
(2008) 09 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 1788 of 2007

M/s Dayal Fuel Industry

APPELLANT

Vs

Bihar State Financial Corpn. and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2009) 1 PLJR 800

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Yogendra Mishra, for the Appellant; Raju Giri, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The petitioner was unfortunate to have approached the Bihar State Financial Corporation for financial assistance to set up an industry. Initially, he was sanctioned a sum of Rs. 82,000/-, which was utilized in part of the construction of the unit. Realizing that it was grossly insufficient, Corporation agreed to sanction a further sum of Rs. 5 lakh to make the unit viably established. For reasons with which we are not concerned, notwithstanding, the said realization of fact, no further amount was disbursed, though sanctioned. The result is that the unit was never born in practical term and died a premature death even before being born. Now, as the unit itself was not established, thus, petitioner did not have the capacity to earn and repay, yet Corporation demanded repayment. On failure to repay, the Corporation in exercise of power u/s 29 of the State Financial Corporation advertised the unfinished unit for sale. As per the stand of the Corporation, the unit was sold to respondent No. 6, Smt. Uma Jha wife of Pankaj Kumar Jha. Petitioner specifically asserts that the auction that took place was sham and in fact no bidder turned up to respond and thus a relative of an employee of the Corporation was set up to purchase the unit for Rs. 3.14 lakh. To this, reply of the Corporation is found in para 9 of the counter affidavit stating that the unit was sold as per norms of the Corporation to

respondent No. 6 and whether or not she is relative of any Corporation's official, such information is not readily available on record. Thus, in my opinion, this is a tacit admission on behalf of the Corporation about the relationship. I will not dwell upon this as it is immaterial in view of subsequent development but I thought it my duty to note this fact to show how Corporation conducts itself when dealing with public money. When the writ petition was taken up for hearing at the stage of admission itself, petitioners contended that the unit was in its possession. This was opposed by the Corporation. The Corporation was asked to file a further affidavit clearly stating the facts in this regard.

2. A supplementary counter affidavit has been filed. As in the counter affidavit and so in the supplementary counter affidavit, the Corporation has stated that pursuant to sale order, issued in favour of respondent No. 6, when petitioner did not agree to retain the unit on matching term, the unit was handed over to respondent No. 6 but on respondent No. 6 failing to pay any further amount, apart from initial deposit and having backed out, the Corporation has taken possession of the unit and admittedly as per statement in the supplementary counter affidavit, no legal formality of sale has been completed.

3. Petitioner's prayer in the writ petition was that the Corporation came out with BSFC OTS Scheme, 2006. Petitioner, with due application money, made an application for settlement of all outstanding due under the said One Time Settlement Scheme. It had offered to take the settlement under Scheme 1A but the Corporation treating it to be a case under Scheme FA, ordered that the entire outstanding could be settled but petitioner would not be entitled to get back the unit, as the unit had been sold. In other words, the Corporation's stand is that petitioner may pay the outstanding under settlement and forego the unit as well. Thus, in other words, the mortgage is foreclosed with liability to liquidate the due outstanding, which on the face of it appears to be peculiar. Thus, in my view, the question is whether the unit was sold or not?

4. Learned counsel for the Corporation submits that by issuance of sale order, by agreement amongst the parties, sale was complete and the Corporation was right in its stand in holding that the unit was sold. This is the specific stand of the Corporation.

5. On the other hand, Mr. Yogendra Mishra, learned counsel for the petitioner submits that sale or its grammatical variation sold is a word having legal significance and legal meaning and the Corporation cannot reinvent legal dictionary. He submits that the Corporation in view of Section 29 of the State Financial Corporation Act has the power to sell. With reference to sub-section (2) of Section 29, he submits that that Section talks of any transfer of property made by the Corporation but the question is whether there is transfer of property in the present case.

6. Having considered the matter, in my view, the stand of the Corporation is misconceived and cannot be accepted.

7. Transfer of property is a term, which is nomen juris. It is dealt by Transfer of Property Act and in relation to immovable property, statute clearly lays down how transfer of property by way of sale can be effected.

8. Provision of sub-section (2) of Section 29 in no way retracts from the provision of Transfer of Property Act. For a sale, the transfer of property has to be absolute in terms of Transfer of Property Act and that is to be achieved only by a document in writing duly registered. Section 29 of the State Financial Act authorizes the Corporation to execute such a document but even then such a sale takes place only when a transfer document is executed and duly registered as contemplated under the Transfer of Property Act, which has not been done in the present case.

9. I fail to understand on what basis Corporation took the stand that the property was sold by virtue of the sale letter. If the property was sold by virtue of sale letter then this Court fails to appreciate why in the very sale letter is stated that the petitioner had a right to retain the property on matching term. If sale was already made and the property sold to respondent No. 6 by the sale letter how could the property be retained by the petitioner after the sale had been made. Then again where is the consideration for sale. It was said that it was sold for a consideration of Rs. 3.41 lakh but what happened to that money. The Corporation admits that after payment of initial amount of Rs. 78,000/- no further amount was deposited by respondent No. 6, who had abandoned the transaction without completing the legal formality. There was no documentation for sale nor registration thereof.

10. If on Corporation own showing legal formalities for sale were not completed i.e. is neither was consideration received nor any document transferring the property executed nor any such document having been registered in terms of Transfer of Property Act, I fail to understand that on what basis Corporation takes the stand that the property was sold. The stand is misconceived in fact and in law and has no tugs to stand. It is only a pretence for denying honorable exit to the petitioner from the debt trip laid out by the Corporation, where for a disbursement of Rs. 82,000/- the petitioner had a liability to discharge now of over Rs. 25 lakh. This Court can say no more. The stand of the Corporation being misconceived in fact and in law that the property was sold, the stand of the Corporation for settling the due under clause FA cannot be sustained either on fact or in law. The application of the petitioner for settlement otherwise was proper and had to be acted upon. Failure on the part of the Corporation to permit the petitioner to settle the due under the said scheme as per petitioner's option was thus wrongly denied to the petitioner. The Corporation is thus be liable to grant the facility to the petitioner to compound his liability in terms of BSFC OTS, 2006 as per his application or as per his desire under any of the scheme because choice is that of the defaulter under the scheme.

11. Let mandamus accordingly issue and the order, if any, -of rejecting to accept petitioner's application is consequently quashed. The writ petition is allowed.