

**(1996) 10 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 200 of 1995**

Shri Gamesh Industries

APPELLANT

Vs

H.P. Financial Corporation and Another

RESPONDENT

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**Date of Decision :** 03-10-1996

**Acts Referred:**

Contract Act, 1872 — Section 2, 29

**Citation :** (1997) 2 ShimLC 54

**Hon'ble Judges :** M. Srinivasan, C.J.; Kamlesh Sharma, J

**Bench :** Division Bench

**Advocate :** Ashutosh Burathoki, for the Appellant; Ramakant Sharma and Ajay Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M. Srinivasan, C.J.—The Petitioner in this case challenges the sale made by the 1st Respondent in favour of the 2nd Respondent of the factory premises of the unit M/s. Krishna Soya Products Private Ltd. and seeks mandamus on that basis. The factory premises belonged to M/s. Krishna Soya Products Private Ltd. who had borrowed certain money from the first Respondent-Corporation. As the amount was not repaid to the Corporation, it took steps under the provisions of the State Financial Corporation Act for bringing the unit to sale. The sale was advertised in the newspaper on 18th January, 1995. The last date for submission of the offer was 6th February, 1995. There were some offers made by the Petitioner and Ors. by which the Corporation was not satisfied and they called for negotiations to be held in their office on 1st March, 1995. On that date, the Petitioner made an offer for 15.60/- lacs while a third party made an offer of Rs 15.50/- lacs. The first Respondent-Corporation gave time to the owner of the unit for bringing better offers for the unit, if possible. The time limit was fixed as 21st March, 1995. As the owner could not bring better offer, the matter was called on 21-3-1995 for fresh negotiations. On that date, the Petitioner made an offer of Rs. 17/- lacs while the 2nd Respondent made an offer of Rs. 16.25/- lacs. On

that date itself, the 2nd Respondent made an improvement in his offer by offering Rs 17/- lacs by cash down payment. The Petitioner increased his offer to Rs 17.10/- lacs, but on instalment basis. The matter was again postponed for negotiations on 28-3-1995. On that date, the 2nd Respondent made an offer of Rs. 17.17/- lacs on instalment basis while at the same time, he revoked the earlier offer for Rs 17 lacs cash down. The Petitioner herein made an offer of Rs 17.10/- lacs. The negotiations did not conclude and the matter was called again on 29-3-1995. On that date, the Petitioner raised his offer to Rs. 17.20/- lacs and gave a letter to that effect in Annexure P-4. In the letter, there is no reference whatever to the mode of payment. The only matter referred to in the letter was the revision of the amount from Rs 17.10/- to 17.20/- lacs. In the circumstances, it was considered only to be an offer for payment of Rs. 17.20/- lacs on instalment basis. But on the same day at 5.00 PM. the offer of 2nd Respondent for Rs 17/- lacs on cash down payment basis was accepted and the sale was effected in his favour. The possession of the machinery was given to him on 30-3-1995. This writ petition was filed on 30-3-1995, and it came up for orders only on 31-3-1995. On that date, the court passed an interim order in CMP No. 442/95 that the sale shall not be confirmed, if not already confirmed and that the Respondents shall not re-sale the unit without prior permission of the Court. The court also recorded the statement of learned Counsel for the Corporation that the sale was confirmed on 29th March, 1995 and the possession delivered on 30th March, 1995. The writ petition was later admitted on 25th June, 1996. The interim order was modified to the extent that the confirmation of the sale and delivery of possession of the unit in question to Respondent No. 2 was held subject to final decision of the writ petition. On making a representation by counsel, we directed this writ petition to be posted for hearing and disposal on 1-10-1996. The matter was adjourned from 1-10-1996 to this date, namely, 3-10-1996.

2. It may be pointed out at the outset that the Petitioner is not the owner of the unit, which was sold by the first Respondent-Corporation and the Petitioner is only rival contender for purchasing the unit. Secondly, it should be borne in mind that the property dealt with by the first Respondent Corporation is not a public property, but it is only a private property of a third party, namely. M/s Krishna Soya Products Private Ltd. and the third party is not in any way aggrieved by the sale in favour of the 2nd Respondent herein by the 1st Respondent. Bearing these facts in mind, if we appreciate the question that is raised by the Petitioner, the position would be very clear that the Petitioner has no locus standi to challenge the sale by the first Respondent to the 2nd Respondent. No doubt, the 1st Respondent is holding the property as a trustee being a State's instrumentality but that is only vit-a-vis the owner of the property. When the owner of the property is not aggrieved by the sale held by the 1st Respondent, it is not open to a third party to challenge that sale on the ground that the 1st Respondent has sold for a low price or has not acted in the best interest of the owner of the property or has not acted as a trustee should act. Learned Counsel

for the Petitioner contends that the first Respondent should have dealt with the matter as if it is the owner of the property when proceeding to hold the sale. This contention is not acceptable inasmuch as the owner is not the person, who has contested the sale before us.

