
(2007) 03 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4185 of 2004

Nand Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 32G

Citation : (2007) 2 WLN 451

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—The instant writ petition has been filed challenging the proceedings initiated vide notice dt. 21.07.2004 (Annex. 4) by respondents No. 1 and 2 and further prayed that recovery certificate dt. 24.12.2003 may also be quashed with all consequential benefits.

2. As per facts, inter alia, stated in the petition, a loan of Rs. 2,10,000/- was granted by respondent No. 3 to the petitioner on 16.02.1990. It is submitted that some amount was paid by the petitioner; but, due to fluctuation in the market and dire need of financial assistance which was not made available to the petitioner, the petitioner could not run the small unit and was burdened with heavy losses. It is submitted that at the time of grant of loan certain documents were executed in between the parties such as, loan agreement, letter of hypothecation of tangible movable property, trust letter, affidavit and guarantor deed etc. It is submitted that respondent No. 3 initiated proceedings to recover the outstanding under the provisions of State Financial Corporation Act, 1951 (hereinafter, "the Act of 1951") against the petitioner and assets of the petitioner were sold by enforcing provisions of Section 29 of the Act of 1951 and as a result of that respondent No. 3 received a sum of Rs. 1,54,000/- by recourse to auction sale. The said sale was finalized on 18.03.2003. It is admitted that the petitioner did not make any objection at the relevant time.

3. Thereafter, a notice for payment of remaining outstanding amount to the tune

of Rs. 2,00,600/- was received by the petitioner through registered AD letter dt. 25.08.1999. It is further submitted that the petitioner was directed to deposit the amount of Rs. 2,00,600/- within a period of 30 days from the receipt of the notice, failing which, it was ordered that legal action shall be initiated against the petitioner for the recovery of the said amount.

4. It is contended that respondent No. 3 committed material irregularity and arbitrariness while carrying through the auction proceedings dt. 18.03.1999 and caused irreparable injury to the petitioner. It is contended that it is established law which makes it clear that a party who had right to get and receive outstanding payable amount from any party then such party cannot receive amount by adopting legal recourse within the specified limitation of three years from the last acknowledgment in pursuance of the related subject matter. It is argued that despite knowing the legal aspect the respondent No. 3 issued a certificate for recovery on 24.12.2003 and, in consequence thereof, respondent No. 2 issued a notice u/s 229 of the Rajasthan Land Revenue Act, 1956, recovering the alleged money under the provisions of Sections 256 and 227 of the Rajasthan Land Revenue Act which is altogether unauthorized and without jurisdiction.

5. The petitioner has preferred the writ petition for challenging the recovery certificate dt. 24.12.2003 and proceeding initiated u/s 229 of the Rajasthan Land Revenue Act vide notice dt. 21.07.2004.

6. As per learned Counsel for the petitioner, the proceedings initiated against the petitioner is wholly without jurisdiction and unauthorized and barred by law. It is contended that the right to recovery has expired, the petitioner has no liability to pay such outstanding amount in any manner in view of the provisions of the law and the action of the respondents is illegal. It is further submitted that respondents No. 1 and 2 have no authority to adjudicate upon the objection under the law and no such machinery has been provided, therefore, the respondents without examining the matter, in hot haste, proceeded to recover the money from the petitioner by adopting harsh method of recovery. It is urged that in the circumstances, impugned notice Annex. 4 dt. 21.07.2004 and recovery certificate dt. 24.12.2003 deserve to be quashed and set-aside.

7. Per contra, learned Counsel for the RFC raised preliminary objection that petitioner has taken loan from the respondent Corporation and he duly executed agreement for re-payment of loan amount in installments; but, he has failed to repay the amount as per agreement and further disowned the liability of making repayment on the ground of alleged technicalities. It is argued on behalf of the respondents that writ jurisdiction is equitable jurisdiction and the person who has failed to honour the agreement entered into by him voluntarily is not entitled to invoke the writ jurisdiction for equitable relief.

8. With regard to ground of technicalities on the question of limitation, it is obvious that after confirming the auction sale on 21.03.1999 the petitioner was

given legal notice u/s 32G of the Act of 1951 and, thereafter, certificate of recovery of the amount was sent to the revenue authorities. Thereafter, proceedings for recovery was effected by the respondent No. 2. Thus, it is clear that the respondents have committed no illegality because the action has been taken by the respondents as per law and there is no infirmity in the action taken by the respondents for the recovery of the outstanding amount of loan granted to the petitioner. It is further submitted that the concerned Tehsildar served the notice upon the petitioner u/s 229 of the Rajasthan Land Revenue Act on 21.07.2004 but, despite that, no heed was paid by the petitioner and then further notice was given. It is vehemently contended that no illegality has been committed by the respondents while initiating the proceedings against the petitioner for recovery of the loan amount. Learned Counsel for the respondents urged that the proceedings initiated under the Rajasthan Land Revenue Act is perfectly legal, the petitioner was under legal obligation to repay the amount.

9. Learned Counsel for the respondents further pointed out that it is clear from notification dt. 28.11.1995 that u/s 32G of the Act of 1951 the Deputy General Manager of the Corporation is conferred authority to determine the amount and issue the certificate of recovery under Revenue law. It is also contended that no legal ground is set out for not repaying the loan amount outstanding against the petitioner.

10. I have considered the rival submissions.

11. The writ petition is bereft of any merit. Admittedly, the petitioner took loan from the RFC and it is also admitted that after part re-payment the petitioner failed to repay the remaining outstanding amount. Thereafter, the respondent authorities initiated the proceedings for recovery and proper notice was issued to him. The proceedings is in progress in the office of respondents No. 1 and 2. There does not appear any violation of the principle of natural justice in the proceedings. In the circumstances, I see no reason for interference.

12. The writ petition is dismissed.