

(2014) 04 SC CK 0076

In the Supreme Court Of India

Case No : Civil Appeal No. 4849 of 2014 (Arising out of SLP (C) 14843 of 2012)

State of Assam and Others

APPELLANT

Vs

Susrita Holdings Pvt. Ltd.

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

State Financial Corporations Act, 1951 — Section 29
Trusts Act, 1882 — Section 37

Citation : AIR 2014 SC 2307 : (2014) 3 AJR 303 : (2014) 4 GLT 12 : (2014) 5 JT 376 : (2014) 5 SCALE 542

Hon'ble Judges : V. Gopala Gowda, J;Gyan Sudha Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—Leave granted.

2. This appeal is filed by the Appellants questioning the correctness of the impugned judgment and final Order dated 2.2.2012 passed by the High Court of Guwahati, Assam, in M.C. No. 5 of 2012 in Writ Appeal Sl. No. 168339 of 2011, urging various facts and legal contentions in justification of their claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the Appellants and also to find out whether the Appellants are entitled for the relief as prayed in this appeal.

4. The Government of Assam issued instructions in respect of alienation of tea garden land from time to time, particularly, letter No. RSS 573/94/25 dated 26.3.2001 of the Government of Assam, Revenue (Settlement) Department requiring prior approval of the Government.

5. On 30.10.2006, following the dissolution of Cachar Tea Farming and Industrial Cooperative Society, the Cachar Ex-Officio liquidator, Cachar Tea Farming and Industrial Cooperative Society Ltd, (in short the 'Liquidator'), issued a notice inviting tenders for the sale of Chincoorie Tea Estate owned by Cachar Tea

Farming and Industrial Cooperative Society Ltd. The concerned tea estate measured 9951 bighas.

6. As on 5.1.2007, no tender had been cast in response to the tender notice issued. Therefore, a fresh tender notice dated 5.1.2007, was issued by the liquidator with minor modifications made on the previous tender notice. The land mentioned in the modified notice admeasured 9000 bighas. The last date for submission of tenders was fixed at 29.1.2007 which was further extended to 26.2.2007 upto 2 p.m. by another modified tender notice dated 28.1.2007.

7. It is pertinent to note that the tender of the sale of the concerned land was floated without the prior approval of the government as required by instructions issued in respect of alienation of tea garden land from time to time, particularly, letter No. RSS 573/94/25 dated 26.3.2001 of the Government of Assam Revenue (Settlement) Department. The other codal formalities for tender process were not followed either.

8. On 26.2.2007, two tender bids were received. The Respondent herein made a bid for Rs. 1.11 crore. Another party, M/s. Luxmi Township made a bid for Rs. 1.05 crore. However, since the Respondent had submitted his tender document by hand at 3:45 p.m., the same was objected by the other contender. The Respondent was still considered the only valid bidder.

9. The Liquidator subsequently, vide Order dated 21.4.2007, cancelled the tender process by observing that the price quoted by the parties for the 9000 bighas of land is not at all justifiable. Further, M/s. Luxmi Township Pvt. Ltd. had intimated that the entire stamp duty for the transfer of land, in case of a valid sale, has to be borne by the Ex-Officio Liquidator of CTFICS Ltd. The bid value is based on this condition which the liquidator did not agree.

10. The Respondent thereafter, filed a Writ Petition (C) No. 1928/2007 before the Guwahati High Court after the tender process had been cancelled vide Order dated 21.4.2007. In the Writ Petition, the Respondent sought directions for the Official Respondents therein to issue final Order of award in favour of the Respondent herein. The Respondent further sought restrain order from cancelling the tender process and initiation of fresh tender process. The High Court, vide Order dated 27.4.2007, restrained the Official Respondents therein from initiating fresh process for the disposal of the land involved. The Order further clarified that it shall not be a bar to issue Order in favour of the Respondent herein.

11. The Liquidator, on 9.5.2007, issued notice in a local daily-The Assam Tribune, declaring that the tender process had been cancelled vide Order dated 21.4.2007. The Respondent thereafter, filed another Writ Petition (C) No. 2416/2007 before the Guwahati High Court impugning the notice dated 9.5.2007. The High Court, vide Order dated 23.5.2007, issued notice and directed that the notice dated 9.5.2007 shall not be given effect till the returnable date.

12. The Respondent next filed a Writ Petition (C) No. 2971/2007 challenging the cancellation Order by the liquidator dated 21.4.2007. In the meantime, the Joint Registrar of the Co-operative Societies forwarded a report to the Registrar of the Co-operative Societies by issuing letter to him.

13. The Deputy Registrar who had cancelled the sale of the tea garden was transferred by that time. His successor vide letter dated 2.7.2009, sought permission/approval of the Registrar of the Co-operative Societies to dispose of the land in question in favour of the Respondent herein in the light of the Order of the High Court dated 27.4.2007 in W.P. (c) No. 1928/2007.

