(1990) 01 KAR CK 0018

In the Karnataka High Court

P. Ramadas Nayak APPELLANT

Vs

Karnataka State Financial Corporation and others RESPONDENT

Date of Decision : 11-01-1990

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

Citation : (1990) 68 CompCas 479 : (1990) 1 KarLJ 275

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : Chaitanya Hegde, for the Appellant; N.B. Bhat, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—This matter is identical in the matter of questions of law as well as questions of fact with the case of Laxminarayana Tile Works (W.P. No. 21766 of 1989 disposed of by me on January 4, 1990) [1990] 67 Comp Cas 559 (Kar).

2. I have held therein that the plenary powers given to the respondent, the State Financial Corporation (hereinafter referred to as "the Corporation") u/s 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"), are wide enough to enter possession and assume management of the industrial concern as well as transfer the right in the machinery or building hypothecated or mortgaged to it and realise the debt due. Admittedly, the petitioner is a defaulter in the matter of repayment of the loan borrowed by him. Despite the show-case notice issued more than once, he has not repaid the amount in full. Therefore, the Corporation has exercised its power u/s 29 of the Act and directed the auction sale of the property which it has taken possession of.

3. The power u/s 29 of the Act was exercised earlier in August, 1989. The petitioner never questioned the action of the Corporation. It is only when the respondent-Corporation published the notice of auction of the properties secured to it, which includes both machinery and buildings as evidenced by annexure A, the petitioner has approached this court, inter alia, contending that he should be

heard before the power u/s 29 of the Act is exercises by the Corporation.

4. It is difficult for me to see how a defaulter who admittedly is a defaulter in the matter of repayment of loan can claim a right of hearing when he has failed to discharge his obligations under the relevant agreement advancing the loan providing for payment in instalments and also after having hypothecated the machinery and mortgaged the building in favour of the Corporation. Undoubtedly, a person is visited with Civil consequences when his property is taken over and sold. But then, that is done only after notice to him and on his failure to comply with the terms of the notice. More than that an opportunity is not contemplated. To invoke the benefit of the rules of natural justice, a party must make out that he had a right to personal hearing. If the statute does not provide for personal hearing, any opportunity given for representation in writing or orally would meet adequately, the requirements of the rules of natural justice.

5. Section 29 of the Act does not provide for any such opportunity. It is only by virtue of judge-made law that the petitioner is entitled to some opportunity to make a representation. If that opportunity has been given, he cannot now complain that he was not heard before the sale by auction has been advertised.

6. The Corporation is funded by public funds in order to promote industrial activity and industrial productivity. Loans are given to entrepreneurs on certain terms and conditions. If there is a default in the repayment of the loan, the public money or fund so advanced must be recovered by a speedy method so that the funds of the Corporation are never so depleted as to make it ineffective to advance loans to other entrepreneurs who may seek loans. It is with that purpose in mind that the Legislature has given special powers to the Corporation in terms of section 29 and other provisions in the Act.

7. The Supreme Court in the case of Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, , had occasion to consider the validity of section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1965. While repelling the contention that resorting to recovery as arrears of land revenue was arbitrary and, therefore, violative of article 14 of the Constitution resulting in hostile discrimination, the Supreme Court, following the decision in an earlier case, namely, Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, , had observed as follows (at page 805 of AIR 1980 SC):

"This is not one of those case where discrimination is writ large on the fact of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, and ruled as follows (at page 805 of AIR 1980 SC):

"We are, therefore, of the view that section 3 of the Act which enables the State Government to recover the sums advanced under the circumstances mentioned therein as if they were arrears of land revenue cannot be held to be discriminatory and violative of article 14 of the Constitution.

8. Therefore, for the reasons I have given above and having regard to the deeming provision under sub-section (5) of section 29 of the Act, the Corporations, as owner thereof, is free to sell the properties in question.

9. The petition is, therefore, misconceived and it is rejected.

