(2011) 09 GUJ CK 0126

In the Gujarat High Court

Case No : Special Civil Application No. 6451 of 2011, Civil Application No. 3358 of 2011 in Letters Patent Appeal No. 2689 of 2010 in Special Civil Application No. 3693 of 2010 and Miscellaneous Civil Application No. 1900 of 2011

Standard Materials Agencies Pvt. Ltd. and Another — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 152, 154, 178, 179
Constitution of India, 1950 — Article 226, 227
Gujarat Monies (Recovery of Dues) Act, 1979 — Section 3, 3(2)

Citation : (2011) 09 GUJ CK 0126

Hon'ble Judges : S.J. Mukhopadhaya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : GK Vakharia and MK Vakharia, for Petitioners 1 and 2, for the Appellant; Krina Calla, AGP for Respondents 1 and 4, Navin K. Pahwa, for Respondent 5 and Pratik Jasani, for Respondent 6, for the Respondent

Judgement

J.B. Pardiwala, J.—By way of this petition under Articles 226 and 227 of the Constitution of India, the Petitioner, a Private Limited Company registered under the provisions of the Companies Act, through its Managing Director has prayed for the following relief''s:

(A) Your Lordship may be pleased to admit and allow the present petition;

(B) Yours Lordship may be pleased to issue a writ of mandamus or a writ of certiorari or a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order passed by the Respondent No. 1 dated 4th May 2011 at Annexure-A and order passed by the Respondent No. 2 herein dated 29th March 2011 at Annexure-B and further be pleased to declare the auction held on 21st December 2010 of the factory premises situated at Plot No. A/501, Phase-IV, GIDC Vatva, Ahmedabad, Taluka Dascroi, as illegal and improper;

(BB) Your Lordships may be pleased to issue a writ of mandamus or a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 30th June 2011 at Annexure-M to the petition and further be pleased to declare the auction held on 21st December 2010 of the factory premises situated at Plot No. A/501, Phase-IV, GIDC Vatva, Ahmedabad, Taluka Dascroi, as illegal and improper and restrain the Respondents, their agents and servants from taking any further action in pursuance of the order dated 30th June 2011 Annexure-M to the petition;

(C) Pending admission hearing and final disposal of this petition, an interim order staying the further operation, execution and implementation of the impugned orders Annexure-A dated 4th May 2011 and Annexure-B dated 29th March 2011 may kindly be granted;

(CC) Pending admission hearing and final hearing of this petition, interim order staying further operation, implementation and execution of the order dated 30th June 2011 at Annexure-M may kindly be granted and the Respondents, their agents and servants may be restrained from taking any action in pursuance of the aforesaid order at Annexure-M to the petition;

(D) And to pass such and further orders as may be deemed just and proper;

(E) Cost of this petition be provided for.

2. Facts relevant for the purpose of deciding this petition can be summarised as under:

1. The Petitioners availed of a bill discounting facility from Respondent No. 5 Corporation to the tune of Rs. 17 lakhs somewhere in the year 1993. It appears that dues payable by the Petitioners to the Respondent Corporation kept on multiplying and in the year 2010, a huge sum of more than Rs. 8 crores fell due and payable by the Petitioner to Respondent No. 5 Corporation.

2. Record reveals that the Petitioners herein challenged notices issued by the Mamlatdar, Alien Recovery, Ahmedabad under Sections 152 and 154 of the Bombay Land Revenue Code for recovery of the dues, payable by the Petitioner to Respondent No. 5 Corporation. At that point of time, decision was also taken to auction the property of the Petitioner, more particularly, Plot No. 501, Phase-IV, GIDC, Vatva for recovery of the dues. The notices which were issued by the Mamlatdar, Alien Recovery, Ahmedabad and the action to auction the property of the Petitioner referred to above was made a subject matter of challenge by filing Special Civil Application No. 3693 of 2010.

3. It appears that during the course of hearing of Special Civil Application No. 3693 of 2010 the Petitioners gave undertaking to deposit an amount of Rs. 1.90 crores on or before 30th April 2010. The learned Single Judge, on the said undertaking, granted stay against the auction of the property.

4. Record reveals that the said amount was not deposited and the undertaking

was flouted. Thereafter, the learned Single Judge passed another order dated 13th May 2010 directing the Petitioner to deposit an amount of Rs. 3 crores on or before 30th June 2010. The learned Single Judge also ordered that the interim relief against the auction during the interregnum period shall continue. Despite the undertakings and assurances given to the learned Single Judge, the Petitioners did not deposit the requisite sum of money. Ultimately, the learned Single Judge, vide order dated 21st July 2010, rejected the petition and vacated the ad-interim relief which was granted in favour of the Petitioners.