14. Thereafter, vide Order dated 23.7.2009, the Registrar of the Co-operative Societies, permitted the Liquidator to dispose of the property involved in favour of the Respondent herein.

15. The Deputy Registrar issued an award letter dated 27.8.2009 and thereafter, signed the agreement for sale of the tea garden land on 2.9.2009 and sent a draft copy of the Deed of Agreement for the sale of the land in question. The Respondent was required to make an initial deposition of 25% of the total bid initially within a week of issuance thereof, as per the terms laid in Clause 3 of the Deed of Agreement. The remaining 75% of the total consideration amount was required to be paid by the Respondent at the time of execution of the sale deed, subject however, to the withdrawal of W.P. (C) No. 1928/2007 by the Respondent. The Writ Petition was closed subsequently since it was not pursued.

16. The sub-Registrar (Registration), Silchar was approached by the liquidator on 9.12.2009 for registration of the sale deed. The sub-Registrar asked the liquidator to produce permission/approval from the Revenue Department for registration of the sale deed. The liquidator on 10.12.2009, wrote to the Registrar of the Co-operative Societies seeking instruction on the same. The Liquidator however, could not produce the government permission for execution of the sale deed in respect of the land in question. Therefore, the sale deed could not be executed in favour of the Respondent. Therefore, vide Communication dated 20.1.2010 from the Secretary, Co-operation Department to the Deputy Commissioner, Cachar, he was directed to refrain from registering the sale deed in respect of the property in question without the clearance from the Co-operation Department.

17. Aggrieved by the same, the Respondent filed another Writ Petition (C) No. 4147/2010 before the High Court seeking a direction to the Appellant for execution of the sale deed in its favour and also to quash the communication dated 20.1.2010 of the Secretary of the Co-operation Department which gave direction to the Deputy Commissioner, Cachar, to refrain him from registering the sale deed without the clearance of the Co-operation Department.

18. The High Court held that since the amount has already been paid by the Respondent to the Department, there is no question of taking further approval from the government. Therefore, the High Court directed the Deputy Registrar of

the Co-operative Societies to follow up the execution of the sale deed in respect of the property and its registration.

19. The said order was forwarded to the higher authority. However, the sale deed did not get registered subsequently which was followed by a Contempt Case No. 443/2010 initiated by the Respondent.

20. The Appellants filed a Review Petition No. 112/2010 before the High Court seeking review of its Order dated 6.8.2010 passed in W.P. (c) No. 4147/2010. In the meanwhile, the Deputy Commissioner, Cachar vide letter dated 13.10.2010 to Secretary, Revenue, sought approval of the government for alienation of the garden land. In response to the letter mentioned above, the Deputy Secretary, Revenue and Disaster Management wrote a letter dated 29.11.2010 to the Deputy Secretary, Co-operation Department to submit a report in order to accord approval for alienation of the land. Another letter was issued to the Deputy Commissioner, Cachar to submit proposal as per Government land policy and guidelines for alienation of garden land.

21. The Review Petition No. 112/2010 filed by the Appellant was dismissed by the High Court on 2.2.2011.

On 29.6.2011, the letter dated 24.5.2011 was put up before the Principal Secretary. The Principal Secretary in turn, forwarded the proposal to the Minister, Revenue and Disaster Management Department for obtaining necessary approval from the Chief Minister of Assam State on the condition that the land under transfer will be used only for the purpose of tea cultivation and no bona fide worker or the erstwhile Co-operative Society should be adversely affected by the transfer of ownership.

22. The Chief Minister of the State observed that there are various discrepancies in the proposal forwarded to him and therefore, directed the Revenue Department to examine the matter and to consult the Legal Remembrancer for further course of action in case discrepancies are found. The Legal Remembrancer observed that since loss of huge amount of public money to the tune of several crores is involved in the matter, the government might prefer an appeal before the Division Bench in wider public interest along with petition for condonation of delay. Accordingly, an appeal was filed by the Appellants against the Order dated 6.8.2010 passed by the High Court in W.P. (C) No. 4147/2010. The High Court however, vide Order dated 2.2.2012, rejected the application for condonation of delay being M.C. No. 5/2011 in WA Sl. No. 168339/2011.

23. The High Court opined that the time lag between 2.2.2011 and 22.11.2011 has not at all been convincingly explained by the Appellants. Though the State is in shackle by unavoidable official formalities to streamline its decision, however, the explanation offered by the Appellants towards justification of the delay in filing the appeal is insufficient and it has dismissed the condonation of delay application and consequently dismissed the writ appeal.

