(2000) 07 PAT CK 0072

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 2170 of 1998

Santu Lal Gupta APPELLANT

Vs

Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 05-07-2000

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

Citation : AIR 2000 Patna 300 : (2000) 48 BLJR 2137 : (2001) 1 PLJR 316

Hon'ble Judges : M.Y. Iqbal, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; A. Sahay, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Pursuant to the judgment and order of remand passed by a Division Bench in LPA No. 475/99 (R), I have heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondent Bihar State Financial Corporation.

2. In this writ application the petitioner has prayed for quashing the sale order dated 20-2-1998 as contained in Annexure 4 to the writ application, whereby the assets of the petitioner''s factory had been sold and the same was purchased by the respondent No. 4.

3. The petitioner, a physically handicapped person, was sanctioned a sum of Rs. 50,000/- by the respondent State Financial Corporation (hereinafter referred to as ''the Corporation''). Although the loan amount was sanctioned in 1980 but out of the sanctioned amount a sum of Rupees 9800/- was disbursed in 1981 and further a sum of Rs. 6000/- was disbursed in 1982. Accordingly, a total sum of Rs. 15,000/- as against the total sactioned amount of Rs. 50,000/- was disbursed by the Corporation.

4. The case of the petitioner is that because of the non-disbursement of the entire amount he could not start the unit and repeatedly made request to the

Corporation for disbursement of the amount. The Corporation did not disburse the entire sanctioned loan amount rather disbursed amount of Rs. 15,000/- multiplied by addition of interest and other charges and it reached to Rs. 1,41 lacs In the year 1995. The Corporation for the recovery of the said amount put the unit in auction in the year 1995. The petitioner, therefore, contended that the action of the respondent-Corporation in auctioning the unit is illegal and mala fide.

5. In the counter affidavit the respondent - Corporation took the stand that on the failure of the petitioner in payment of the alleged dues of the Corporation the unit was advertised for auction sale in the newspaper namely, Hindustan Times, Patna dated 14-12-1995 and it was ultimately auction sold in 1998 and a sale order was issued on 20-2-1998 in favour of the respondent No. 4. This Court in terms of the judgment and order dated 5-10-1999 allowed the writ application and quashed the sale order dated 20-2-1998 on the condition that the petitioner shall deposit a sum of Rs. 50,000/-within four weeks and thereafter rest of the amount shall be paid as per the calculation sheet that shall be served by the Corporation to the petitioner, For better appreciation the operative portion of the judgment and order is reproduced herein below :--

"Without going into further details of the matter the admitted position is that the advertisement for sale of the unit was issued on 14-12-1985 fixing 31-12-1985 for auction sale in presence of the promoter. Admittedly auction was not done on 31-12-1985. However, on the basis of aforesaid advertisement dated 14-12-1985 unit was sold to respondent No. 4 and sale order was issued on 20-2-1998. On this sole ground alone I am of the opinion that the entire procedure adopted by the Corporation in auction sale of the unit of the petitioner is vitiated in law. The contention of the petitioner that the unit was not auction sold rather it was sold to respondent No. 4 on negotiation has not been controverted by the respondent. On that ground also the sale order issued by the Corporation in favour of the respondent No. 4 is bad in law. Besides the above petitioner who Is handicapped person was disbursed only a sum of Rs. 15,000/- and for that amount the Unit worth rupees more than 6 lacs has been auction sold, is also not justified.

Having heard to the facts and circumstances of the case I allow this application and quashed the sale order dated 20-2-1998. This order shall be subject to the condition that the petitioner shall deposit a sum of Rs. 50,000/- within four weeks from today and thereafter the Corporation will serve the detailed calculation of amount which ultimately became due against the petitioner. The said calculation sheet shall be served upon the petitioner within one month from the dale of deposit of aforesaid amount of Rs. 50,000/-. Petitioner, if so advised can make representation to the Corporation if he will not satisfied with the said calculation.

It goes without saying that respondent No. 4 shall be entitled to get refund of the amount deposited by him with the respondent-Corporation and he may also claim interest if any, which shall be considered in accordance with law."