5. The learned Single Judge, while rejecting the Special Civil Application No. 3693 of 2010, vide order dated 21st July 2010, was constrained to observe in paragraphs 4, 5, 6 and 7 as under:

4. It is pertinent to note that despite the aforesaid orders passed by this Court, the Petitioner has not deposited an amount of Rs. 3 crores on or before 30/6/2010 as directed by this Court. Thereafter also, to find out some way out and to check bonafides of the Petitioner, even this Court also adjourned the matter sufficiently, however, the Petitioner has not deposited any amount as directed by this Court and it appears that the Petitioner is not able to pay the amount due and payable to the Respondent Corporation and therefore, there is no other alternative but to put the property in question to auction.

5. The learned advocate appearing on behalf of the Petitioner has submitted that if some more time is granted, the Petitioner may come with a buyer. It will always be open for the Petitioner to come with the buyer at the time of auction and such buyer can compete with others and participate in the auction proceedings. It appears that except passing time and delaying the mater, the Petitioner has no valid defence to postpone the auction which is inevitable.

6. Under the circumstances and as the order passed by this Court to deposit the amount, though an undertaking has been filed by the Petitioner to deposit the balance amount, is not paid present petition deserves to be dismissed and is accordingly dismissed. The Respondent Corporation shall be entitled to withdraw the amount of Rs. 21,17,000=00 as observed by the learned Single Judge of this Court in its order dtd.13/5/2010.

7. With these, present petition is dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith. In the facts and circumstances of the case, there shall be no order as to costs.

6. Being aggrieved by the judgment and order passed by the learned Single Judge dated 21st July 2010 in Special Civil Application No. 3693 of 2010, the Petitioners preferred Letters Patent Appeal No. 2689 of 2010. The Division Bench of this Court, vide order dated 26th November 2010, gave one more opportunity to the Petitioners to state, whether they intend to comply with the undertakings given before the learned Single Judge and if they intend to comply, the Petitioners were directed to remain present with a demand draft of 50% of the undertaking amount by the next date. The Division Bench, thereafter, kept the

matter on 16th December 2010. On 16th December 2010, an affidavit was filed on behalf of the Petitioners containing some calculations. However, the Division Bench found that the calculations were not correct in view of the undertaking given before the learned Single Judge and asked the Petitioners to obtain instructions as to whether they intended to comply with the observations made by the Division Bench in the order dated 26th November 2010 and act in terms of the undertaking.

7. On 20th December 2010, learned Counsel appearing for the Petitioners stated upon instructions that it was not possible for the Petitioners to comply with the undertaking. At that stage, the Division Bench, while adjourning the matter, allowed the Respondents to proceed with the auction sale.

8. The auction was accordingly held by the Respondents on 21st December 2010. Respondent No. 6 herein was found to be the highest bidder and he deposited the entire purchase consideration with the office of the Mamlatdar, Alien Recovery in February 2011.

9. The Letters Patent Appeal No. 2689 of 2010 was again taken up for hearing on 23rd March 2011, whereby this Court passed the following order:

We have noticed that pursuant to the proceedings, the auction sale has taken place. The learned Counsel for the Appellant submits that the Appellant has already preferred an application u/s 178 read with Section 179 of the Bombay Land Revenue Code, 1879. In that view of the matter, he sought for and is permitted to withdraw this appeal without any liberty to move against the impugned order passed by the learned Single Judge. The appeal stands disposed of as withdrawn.

In view of the withdrawal of the appeal, the competent authority/Collector will conclude the auction sale in accordance with law.

In that view of the matter, no order is required to be passed in the Civil Applications and they stand disposed of.

10. It appears that after this Court disposed of the Letters Patent Appeal No. 2689 of 2010 as withdrawn, directing the competent authority/ Collector to conclude the auction sale in accordance with law, the Petitioners preferred an application under Sections 178 and 179 of the Bombay Land Revenue Code raising objections against the auction held by the Respondents on 21st December 2010.

11. The grievance which is voiced in the present petition is that Respondent Nos. 1 and 2 have confirmed the sale of the factory of the Petitioners by public auction dated 21st December 2010 without deciding their application preferred under Sections 178 and 179 of the Bombay Land Revenue Code. It is in this background that the present petition has been preferred, wherein the challenge is to the order passed by Respondent No. 1 dated 4th May 2011 at Annexure-A and the order passed by Respondent No. 2 herein dated 29th March 2011 at

Annexure-B and also for a declaration that the auction held on 21st December 2010 of the factory premises situated at Plot No. A/501, Phase-IV, GIDC, Vatva, Ahmedabad is illegal.

3. We have heard learned senior counsel Mr. K.G. Vakharia appearing for learned advocate Mr. M.K. Vakharia for the Petitioners, learned AGP Mrs. Krina Calla appearing for Respondent Nos. 1 to 4, learned advocate Mr. Navin Pahwa for Respondent No. 5 Corporation and learned advocate Mr. Pratik Jasani for Respondent No. 6.

