

(2005) 09 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No. 1020 of 2005 (M/B)

Shankar Rice Mill and Another

APPELLANT

Vs

Uttar Pradesh Finance Corporation and Others

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 29(1)

Citation : (2006) 1 UC 230

Hon'ble Judges : Cyriac Joseph, C.J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : S. Dhulia, sisted by Vipul Sharma, for the Appellant; Naresh Pant, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The Petitioners are aggrieved by the action taken by Respondents Nos. 1 and 2 u/s 29 of the State Financial Corporation Act, 1951 in respect of the industrial unit of the Petitioners.

2. u/s 29(1) of the said Act, where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concerns, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Finance Corporation. It is not disputed that the industrial concern of the Petitioners is under a liability to the first Respondent - U.P. Financial Corporation under an agreement. It is also not disputed that the said industrial concern has made default in repayment of the loan taken from the first Respondent. Therefore, the first Respondent had the power to take over the management or possession or both of the industrial concern, as well as the right

to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned by the industrial concern to the Financial Corporation.

3. Admittedly, Respondents Nos. 1 and 2 have taken the possession of the property mortgaged to the first Respondent. It is in respect of the same property that the impugned notice (Annexure 3) was issued by the second Respondent for its sale. Therefore, the impugned action of Respondent Nos. 1 and 2 cannot be said to be wrong or illegal and hence, the challenge against the action of Respondents Nos. 1 and 2, in taking possession of the mortgaged property and issuing notice for sale of the said property, is liable to be rejected.

4. Learned Counsel for the Petitioners submitted that the Petitioners apprehend that the property will be sold for a song. According to the counsel, even a reasonable price is not likely to be fetched in the sale conducted by Respondents Nos. 1 and 2 due to the manner in which the sale is being conducted. Learned Counsel suggests that the property may be sold in a more transparent manner. In the decision of the Hon'ble Supreme Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the power of the Financial Corporation to sell the property in Section 29 of the State Financial Corporation Act, 1951 has been recognised and the Court has observed that unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 are not desirable. Moreover, we are not specifically told what better transparent method is to be adopted by Respondents Nos. 1 and 2 in the sale of the mortgaged property. Therefore, we do not consider it proper to issue any direction which will place unnecessary restrictions on the exercise of power by Respondents Nos. 1 and 2 u/s 29.

5. Learned Counsel for the Petitioners further submitted that Respondents Nos. 1 and 2 should not have taken action u/s 29 when request for rehabilitation of the industrial unit is pending before the District Industries Officer, Udham Singh Nagar. The relevant Government Orders relating to the rehabilitation of such industrial units and to the impact of rehabilitation proceedings on the action u/s 29 of the State Financial Corporation Act, 1951 have not been placed on record. In the absence of those Government Orders, we are not in a position to examine whether the power of the State Financial Corporation u/s 29 is, in any way, circumscribed or inhibited by the rehabilitation proceedings. Therefore, we do not find any reason to restrain Respondents Nos. 1 and 2 from proceeding u/s 29 of the Act on the ground that rehabilitation proceedings are alleged to be pending.

6. It was stated by Mr. Naresh Pant, learned Counsel for Respondents Nos. 1 and 2 that the apprehension of the Petitioners that the mortgaged property will be sold for a very low price, is misplaced. It is stated that as per the procedure being followed by Respondents Nos. 1 and 2, the valuation of the unit for the purpose of sale and the highest bid offered by intending purchaser will be intimated to the Petitioners to enable them to offer a higher price or to bring any third party with a better offer. We are of the view that when such a procedure is being followed by Respondents Nos. 1 and 2, the Petitioners need not have any

apprehension that the property will be sold for an inadequate price. Once the Petitioners are intimated about the valuation of the unit and the highest price offered during the sale proceedings, the Petitioners will get an opportunity to object to the sale, if the price is very low and also to offer a higher price or to bring a third party who is willing to purchase the property for a higher price.

7. In the above circumstances, we do not find any valid reason to entertain this writ petition. Hence, the writ petition is dismissed.