

(2008) 09 KAR CK 0060
In the Karnataka High Court
Case No : Writ Petition No. 48136 of 2004

Smt. K. Swarnalatha

APPELLANT

Vs

The Karnataka State Industrial Investment and Development
Corporation Ltd.

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2009 Kar 16 : (2009) 1 KarLJ 473

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : C.S. Kothavale, for the Appellant; D.C. Joshi, for R1, V.T. Rayareddy, for R2, P.K. Ponnappa, for R3 and Padmanabha Mahale, for H.H. Kaladagi, for R3, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who had acted as surety in respect of a loan borrowed by an industrial concern from the first respondent-Karnataka State Industrial Investment and Development Corporation Ltd. The property bearing old No. 19, Old House List No. 15, new khata No. 57, New House List No. 19, situated at Raghuvanahalli, Uttarahalli Hobli, Bangalore south taluk, belonging to the petitioner, which according to the first respondent-corporation, was a collateral security for repayment of the loan borrowed by M/s Techsmart Astenizer Pvt Ltd., had been proposed for sale by the corporation in exercise of its power u/s 29 of the State Financial Corporations Act, 1951 [for short, the Act] by issuing a paper publication to this effect carried out in the Deccan Herald and the Economic Times, news dailies on 29-7-2004 [copy at Annexure-R-9 to the writ petition.

2. It is the version of the petitioner that the procedure followed by the first respondent-corporation is without any conformity with the proper procedure contemplated for such purpose; that the petitioner had never been put on notice;

that the petitioner has not received any notice either demanding the repayment of loan or for the proposal to bring her property for auction sale; that the entire proceedings are bad in law; that notwithstanding, the petitioner having filed the present writ petition on 6-12-2004 and the respondents have gone ahead even subsequent to the filing of the writ petition by executing the sale deed in favour of the bidders, who, in turn appear to have sold the same in favour of another person, who has been impleaded as fourth respondent to this writ petition during the pendency of this writ petition; that all such actions are bad in law.

3. Writ petitioner had questioned the legality of the proceedings taken by the first respondent-corporation invoking Section 29 of the Act, mainly based on the declaration of law made by a division bench of this court, in the case of N. Narasimahaiah and Others Vs. Karnataka State Financial Corporation and Others, and the petitioner has, therefore, sought for quashing of not only the auction sale notice but also all consequential actions on the part of the first respondent-corporation including its action in executing the sale deed in favour of third respondent and subsequent transfer in favour of fourth respondent. The petitioner has sought for the following prayer:

(a) call for the records of the proceedings relating to the petitioner's site described in the schedule hereunder from the respondent and set aside or quash the whole proceedings from its commencement till its culmination into the sale of the site as notified and published for sale at sub-item (ii) of item (2) in annexure-"A" including all further steps or actions pursuant to such sale publication by issuing a writ of certiorari or writ in the nature of certiorari or any other writ or order or direction or

a(i) Declare the whole proceedings initiated by the 1st respondent u/s 29 of the State Financial Corporations Act, 1951 against the petitioner and her property described in the schedule annexed to the main petition from its commencement till its culmination into the sale of the schedule property notified and published for sale at sub-item (ii) of item 2 as in Annexure-"A" and all further steps pursuant thereto as null and void and quash the entire proceedings by issuing a writ of certiorari or any other writ or order or direction;

a(ii) Declare the sale of property described in the scheduled annexed to the main petition by the 1st respondent in favour of the 3rd respondent Sri S.N. Ayaz in the first instance and thereafter in favour of the 2nd respondent Sri Ramesh Babu by means of a registered sale-deed dated 13.7.2006 as per Annexure: "G" as null and void and quash the said sale-deed dated 13.7.2006 as per Annexure: "G" by issuing a writ of certiorari or any other writ or order or direction;

a(iii) Declare the sale of the property described in the schedule annexed to the main petition by the 2nd respondent Sri Ramesh Babu in favour of the 4th respondent Sri. Lokesh Reddy by means of a registered sale deed dated 4.12.2006 as per Annexure: "J" as also the encumbrance certificate dated 4.12.2007 as in Annexure: "H" as null and void and quash the said sale-deed dt.

