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**(2010) 09 PAT CK 0124**  
**In the Patna High Court**  
**Case No : CWJC No. 3561 of 2001**

Shyam Cold Storage

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

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**Date of Decision :** 28-09-2010

**Acts Referred:**

**Citation :** (2010) 09 PAT CK 0124

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## Judgement

R.K. Datta, J.—Heard learned Counsel for the Petitioners, learned Counsel for the Bihar State Financial Corporation and learned Counsel for the Respondent Nos. 5(a) to 5(d).

2. The Petitioners had filed the writ petition for quashing the order contained in Memo No. 468 dated 29.11.2000 of the Managing Director, Bihar State Financial Corporation as also the earlier order contained in letter dated 17.7.1997 by which sale of the mortgaged assets of the Petitioner Cold Storage has been sought to be made in favour of the original Respondent No. 5 Shri Gauri Shankar Sinha. They further seek quashing of the order dated 1.2.2001 issued by the Assistant General Manager (Z-1), Bihar State Financial Corporation conveying the decision of the Managing Director authorizing the Branch Manager, Bihar State Financial Corporation to enter upon the premises of the Petitioner Cold Storage and take possession of the mortgaged/hypothecated assets of the Petitioner Cold Storage and also for restraining the Respondents from taking forceful possession of the Cold Storage in question and also executing any registered document transferring the assets of the Petitioner Cold Storage in favour of original Respondent No. 5.

3. It is, however, the admitted position that the possession of the Cold Storage has already been taken over by the Respondent Bihar State Financial Corporation (B.S.F.C.) and handed over to the original Respondent No. 5, who is now represented by his legal representatives.

4. The Petitioners had filed I.A. No. 5375 of 2006 in which an amendment was sought to the prayer made in the writ petition seeking a direction upon the

Respondent B.S.F.C. to permit the Petitioner to avail full benefit under part-A of the One Time Settlement (OTS) Scheme, 2006 as offered by the B.S.F.C. for the purposes of clearing its dues and for continuing with the possession of the mortgaged assets.

Learned Counsel for the B.S.F.C. submits with respect to the said prayer for amendment as sought and pressed by learned Counsel for the Petitioners, that at present O.T.S. Scheme, 2009 has been floated by the B.S.F.C. on 17.8.2008 which shall remain in force till 17.11.2010 and thus it would be open to the Petitioners to apply under the said Scheme under the appropriate category in terms of the decision of this Court in this writ petition regarding the prayer made with respect to the quashing of the sale order.

The prayer for amendment is, accordingly, disposed of in terms of the aforesaid statement made on behalf of the B.S.F.C. holding that it shall be open to the Petitioners to apply under the O.T.S. Scheme, 2009 in the applicable category in terms of the decision of this Court.

I.A. No. 5375 of 2006 is, accordingly, disposed of.

5. The facts of this case are that the Petitioner M/s. Shyam Cold Storage established in 1974 as a partnership venture was sanctioned and disbursed a loan of Rs. 3.50 lacs in the year 1974 by the Respondent B.S.F.C. On account of certain setback in its business it again filed for sanction of further amount of Rs. 8.64 lacs on 25.11.1980 but the amount disbursed against the same was to the extent of Rs. 3,98 lacs only. It appears that the State Government in the Agriculture Department had constituted a Committee in the year 1981 with respect to the Cold Storages operating in the State and certain recommendations had been made by the said Committee for giving benefits to the Cold Storages and also made specific recommendation with respect to the Petitioner Cold Storage including the giving of fresh HT connection of the Bihar State Electricity Board (B.S.E.B.) and the payment of balance amount of Rs. 5.11 lacs against the sanctioned loan by the B.S.F.C. It further recommended the Government to give working capital loan as also subsidy and for sharing of the losses of the Cold Storages. However, no steps were taken pursuant to the said recommendations and the Petitioner Cold Storage remained non-functional.

