(1996) 08 CAL CK 0006

In the Calcutta High Court

Case No : Writ Petition No. 873 of 1996

Nathmal Girdharilall Steels Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1997) 73 ECR 297 : (1997) 93 ELT 682

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Talukdar, for the Appellant;S.P. Mazumdar, for the Respondent

Judgement

Tarun Chatterjee, J.—In or about March, 1993 the writ petitioners in the name of "Nathmal Girdharilall" participated in the sale of various items conducted by the Customs authorities after taking inspection of various materials under different items including 300 MT M.S. Angles under Item No. 392 lying at 3 and 4 Garden Reach Jetty (in short called G.R.J.). At the auction the offer of the writ petitioner for various items under lot numbers 369,371,377,378, 382,389, 391 and 392 were accepted by the Customs Authorities as the highest one. There is no dispute in respect of other lots excepting the lot No. 393. In respect of lot No. 393 a sum of Rs. 1.62 per kg. was accepted by the Customs authorities. Consideration was paid in full but because of an interim order passed by this Court in the writ jurisdiction the delivery could not be made.

2. A writ application was moved in respect of the aforesaid lot including lots mentioned hereinabove on the ground that although the offer had been accepted and money had been paid, there was non-delivery of the lots in question to the writ petitioner. So far as lot No. 392 is concerned, it appears that the said lot was sold at the rate of Rs. 7,000/- per M.T. The writ petitioner by a letter dated 1-10-1993 intimated the Collector of Customs that although lot Nos. 389, 391, 392, 371 and 372 were allotted to them and earnest money was paid for all the five items as mentioned hereinabove no delivery order was given to the writ

petitioner. In the said letter which is annexure ''C'' to the writ application it was prayed that how much money the writ petitioner would have to pay so that they could get the delivery order at an earliest.

3. Finally, by a letter dated 4-1-1996 the writ petitioner wrote to the Assistant Commissioner of Customs enclosing therewith the pay orders. In the said letter the writ petitioner prayed for delivery of the aforesaid goods in respect of lot No. 392 as mentioned hereinabove within a very short time. It is now an admitted position that certain lots which, according to the Customs authorities were lying in the GRJ, were offered to the writ petitioner to take delivery of the same. According to the writ petitioner, after inspecting the goods it was found that they were rusted and corroded and, as such, they were not in a position to take delivery of the goods which were offered by the Customs authorities to them and also by the Calcutta Port Trust authorities. Subsequent to this an advertisement had been caused by the Calcutta Port Trust authorities (hereinafter called as CPT) for sale by auction of certain lots, the particulars of which have been mentioned in the supplementary affidavit filed by the CPT. When these goods were going to be sold in auction on the basis of such advertisement this writ application was moved by the writ petitioner praying for a direction upon the respondents that in view of the deposit of the aforesaid amount with the Customs authority question of sale by public auction of those goods could not arise at all as on the deposit of the aforesaid sum with the Customs authorities the writ petitioners have become the owner of the said lots.

4. Mr. S.P. Mazumdar, the learned counsel appearing on behalf of the CPT, however, submits that the advertisement that has been made for sale by auction in respect of the lots mentioned in the supplementary affidavit are not the goods for which the writ petitioner has deposited the sum as mentioned hereinabove. Therefore, a dispute has arisen as to whether by deposit of the said amount the writ petitioners have at all become the owner of the lots which were allowed to be taken delivery of by the writ petitioners and if they have become the owner of the same even then whether the writ petitioners have become the owner of the aforesaid lots which the CPT authorities have now taken steps to sell by auction.

5. From the affidavits filed by the parties it cannot be disputed that there is a dispute of identity of the goods which have been alleged to have been purchased by the writ petitioners from the Customs authorities and the identity of the goods which are going to be sold by auction on the basis of advertisement made by the Calcutta Port Trust authorities. In my view, this dispute as to the identity of the properties and as to the identity of the property sold and the properties to be sold by auction by CPT requires thorough investigation of facts and adducing of evidence from both sides and such disputed question of fact, in my view, cannot be decided in the writ jurisdiction of this Court.