4.12.2006 and the encumbrance certificate dated 4.12.2007 as in Annexure: "J" and "H" by issuing a writ of certiorari or any other writ or order or direction;

a(iv) Restore the property described in the schedule annexed to the main petition back to the petitioner herein ;or

a(v) In the alternative, direct the 1st respondent to pay to the petitioner the present market value at the rate of Rs. 2500/- per sq.ft. in respect of the property described in the schedule annexed to the main petition;

a(vi) In addition, direct the 1st respondent to pay to the petitioner reasonable damages/compensation for subjecting the petitioner to constant embarrassment and harassment caused to the petitioner; and

(b) declare the whole proceedings of the respondent in respect of the petitioner's site described in the schedule below and referred to as sub-item (ii) of item (2) in annexure A" as null and void.

(c) Permanently restrain the respondent from transferring in any manner either by selling it or by executing the sale-deed or by any other mode of transfer and getting the same registered in favour of the third party or parties of the petitioners site described hereunder in the schedule annexed hereto and also referred to at sub-item (ii) of item (2) in annexure-"A" by issuing a writ of mandamus or writ in the nature of mandamus any other writ or order or direction.

(d) Grant such other relief or reliefs as are deemed fit and necessary under the facts and circumstances of this case in the interest of Justice.

4. The respondents have been put on notice and they have entered appearance through Counsel. The first respondent-corporation is represented by Sri D.C. Joshi, Sri V.T. Rayareddy is appearing for second respondent, third respondent is represented by Sri P.K. Ponnappa and the fourth respondent is represented by Sri Padmanabha Mahale, learned senior Counsel for Sri H.H. Kaladagi.

5. In the statement of objections filed on behalf of the third respondent, it is contended that the first respondent-corporation having sold the property pursuant to the paper advertisement and having confirmed the sale in favour of the highest bidder on 20-9-2004 and the transactions concluded by 20-9-2004; that the writ petition was filed on 6-12-2004, much beyond the time within which an application could have been made for setting aside the confirmation of sale had expired and therefore no subsequent action is required to be examined by this court and therefore the writ petition deserves to be dismissed.

6. It is also averred that the property having been subsequently transferred, interest of third party having come into picture, and their interest cannot be in any way affected even assuming that there was some irregularity in the conduct of action taken by the first respondent-corporation; that the consequences of such irregular action on the part of the first respondent-corporation cannot visit

the subsequent bonafide purchasers for valid consideration and therefore the sale in their favour could not be in any way disturbed in the present proceedings.

7. I have heard Sri C.C. Kothavale, learned Counsel for the petitioner, Sri D.C. Joshi, learned Counsel for the first respondent, Sri V.T. Rayareddy learned senior Counsel for second respondent, Sri P.K. Ponnappa, learned Counsel for the third respondent and Sri Padmanabha Mahale, learned senior Counsel for Sri H.H. Kaladagi, for fourth respondent.

8. In so far as the legal position, viz., that a state financial corporation like the first respondent-cooperation cannot invoke the powers available u/s 29 of the Act as against the properties of guarantor or surety is concerned, it no more admits any doubt or dispute, particularly with the Supreme Court having affirmed the view taken by this court in the case of N. Narasimhaiah [supra] in the very appeal preferred by the KSFC, which appeal came to be dismissed by the Supreme Court in the case of Karnataka State Financial Corporation v. N Narasmhaiah AIR 2008 SCW 2480, declaring that the state financial corporations cannot invoke the powers u/s 29 of the Act as against a guarantor like the petitioner herein, there cannot be any further debate on the question as to whether the financial corporation still has such a power to take action against the property of a guarantor by invoking its power u/s 29 of the Act.

9. The present pleadings leave me with no doubt that the action taken in respect of the property with reference to which the petitioner has put forth her grievance is an action in exercise of such power u/s 29 of the Act, as is very clear from the communication of the proceedings dated 2-3-2000 [copy at Annexure-R-6 to the writ petition] of the corporation purported to be u/s 29 of the Act.

10. In the light of the law as settled, such proceedings and all consequential actions which are without the initial statutory support and therefore without jurisdiction have all to be declared to be null and void by this court.

