(1994) 02 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15624 of 1989

M/s. Bajwa and Co. APPELLANT

Vs

Punjab Financial Corporation and another RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 1995 P&H 129 : (1995) 82 CompCas 891 : (1994) 107 PLR 398

Hon'ble Judges : M.K. Sodhi, J

Bench : Single Bench

Advocate : Suresh Amba, for the Appellant; Harmohan Singh Sethi and Harmanjit Singh Sethi, for the Respondent

Judgement

M.K. Sodhi, J.—The Punjab Financial Corporation (for short, ''the Corporation'') sanctioned in July, 1979 a loan of Rs. 5 lacs to the petitioner which had set up a rise sheller in village Pulpukhta, Tehsil Dasuya, District Hoshiarpur. However, a sum of Rs. 4.5 lacs only was availed and in order to secure the loan the petitioner had mortgaged with the Corporation the land and rice sheller set up thereon. The agreed rate of interest was 16.5 per cent and the loan was repayable in half yearly instalments commencing from December 16, 1979. A sum of Rs. 1,48,879/- is said to have been repaid to the Corporation and thereafter the petitioner defaulted in the payment of instalments and could not adhere to the agreed schedule of payment. The Corporation recalled the loan u/s 30 of the State Financial Corporations Act, 1951 (hereinafter called ''the Act'') and thereafter filed a petition before the District Judge u/s 31 of the Act for the recovery of Rs. 5,27,328.92 Ps. along with future interest at the agreed rate by the sale of the mortgaged property. The petitioner was allowed on October 10, 1983. The order of the District Judge was executed by putting the mortgaged property to sale by a public auction. On July 19, 1984 the Corporation was granted permission to participate in the auction proceedings. The mortgaged property was purchased by the Corporation on July 7, 1985 for Rs. 3.97 lacs and the amount was credited to the account of the petitioner. The sale in favour of the Corporation was confirmed by the Court on August 19, 1985 and a sale certificate was issued in its favour on February 4, 1986. It is further not in dispute that the Corporation took possession of the property in March, 1986.

2. The Corporation having become the absolute owner of the properly, advertised the same for sale. An advertisement appeared in the press on June 7, 1986 but the sale did not go through. On learning that the Corporation intended to sell the property through an auction the petitioner approached the Corporation settle the matter and return the property to it. Negotiations started between the parties. The petitioner claims that in pursuance of the verbal direction issued by the then Managing Director of the Corporation it deposited in June, 1986 a sum of Rs. 50,000 / - by way of a bank draft which was credited to the account of the petitioner only in January, 1987. It appears that during the course of negotiations which were yet to be finalised the bank draft was kept by the Corporation and when its validity was about to expire it was got encashed and the amount credited to the account of the petitioner. The negotiations did not materialise as is clear from the letter dated August 11, 1986 (Annexure P6 with the, writ petition) which is a letter written by the petitioner to the Corporation. It was stated therein that a sum of Rs.50,000/- had been deposited with the Corporation as earnest money along with an offer to buy the unit back but since the same had not been accepted by the Corporation the petitioner requested the return of the bank draft or the amount of Rs. 50,000/-. It is further claimed by the petitioner that negotiations between the parties for the purchase of the property by the petitioner continued though this fact is disputed on behalf of the Corporation and there is nothing on the record to indicate anything either way. The Corporation published another auction notice on October 31, 1989 in ''the Daily Tribunal'' and auctioned the property on November 4, 1989. It has been purchased by one Shri Yog Raj Puri for Rs. 4.05 lacs.

3. The petitioner then filed the present petition in the year 1989 claiming that the Corporation having negotiated with it for the return of the property and having accepted Rs. 50,000/- in pursuance thereof, it was estopped from selling the property to any one else. Notice of motion was issued for January 15, 1990 on which date it was ordered that the auction held in favour of the purchaser be not confirmed till further orders. White the petition was pending in this Court the petitioner addressed a detailed letter/representation to the Governor of Punjab as the State was under President''s rule who marked the same to the Managing Director of the Corporation on the basis of which negotiations again started between the parties. In the affidavit filed before the Governor it was alleged by the petitioner that the terms and conditions for the purchase of the prpperly by it had been settled in pursuance of which he had deposited Rs. 50,000/- in June, 1986 and that the Corporation was acting unfairly in selling the. property to another party. Negotiations again failed. The present petition was also dismissed in limine by this Court on March 5, 1991. The petitioner filed a SLP No. 6702 of 1991 in the Supreme Court. The learned Judges of the Apex Court after granting special leave allowed the appeal, set aside the order of this Court and remanded

the case of rehearing and disposal by a reasoned order in accordance with law. Status quo as it existed on August 26, 1991 was ordered to be maintained for a period of four weeks. Thereafter when the petitioner came up for motion hearing again on September 27, 1991 it was admitted and stay in terms of the order passed by the Apex Court was ordered to continue. The net result is that the property stands auctioned and Mr. Yog Raj Puri respondent has purchased it but the auction in his favour has not so far been finalised in view of the interim orders passed by the Court.

4. I have heard counsel for the parties at length and find no merit in the petition which deserves to be dismissed. It was strenuously urged by Mr. Amba, Advocate for the petitioner that the Corporation having negotiated the matter with the petitioner and the latter having paid a sum of Rs. 50,000/- in pursuance of the settlement, the Corporation could not auction the property in favour of any other party. The argument is that the Corporation being a ''State'' for purposes of Part III of the Constitution could not be permitted to act unreasonably in as much as while it was negotiating with the petitioner, it sold the property to respondent 2. There is no substance in these contentions. It could not be disputed on behalf of the petitioner that when the mortgaged property was put to auction in execution of the order passed by the District Judge u/s 31 of the Act, the Corporation purchased the same on July 7, 1985 and this sale was confirmed by the Court. Even a sale certificate was issued in its favour and the Corporation took possession of the property in 1986. In my opinion, the Corporation had become the absolute owner of the property and was at liberty to sell it in any manner to any person. It was only with a view to fetch the maximum price it decided to sell the property by way of an auction. It is true that the petitioner on coming to know about then sale of the property started negotiating the matter with the Corporation but there is nothing on the record to show that any settlement had been arrived at between the parties. No doubt, a sum of Rs. 50,000/-was deposited with the Corporation in June, 1986 by way of a bank draft which was credited to the account of the petitioner but this fact by itself is not conclusive of any settlement between the parties. Learned counsel for the petitioner could not spelt out the terms of the settlement, if any, and the Corporation, in my opinion, was justified in crediting this amount to the account of the petitioner since a large sum of money as still due to the Corporation. I am informed that even after the sale of the property to respondent 2 the outstanding amount due from the petitioner had not been cleared and the Corporation has obtained a decree against the petitioner for another sum of Rs. 6,24,408.45 Ps. with interest at the rate of 16.5% per annum w.e.f. 14-6-1988 till realisation. In this view of the matter, it could not be said that the Corporation acted unreasonably/ arbitrarily in selling the property to respondent 2 or that it was estopped from doing so.

5. No other point was raised.

6. In the result, the writ petition is dismissed. There is no order as to costs.

7. Petition dismissed.

