs. State ofMadhya Pradesh and others, 2008 (4) MPLJ 278 decided on August 19, 2008. In Mahavir''s case (supra), an identical controversy had arisen for consideration before this Court. In that case also, the writ petitioner-Mahaveer Enterprises had purchased the property in question from M.P. Financial Corporation, and the Commercial Tax Department of the State Government, was proposing to auction the property for recovery of the arrears of commercial tax due from the erstwhile owners. A similar plea of section 53 was also raised, by the department, but was not accepted by this Court. I: was held that after the purchase of the property, sold by the Corporation, u/s 29 of the Act, a purchaser acquires the property free from all encumbrances, and Commercial Tax Department could not initiate recovery proceedings for recovery of commercial tax dues, from the erstwhile owner, by sale of the purchased property.

During the course of arguments, Ms. Ritu Bhargava, learned counsel for the M.P. Financial Corporation has also brought to the notice of the Court a recent judgment of the Apex Court in the case of Union of India and others vs. SICOMLtd. and another, JT 2009 (I) SC 87, wherein, in identical circumstances, the Apex Court has held that right of a State Financial Corporation is a statutory one, and contains a non-obstante clause in section 46B of the Act, and as such, the sale conducted by the Corporation in favour of a purchaser was duly protected and the purchased property could not be utilized for realization of the excise duty etc.

For the reasons given in Mahaveer''s case (supra) and as per the law laid down by the Apex Court in SICOM Ltd. ''s case, the present writ petition is also allowed and it is declared that the property purchased by the petitioner-Company from the Corporation cannot be put to auction by the Commercial Tax Department of the State Government for recovery of the arrears of commercial tax from the erstwhile owners.

A copy of the judgment in Mahaveer''s case be retained in this file also. C.C. as per rules.

