(1999) 04 KL CK 0004

In the High Court Of Kerala

Case No : W.A. No. 858 of 1999

M.O. Antony and Another — APPELLANT

Vs

Kerala Financial Corporation and Others — RESPONDENT

Date of Decision : 09-04-1999

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

Citation : AIR 1999 Ker 333 : (1999) 1 KLJ 890

Hon'ble Judges : S. Krishnan Unni, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : S.V. Balakrishna Iyer, for the Appellant; V.B. Unniraj, for the Respondent

Judgement

Ar. Lakshmanan, J.—This Writ Appeal can be disposed of on a short ground. The appellants in the Writ Petition are the petitioners in the Original Petition. They filed the Original Petition against the Kerala Financial Corporation and also against the owner of the property mortgaged to the Corporation, for a mandamus directing the respondents 1 and 2 to remove the seal affixed by them on the three rooms occupied by the appellants/petitioners in the hotel Moonstar Complex and permit them to conduct the business therein and grant appropriate reliefs.

2. According to the appellants they are the tenants of three rooms in the ground floor of the hotel Moonstar Complex, Ulloor Medical College Road, Thiruvananthapuram which is a multi-storeyed structure belonging to respondent No. 3. The complex has about 35 hotel rooms and a restaurant. Three rooms on the ground floor alone have been let out to the third party viz., petitioners/ appellants herein. Respondent No. 3 has availed a loan from the first respondent Corporation by offering the hotel Moonstar Complex as security. He has fallen in arrears in repayment of the loan. Therefore the officials of the first respondent Corporation along with the police came to the hotel and evacuated the entire complex. The customers in the petitioners''/appellants shops were also asked to

leave the premises and the shutters in the shops/rooms under the occupation of the appellants were also sealed by the Officers of the Corporation. According to the appellants they have not been served with any notice of any proceedings and that they have an independent right as tenants of the rooms. They have not availed of any loan from the respondents 1 and 2 and that the respondents ought to have issued notice of any proposed action and granted a fair and reasonable opportunity of hearing before taking any coercive action. It is further submitted that they are the tenants of the building of the third respondent and is protected under the Kerala Buildings (Lease and Rent Control) Act and therefore the action of the respondent No. 2 is illegal and arbitrary. Therefore they filed the above writ petition for a mandamus as already noticed. The writ petition was dismissed by the learned single Judge at the admission stage itself.

3. Being aggrieved against the judgment the petitioners have come up on appeal. The contentions raised in the writ petition have also been reiterated in the Writ Appeal. At the time of hearing Mr. S. V. Balakrishna Iyer submitted that there is violation of principles of natural justice and that Section 29 of the State Financial Corporation Act, 1951 does not contemplate arbitrary action without notice and therefore the learned single Judge ought to have held that the sealing of the premises by respondents 1 and 2 is illegal. It is also further submitted that in the case of take over of another complex ''Fort Manor'' by respondents 1 and 2 the tenants were permitted to continue in occupation on payment of monthly rent and the same treatment ought to have been adopted in the case of appellants also. He would further submit that there is violation of Article 14 of the Constitution of India. The appellants, as law abiding citizens did not forcibly resist the sealing of the premises though they did raise a protest.

4. The Writ Appeal was admitted by this Court on 30-3-99. Since no opportunity was given to the Corporation to file a counter-affidavit, we directed the respondent Corporation to file a counter-affidavit in the Writ Appeal. It is stated in the counter-affidavit that the third respondent who availed a loan of Rs. 124.69 lakhs had executed various agreements agreeing to repay the loan in monthly instalments and towards collateral security the company had created equitable mortgage in respect of the hotel building and 13.250 cents of land in Pattom Village and that the company had also mortgaged another extent of land in the same village and since the company had committed default of payment of principal and interest due under the agreement executed by them, respondents I and 2 invoking Section 29 of the State Financial Corporations Act, 1951 initiated action against them. Along with the counter-affidavit the respondents filed the agreement dated 4-10-1996 between the third respondent viz., A. M. Kassim, Managing Director, Hotel Moonstar (P) Ltd., Thiruvananthapuram and the respondent Corporation. Clause V(l1) of the agreement reads as follows :--

"The Borrower Company shall not at any time during the continuance of this Agreement sell, mortgage, lease, transfer, exchange or otherwise dispose of or create any lien or charge by way of hypothecation pledge or other encumbrances in respect of the security properties or any part thereof (including machinery spares and machinery stores forming part of the plant and also including all future assets and acquisitions of the Borrower Company) except with the consent in writing of the Corporation first had and obtained and subject to such terms and conditions as may be imposed by the Corporation in its discretion."