4. Learned Counsel for the Petitioners would contend that the auction of the property held on 21st December 2010 cannot be said to be in accordance with law. Respondent Nos. 1 and 2 ought to have decided the application preferred by the Petitioners under Sections 178 and 179 of the Bombay Land Revenue Code. It is further contended that while passing the order regarding disposal of the Letters Patent Appeal No. 2689 of 2010, the Division Bench of this Hon''ble Court has stated to conclude the sale in accordance with the provisions of law. It is submitted that in the pending proceedings of the Letters Patent Appeal it was pointed out that the Petitioners have objected against the sale of the factory under the provisions of Sections 178 and 179 of the Bombay Land Revenue Code and the authorities were bound to consider those objections and decide regarding the validity of the auction as well as the sale. It is submitted that both the authorities have erred in not properly construing the order passed by this Hon''ble Court.

5. It is further contended that the remedies which are given under Sections 178 and 179 of the Bombay Land Revenue Code are statutory remedies which were bound to be complied with prior to the confirmation of the sale by the concerned authorities. It is submitted that merely because this Hon''ble Court permitted to proceed with the sale, by no stretch of imagination, it can be construed that the statutory remedies available to the Petitioners were taken. It is submitted that the statutory remedies are required to be complied with.

6. Lastly, it was contended that they have challenged the auction which had taken place on 21st December 2010 on the ground of non-compliance of the mandatory provisions of Section 3 of the Gujarat Monies (Recovery of Dues) Act, 1979. It is submitted that the perusal of the aforesaid provisions show that upon the receipt of the certificate, the Collector was under the obligation to make an inquiry before proceeding with the recovery of the amount as arrears of land revenue. It is submitted that as per the provisions of Section 3(2) of the Gujarat Monies (Recovery of Dues) Act, 1979, the Collector was under the obligation to hear the Petitioners. It is submitted that neither the inquiry was held nor the hearing was given to the Petitioners, who are parties affected, as required under the provisions of Section 3(2) of the aforesaid Act.

7. Per contra, learned Counsels for the Respondents vociferously submitted that the Petitioners have already lost in two earlier writ petitions filed before this

Court, challenging the recovery proceedings. Even the Letters Patent Appeal has been withdrawn by the present Petitioners unconditionally. Counsels for the Respondents would contend that the action of the Collector and/or the Mamlatdar, Alien Recovery in auctioning the properties has become final. It is also contended that the Petitioners are filing various proceedings with the sole object of stalling and delaying the recovery process. Respondent No. 5 Corporation had issued recovery certificate in the year 1999 and the Petitioners have successfully avoided the recovery proceedings for a period of more than ten years. It is also contended that the Petitioners have not acted as per the undertakings given before the learned Single Judge time and again.

8. The question which falls for our consideration is that in the backdrop of the above factual background whether the Petitioners are entitled to any discretionary relief in exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India, more particularly, having regard to the conduct of the Petitioners, which is a matter of considerable importance.

9. We have noticed that the Petitioners have failed to honour the undertakings given to this Court time and again, despite being given various opportunities. Respondent No. 5 Corporation owes a huge amount of money and the Petitioners are liable to pay. By adopting dilatory tactics, the Petitioners have successfully stalled the recovery proceedings so far over a period of almost a decade. We have also noticed that the Letters Patent Appeal No. 2689 of 2010 was also unconditionally withdrawn, wherein we made it very clear that in view of the withdrawal of the Appeal, the competent authority/Collector will conclude the auction sale in accordance with law. The auction sale has already become final pursuant to the orders passed by this Court. The recovery certificates issued by the Respondent Corporation are thus already executed.

10. We have also noticed that the auction purchaser Respondent No. 6 has deposited the entire purchase consideration before the Collector way back in the month of February 2011. The auction has thus attained finality.

11. We would like to emphasize here that the jurisdiction which is exercised by this Court is an extraordinary jurisdiction and this Court has discretion to interfere or not to interfere taking into consideration all the circumstances including the broad equities of the case. The Petitioners have, by their own conduct, rendered themselves incapable of getting any relief in this jurisdiction.

12. In the above view of the matter, we hold that there is no merit in this petition and the same is hereby rejected with no order as to cost.

13. Respondent Nos. 1 and 2 are directed to conclude the auction sale forthwith and also disburse the sale proceeds to Respondent No. 5 Corporation.

14. In view of the judgment and order passed in Special Civil Application No. 6451 of 2011 today, Civil Application No. 3358 of 2011 and the Misc. Civil Application No. 1900 of 2011 stand disposed of.