6. B.S.F.C. in the meantime advertised the unit for sale u/s 29 of the State Financial Corporations Act on 17.7.1987 and on various other dates. The Petitioner also challenged the said action by filing writ petition being C.W.J.C. No. 3331 of 1987 in this Court. It appears that other sale notices were published thereafter and lastly it was published on 30.7.1995. In the said sale notice the amount of balance outstanding as on 30.6.1995 was shown as Rs. 48.58 lacs and the reserve price was fixed at Rs. 28.65 lacs. The said tender notice for sale provided that the offer submitted would be opened in the Corporation Head Office at 11 A.M. on 16.8.1995 but if no acceptable tender is received on the above date the tender shall continue to be received against the said

advertisement in the concerned Branch Office or Head Office until the tender is accepted by the Corporation or dues of the Corporation are liquidated by the promoter. Pursuant to the said advertisement one Shri Shailendra Kumar and the original Respondent No. 5 made separate offers for Rs. 4.50 lacs and Rs. 7 lacs respectively which was rejected by the Tender Committee and the Managing Director of BSFC. Two years later they raised their offer to Rs. 9.5 lacs and Rs. 16 lacs respectively on negotiation entered into by the B.S.F.C. with them and ultimately the impugned order dated 17.7.1997 was issued for sale of the mortgaged assets of the Petitioner Cold Storage in favour of original Respondent No. 5 Shri Gauri Shankar Sinha. The sale order provided that out of the consideration money of Rs. 16 lacs, 25% of the amount shall be paid as initial cash down within 21 days from the date of issue of the sale order and the balance 75% amount of Rs. 12 lacs was converted into loan repayable in a period of five years in 20 quarterly instalments of Rs. 60,000/- each.. It was further provided that within 21 days from the date of issue of the sale order if the unit is not taken by the original promoter, the purchaser will make payment of the consideration money. Paragraph-7 of the order further provided that difference between balance outstanding and the consideration money as on 22nd day of the issue of the sale order and interest at the rate of 19% with 2% penal interest till date of its realization of the same will be realized from the original promoter by invoking provisions of personal guarantee bond or the PDR Act. It was further stated that the sale order was valid for a period of two months only and thereafter the sale shall not materialize. The order is stated to have been issued by the Managing Director in anticipation of the Executive Committee of the Corporation.

7. Copy of the aforesaid sale order was also forwarded to Shri Ramanand Gadia, partner of the Petitioner firm stating that if he was interested to retain the unit on matching terms and conditions he may do so by submitting his acceptance alongwith matching payment plan as mentioned in the sale order at the Motihari Branch Office within 21 days from the date of issue of the sale notice. Pursuant to the same the Petitioner by its letter dated 31.7.1997 accepted the terms and conditions as mentioned in the sale order dated 17.7.1997 stating therein that it intended to retain the mortgaged property and also deposited a sum of Rs. 4 lacs by Bank Draft. Thereafter the Branch Manager, B.S.F.C. Motihari by his letter dated 8.9.1997 referring to the letter dated 31.7.1997 stated that he was supposed to deposit an amount of Rs. 43,65,000/- as on 31.7.1997 alongwith interest at the rate of 19% with 2% penal interest as mentioned in Clause 7 of the letter dated 17.7.1997 but he had failed to submit the payment plan for the same and advised him to submit the payment plan of balance amount of Rs. 43,65,500/- as on 31.7.1997 within ten days from the date of the letter failing which it would be presumed that he was no longer interested to retain the mortgaged assets and, as such, the sale will stand materialized in favour of Shri Gauri Shankar Sinha and the amount deposited by him shall be adjusted against the balance amount. The Petitioner protested by sending legal notice dated

17.9.1997 mentioning that it had complied with the conditions put forth in the order dated 17.7.1997 by depositing an amount of Rs. 4 lacs within the prescribed period and also given an offer in writing that it was prepared to offer the remaining amount of Rs. 12 lacs under the same schedule of payment as was offered to the original Respondent No. 5 and that the direction to deposit an amount of Rs. 43,65,500/- was wholly uncalled for and arbitrary and the matching terms and conditions would only mean payment of Rs. 16 lacs for the present. It had also been requested in the legal notice that the Corporation should permit the Petitioner to sell the vacant piece of land apart from the area on which the Cold Storage was situated so that it could repay the entire loan amount. The Corporation replied to the legal notice taking a similar stand as in the letter dated 8.9.1997. The B.S.F.C. thereafter treated that the Petitioner had failed to make a matching offer.