5. A reading of the above clause would disclose that the borrower company viz., third respondent herein is entitled to sell, mortgage, lease, transfer, exchange or otherwise dispose of or create any lien or charge by way of hypothecation pledge or other encumbrances in respect of the secured property or any part thereof only with the consent in writing of the Corporation. The agreement dated 4-10-1996 has been produced and marked as Annexure R-1 to the counter. According to the Corporation the third respondent has not obtained any permission from the Respondents 1 and 2 to create any lease or arrangement in respect of the shop rooms in the building. It is also submitted that the third respondent is not entitled to create any lease arrangement in respect of the hotel building or any portion thereof in respect of the shop room in question and that the permission granted by the third respondent is not binding on the respondent Corporation and that the Corporation is not prepared to enter into any lease arrangement with respect to the building taken over or any portion thereof, and that first respondent intends to sell the properties taken over for the realisation of the amounts due to it and that the appellants have no right or authority to occupy the shop rooms or to conduct business therein.

6. Our attention was also drawn to Section 46-B of the State Financial Corporation Act, 1951 which reads thus :--

"46-B. Effect of Act on other laws :--

The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern."

A reading of the above provision would show that the provisions of the State Financial Corporation Act will prevail ever the provisions of any other laws including the provisions of the Kerala Buildings (Lease and Rent Control) Act by virtue of Section 46-B of the State Financial Corporation Act, 1951. Therefore the respondents contended that the appellants are not entitled to continue in possession and that the Corporations are entitled to take possession of the properties mortgaged to it.

7. We have carefully considered the rival submissions and also perused the agreement that has been entered into between the parties. We are of the opinion that the third respondent has no authority to lease out the property in question

to the appellants which has been mortgaged to the Corporation. The third respondent has also not obtained any consent from the Respondents 1 and 2. This apart the claim made by the appellants that they are entitled to protection under Kerala Building (Lease and Rent Control) Act cannot also be accepted in view of the provisions of Section 46-B of the State Financial Corporations Act, 1951, which is a central enactment which will always have an overriding effect over the State laws and therefore the provisions contained in the said Act alone shall prevail over any other laws including the provisions of Rent Control Act. We are therefore of the opinion that the appellants shall not be allowed to continue in possession of the premises and therefore the action initiated by the respondent Corporation against them is proper and legal.

8. When the matter came up for hearing on 8-4-99 appellants took time to file separate affidavits undertaking to vacate the premises under their occupation. They have also undertook to pay the monthly rent in the meanwhile to the Respondents 1 and 2 commencing from 1-4-99 onwards at the rate of Rs. 1,800/- and Rupees 2,500/- respectively by appellants 1 and 2 respectively. Both parties have filed identical affidavits. For the sake of convenience paragraphs 3 and 4 of the affidavit is extracted below :--

"3. I submit that immediately on receipt of information from Respondents 1 and 2 of the confirmation of the sale of the Hotel Moonstar Complex to any third parly, I unconditionally undertake to vacate the premises. Until receipt of the information aforesaid I undertake to pay every month an amount of Rs. 1,800/- with respondent No. 2 for my occupation of the premises, beginning from the 1st April, 1999.

4. In view of the above undertaking this Hon''ble Court may be pleased to direct Respondents 1 and 2 to remove their seal on the two rooms in my occupation and permit me to do business therein subject to the conditions aforesaid. Otherwise I will be put to irreparable loss, damage and inconvenience."

The undertaking given in both the affidavits are recorded. The appellants shall, on receipt of the information from Respondents 1 and 2 of confirmation of sale shall unconditionally vacate and hand over the premises to Respondents 1 and 2.

9. In view of the affidavit now filed and recorded by us we allow the appeal in part and permit the appellants to continue in possession on payment of monthly rent to the respondent Corporation and shall vacate the premises on receipt of information from Respondents 1 and 2 of confirmation of sale of Hotel Moonstar to any third party. Writ Appeal is ordered accordingly.

The respondent Corporation is directed to remove the seal forthwith.