**(1998) 11 P&H CK 0113**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 410 of 1997

Parkash Aggarwal APPELLANT

Vs

Haryana Financial Corporation and Another RESPONDENT

**Date of Decision :** 03-11-1998

**Acts Referred:**
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

**Citation :** AIR 1999 P&H 225 : (1999) 121 PLR 279 : (1999) 1 RCR(Civil) 184

**Hon'ble Judges :** V.K. Bali, J;B. Rai, J

**Bench :** Division Bench

**Advocate :** Sanjay Majithia, for the Appellant; Vikas Kumar and Rakesh Garg, for the Respondent

**Final Decision :** Dismissed

## Judgement

V.K. Bali, J.—Parkash Aggarwal, Managing Director of M/s. Malook Chand Vanaspati Products Limited, village Samshadpur Patti, Dabwali Road, Sirsa through present petition filed by him under Article 226 of the Constitution of India seeks issuance of writ in the nature of mandamus directing the Haryana Financial Corporation, respondent No. 1 herein, to get back possession of the land with building and machinery which were the properties/assets of Unit-II of M/s Malook Chand Vanaspati Products (P) Ltd., Sirsa, possession whereof was illegally delivered to respondent No. 2 M/s. Shree Ram Enterprises in pursuance of the auction held on December 6, 1996 as per advertisement dated November 18, 1996.

2. Brief facts, on which the reliefs as spelled out above is sought to rest reveal that in the year 1995-96 the petitioner promoted M/s. Malook Chand Vanaspati Products Dabwali Road, Sirsa with business of extraction of oil and oil cakes. It is the case of the petitioner that the said company obtained Sales Tax registration certificates, both under the Haryana General Sales Tax Act and the Central Sales Tax Act in 1989. A loan to the tune of Rs. 45.60 lacs was sanctioned by

respondent No. 1 but only an amount of Rs. 29.78 lacs was disbursed. It is also the case of the petitioner that subsequently in 1991 the company set up another unit of Solvent Extraction and obtained separate certificate of registration under both the State Act as well as the Central Act. The mortgage value of this unit was stated to be Rs. 1.60 crores. The loan was sanctioned for this unit to the tune of Rs. 75.60 lacs but loan actually disbursed was Rs. 68 lacs. In addition, there was charge of the State Bank of Indiaalso on the assets of the Units. Respondent No. I maintained two separate accounts with regard to the loans advanced to the aforesaid companies. In the year 1995 working of the aforesaid two units, i.e., Unit I and Unit II ran into rought weather and ultimately respondent No. 1 initiated proceedings u/s 29 of the State Financial Corporation Act, 1951 and on September 15, 1995 possession of the land measuring 15 kanals 14 marlas along with building constructed thereon as also lease rights in land measuring 5000 sq. ft. up to 30-11 -2035 as also machinery lying therein was taken by the said respondent. On November 18, 1996 respondent No. 1 initiated steps for the auctioning of the properties of company and issued an advertisement to the effect that the unit/assets would be auctioned at site on December 6, 1996 at 11-00 a.m. giving description of land measuring 14 marlas (lease rights on land measuring 500 sq. ft. up to 30-11 -2035) with building and machinery, Pursuant to advertisement, referred to above, auction was held on September 5, 1997. M/s. Globetex Limited was the highest auction bidder, However, respondent No. 2 subsequently gave higher bid to the Corporation and it accepted the same, which gave rise to litigation which went up to this Court. It is further the case of petitioner that re-bidding was done in which Globetex Limited was the highest bidder at Rs. 62 lacs. Respondent No. 2 went (o Hon''ble Supreme Court in SLP wherein in (he Hon''ble Supreme Court directed the Haryana Financial Corporation to accept Rs. 65 lacs from respondent No. 2 and hand-over the possession. It is pursuant to the orders passed by the Hon''ble Supreme Court that the possession was handed over to respondent No. 2 of both the units by respondent No. 1 on May 6, 1997. Petitioner came to know of the possession having been taken by respondent No. 2 of both the units, i.e., Unit I and Unit-II whereas auction notice was issued only with respect to Unit-I. It is also the case of petitioner that the respondent corporation has acted illegally in handing over the possession of both the units of the petitioner and it failed to give proper particulars of the unit or Units to be auctioned inasmuch as both the units were housed separately on apiece of land measuring 15 kanals 14 marlas whereas in the auction notice sale of 14 marlas of land had been reflected along with building and machinery. Petitioner was always left with an impression that only Unit-I was being put to auction and Unit-II was to be separately auctioned. It is only on handing over of "the possession that the petitioner learnt that the Corporation had handed over the possession of Unit-II i.e., Solvent Plant as well to respondent No. 2.

