(2009) 02 JH CK 0105

In the Jharkhand High Court

Case No : Writ Petition (C) No. 970 of 2003

Raj Kumar Chitlangia — APPELLANT

Vs

Bihar State Financial Corporation and Others — RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Bihar State Financial Corporations Act, 1951 — Section 29, 30
Constitution of India, 1950 — Article 14

Citation : AIR 2009 Jhar 100 : (2009) 57 BLJR 1683 : (2009) 2 JCR 302

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; M.S. Mittal and A.K. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition the petitioner prays for issuance of an appropriate writ, order or direction in the nature of mandamus commanding upon the respondents to settle the mortgage/hypothecated assets of M/s Mahalaxmi Chemical, Tipudana, Ranchi in favour of the petitioner who is its original promoter as because the respondents have taken a decision vide Memo No. 1159 dated 5.10.2001 to sell out the above firm in lieu of consideration amount fixed by the respondents themselves for other purchaser.

The petitioner further prays for issuance of a writ in the nature of certiorari for quashing the letter dated 6.11.2001 whereby and whereunder the petitioner has been informed that his request for the above mentioned settlement in his name has not been entertained by the respondents although the petitioner has offered the same consideration amount in which the respondents have decided to settle the firm in question in favour of other purchaser.

The petitioner further prays for a direction upon the respondents to settle the above firm''s assets in favour of the petitioner who is the original promoter and proprietor of the said firm which was taken over by the respondents in the year

1981 by virtue of a decision taken by them in the year 1979 and admittedly when the petitioner at present is agreeable to pay the same consideration amount which has been fixed by the respondents for the other purchasers.

The petitioner further prays for a direction upon the respondents not to discriminate the petitioner from that of other purchaser.

The petitioner further prays for a direction against the respondents restraining them from raising an illegal demand in case of petitioner only towards the sale of the unit namely Mahalaxmi Chemicals.

2. The main contention raised by the petitioner is that the action of the respondents is illegal, arbitrary and violative of Article 14 of the Constitution.

3. The facts, in brief, are set out as under:

On 27.4.1981 the respondents issued an order taking possession of the petitioner''s firm u/s 29 of the State Financial Corporation Act since the petitioner failed to liquidate the outstanding dues of the Corporation in terms of the agreement and the mortgaged assets of the petitioner was sold in favour of the private respondent No. 4. According to the petitioner they received a memo No. 1159 dated 5.10.2001 issued by respondent No. 2 vide which the petitioner came to know that his mortgaged/hypothecated assets have been approved for sale on the consideration amount of Rs. 3,00,000/-. The further submission on behalf of the petitioner is that he submitted his offer vide letter dated 10.10.2001 with regard to re-purchase of the said asset in question which was mechanically rejected vide letter dated 6.11.2001.

That M/s Maha Lakshmi Chemicals, Tupudana was sanctioned a term loan of Rs. 1.54 lacs on 31.3.1976 to set up an industrial unit at Tupudana for manufacture of processed minerals under the proprietorship of Shri Raj Kumar Chitlangia. The petitioner availed the total sanction loan and implemented the unit in full and went into the production.

That as per agreement executed by the petitioner, the repayment of loan was to begin from June, 78 and the loan was required to be duly repaid along with interest and other charges by December, 87 and the petitioner did not choose to make payment of even a single farthing of the principal amount and as such the Advisory Committee decided to take action u/s 29 and 30 of the State Financial Corporation Act for recovery of its dues.

That in compliance of the decision of the Advisory Committee, the loan was recalled by issuing legal notice u/s 30 of the State Financial Corporation Act and the petitioner instead of making payment of the dues of the corporation requested the corporation for additional loan and rehabilitation package by claiming the unit as sick, moreover, there was no reason to establish the fact that the unit was sick and as such it was a lame excuse for non-payment of the dues.