24. The Appellants have come in appeal before this Court mainly on two grounds:

Firstly, the impugned Order is violative of the principles of natural justice. The Appellants in the writ proceedings, have not been afforded an opportunity to file their affidavits on merits. Also, the Order in this perspective is unsafe to be acted upon since enormous amount of public revenue is involved in the matter.

Secondly, the Appellants claim that the transaction sought to be completed squarely within the realm of a contract. Therefore, no direction in the nature of mandamus could have been issued to the Appellants as the same is not permissible in law, and rendered the impugned decision void ab initio.

25. The impugned Order passed by the High Court stated that the appeal brought before it by the Appellants has been dismissed on the ground of delay. Though, submissions were made by both the parties explaining the cause for delay. However, instead of deciding this issue on merit which was required in this case as it involved substantial question of law and public interest, the Court dismissed the case on the ground of delay after hearing the submissions of the parties.

26. We are of the opinion that the High Court erred in dismissing the appeal of the Appellants on the ground of delay since this appeal requires to be heard on merit. There is no qualm on the fact that there has been a delay of 9 months in filing the Review Petition. The Appellants contended that the delay was due to unavoidable government procedure involved.

27. It has been held by this Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, that:

15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

XXX

17. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making.

Therefore, regarding the matter of delay in this case, we are inclined to observe that the malfunctioning of the State Government regarding the unpardonable lackadaisical attitude towards pursuing matter in the court of law cannot be the reason for loss of public property, which involves public money and causes loss to

the public exchequer. Therefore, we feel that it is a fit case to exercise our discretionary power to condone the delay in filing the writ appeal in the interest of public at large as the High Court has failed to do so. We therefore, condone the delay in filing the Review Petition by the Appellants before the High Court in the larger interest of public. However, this case should not set a precedent to justify inordinate delays on the part of the State Government to file appeals or any other legal proceedings required to be filed within the period of limitation prescribed in law.

28. The only legal issue before us for our consideration is therefore, whether the Appellants lawfully cancelled the tender process in relation to the property in question in view of the discrepancies crept in the process of transfer of the land in favour of the Respondent.

29. It is an undisputed fact that in the present times consideration of Rs. 1.11 crores for 9000 bighas of land does not reflect the correct market value prevalent at the relevant point of time and not even to the civil valuer's report without either factual or legal basis. As per the report of the Joint Registrar of Cooperative Societies dated 31.02.2006, the updated registered value of the concerned tea garden stands at Rs. 4,24,72,124/- as opined by Sri. M.P. Gindora, Tea Consultant and Registered Valuer. This report however, carried a qualifier along with it. It is stated in the report on the assumption that it is hardly expected that any party will come forward to purchase an existing tea garden with huge encroachment. As per the facts put on record, the total area of the estate is 1247.29 Hectares out of which 70% is encroached. However, this alone cannot be a ground for the Joint Registrar of Co-operative Societies to opine that it would not fetch the value of the property as indicated by the valuer in the report. Therefore, there was no justification for the Appellants to sell the property at an extremely low price without any effort of issuing eviction notice to the alleged encroachers to evict them by following the due process of law. There will not be any impediment for the Appellants to evict trespassers from the land in question without considering the above relevant aspects of the case. The High Court granted the relief in favour of the Respondent in its writ petition by quashing the order of cancelling the tender process by the officer of the Appellant No. 1 and further directing the Appellants to execute the sale deed accepting the offer of the Respondent.

30. Further, according to the material placed on record, the land concerned involves significant amount of public money. Therefore, its transfer in favour of the Respondent attracts the greatest amount of responsibility and caution. The competent valuer had already determined the registered value of land at Rs. 4,24,72,124/-. Therefore, it was the responsibility of the concerned authority to ensure all steps which should have been undertaken to sell the land at a minimum cost of Rs. 4,24,72,124/- or above instead of its attempt to sell the same at a lower price merely on the pretext that no one would come up to purchase the land at the valuer's price or that since the land is an encroached

land, the lower price is justified cannot be accepted. The strong reliance placed by the learned senior counsel, Mr. Mehta on the report of the Joint Registrar of Co-operative Societies, is the basis for the High Court for grant of relief in favour of the Respondent is wholly untenable in law and therefore, the same cannot be accepted by this Court. The High Court should have noticed the above relevant aspects of the case in passing the impugned order which would certainly affect the public interest.

31. With regard to the procedure to be followed while selling the property, this Court, in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , has held:

15. ...Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason....