11. However, Sri D.C. Joshi, learned Counsel for the first respondent-corporation would join issue here and would submit that notwithstanding the law that had been declared in terms of the judgment of the Supreme court in the above case, the action taken in respect of the property with reference to which the petitioner is aggrieved, is an action that is saved due to the interim order that had been granted by the Supreme Court, during which the judgment of the High Court had come to be stayed and it was only during such period when the order of the High Court had been stayed, the first respondent-corporation having taken action for sale, confirmation and execution of the sale deed, such actions cannot be said to be vitiated. Though Sri Joshi has pointed out to the relevant dates to indicate the order of stay being in operation and covering the dates when the corporation took steps for sale, confirmation and execution of sale deed I find that it is not of any significance, for the reason that a declaration of law particularly interpreting a provision of law operates from the date the statute is enacted. Though Sri Joshi would nevertheless would still contend that the law as declared by the Supreme

Court if at all can operate prospective and that at any rate such declaration did not operate during the period when the corporation had the benefit of the stay order in its favour, this is an argument only to be rejected for the reason that the law operates from its inception and not from the date of its declaration is a legal principle resolved long back See AIR 1985 SC 621 - Baburam Vs. C.C. Jacob and Others, Baburam v. C.C. Jacob. But the operation of law would nevertheless not revive concluded matters, which had attained finality and it is also equally well settled principle of law that such matters are not revived or reopened, if it has attained finality but otherwise, consequences follow.

12. In the present case, in so far as this writ petition is concerned, the writ petition though filed before this court on 6-12-2004, it has been admitted by issue of rule on 7-1-2005 and there was a further interim order granted by this court on 11-8-2006, making all proceedings of the corporation subject to the result of this writ petition. But these orders apart, the proceedings of the first respondent corporation, which is in exercise of a statutory power which was not available to the first respondent corporation, if is to be examined on the touchstone of Section 29 of the Act and the extent of power conferred on the first respondent corporation, under this provision then the action taken against the property of the guarantor being not supported by the statute, it invariably falls to ground and its legal consequences necessarily are to be given effect to.

13. It is in this regard, Sri Joshi, learned Counsel for the first respondent-corporation, Sri P.K. Ponnappa, learned Counsel for the third respondent and Sri H.H. Kaladagi, learned Counsel for the fourth respondent, have all contended that the sale having been confirmed even prior to the filing of writ petition and issue of Rule cannot be in any way disturbed in this proceeding and in support of such submission, Sri Joshi has drawn attention of the court to Section 8 of the Transfer of Property Act and other relevant provisions of the CPC.

14. I am afraid, it is not necessary for this court to go into further details of such submissions for the simple reason that the entire proceedings of auction sale etc., are initiated by the first respondent-corporation and without dispute by exercising the power u/s 29 of the Act. If such power was not available, the first respondent-corporation cannot, purporting to be in exercise of such power, convey or confer any right in favour of any other parties, whether it is by way of auction sale or in any other manner. The first respondent-corporation if did not convey any right, title or interest in any property, just because it has confirmed such auction sale even before the filing of this writ petition, it does not mean that the person in whose favour the auction is confirmed and the sale deed had been executed, gets any right under the confirmation of sale, as the conveyor itself did not have such right No buyer can get a better right/title than what his/her vendor has, is a well settled proposition of law.

15. The only other question is whether it is necessary that the consequences should follow on the respondents 2 to 4, who claim to be bona fide purchasers for valuable consideration etc.

16. While a bona fide purchaser for a valuable consideration can definitely seek to defend his position, if had acquired some good right or title, it does not by itself enable the person to acquire a good title which he otherwise did not acquire. The action of the corporation is bad not because of any irregularity of the procedure that was required to be followed by the first respondent-corporation, but because of a basic lack of statutory power or jurisdiction. If such action is not supported initially by the statutory provision, the consequences cannot be sustained on its own and therefore falls to ground. It is for this reason I am rejecting the argument on behalf of the respondents and declaring that the proceedings pursuant to Annexure-R6, in so far as it relates to the subject property with reference to which the petitioner is interested, is a proceeding without statutory support, without jurisdiction and all actions are nullity in the eye of law and therefore the consequential actions also falls to ground, being quashed by issue of a writ of certiorari.

17. It is therefore, this writ petition is allowed. Rule made absolute. The proceedings beginning with Annexure-R-6 are all quashed by issue of a writ of certiorari.

18. However, it is made clear that the corporation is definitely entitled to such other actions as is available to it under any other provision of law in respect of the property, if it had been secured in its favour for the repayment of any loan borrowed by the borrower.

19. The first respondent-corporation is required to reverse or restore the position ante to proceedings dated 2-3-2000 in respect of the subject property, but it does not come in the way of the independent proceedings that the corporation can take and as provided in law.

20. Respondents 2 and 4, who are all contending that they are bona fide purchasers of the property, are at liberty to take recourse against the corporation to such action in law as is available to them elsewhere but cannot look up to such relief in this writ petition.

Writ Petition allowed.