That the Corporation requested the petitioner several times to make payment of the outstanding dues but the petitioner did not choose to comply the same and as such the unit of the petitioner was taken over by the corporation in presence of the Magistrate on 10.8.1981 and the unit was advertised for sale.

That the petitioner filed CWJC No. 1567 of 1981(R) challenging notices issued to the petitioner under the provisions of Section 29 and 30 of the Bihar State Financial Corporation Act which was dismissed.

That it is stated that even after taking over of the assets, the petitioner was advised several times by the corporation to pay the dues of the Corporation, but the petitioner did not choose to comply the same and did not respond to it and ultimately the unit of the petitioner was advertised for auction sale and the same was auction sold on 5.10.2001 in favour of the respondent No. 4 and possession was duly given to the respondent No. 4 on initial payment as per the sale order.

4. The counsel for the respondents have submitted that after 21 days of issue of the sale order the purchaser deposited the initial payment and agreement with the Corporation was entered into and the unit was handed over to the purchaser respondent No. 4 on 5.12.2001. The counsel for the respondents further submit that the offer given by the petitioner to retain the asset was confined to the payment of consideration money to the sale and he did not choose to pay the difference between total balance outstanding and the consideration and as such the proposal of the petitioner was rightly rejected by the Corporation. It has further been submitted that they have acted in accordance with the terms and conditions of the agreement and also in accordance with the relevant provision of the State Financial Corporation Act. It has also been submitted by the respondent No. 1 to 3 that the initial Writ Petition bearing CWJC No. 1567 of 1981 was dismissed and thereafter the unit was taken over by the Corporation on 10.8.1981 and thus this writ petition was not maintainable.

5. I have considered the arguments and the pleadings of the parties concerned. I find that the private respondent No. 4 is a bonafide purchaser of the asset in question in an auction sale and he has already taken physical possession of the said unit to the knowledge of the parties including the petitioner in the year 2001 itself. It has also been submitted that the unit has already been handed over and he is depositing the installment of the balance amount to B.S.F.C. Accordingly he also submits that the entire action was taken in accordance with law and he was validly put in possession over the assets in question and that this writ petition was filed belatedly. It appears that this Hon''ble Court vide its interim order dated 26.3.2003 has passed the following interim direction:

In the meantime, if the petitioner deposits a sum of Rupees Three Lakhs with the Bihar State Financial Corporation, Patna, subject to final settlement of the dues, the Respondents will not sell the unit, nor hand over it to the Respondent No. 4, if the petitioner is in possession.

Further this order was modified vide order dated 8.4.2003 and the Hon''ble Court directed as under:

I direct the Bihar State Financial Corporation, Patna not to sell the unit or make any agreement with Respondent No. 4, if not yet made, until further orders, if the petitioner deposits a sum of Rs. 3 (three) Lakhs with the Bihar State Financial Corporation, Patna.

6. The admitted facts remains that the entire transaction was over and the agreement was entered into and the assets in question was also handed over in the year 2001 itself. It appears that the petitioner failed to act in terms of the approval sale letter/order dated 5.10.2001 in which he was given 21 days time to retain the unit on the stipulated terms and conditions. It was only after the petitioner failed to act as per the stipulated terms and conditions that the private respondent No. 4 was asked by the respondent Corporation to deposit the rest of the amount as per the approval of the sale order and it was in these background that the mortgaged/hypothetecated assets of the unit was put on sale/auction in accordance with Section 29 of the B.S.F.C. Act.

7. In the light of the aforesaid facts and circumstances it also becomes clear that the possession of the unit was taken over by the Corporation way back in 1981 itself and the writ petition filed at that point of time was also dismissed and the same has attained finality and even the opportunity given to the petitioner was not fully complied with. In any event the private respondent No. 4 has taken possession and has made huge investments and also in view of the fact that more than 28 years have passed, it will not be in the interest of justice to interfere in this matter at this stage.

This writ petition is accordingly dismissed.