3. With these facts, when the writ was filed, the counsel for the petitioner at the motion stage contended that while auctioning the unit vide auction notice,

 

Annexure P-2 it was mentioned that only 14 marlas of land is to be auctioned whereas the total land that has been put to sale is 15 kanals 14 marlas and that in itself was sufficient to show that proper bid did not come. This contention of the learned counsel has been noted in our interim order dated January 13, 1998 while issuing notice of motion.

4. Pursuant to notice issued by this Court, separate written statements, one by respondent No. 1 and the other by respondent No. 2 have been filed. The cause of the petitioner has been vehemently opposed. Inasmuch as written statement filed on behalf of respondent No. 2 is more comprehensive and, therefore, even though the matter has been contested on identical grounds, we are mainly referring to the pleadings made in written statement filed on behalf of respondent No. 2 only. By way of preliminary objections, it has been pleaded that respondent No. 2 had purchased the property in dispute from respondent corporation for valuable consideration and they are bona fide purchasers. The respondent Corporation invited the sealed tenders for sale of the industrial unit of the petitioner. Respondent No. 2 in response to the said notice, submitted their tender for purchasing the said property. In the notice inviting tenders full details of the properties were given by the respondent Corporation which entered into negotiations with respondent No. 2 and their offer for Rs. 44 lacs for purchasing the property in dispute was accepted and the sale was confirmed in their favour by respondent Corporation on March 28, 1997. However, one M/s Globetex India Ltd. filed a writ petition in this Court. The said writ petition was decided on May 28 1997 and the sale in favour of respondent No. 2 was set aside. Thereafter, this Court itself received offers from the parties, namely, M/s Globetex India Ltd. and respondent No. 2. Respondent No. 2 accepted the offer of M/s Globetex India Ltd. for Rs. 62 lacs for the said unit. However, respondent No. 2 filed Civil Appeal No. 6131 of 1997 in the Hon''ble Supreme Court and the order dated May 28, 1997 passed by this Court was set aside and it was directed that respondent No. 2 would pay a sum of Rs. 65 lacs as the purchase price of the property in dispute. It is further the case of respondent No. 2 that when their offer for Rs. 44 lacs for purchasing this property was accepted by the respondent Corporation, an agreement to sell was executed between respondent Corporation and respondent No. 2 on May 6, 1997 and in pursuance of the said agreement, respondent No. 2 was handed over the possession of the property in dispute by respondent Corporation. The sale of the property in dispute in favour of respondent No. 2 has been confirmed up to the Supreme Court. It is then pleaded that there is no ambiguity or dispute over the description of the property as is crystal clear from the schedule of properties annexed with the agreement to sell, Annexure R2/3 and the handing-over of possession report. Annexure R2/4. Respondent No. 2 was handed over the possession of only those properties which had been agreed to be sold by respondent Corporation and description of properties was never disputed by the petitioner despite the fact that matter has already gone up to the Hon''ble Supreme Court of India. It is then pleaded that present writ is nothing but an abuse of the process of law. It has been filed by

