(2015) 02 CHH CK 0034

In the Chhattisgarh High Court

Case No : Writ Petition No. 1906 of 2001

Pushpa Singh APPELLANT

Vs

State of Madhya Pradesh (Now Chhattisgarh) and Others RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 2, 3(1)(B)

Citation : AIR 2015 Chh 88

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Jitendra Pali, for the Appellant; Garry Mukhopadhyaya, Govt. Advt. and Vinod Deshmukh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J—Invoking extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, instant writ petition has been filed by the petitioner herein questioning the Recovery Certificate issued by the Tahsildar, respondent No. 2 herein under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 (hereinafter referred to as ''Adhiniyam, 1987'') and also order dated 31-8-2001 (Annexure P-2) passed by the Tahsildar, Raipur overruling the objection raised by the petitioner herein. The imperative facts required to be noticed for adjudication of this petition are as under:

"2.1 The respondent No. 3/Dena Bank sanctioned commercial loan of Rs. 2,85,000/- to the petitioner on 5-8-1988 for his business purpose on application filed by the petitioner herein.

2.2 Petitioner also mortgaged his property against the said loan i.e. residential plot admeasuring 690 sq.ft. situated in Patwari Halka No. 31/1, Plot No. 32/1, Telibandha, Raipur by depositing sale deed to respondent No. 3/Dena Bank.

2.3 The petitioner failed to make payment of the loan taken and deposited only Rs. 1,00,000/- against the said loan, thereafter, respondent No. 3/Bank initiated recovery proceedings against him under the provisions of Adhiniyam, 1987.

2.4 On an application filed by the respondent No. 3/Dena Bank for recovery of the said loan, respondent No. 2/Tahsildar heard the petitioner and rejected his objection by order dated 31-8-2001 (Annexure P-2) and issued Recovery Certificate (Annexure P-l) for recovery of Rs. 4,96,000/- along with interest."

2. Against the said Recovery Certificate issued under the Adhiniyam, 1987 and rules made thereunder, rejecting objection raised by the petitioner, instant writ petition has been filed by the petitioner herein stating inter alia that Adhiniyam, 1987 is not applicable to the petitioner as the loan was not advanced to the petitioner by a banking company under a State sponsored scheme or under social desirable scheme and remedy of the petitioner was to file suit for recovery before the jurisdictional Civil Court, therefore, Recovery Certificate issued by the Tahsildar, respondent No. 2 herein as well as order rejecting his objection deserves to be quashed.

3. On rule being issued, the State has filed return supporting the order passed by the Tahsildar, but no return has been filed by the respondent-Bank.

4. Shri Jitendra Pali, learned counsel for the petitioner would submit that Recovery Certificate issued by the Tahsildar under the Adhiniyam, 1988 and rules made thereunder is absolutely illegal as the loan granted to the petitioner is the commercial loan for business purpose after mortgaging property of petitioner''s-son, which is not covered under the provisions of S. 3(1)(B) of the Adhiniyam, 1987 and, as such, Certificate of Recovery issued and the entire proceedings initiated against the present petitioner deserves to be quashed.

5. Shri Garry Mukhopadhyaya, Govt. Advocate for the State/respondent Nos. 1 and 2 and Shri Vinod Deshmukh, counsel for respondent No. 3, while supporting the impugned Recovery Certificate issued by the Tahsildar, would submit that me action of the Tahsildar against the petitioner is strictly in accordance with law, which does not call for any interference.

6. I have heard learned counsel appearing for the parties and perused the material available with utmost circumspection.

7. M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 is an Act enacted by the Legislature to provide for the speedy recovery of certain classes of dues payable to the State Government, Government Companies and certain categories of Corporation and Banking Companies.

8. According to S. 2(b)(i) of the Adhiniyam, 1988, "Banking Company" means "a banking company as defined in the Banking Regulation Act, 1949."

9. It is not in dispute that Dena Bank is a banking company as defined in Banking Regulation Act, 1949.

10. Section 3(1)(B) of the Adhiniyam, 1988 provides that for recovery of certain dues as arrears of land revenue is recoverable under me Adhiniyam, 1987.

11. Section 2(7) of the Adhiniyam, 1988 defines as under:--

"State sponsored scheme" means a scheme sponsored by way of financial assistance by the State Government under which the State Government either:--

(i) advances money to a banking company or Government company for the purposes of disbursing loans, advances or grants or for the purposes of sale of goods on credit or hire-purchase; or

(ii) guarantees or agrees to guarantee the repayment of a loan, advance or grant or me payment of the price of goods sold on credit or hire purchase.

(i) "socially desirable scheme" means a scheme notified as such by the State Government under which a banking company advances money to any person by way of loan."

11A. A close and careful perusal of S. 3(1)(B) of the Adhiniyam, 1987 would show that recovery of dues can be made as arrears of land revenue where any person is a party to an agreement relating to the loan, advance or grant given to him or relating to payment of price of goods sold to him on credit or relating to hire-purchase of goods sold to him by a banking company or a Government company under a socially desirable scheme.

12. In exercise of, notification No. F.12-5-88-IF-IV, dated 5-11-1988, powers conferred by Cl. (i) of S. 2 of the Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, the State Government has declared the following Scheme as "Socially Desirable Scheme":--

(1) All Schemes under which any Banking Company or a Government Company advances loans for/to--

(a) xxxx

(b) Small scale, Cottage and Village Industries.

(c) xxxx

(i) Other borrowers in Priority Sectors, including--

1. Small road and water transport operators.

2. Retail traders.

3. Small Business operators.

4. Professionals and Self-employed persons.

5. Consumption loans for weaker sections.

6. Housing to weaker sections.

7. Educational loans to students."

13. A close and careful perusal of the record would show that respondent No. 3/ Dena Bank has advanced the loan of Rs. 2,85,000/- to the petitioner, who is proprietor of M/s. Ravi Wires Products, Raipur for the business purpose on 5-8-1988. In reply to the objection, respondent No. 3/Bank had clearly stated in Annexure P-4 that the petitioner is running a Small Scale Industry and, as such, in that capacity, loan was advanced in favour of the petitioner.

14. In this view of the matter, petitioner''s-loan for socially desirable scheme covered under the notification issued under CI. (i) S. 2 of the Adhiniyam, 1987. Thus, in the opinion of this Court, the Tahsildar has rightly held that Act of 1987 is applicable to the petitioner and has rightly rejected the objection raised by the petitioner and issued Recovery Certificate against the petitioner.

15. At this stage, counsel for the petitioner submits that after enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Debt Recovery Tribunal has exclusive jurisdiction of recovery of dues. The petitioner has neither raised such objection before the authority nor raised such points in this writ petition by making necessary pleading though it is pending consideration since 2001 and interim order is operating in his, favour since 4-10-2001; and further considering that petitioner is a person to whom loan of Rs. 2,85,000/- was granted by respondent on 5-8-1988, and he has not paid the loan amount to the Bank, I am not inclined to permit the petitioner to raise such a plea at this stage without any foundational fact in the writ petition. For the reasons mentioned hereinabove, flip petition being devoid of merit is liable to be and is hereby dismissed with cost of Rs. 2,000/-, which is payable to the respondent No. 3/Dena Bank.