6. Although in first and second paragraph of the aforesaid Judgment and order, this Court took notice of the fact that the respondent-Corporation advertised for auction sale of the property in the year 1995 and finally sold it in the year 1998 but in the latter part of the order the year of auction notice was Inadvertantly typed as 1985 instead of 1995. Taking advantage of the typographical mistake in the order the respondent-Corporation filed LPA No. 475/99{R) assailing the judgment and order on the ground, inter alia, that the judgment and order suffers from grave error of record inasmuch as the auction notice was never Issued in 1985 rather it was issued in 1995 and unit was sold in 1998. The letters patent appeal was listed for admission on 6-3-2000 and the Division Bench of this Court passed the following order :--

"In this case, the unit was sold after three years of the advertisement. Though in terms of the advertisement, it was permissible on the part of the Corporation to go ahead with the sale, prima facie, it appears that when the offer was received after three years of the advertisement, the Corporation should have informed the unit holder of the offer so as to give him opportunity to retain the unit on the same terms. Be that as it may, sale has already been complete though possession has not been handed over to the purchaser, At this stage, for doing complete justice between the parties, we are prima facie of the view that the writ petitioner may be allowed to retain the unit but at the same time, the dues of the Corporation should be paid.

Counsel for the Corporation states that she will file up-to-date accounts as on 31-3-2000 by 13-3-2000. Put up this case on 15-3-2000.

Counsel for the respondents may take instruction in the meantime.

Till further order, the operation of the order of the learned Single Judge shall remain stayed."

7. The letters patent appeal was finally heard on 28-3-2000. Mr. A. Sahay, learned counsel for the Corporation assailed the Judgment and order passed by the learned Single Judge solely on the ground that advertisement for auction sale was issued by the Corporation in December, 1995 but the learned Single Judge without any averment in the writ petition, wrongly came to the conclusion that the sale advertisement was issued on 14-12-1985. For better appreciation the submission of Mr. A. Sahay, learned counsel appearing for the Corporation, which is reflected from the judgment dated 28-3-2000, is reproduced hereinbelow :--

"Mr. Sahay, learned counsel appearing on behalf of the appellant, has drawn our attention to sale notification dated 14th December, 1995, Annexure 1 to the L.P.A. which is annexure-R-4/A to the counter affidavit filed by the private-respondent No. 4 in the writ application and submits that this sale advertisement was made in December, 1995 but the learned Single Judge without any averment in the writ application came to the conclusion that the sale advertisement was dated 14-12-1985. His contention is that only on this premises the writ Court was of the view that the conduct of the appellant-Corporation was malafide as because the sale order was Issued on 20-2-1998 to respondent No. 4 after lapse of so many years."

8. The letters patent Court after hearing the submission of the counsel for the Corporation and the counsel for the petitioner allowed the letters patent appeal and remanded the matter for fresh consideration. The operative portion of the order passed by the letters patent Court is quoted hereinbelow :--

"Having heard the learned counsel for the parties and going through the relevant documents annexed in the writ application as well as in this appeal we are of the view that probably by mistaken notion of fact the learned Single Judge has allowed the writ application. From perusal of Annexure 1, the sale advertisement, we find that it was issued in December, 1985 as observed by the learned Single Judge. However, without going into the merits of the case we set aside the order of the learned Single Judge and remit the matter to him for fresh consideration after hearing the parties and going through the relevant records of the case.

In the result, this appeal is allowed. The order dated 5-10-1999 is set aside and the matter is remanded to the learned Single Judge for fresh consideration."

9. This is how this instant writ application was listed for fresh hearing before me and I have heard at length the counsel for the parties.

10. Mr. P.K. Prasad, learned counsel for the petitioner drawn my attention to advertisement notice which was dated 14th December, 1995 and submitted that by the said notice the Corporation invited tender in sealed cover and specific date was fixed as 30-12-1995 for opening of the tender in the Corporation Head Office in presence of the promoters. Learned counsel submitted that neither respondent No. 4 submitted tender nor it was open on 30-12-1095 rather the advertisement notice was not given effect to and without fresh advertisement and without any fresh notice the property was sold by the Corporation to respondent No. 4 by private negotiation and that too after three years i.e. in 1998. This part of the averment has not been denied by the counsel appearing for the Corporation. Mr. P.K. Prasad further drawn my attention to annexure 4 to the writ application, which is sale order issued by the Corporation in favour of respondent No. 4. Learned counsel submitted that without giving opportunity to the petitioner either to purchase the unit or to deposit the outstanding dues the Corporation decided to sell the unit by only accepting part of the amount from the respondent No. 4 and converting the rest of the amount into a loan re-payable in two years in 8 quarterly instalments.

11. On the other hand, Mr. A. Sahay, learned counsel for the Corporation, submitted that on the basis of advertisement notice dated 14th December, 1995 sale of the property in favour of the respondent No. 4 in 1998 is perfectly legal and valid. According to the learned counsel there was no need to issue a fresh auction notice and to invite persons to participate in the auction and that there is no illegality in the sale of the property by private negotiation with the respondent No. 4.1 do not find any force in the submission of Mr. Sahay, counsel for the

Corporation.