 

the petitioner just to harass respondent No. 2 M/s Globetex India Ltd. was a sister concern of the petitioner and many partners in both the firms are same. Dinesh Chand, partner of M/s Globetex India Ltd. is the real brother of petitioner and he stood his guarantor in the loan case of HFC. Petitioner was also issued many notices by respondent corporation informing him that the Corporation was going to sell the properties of the petitioner and in case he has any buyer, he may advise him to participate in the auction/tender. These notices were issued to the petitioner on various dates such as 1-2-1996, 16-4-1996, 19-7-1996 and 3-9-1996. However, at that stage the petitioner never raised any dispute regarding description of the property nor he ever asked the respondent Corporation in this regard. Petitioner was also issued notice dated 14-1-1997 by respondent Corporation regarding sale of the properties for Rs. 30.10 lacs to M/s. Globetex India Ltd. and through this notice. Petitioner was given an opportunity to locate a better buyer for the property in dispute. However, the petitioner, never responded to the said notice nor he raised any dispute regarding the description of the properties to be sold. Respondent No. 2 is in possession of the same properties for which M/s. Globetex India Ltd. had sent an offer for Rs. 30./10 lacs and after that the matter went up to the Hon''ble Supreme Court in Civil Appeal No. 6131 of 1997. It is further pleaded that the petitioner is trying to mislead this Court and wants to take benefit of omission of words "15 kanals" in the auction notice in column No. 2. It is then pleaded that the property in dispute was purchased by respondent No. 2 on 28-3-1998 and possession was taken over on 6-5-1997. Petitioner failed to raise any objection for a considerable period of 8-10 months despite the fact that he is living in a house adjoining to the factory premises. When in 1986 petitioner raised loan for Unit-I he mortgaged 15 kanals 14 marlas of land and at that time the value of Unit No. 1 was not more than 15 lacs as that unit only consisted of Oil Expellers whereas in the advertisement for sale by the respondent Corporation property is described as Vanaspati Oil Mill which is established in Unit-II. Respondent No. 2 has invested about 30-40 lacs more in the industry and petitioner wants to purchase the same through pressure tactics by filing the present petition. It is then pleaded that the petitioner had filed a civil suit at Sirsa on December 29, 1997 titled as Himanshu Pvt. Ltd. v. Shree Ram Enterprises. In that suit petitioner had filed an affidavit admitting the fact that respondent No. 2 has purchased 15 kanals 14 marlas of land. A copy of the said affidavit has been annexed with the written statement as Annexure R2/7.

5. The contents of written statement on merits are no different than the one as have already been referred to above. Suffice it to say that the cause of the petitioner has been vehemently opposed and the plea raised in the writ with regard to there being two separate units and the sale being only of one, has been denied. In addition, it may be mentioned here that the respondent Corporation, while opposing the cause of the petitioner, has pleaded that M/s. Malook Chand Vanaspati Products is a limited company which has set up two manufacturing units and both the units were financed by the respondent

 

Corporation. The petitioner company mortgaged land building and machinery of both the units for availing loan for units I and II. Unit-I was engaged in Oil extraction with the help of expellers etc. whereas Unit-II is a solvent plant. The third loan was given for purchase of machinery and plant of solvent extraction. The land building of Units-land II is the same which was owned by M/s. Malook chand Vanaspati Products Ltd. The solvent extraction plant was housed in the same premises. First two loans were secured vide mortgage deed dated Februarys, 1986 and May 15, 1987 and the third loan was secured vide mortgage deed dated April 3,1992. The ownership rights in the land measuring 15 kanals 14 marlas along with building and lessee rights for 50 years w.e.f. 1-2-1985 to 30-11-2035 in the land measuring 5000 sq. ft. along with machinery situated at village Shamshabad Patti, Tehsil and Distt. Sirsa were mortgaged in favour of respondent Corporation. The petitioner committed defaults in repayment of the loan amount and consequently the entire loan was recalled by the respondent Corporation vide letter dated August, 11 1993 and petitioner company was given one month time to clear the entire loan amount but the petitioner company did not take care to make any payment and the respondent Corporation was left with no other alternative but to invoke the provisions of Section 29 of the State Financial Act and consequently notice u/s 29 of the said Act was sent vide letter dated September 17, 1993. Possession of the factory was taken on September 15, 1995 along with land measuring 15 kanals 14 marlas and building constructed thereon with lease rights for 50 years w.e.f. 1-2-1985 to 30-11-2035 in the land measuring 5000 sq. ft. The possession report was duly signed by the petitioner and at the time of taking over the possession, Shri Parkash Aggarwal, petitioner was present and he was well aware of the fact that respondent Corporation had taken over the possession of land measuring 15 kanals 14 marlas as also building and machinery. Thereafter, respondent Corporation invited tenders on December 13, 1995 for the sale of the said property vide advertisement in the newspaper. An information to this effect was also sent to the Directors/Guarantors including the petitioner vide letter dated December 1, 1995 vide which they were asked to bring a buyer. In the aforesaid . tender notice the land was clearly mentioned in the column of description of assets as land measuring 15 kanals 14 marlas with lease rights on the land measuring 5000 sq. ft. up to 30-11-2025 with building and machinery. The description of the properties was never disputed by the petitioner at any stage.

