(1995) 02 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 403 of 1995

Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:
Constitution of India, 1950 — Article 254
Rajasthan Sales Tax Act, 1954 — Section 11AAAA
State Financial Corporations Act, 1951 — Section 29(1), 29(4), 46(B)

Citation : AIR 1995 Raj 219 : (1996) 2 RLW 698 : (1995) 3 WLC 52 : (1995) 1 WLN 247

Hon'ble Judges : P.K. Palli, J;J.R. Chopra, J

Bench : Division Bench

Advocate : Vineet Kothari, for the Appellant; B.C. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

1. By this writ petition, the petitioner has sought the following reliefs :--

(i) Quash the impugned orders/letters of the respondent No. 2, Annexure 5, dt. 18-4-1994, 16-8-1994, Annexure 9 and Annexure 10, dt. 22-12-1994.

(ii) Hold that the respondents Nos. 1 and 2 are not entitled to attach/auction, sell or otherwise take over the possession of the industrial undertaking of the respondent No. 3, in violation of rights of the petitioner Corporation.

(iii) Hold that the Section 11AAAA of the RST Act does not override statutory powers of the petitioner-Corporation, under Sections 29/30 of the Act.

(iv) Restrain the respondents Nos. 1 and 2 from auctioning the property, in question.

(v) Set aside the sale or transfer, if any made by the respondent No. 2.

(vi) Direct the respondents Nos. 1 and 2 to deposit realization, if any, made by them by auction of property of the respondent No. 3 with the petitioner-Corporation.

(vii) Permit the petitioner-Corporation to take over the assets of the respondent No. 3 under Sections 29/30 of the S. F. C. Act, 1951.

(viii) Strike down the provisions of Section 11AAAA of the Act as ultra vires and further realize their loan by sale, auction or otherwise transfer of property, in question.

(ix) Award exemplary cost and compensation.

2. It was contended by Mr. Vineet Kothari, learned counsel appearing for the petitioner that keeping in view Article 4.1 of the Loan Agreement No. 1 (Annexure 1) read with Section 29(1) and Section 46(B) of the State Financial Corporations Act, 1951 (in short ''the Act of 1951''), a loan advanced by the Rajasthan State Industrial Development and Investment Corporation Ltd. (in short ''RIICO'') to the respondent-Company will have a first charge on his assets and, therefore, the contention of the Sales Tax Department that respondent-Department will have a first charge on the assets of the respondent-Company, cannot be sustained, because the provisions of the Act of 1951 will have an overriding effect over the provisions of the Rajasthan Sales Tax Act because the former happens to be the Central Act and the Rajasthan Sales Tax Act happens to be the State Act. In this respect it was contended by him that the agreement being statutory and as it has been provided u/s 46(B) of the Act of 1951 that the provisions of this Act and of any rules or orders made thereunder shall have an effect notwithstanding anything inconsistent therewith contained in any other law, this agreement should have an overriding effect over the provisions of Section 11AAAA of the Rajasthan Sales Tax Act, 1954. In this respect he has drawn our attention to Sub-section (4) of Section 29, which reads as follows:

"Section 29(4) -- Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and secondly in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto."

This provision only provides that if the assets of an industry concern are taken over by RIICO u/s 29(1) of the Act of 1951, then all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred will be recovered from the industry concerned from the money which is received by it by selling of the mortgaged property and in absence of any contract to the contrary the sale proceeds of the property of the industry will be held by the Corporation in trust to be applied firstly, in payment of such costs, charges and expenses and secondly in discharge of the debt due to the Financial Corporation. This does not create a first charge by the Corporation on the property of borrower. It only says that the property mortgaged with the Corporation can be taken over by it and it can be sold by it for discharge of his debt and in doing so, the proceeds of the sale will first be utilized in payment of the costs, charges etc. incurred in taking over the property of the industry and in selling it and thereafter the remaining property will be applied to the debt which has been taken by the debtor. This only provides the procedure for application of funds held in trust. It does not create any first charge as alleged by Mr. Kothari.