8. The original Respondent No. 5 by his letter dated 21.10.1997 to the Managing Director, B.S.F.C. demanded return of Rs. 75,000/- which was deposited for the purchase of the unit stating that he was leaving security money Rs. 20,000/- which was deposited on 20.10.1997 and after finalization of the sale he will deposit Rs. 4 lacs in terms of the sale order dated 17.7.1997. The sum of Rs. 75,000/- was returned to him by cheque dated 21.10.1997.

9. The Petitioner had earlier filed C.W.J.C. No. 3331 of 1987 wherein initially notice had been issued and the same had remained pending and a direction was also issued in the said case in the year 1998 to the Petitioners to get in touch with the Managing Director, BSFC and to explain to him the manner in which they wished to liquidate the outstanding dues and the Managing Director was also directed to consider the request of the Petitioners within five days. The Petitioners made their offer on 14.8.1998 through letter of their learned Counsel. The Petitioners reiterated their intention to clear the balance dues of Rs. 12 lacs and also the remaining dues if they were permitted to sell the vacant land and the sale proceeds could be deposited with the BSFC. It was also their stand that they were prepared to accept the matching settlement offer. However, no response came from the Managing Director, BSFC which fact has also been placed on the record of the pending writ petition. Thereafter the writ petition was dismissed for default on 12.7.2000 for which restoration application was filed being MJC No. 2467 of 2000 which was pending at the time of filing of this writ petition. After dismissal for default of the earlier writ petition the Managing Director passed the impugned order contained in Memo No. 468 dated 29.11.2000 effecting sale of the mortgaged assets of the Petitioner in favour of original Respondent No. 5. It was stated in the said impugned sale order that after the disposal of the earlier writ petition on 12.7.2000 fresh negotiation was entered into with Respondent No. 5 and on considering the request the rate of interest on the balance outstanding was reduced from 20% to 18% and the first instalment of Rs. 60,000/- was also payable after completion of six months from the execution of the sale agreement or the handover of the assets whichever is earlier. The said order was not communicated to the Petitioner. Thereafter the

order dated 24.1.2001 was passed by the Managing Director for taking over the possession of the assets of the Petitioner. Upon steps being taken for taking over possession the Petitioner learnt about the two impugned orders and filed the present writ petition.

10. On 5.3.2001 MJC No. 2467 of 2000 was allowed and C.W.J.C. No. 3331 of 1987 was restored to its original file. Subsequently when the said writ petition came up before a Division Bench of this Court this Court held that in view of the challenge to the sale orders of 1997 and 2000 in the present writ petition the said writ application had become infructuous and dismissed the same with the observation that all the contentions which have been raised in that writ petition shall be available in the present writ application.

11. Learned Counsel for the Petitioner submits that the sale order dated 17.7.1997 was vitiated by arbitrariness and mala fide as the same has been made without advertising the assets for sale on the basis of the negotiation made with the original Respondent No. 5. The claim that it was on the basis of the continuous advertisement of 1995, according to learned Counsel, has no legs to stand in view of the fact that the earlier offer made by Respondent No. 5 had already been rejected by the Corporation.

12. It is further submitted that the sale order dated 17.7.1997 had been passed by the Managing Director without any authority as only the Executive Committee of the Respondent Corporation is empowered to make the sale. The order having been passed in anticipation of the approval of the Executive Committee cannot be held to be within the jurisdiction of the Managing Director and until the same was accepted and approved by the Executive Committee it could not take effect.

13. Learned Counsel further assails the principle of continuous advertisement as made in the advertisement dated 30.7.1995 and submits that the same is bad and illegal. In support of the same he relies upon a decision of learned Single Judge of this Court in the case of Santu Lal Gupta Vs. Bihar State Financial Corporation and Others, in paragraphs 11 & 12 of which it has been held as follows:

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. I 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 Respondent 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.