6. Mr. Talukdar appearing on behalf of the writ petitioners makes an alternative submission by arguing that if the writ petitioners have become the owner on deposit of the amount mentioned earlier in respect of the lots which were offered

by the Customs authorities to the writ petitioners then this Writ Court is entitled to direct payment of compensation along with refund of the amount which has already been deposited by them as purchase money in respect of the lots offered to the writ petitioners. According to Mr. Talukdar in view of delay in delivery of the goods there was deterioration of the goods and, therefore, on inspection delivery of the goods could not be taken by the writ petitioners. Therefore, according to Mr. Talukdar, the Customs authorities are liable to pay compensation for making delay in the delivery of goods for which the conditions of the goods became deteriorated. In support of this contention Mr. Talukdar relied on a decision of the Supreme Court reported in AIR 1964 S.C. 1885 (State of Gujarat v. Menon Mahammad). In that decision the Supreme Court has held that since the Government have a legal obligation to preserve the property intact and also the obligation to take reasonable care so as to enable the Government to return it in the same condition in which it was seized and the position of the State Government until the order became final would be that of a bailee. If that is the correct position, once the Revenue Tribunal set aside the order of the Customs Officer, the Government became liable to return the goods and the owner had the right either to demand the property seized or its value if in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants. There is no dispute about this proposition of law. This judgment is binding on me. But it is clear from the said decision of the Supreme Court that the said judgment was delivered in a suit filed against the State of West Bengal, that is to say, the Civil Court had the opportunity to take evidence in the matter and to decide the issue raised before the Civil Court on adducing evidence by the parties which is not permissible under Article 226 of the Constitution of India. Apart from that the question of payment of compensation again requires investigation of facts and production of evidence by the parties for the purpose of determining the actual payment of compensation if at all the writ petitioners are entitled to get such compensation under the law.

7. For the reasons aforesaid, I am unable to grant any relief to the writ petitioner, as, for giving relief or to decide the said application, the Writ Court has to investigate disputed questions of fact which, in my view, is not permissible under Article 226 of the Constitution of India without production of evidence by the parties. It is well settled law now that in a proceeding under Article 226 of the Constitution of India the Writ Court is not permitted to go into the disputed question of fact and decide the disputed question of fact without investigating the dispute on production of evidence to be adduced by both the parties. If any authority is required for this purpose I may straightway refer to the decision of the Apex Court of our country in the case of Ashoka Marketing Ltd. and Anr. v. Punjab National Bank and Ors. - (1990) 4 SC 406. That apart it shall not be justified on my part to direct payment of compensation to the writ petitioner in the exercise of my power under Article 226 of the Constitution as it is now well settled that the remedy available under Article 226 of the Constitution is a

discretionary one. This view is being expressed relying on the Supreme Court decision in the case of Union of India and others Vs. M/s. Graphic Industries Co. and others, That being the position, I am of the view that no relief can be granted to the writ petitioner. It is made clear that this order shall not however, prevent the writ petitioner from approaching either the Civil Court or any other appropriate forum for redressal of the grievances which they have made in this writ application. I also make it clear that I have not gone into the merits of the disputes raised by the writ petitioner on the question as to whether the writ petitioner has become the owner of the lots for which the delivery of the said lots would be given to him or on the question as to whether the writ petitioners are entitled to compensation and refund of the money from the Customs Authority under the law. All those questions are kept open to be decided by the Civil Court or by any other appropriate forum if the writ petitioners are advised to approach the Civil Court or any other appropriate forum for this purpose.

8. Subject to this observation the writ application is dismissed. The interim order, if any, stands vacated.

9. There will be no order as to costs.

10. In view of the order passed on the writ application itself the application for vacating the interim order is disposed of accordingly

11. All parties concerned to act on the signed copy of this dictated order on the usual undertaking.

