(1990) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7058 of 1984

M/s R.K. Industries Plot No. SPL 35, Industrial Estate, Kallur — APPELLANT

Vs

The A.P. State Financial Corporation and others — RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14
State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 1991 AP 174

Hon'ble Judges : Sivaraman Nair, J;Sardar Alikhan, J

Bench : Division Bench

Advocate : V. Rajagopal Reddy, for the Appellant; Y. Sivarama Sastry and Subba Rao, for the Respondent

Judgement

Sardar Alikhan, J.—M/s R.K. Industries Plot No. SPL 35, Industrial Estate Kallur, Kurnool District petitioner herein prays for the issue of a writ of Mandamus directing respondents 1 and 2 to restore possession of the industry which was illegally taken possession of by respondent No. 3 by declaring that the act of taking possession of the properties and their sale is illegal and void being violative of Art. 14 of the Constitution of India.

2. The circumstances under which the above writ petition has been filed are as follows:

3. The petitioner-Industry was started by an educated unemployed person for the manufacture of mosaic chips and tiles as a small scale industry and established the unit in the industrial estate, Kallur, in Kurnool District. The Unit obtained financial assistance from the Andhra Pradesh State Financial Corporation and State Bank of India in addition to his own investment. Due to certain difficulties the industry could not be run on a regular basis. Further more, due to heavy competition in the market the petitioner-industry started incurring losses forcing it to close down the industry temporarily. As a result of the above strained circumstances, the petitioner could not repay the loan instalments due

to the A. P. State Financial Corporation. The Branch Manager of the A.P. State Financial Corporation, Kurnool Branch respondent No. 2 herein auctioned the unit, which was knocked down at a very low cost in favour of the 3rd respondent. This action was taken by the A. P. State Financial Corporation u/S. 29 of the State Financial Corporations Act, 1951 (Act No. 63 of 1951) hereinafter referred to as ''the Act''. It could be appropriate to reproduce S. 29 of the Act here itself which is in the following terms:

"29. Rights of Financial Corporation in case of default:--

(a) Where any industrial concern which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property under the Financial Corporation in exercise of its powers u/sub-s. (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1) all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is recovered by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-s. (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

U/S. 31 of the Act special provisions for enforcement of claims by Financial Corporation are provided, stating inter alia that if an industrial concern commits any breach of an agreement and makes default in repayment of any loan or advance or any instalment thereof, the State Financial Corporation may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation or for transferring the management of the industrial concern or for an ad interim injunction restraining the industrial concern from transferring or removing its machinery etc. from the premises of the industrial concern. An order passed by the District Judge is enforceable in the same manner as the decree under the Code of Civil Procedure.

4. The main submission of the petitioner in this case is that the respondents cannot take. action u/S. 31(29) of the Act without recourse to the procedure laid down in S. 31. The further submission made is that S. 29 of the Act merely declares and confers certain rights on the Financial Corporation and does not by itself provide any remedy enabling the Corporation to exercise the said rights without intervention of courts. It is further submitted that assuming that the provisions of S. 29 can be invoked independently of S. 31, S. 29 should be struck down as unconstitutional and being violative of Art. 14 of the Constitution of India. In this regard it is contended that the decision of the Division Bench of this Court reported in Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others, holding S. 29 of the Act as valid and not violative of Art. 14 of the Constitution of India, is erroneous and requires reconsideration.

5. In so far as the first contention of the petitioner is Concerned viz. that recourse cannot be had to S. 29 of the Act unless the remedies available u/S. 31 of the Act are exhausted it may be stated that such a contention is thoroughly unsustainable in the eye of law. Ss. 29 and 31 of the Act are the two sections which provide remedies to the Corporation. It is not at all necessary for the Corporation to resort to S. 31 first before invoking the provisions of S. 29 and initiating action under the said section. A Full Bench of this court in K. Subba Reddy Vs. Andhra Pradesh State Financial Corporation and Others, held that it is for the Financial Corporation to make up its mind about the remedy which it wishes to pursue against the erring Financial concern for recovery of debt advanced and if the provisions of S. 31 have been invoked culminating to an order passed to the court, it cannot turn back to the remedies available to it u/ S.29. Having invoked the provisions in S. 31 by filing an application before the District Judge and obtained a decree, the Financial Corporation cannot go back to the provisions of S. 29 to enforce the claim. It is evident from a reading of this decision that two remedies are available to the Corporation u/Ss.29 and 31. If resort has been had to S. 31 culminating in the passing of a decree, then the Financial Corporation cannot initiate action u/S. 29. But under no circumstances it can be said that if the Corporation wants to initiate action u/S. 29 straight away there is any bar or embargo on the Corporation to take such action u/S. 29 as such without recourse to S. 31. Therefore there is no substance in the first contention raised by the learned counsel for the petitioner.

6. In so far as the question of validity of S. 29 is concerned, it may be stated that S. 29 has been held to be perfectly valid and constitutional and not violalive of Art. 14 of the Constitution of India in several judgments of this Court. In

Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others, a Division Bench of this court clearly held that the statute itself discloses a definite policy and objective and it confers authority on the corporation to make selection of the procedure. When that is so a responsible body like the Financial Corporation will act in a realistic manner keeping in view the interests of the Corporation industry, commerce and the general public. There is a guiding policy and principle available from the statute for the Corporation to act in this regard and accordingly S. 29 is not violative of Art. 14 of the Constitution. A similar view was taken by a learned single Judge of this Court in M/s. G.A.R. Re-rolling Mills, Vizianagaram v. The A.P. State Finance Corporation, 1982 (1) An LR 93 by holding that there are two independent remedies provided u/S. 29 and S. 31 of the Act and that action initiated u/S. 29 of the Act was upheld by the learned single Judge on the ground that the Corporation is free to do so, to recover the amounts due from the erring units. In K. Surendranathan Vs. Kerala Financial Corpn. and Others, it was held that the guide lines for the exercise of the power u/ S. 29 are found in the object and purpose of the Act and the S. 29 is neither arbitrary nor violative of Art. 14 of the Constitution. In Alka Ceramics Vs. Gujarat State Financial Corporation and Others, the same principle was upheld by holding, inter alia, that S. 29 cannot be held to be arbitrary and, therefore, any action taken under the said section is not vitiated in the eye of law.

7. During the course of arguments, learned counsel for the petitioner had relied upon an obter dicta in W.P. No. 235 of 1982 dated 21-6-1982 therein a Divison Bench of this court entertained some doubts about the validity of S. 29 of the Act and referred it to a Full Bench for consideration. In fact, before the Full Bench i.e. in K. Subba Reddy v. A.P.S.F. Corporation (supra) the question of validity of S. 29 was never raised and it was held that Ss. 29 and 31 provide two independent remedies to the Corporation. However, if in a given case the Financial Corporation has invoked Section 31 and approached the District Judge and a decree has been passed, thereafter resort cannot be had to section 29 of the Act suffice it to say that the validity of section 29 has never been in doubt. In view of the above preponderance of judicial opinion expressed in various cases we do not see any merit in the contention of the learned counsel for the petitioner that Section 29 of the Act is violative of Art. 14 of the Constitution and deserves to be struck down as such.

8. We therefore, dismiss the writ petition, but in the circumstances of the case, there will be no order as to costs.

9. Petition dismissed.