14. The further submission of learned Counsel is that even with respect to the sale order dated 17.7.1997 a matching offer was made to the Petitioner to accept the same on the same terms and conditions as offered to the Respondent No. 5 within 21 days and the Petitioner complied the same within two weeks through his letter dated 31.7.1997 to the BSFC and also by enclosing a Demand Draft of Rs. 4 lacs towards payment of 25% of the sale price as per the sale order and accepting to pay the balance amount in terms thereof. However, in a most collusive and mala fide manner the Respondent authorities created a situation stating that the matching offer exists upon payment of the entire outstanding amount of Rs. 43,65,500/- within ten days, contrary to the terms and conditions of the sale order dated 17.7.1997 and when the Petitioner resisted the same pointing out the terms and conditions of the sale order, it was treated by the Respondent BSFC that it had failed to meet the matching offer and holding that it was not entitled to the benefit of the same. It is stated by learned Counsel that in terms of paragraph-7 of the sale order the difference between the balance outstanding and the consideration money was to be realized from the original promoter (i.e., the Petitioners) by invoking provisions of personal guarantee bond or PDR Act. It is urged by learned Counsel that only such a condition could be considered as reasonable and not a condition imposed upon the original promoter while making a matching offer to make payment of the balance amount. The said deliberate wrong action of the Respondent authorities would only create a situation that no matching offer can ever be made except upon payment of the entire dues which cannot be said to be a matching offer nor it is required by the original sale order dated 21.10.1997.

15. It is also the stand of learned Counsel that the Respondent No. 5 had withdrawn an amount of Rs. 75,000/- on 21.10.1997 and once the same had been withdrawn the sale order dated 29.11.2000 could not have been issued in his favour as it amounted to withdrawal of the offer made by him. In that circumstance, it was not open to the authorities to have issued the second sale order in favour of Respondent No. 5.

16. It is urged by learned Counsel that the second sale order is all the more bad and illegal not only for the reason that the person concerned had withdrawn the earlier offer by withdrawing the initial amount of Rs. 75,000/- towards the offer but also because it was finalised by negotiation without re-advertising more than three and a half years after the lapse of the original sale order. It is also

contended by learned Counsel that the order is completely without jurisdiction as the same had been passed by the Managing Director without any fresh approval from the Executive Committee and no such approval was ever granted.

17. It is also the contention of learned Counsel that the collusive and mala fide nature of the action of the officials of the Respondent Corporation is all the more evident from the fact that the sale orders have been made in favour of Respondent No. 5 who as a loanee in respect of M/s. Shankar Rerolling Mills was already a defaulter to the tune of more than Rs. 1 crore which fact has been asserted in the writ petition and not denied either by the Respondent Corporation or the Respondent No. 5. This shows the gross manipulation that has been made in order to show undue favour towards the Respondent No. 5 by the authorities of the Respondent Corporation.

18. Learned Counsel also submits that the entire exercise of making the sale that too by private negotiation is bad and illegal also for the reason that no valuation report of an independent valuer was taken before the sale had been made, that too when the Petitioner had repeatedly written to the authorities of the Corporation that the value of the vacant land itself was of such an extent that if it was permitted to sell the vacant land then the entire outstanding dues of the Corporation could be liquidated. In such circumstances, learned Counsel submits that the entire action of the Respondent authorities was to provide undue benefit to the Respondent No. 5 by selling assets worth 4 to 5 times more to him at a price of Rs. 16 lacs. In this regard learned Counsel submits that the so-called valuation report submitted by the Branch Manager by letter dated 11.12.1996 cannot be considered as a valuation report in the eye of law as the same had been made on the basis not of any independent authorized valuer.

19. Learned Counsel also assails the subsequent sale order dated 29.11.2000 on the ground that it has changed the terms and conditions of the earlier sale order with respect to the rate of interest as also the time for payment of the first instalment without obtaining any approval of the Executive Committee.

20. It is also the stand of learned Counsel that the Petitioner at all times applied for the benefit of various OTS Schemes floated by the Respondent Corporation in the years 2004 and 2006 but the same was denied to it and for which the relief was sought by filing amendment petitions before this Court.