16. ...It saddles the Corporation or the officer concerned with inbuilt duties, responsibilities and obligations towards the debtor in dealing with the property and entails him to act as a prudent and reasonable man standing in the shoes of the owner. According to Prof. Issac, a noted author on Trusts, trusteeship has become a readily available tool for everyday purpose of organisation financing, risk shifting, credit operations, settling disputes and liquidation of business affairs. Maitland, the other renowned writer on Equity, observed that one of the exploits of equity; the largest and the most important, is the innovation and development of the trust. Thus, trust has been and is being applied for all purposes mentioned by Prof. Issac and many others as device to accomplish different purposes. Trusteeship is an institution of elasticity and generality. The broad base of the concept of property or its management vested in one person and obligation imposed for its enjoyment by others is accepted in Hindu jurisprudence. Therefore, when the property of the debtor stands transferred to the Corporation for management or possession thereof which includes right to sell or further mortgage etc., the Corporation or its officers or employees stands in the shoes of the debtor as trustee and the property caste que trust. In N. Swyanarayan Iyer's Indian Trust Act, Third Edition, 1987 at page 275 in Section

37 it is stated that, "Where the trustee is empowered to sell any trust property...by public auction or private contract and either at one time or at several times..." the duty of trustee is to obtain the best price. He should, therefore, use reasonable diligence in inviting competition to that end. Where a contract of sale has been entered into bona fide by a trustee the court will not allow it to be rescinded or invalidated because another purchaser comes forward with a higher price. It would, however, be improper for the trustee to contract in circumstances of haste and improvidence. Where in a trust for sale and payment of creditors the trustee sold at a gross under valuation showing a preference to one of the creditors, he was held guilty, of breach of trust. If the purchaser is privy of the fraud the property itself can be recovered from him.

17. The sale may be either by public auction or private contract. In either case the trustee has to keep in mind that he must obtain the most advantageous price. Kerr on Receivers 17th Edition, at page 208 stated that "a receiver, however, is not expected any more than a trustee or an executor to take more care of their property entrusted to him than he would have as a reasonably prudent man of business". In Halsbury's Law of England, 4th Edition, Vol. 39, at para 919 it is stated that the "receiver will be compelled to show that he has acted with perfect regularity and has used such degree of prudence as would be expected from a private individual in relation to his own affairs". The trustee or a receiver is, therefore, duty bound to protect and preserve the property in his possession and the standard of conduct expected of him, in dealing with the property or sale thereof, is as a prudent owner would exercise in dealing with his own property or estate. The degree of care expected of him in handling property taken possession of is measured by the degree of care expected of a person acting as trustee, executors or assignees. The object and endeavour should also be to secure maximum advantage or price in a sale of the property in lots or as whole, as exigencies warrant.

Though, this case was subsequently overruled by this Court by a three judge bench decision in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, on the point of guiding principles laid down to sell mortgaged property by the Financial Corporation u/s 29 of the State Financial Corporations Act, 1951 (in short 'SFC Act'). However, keeping in view the facts and circumstances of that case and as per Section 29 of the SFC Act, the guidelines laid down in the case of Mahesh Chandra were found fault with to sell the property mortgaged with Financial Corporations. However, the principle of Public Trust Doctrine referred to in Mahesh Chandra's case (supra) shall be applied to fact situation at hand as the public interest has adversely affected in this case. Notwithstanding the aforesaid decision in Jagdamba Oil Mills's case (supra) in overruling guidelines laid down in Mahesh Chandra's case keeping in view the reasonableness and fairness in action shall be adhered by the state and its instrumentalities is the ratio laid down by this Court to pass the test of Article 14 reiterated after referring to three Judge Bench decisions in case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Kasturi

Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and other catena of cases which were mentioned in the case of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, are aptly applicable to the fact situation of the case on hand.

32. Therefore, in the light of the legal principle laid down by this Court with regard to Public Trust Doctrine in Mahesh Chandra's case (supra) and the cases mentioned supra, we are inclined to observe that the liquidator did not act fairly and reasonably in the best interest of the public of the State whose interest he is required to uphold. As per the material evidence put on record, the liquidator and the concerned authority did not take any step to improve the condition of the land and sell it at reasonable and standard price prevalent at the time of sale of the property in question.

33. Hence, we hold that the tender process initiated by the Appellants is not legal and is liable to be set aside. We direct the concerned authority to issue fresh notice of tender for selling the land. The notice shall be made available in government websites and other local and national newspapers so as to encourage and invite more bidders. In the meanwhile, the authority shall take all necessary steps to improve and restore the condition of the land so as to make the purchase of the land free from legal encumbrances.

34. Since, the Respondent had paid up the entire bid amount, it is entitled to refund of the entire amount. Further, since it is also proved that the amount paid by the Respondent has been used to pay the arrears, the Respondent is entitled to interest for the amount paid @7% p.a. from the date of payment till the date of refund.

35. Accordingly, we set aside the order dated 2.2.2012 passed by the High Court of Guwahati in M.C. No. 5 of 2012 in Writ Appeal Sl. No. 168339 of 2011 after condoning the delay and consequently we allow the writ appeal by allowing this Civil Appeal.