12. Admittedly, the advertisement for auction of the petitioner''s unit was issued on 31-12-1995 but no one submitted their tender or participated in the auction and consequently the unit could not be sold. Thereafter no fresh advertisement was made or any notice for auction sale of the petitioner''s unit was issued by the Corporation rather after three years the unit was sold to the respond ent No. 4 on negotiation and a sale order was Issued in favour of respondent No. 4. This fact has not been controverted by the Corporation. It is also not disputed that the petitioner is a handicapped person and was disbursed only a sum of Rs. 15,000/- and for that amount together with interest the unit of the petitioner worth more than Rs. 6.00 lacs has been sold in favour of respondent No. 4. I, therefore, strict my view that the action of the Corporation in selling the property of the petitioner in favour of the respondent No. 4 is illegal, arbitrary and unjustified.

13. From the judgment and order passed in the earlier writ application, as quoted hereinabove, it appears that this Court had quashed the sale order on the condition that the petitioner shall deposit a sum of Rs. 50,000/- within four weeks and thereafter the Corporation will serve the detailed calculation of the amount which ultimately became due against the petitioner. As noticed above, against the impugned judgment and order the respondent No. 4 did not prefer any appeal rather the appeal was preferred by the Corporation on technical ground that the judgment and order suffers from error of record. It has also not been disputed that before sale of the unit by the Corporation to respondent No. 4, possession of the mortgaged assets of the unit was not taken by the Corporation from the petitioner and the petitioner is still in possession of the unit and the mortgaged assets are lying therein.

14. In Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, the apex Court issued certain directions to the State Financial Corporation while exercising power u/s 29 of the State Financial Corporations Act. The direction, inter alia, says that every endeavour should be made to make the unit viable and be put on working condition, if it become unviable. The apex Court deprecated the action of the Corporation in selling the assets by private negotiation. Their Lordship held that sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that normal buyers may not be available. But, before taking such steps there should be advertisements not only in daily newspapers but business magazines and pepers also.

15. In Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, the Apex Court under exceptional circumstances held the sate by private negotiation valid. In that case when the mortgager Industrial concern failed in repayment of the loan despite being given a number of opportunities, the

Corporation after giving notice to the Mortgager passed an order for closure and took possession of the mortgaged property. The Corporation issued second advertisement after taking possession of the mortgaged assets for auction sale of the property and in response to that advertisement only one person made an offer to pay a priee of Rs. 14.26 lacs. However, on negotiation price was enhanced to Rs. 38.00 lacs. In that context the apex Court held that such sale by private negotiation cannot be said to be contrary to Mahesh Chandra''s case.

16. As noticed above, in the instant case advertisement was made in 1995 and in response to that no one came to offer any price. After about three years, without making fresh advertisement and without making any endeavour to make the unit viable the Corporation sold the unit to respondent No. 4 by private negotiation behind the back of the petitioner.

17. Nothing has been brought to my notice by the learned counsel appearing for the Corporation that there has been any sincere effort made by the respondent Corporation to make the unit viable and bring it in working condition. It is rather surprising that when a sum of Rs. 50,000/- was sanctioned to the petitioner, who is a handicapped person, only a sum of Rs. 15,000/- was disbursed and thereafter adding interest on that amount the Corporation did nothing for setting up a handicapped person in business by making the unit viable. On the other hand, inspite of the fact that the petitioner is a handicapped person, he did much efforts for making the unit viable and sufficient fund was invested, as a result of which the assets of the unit became worth of Rs. 6.00 lacs. As against the loan of Rs. 15,000/- the Corporation by adding interest decided to sell the unit at Rs. 1.41 lacs. Such conduct of the Corporation cannot be appreciated.

18. Having regard to the entire facts and circumstances of the ease, I am, therefore, of the opinion that the manner and procedure adopted by the corporation in issuing sale order in favour of the respondent No. 4 is absolutely illegal and violative of principle of natural justice.

19. In the result, this application is, therefore, allowed and the sale order dated 20-2-1998 Is quashed. This order shall be subject to the condition that the petitioner shall deposit a sum of Rs. 50,000/- within four weeks from today and thereafter the Corporation will serve the detailed calculation of the amount which ultimately found due against the petitioner. The said calculation sheet shall be served upon the petitioner within a month from the date of deposit of the aforesaid amount of Rs. 50,000/-. The petitioner may also make representation to the Corporation if he will not be satisfied with the said calculation. The rest of the amount ultimately found due against the petitioner shall be paid by him within six months thereafter. It goes without saying that the respondent No. 4 shall be entitled to get refund of the amount deposited by him with the Corporation and he may also claim interest, if any, which shall be considered by the Corporation in accordance with law.