21. In support of the aforesaid stand learned Counsel relies upon a decision of the Supreme Court in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, in paragraphs 17, 18, 19 & 21 of which, it has been held as follows:

17. We are of the view that the sale effected in favour of Respondent No. 6 cannot be sustained. It is axiomatic that the statutory powers vested in the State Financial Corporation under the State Financial Corporation Act, must be exercised bonafide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be regulated by establishing

circumstances which reasonably probabalize the abuse of that power. In such event it is for the concerned officer to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the Court can assume that the impugned action was improper [See Pannalal Binjraj Vs. Union of India (UOI), Doubtless some of the restrictions placed on State Financial Corporation exercising their power u/s 29 of the State Financial Corporation Act, as prescribed in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , are no longer in place in view of the subsequent decision in Haryana Financial State Corporation v. Jagdamaba Oils Mills. However, in overruling the decision in Mahesh Chandra, this Court has affirmed the view taken in and said that in the matter of sale u/s 29, the State Financial Corporation must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold. "This can only be achieved when there is a maximum participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on "As is where is basis" to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.

19. In this case, the first notice of sale was given on 31st January, 2002. A period of about four weeks was given to the purchasers to submit their offers by 28th February, 2002. The period of four weeks can therefore be taken to be the ordinary norm. But when the second impugned notice of sale was given on 26th March, 2002, less than three days were given for the purchasers to inspect the premises, make necessary arrangements and submit their offers to BICICO. Of these three days, two were public holidays when banks would have also been shut. The period of notice was, in the circumstances, entirely inadequate. Besides, we have not been told the reason for this unusual haste. Such precipitate action was not called for unless there were some other considerations weighing with the authorities, considerations which have not been disclosed to the Court.

21. The third-extra ordinary circumstances is that the Respondent No. 6 had submitted his offer on the day on which the sale notice as published and made payment of the entire consideration on the same day before the last date for submission of tenders was over and even before its offer could have been accepted. It is unlikely that this would have been done unless the Respondent

No. 6 knew (i) the valuation made and (ii) that its offer would be accepted. Indeed a portion of the Respondent No. 6's offer had already been paid on 7th March, 2002 i.e. prior to the sale notice itself. According to the Respondent No. 6 this was pursuant to the earlier infructuous sale notice, a payment which, again for some undisclosed reasons, had not been returned by BICICO to the Respondent No. 6."

Learned Counsel also relies upon similar observation made by the Apex Court in the case of Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, in paragraph 12 of which it has been held as follows:

12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and every body has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In the event, the other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These considerations which govern the sale of public property have been held to be applicable to a sale of property by the State Financial Corporations u/s 29 of the Act in Mahesh Chandra case (1992 AIR SC 3629 ) (supra). In that case this Court has held that sale by public auction is universally recognized to be the best and most fair method and is beyond reproach and, if it is not possible to adopt the said method, sale may be held by inviting tenders, but in that event every endeavour should be made to give wide publicity to get the maximum price. The said decision cannot, therefore, be construed as laying down that a sale by tender is impermissible and invalid. The learned judges, in that case, have referred to the decisions of this Court in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, wherein it has been held that one of the modes of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. It cannot, therefore, be said that a sale by inviting tenders is ipso facto invalid. The validity of such a sale will have to be considered in the light of the facts and circumstances of the particular case.

In view of the aforesaid submissions it is urged by learned Counsel that the sale order ought to be set aside and the Petitioner should be given the benefit of the OTS Scheme, 2006 or of the currently running OTS Scheme, 2009.

22. Learned Counsel for the B.S.F.C. seeks to defend the actions of the

Respondent authorities and submits that the Corporation repeatedly advertised for sale of the assets of the unit from the 1980's till the last advertisement of 1995. Since satisfactory offers had not been received, in the said circumstances, the Corporation had entered into negotiation with the Respondent No. 5 who had earlier made an offer of Rs. 7.51 lacs and on his raising the offer to Rs. 16 lacs the sale order was passed in his favour. It is submitted by learned Counsel that taking a fair stand the Petitioner was given an opportunity to make a matching offer against which he paid Rs. 4 lacs initially but subsequently defaulted in complying with the terms and conditions. In the said circumstances, it is urged by learned Counsel that the Corporation has made the fresh sale order in favour of Respondent No. 5 by order dated 29.11.2000 and thereafter possession was also handed over to the Respondent No. 5 on 16.2.2001.