3. Section 46(B) only provides that the provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. When Section 29(4) does not start with any non obstante clause and does not make debt due to the Corporation from any borrower as a first charge on its assets and hence in absence of any inconsistency with provisions of Section 11AAAA of Rajasthan Sales Tax Act, the provisions of Section 46(B) will not come into play and they cannot override the effect of the provisions of Section 11AAAA of the Rajasthan Sales Tax Act.

4. Section 11AAAA reads as follows :

"Section 11AAAA.-- Liability under this Act to be the first charge -- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person."

This section starts with non obstante clause and makes the debts due to the Sales Tax Department from the borrower as a first charge as against all other dues and debts due from the borrower.

5. The agreement which is entered into between the Corporation and the borrower may be statutory agreement because it is executed under the provisions of the Act of 1951 but that only makes it justiciable by a court of law. Such an agreement cannot be categorised as an order or rule or provision of the Act, and, therefore, if anything which has been contained in the agreement, it will only bind the parties but it cannot take the place of or have efficacy as a statutory provision of law. Thus, contents of the bipartite agreement cannot have any overriding effect over the provisions of Section 11AAAA of the Rajasthan Sales Tax Act.

6. It was argued by Mr. Vineet Kothari, learned counsel for the petitioner that as per Article 254 of the Constitution, the Central Legislation will have precedence over the State Legislation. As the provisions of the Act of 1951, i.e., Section 29(4) read with Section 46(B) do not create any first charge of the dues of the Corporation (RIICO) as against dues of the Sales Tax Department and, hence this argument of the learned counsel for the petitioner has no force. It is true that Section 11AAAA of the Act No. 3 of 1990 has not received the assent of the

President. That hardly matters because that has to be taken into consideration only when there are parallel or identical provisions in the Central and the State Act and both of them start with non obstante clause and are inconsistent with each other. That conflict of provisions of two Acts is not present in this case and, therefore, that argument of the learned counsel has to be rejected for the reasons aforesaid.

7. A somewhat similar controversy came up for consideration before Hon''ble the Supreme Court in a recent decision rendered in the case of State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and Others, wherein their Lordships of the Supreme Court have observed as under :

"Para 10. In the present case, the section creates a first charge on the property, thus clearly giving priority to the statutory charge over all other charges on the property including a mortgagee. The submission, therefore, that the statutory first charge created by Section 11AAAA of the Rajasthan Sales Tax Act can operate only over the equity of redemption, cannot be accepted. The charge operates on the entire property of the dealer including the interest of the mortgagee therein.

Para 11. Looked at a little differently, the statute has created a first charge on the property of the dealer. What is meant by a "first charge"? Does it have precedence over an earlier mortgage? Now, as set out in Dattatreya Shanker Mote''s case (supra), a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage."

Thus, this provision in the Rajasthan Sales Tax Act has an overriding effect over all other provisions of all other Acts as regards the payment of debt due to Financial Corporation and in these circumstances this contention of Mr. Vineet Kothari that in view of the provisions of Section 29(4) read with Section 46(B) of the Act of 1951, the provisions of Section 11AAAA of the Rajasthan Sales Tax Act, 1954 will have no effect cannot be sustained and Section 11AAAA inserted by the Act of 1990 cannot be quashed as ultra vires provisions of the Act of 1951. Even if the property which was mortgaged with the Corporation has been attached by them and has been sold by them, they will have to keep the proceeds of the sale of that property in trust and the dues of the Sales Tax Department, i.e., tax, penalty, interest and any other sum will have to be recovered from the sale proceeds of the property as a first charge. Accordingly, if the Rajasthan Sales Tax Department has attached and is auctioning the property of the industry, i.e., the respondent No. 3 for realization of its dues, it has authority to do so. That action of the Sales Tax Department being in accordance with the provisions of Section 11AAAA of the Rajasthan Sales Tax Act and accordingly, Annexures 5, 9 and 10 do not deserve to be quashed.

8. This writ petition, therefore, has no force and it is hereby dismissed in limine

at the admission stage.