6. As mentioned above, the primary contention of learned counsel for the petitioner, when notice of motion was issued, was as has been referred to above, but the said contention, while arguing the case after the written statements and replication to the same, have been filed, was almost abandoned. What in turn is now being argued is that there were two separate units as would be evidenced from the fact that the same had been separately registered as different loans were obtained from the Haryana Financial Corporation but the proceedings culminating into purchase of the entire property by respondent No. 2 nowhere

 

clarified that two separate units were being sold, thus, resulting into bringing a wholly insufficient sale consideration whereby the property worth far more value has fetched a very low price, contends the learned counsel. Learned counsel for the Financial Corporation and respondent No. 2 have joined issues with the counsel representing the petitioner on his contention, as noted above.

7. We have heard learned counsel for the parties and with their assistance, examined the pleadings and accompanying documents. We are of the firm view that the petitioner has made a very crude attempt to mislead this Court. It further appears to us that the Company, after having obtained a huge loan and unable to repay the same, tried its very best to purchase the said unit when it was put to auction by way of tenders, on a throw-away price but when its effort proved abortive by virtue of the judgment rendered by the Supreme Court, wherein respondent No. 2 was permitted to purchase the property for an amount of Rs. 65 lacs, it devised a method of saving the property by filing this writ petition. It requires to be highlighted here that M/s. Globetex India Ltd. is a sister concern of the petitioner and many partners in both the firms are same. It is the positive case of respondent No. 2 that Dinesh Chand, partner in M/s. Globetex India Ltd. is the real brother of petitioner and he stood his guarantor in the loan case of H.F.C. The petitioner remained a silent spectator when M/s. Globetex India Ltd. was successful in purchasing the property by virtue of an order passed by this Court. No grouse was ever raised at any stage that M/s. Globetex Indian Ltd. was purchasing a property belonging to two units or for that matter, the advertisement did not properly describe the property and the land in which two units were located. It is absolutely clear to this Court that it suited the petitioner if the property was to be given to its sister concern M/s. Globetex India Ltd. and that too on an inadequate consideration. As mentioned above, petitioner thought of raising boggy of two units having been sold or the advertisement not correctly describing the land in which two units were located, only at a stage when it became apparent that neither the petitioner nor its company nor its sister concern would be able to retain this property. That apart, we do not find any substance in the contention of learned counsel for the petitioner that any prejudice has been caused to it inasmuch as the proceedings culminating into sale of property in favour of respondent No. 2 did not in terms mention that both Unit I and Unit II are to be sold. Both the units were admittedly located in the same premises and it is in pursuance of the loan obtained by both the units, which could not be repaid that the premise as such along with building and machinery came to be sold by way of inviting tenders. We find absolutely no merit in this petition and dismiss the same in limine leaving, however, the parties to bear their own costs.

 