23. It is also urged by learned Counsel that the BSFC before accepting the offer of Respondent No. 5 had made an attempt to revalue the assets through its own officers and in the valuation given as stated in the letter dated 11.12.1996 of the Branch Manager it was found that the offer made by Respondent No. 5 was reasonable.

24. It is also the stand of learned Counsel that the Respondent Corporation did not act in haste in the matter and four and a half months after the dismissal of the earlier writ petition in default on 12.7.2000 the sale order dated 29.11.2000 was issued and thus it could not be said to have been issued in a hurry.

25. It is also submitted that the sale order is not bad and is the result of the attempt by the Corporation to secure the best price of the assets in question. Learned Counsel also submits that since the possession of the assets had already been handed over to Respondent No. 5 on 16.2.2001 hence there was no question of giving the benefit to the Petitioner under the OTS Scheme, 2004 and 2006 as an original promoter and he could only get the benefit under category 1(c) or category 1(d) of the two OTS Schemes respectively, that is as an original promoter whose assets have already been sold to another purchaser.

26. Learned Counsel for the Respondent No. 5 while adopting the submissions made by learned Counsel for the BSFC submits that the Respondent No. 5 had only withdrawn Rs. 75,000/- that he had deposited at the time of making the offer but his security money of Rs. 20,000/- which had been initially deposited in the year 1995 remained with the BSFC and thus there was nothing wrong with the sale order being issued to him in the year 2000 again. With respect to the defaults made by the Respondent No. 5 in making payment under the sale order dated 29.11.2000 it is submitted by learned Counsel for Respondent No. 5 that the same has been made since the Petitioner has removed the machineries from the unit which was sold to him but the same had not been informed to him.

27. On a consideration of the rival submissions of learned Counsel s for the parties it is evident that in the present matter sale has not been made in accordance with what has been held by the Apex Court in the case of M/s. S.J.S.

Business Enterprises (supra) and in the case of Chairman and Managing Director, SIPCOT (supra) or other decisions on the point. It has been repeatedly held by the Courts that the consideration for making sale of assets while exercising powers u/s 29 of the State Corporation is to secure best price for the properties to be sold and such price could only be secured if there is maximum participation in the process of sale and everybody has an opportunity of making an offer. This requires public auction after adequate publicity so that every person is interested in purchasing the property can participate in the process which generally secures the best price. It has also been held that the authorities acting u/s 29 S.F.C. Act must act fairly and not unreasonably otherwise their actions are liable to be called in question in proceedings under Article 226. The Officers of the State Finance Corporation are bound to exercise their powers bona fide and if the Court finds that the explanations are not credible then it could be termed that the impugned action is improper.

28. In the light of the aforesaid principles laid down by the Courts it is evident that the authorities of the Respondent Corporation have not acted in the present matter in a manner which is expected of them while exercising power u/s 29 of the S.F.C. Act.

29. The Advertisement itself was made on 30.7.1995. The admitted position is that none of the offers were found sufficient and the offers of original Respondent No. 5 and another person were rejected by the Tender Committee and the Managing Director of the Corporation as they were very low. No advertisement has been made thereafter. Thus the sale made in the year 1997 on private negotiation between the Respondent Corporation and the Respondent No. 5 pursuant to the advertisement dated 30.7.1995 would be bad and illegal in view of the law laid down by this Court in Santu Lal Gupta's case

(supra). The said decision has been affirmed by a Division Bench of the Jharkhand High Court (after reorganization of the State of Bihar), which case has been reported in AIR 2003 Jha 44. SLP against the same has also been dismissed. Thus, following the aforesaid decision in the present matter also the sale held by the Corporation must be held to be illegal, arbitrary and unjustified.