3. The first contention is that on 24-3-1995, the Petitioner had made a higher offer than the 2nd Respondent as the offer was for Rs. 17.10/- lacs. But it should not be forgotten that on that date, the offer of the 2nd Respondent was for payment in cash of the entire amount, whereas the Petitioner made an offer only for payment in instalments. Again on 28-3-1995, no doubt, the 2nd Respondent revoked his earlier offer of paying in cash Rs. 17/- lacs, but he made a higher offer of Rs 17.17/- lacs, which was higher than that of the Petitioner. Hence, on 28-3-1995, the option before the 1st Respondent was either to accept the higher offer of Rs 17.17/- lacs made by the 2nd Respondent or to call for fresh negotiations. In the course of fresh negotiations held on 29-3-1995, the 2nd Respondent had offered to pay in cash the entire amount of Rs. 17/- lacs and that had been accepted.

4. It is contended that on 29-3-1995, the Petitioner had made an offer for a higher amount of Rs. 17.20/- lacs and an opportunity should have been given by the 1st Respondent to the Petitioner to ascertain whether he was willing to pay in cash the entire amount or he was insisting upon payment in instalments. This contention has no force whatever inasmuch as Annexure P-4 is available before us in black and white. The only offer made by the Petitioner in Annexure P-4 was that he would increase the amount of price from Rs. 17.10/- to Rs. 17.20/- lacs. He never gave an indication in that letter that he would pay in cash in one instalment and not insist upon the instalments and the other conditions, which he had already proposed in his offer dated 24-3-1996. In such circumstances, it cannot be contended by the Petitioner that the action of the 1st Respondent was in any way mala fide or that the 1st Respondent has acted in collusion with the 2nd Respondent.

5. Learned Counsel for the Petitioner has placed reliance on the judgment of the Supreme Court in *Ram and Shyam Company Vs. State of Haryana and Others*, That was a case in which the mining lease was granted to a person, who wrote a letter to the Chief Minister by making allegations against the higher bidder at auction. No opportunity was given to the highest bidder by the Chief Minister, but the sale to the highest bidder was not confirmed. The court held that the action of the Government was mala fide and it was struck down. The crucial fact before the Bench was that it was a public property. It was a case of mining lease and it was not a case of private property being dealt with by the Government. Apart from those facts, the report clearly shows malafides on the part of the Government. That ruling cannot help the Petitioner herein.

6. Our attention is then drawn to a judgment of the Supreme Court in *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, The very first sentence in the passage on which reliance is placed by the Petitioner reads as follows:

The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders.

7. The court proceeded to set out certain guidelines with regard to the dealing with the property of the State or its instrumentality. None of the observations would apply in this case, as those observations cannot be divorced from the fact that the property dealt with was a public property.

8. Our attention is also drawn to the judgment of the Supreme Court in *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, The proposition held by the Supreme Court in that case was that an administrative action of the State should be informed by reason and any action which was not based on proper reason is subject to judicial review and it can be on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. The ruling has no relevance in the present case, as this is a case of private property being sold by the Corporation, which was in the position of a mortgagee.

9. It is also submitted by learned Counsel for the Petitioner that under the provisions of Section 2 of the Contract Act, a revoked offer cannot be accepted. The provisions of the section will have no application in this case, as the question before the 1st Respondent was to choose which is in the best interest of the parties concerned in the circumstances. The offer of the petitioner remained at that stage an offer and the offer of the 2nd Respondent was also only an offer, but he had made a different offer on the footing that if he was permitted to make payments in instalments, he would pay a higher amount than the amount offered by the Petitioner. At that stage, he revoked the earlier offer of payment of Rs. 17 lacs by cash down payment. That was undoubtedly a conditional revocation and it was not a question of revoking an offer finally. Then the first Respondent thought fit to accept the offer of the 2nd Respondent to pay the entire amount of Rs 17/- lacs in cash.

10. Learned Counsel has drawn our attention to the judgment of the Supreme Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, It should not be forgotten that the case was at the instance of the owner of the unit in question. It was the owner of the unit, who had challenged the action of the Corporation, but the Supreme Court after pointing out that the Corporation and its officers stood in the position of a trustee by stepping into the shoes of the owner of the property held they should act in a reasonable manner as if they were dealing with their own property. The observations made by the Supreme Court and the guidelines laid down therein cannot be taken out of the context and made use of in the present case.

11. In fact, the Supreme Court had occasion to consider the various guidelines laid down in *Mahesh Chandra's* case in a recent judgment, namely, *Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others*, The Court held categorically that in the matter of sale by the State

Financial Corporation in exercise of the powers conferred on it u/s 29 of the Act, the scope of judicial review is confined to two situations, namely, (i) whether there is a statutory violation on the part of the State Financial Corporation or (ii) whether the State Financial Corporation acts unfairly or un-reasonably. It should be noted here that the case in Karnataka State Financial Corporation was also initiated by the owner. In spite of that the court said that the judicial review was available only on two grounds. In this case though it is contended that the Corporation has acted unfairly or unreasonably, it is not the contention of the owner of the unit but it is only the contention of the rival contender. In the circumstances of the case, it was quite reasonable for the Corporation to accept an offer of payment in cash of Rs. 17/- lacs in one lump as against the offer by a person to pay Rs. 17.20/- lacs or Rs. 17.10/- lacs in instalments. Hence, we do not find anything unreasonable in the action of the 1st Respondent in accepting the offer made by 2nd Respondent. The sale in favour of the 2nd Respondent is not vitiated by any circumstance pointed out by the judgment of the Supreme Court.

12. In the result, the writ petition fails and is dismissed. There will be no order as to costs. Interim order is vacated.