30. This Court also finds that no independent valuation has been obtained of the assets. It is evident from the last advertisement dated 30.7.1995 that the reserve price of the assets was fixed at Rs. 28.65 lacs. No justification has been shown how the assets including in a large measure vacant land could have decreased in valuation with the passage of time on the basis of any so-called valuation report of the Branch Manager of the B.S.F.C. The same is evidently an attempt to bring down the valuation of the assets so as to give benefit to Respondent No. 5. The assets whose reserve price was fixed at Rs. 28.65 lacs in the year 1995 cannot be sold away in 1997 by negotiation by the authorities of the Respondent Corporation for a mere Rs. 16 lacs without making any attempt to obtain either fresh valuation report of an independent valuer or advertising the unit for fresh auction. This is all the more so in view of the offer made by the

Petitioner by letter dated 17.9.1997 to sell the vacant land at much higher price so as to liquidate the entire dues of the Corporation. Such action on the part of the Respondent authorities cannot be considered to be bona fide in the face of these facts.

31. This Court is also of the view that the Petitioner by depositing Rs. 4 lacs and accepting matching offer made to it had complied with the requirements as stated in the sale order dated 17.7.1997 and it was not open to the Branch Manager to have insisted in his letter dated 8.9.1997 to submit a payment plan for balance amount of Rs. 43,65,500/- within ten days failing which it would be presumed that he was no longer interested in retaining the mortgaged assets. In terms of Clause 7 of the sale order it is clearly stated that the balance would be realized from the original promoter by invoking provisions of personal guarantee bond or the PDR Act. No such condition having been made in the sale order, hence while making matching offer to the Petitioner it was not open to the Branch Manager to impose further conditions so as to frustrate the matching offer. This also shows that the action of the Respondents were not bona fide and they were bent upon to give benefit to the original Respondent No. 5 by any means and to defeat any attempt on the part of the Petitioner to retain its unit.

32. The matter can also be looked at from another angle. If the sale order dated 17.7.1997 would have materialized in favour of the Respondent No. 5 and no matching offer had been made by the Petitioner, then all that the authorities of the Respondent Corporation could have got from Respondent No. 5 would be Rs. 4 lacs immediately with the remaining amount of Rs. 12 lacs to be repaid in 5 years in 20 equal quarterly instalments of Rs. 60,000/-. For the remaining outstanding amount, which according to them was Rs. 43,65,500/-, they could have taken recourse by invoking provisions of personal guarantee bond as well as PDR Act against the Petitioner and its Directors. In the said circumstances, if the matching offer made to the Petitioner is accepted then it has to be presumed that the balance outstanding would have to be realized in the same manner as stated in Clause 7 of the sale order and that is why the sale order does not mention while giving matching offer that the entire outstanding amount has also to be paid or a payment plan to be submitted for its payment within ten days, as it was open to the Respondent Corporation to have taken steps for realizing the same by invoking the said provisions as stated in Clause 7 of the sale order itself.

33. The collusive manner in which the Respondent authorities have acted is also shown from the fact that Respondent No. 5 who is a loanee of the BSFC with respect to another unit, M/s. Shankar Rolling Mills, has been alleged by the Petitioner to be a chronic defaulter to the tune of Rs. 1 crore and yet for reasons best known to themselves the Respondent authorities instead of taking steps against Respondent No. 5 have tried to reward him by handing over the instant unit having much higher valuation for a mere Rs. 16 lacs to him. The allegations made by the Petitioner in the writ petition have not been countered either by the BSFC or Respondent No. 5 and therefore this Court considers the same as correct.

34. On a consideration of the entire facts and circumstances of the case, the impugned sale orders dated 17.7.1997 and 29.11.2000 are quashed, as also the subsequent order regarding handing over of possession. The Respondents are directed to hand over the possession of the assets to the Petitioners within six weeks from today. It is also made clear that the Petitioners would be entitled to apply for the benefit under the OTS Scheme, 2009 which shall be considered and disposed of by the authorities of the Respondent Corporation in accordance with law and in the light of the findings in this order.

35. The writ application is, accordingly, allowed with the aforesaid observations and directions.