
(2003) 02 MP CK 0076

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1562 of 2002

Surendra Singh and Another

APPELLANT

Vs

Recovery Officer and Others

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Financial Institutions Act, 1993 — Section 30

Citation : (2003) 02 MP CK 0076

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : M.M. Asudani, for the Appellant; D." Silva, for Respondent No. 1, P.B.S. Nair, for Respondent No. 4, S. Bhargava and R. Bhargava, for the Respondent

Final Decision : Partly Allowed

Judgement

A.M. Sapre, J.—The decision rendered in this writ shall also govern the disposal of the other writ being W.P. No. 1592 of 2002 because in both these writs common question of law is involved.

2. By filing this writ, under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order, dated 5.10.2002 (AnnexureP-10) alleged to be passed by Recovery Inspector (respondent No. 2) Debt Recovery Tribunal, Jabalpur. It reads as under:

"xxxx xxxx xxxx" 3. The dispute in this case relates to a shop situated at 503, M.G. Road, Indore (old No. 279). It is alleged to be owned by respondent No. 3. It is the case of petitioner that they are the lawfully inducted tenant of respondent No. 3 pursuant to rent note dated 21.8.1990 (Annexure P-1) executed by them in favour of respondent No. 3 and since then petitioner has been in actual physical possession of the said shop being a lessee of respondent No. 3 and is carrying on their business. The petitioner says that all of a sudden, they received the impugned order (referred supra) asking them to vacate the

shop in three days failing which it was threatened that the possession of the shop will be taken from them by force giving rise to filing of this writ and challenging the legality and validity of the impugned order. It is also the case of petitioner that on an inquiry made by them, as to in what circumstance, the impugned order came to be served on them for taking such extreme action against the petitioner, it was revealed that respondent No. 4 a Nationalised Bank had filed a claim against the respondent No. 3 for realisation of loan, amount before the D.R.T. Jabalpur under the provisions of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (hereinafter for brevity referred to as R.D.B. Act) and obtained money decree against respondent No. 3. It was also revealed that it is in realisation of this money claim, the shop in question mortgaged by respondent No. 3 with the respondent No. 4 was sold in auction and purchased by respondent No. 5 (as auction purchaser). It was further revealed that it is to accommodate the auction purchaser (respondent No. 5) the impugned letter/order was sent to petitioner by the Recovery Inspector-the respondent No. 2 asking them to deliver vacant possession to auction purchaser. This Court issued the notices of petition to respondents and in the meantime by order dated 10.10.2002 stayed the operation of impugned order. It is, however, the case of petitioner that respondent No. 5 with the aid of impugned order has obtained possession of the shop in question by force and has thereby dispossessed the petitioner without any authority of law. A prayer is also thus made for restoring the possession back to petitioner to uphold the majesty of law. The respondents are served and represented. They have also filed their respective returns justifying the impugned action, both on facts as also in law.

4. Heard Mr. M.M. Asudani, learned Counsel for the petitioner, Mr. D'Silva, learned Counsel for respondent No. 1, Mr. P.B.S. Nair, learned Counsel for respondent No. 4 and Mr. S. Bhargava, learned Senior Counsel with Mrs. R. Bhargava, learned Counsel for respondent No. 5.

5. While assailing the legality and validity of the impugned order, learned Counsel for the petitioners in the first place contended that impugned order is per se and on the face of it without jurisdiction and an outcome of abuse of power and authority by the Inspector. In the second place, it is urged that in no circumstances, the recovery inspector--an executive functioning in Tribunal is empowered under the R.D.B. Act to even write such letter/order asking any person to vacate any accommodation. In the third place, it is contended that in the absence of any inquiry much less an inquiry by the Recovery Officer and that too after affording an adequate opportunity to the petitioner, no such order (even by the competent judicial authority) under the RDB Act could have been passed. In the fourth place, it is contended that in any event, there can never be an order that can be passed either under C.P.C. or under the R.D.B. Act asking the petitioner to vacate the shop in question for the simple reason that they are in lawful possession of shop as tenant and the alleged decree passed against the respondent No. 3 at the instance of respondent No. 4 is only a money decree and not an eviction decree entitling any person (decree holder) or auction purchaser

to obtain its vacant possession while acquiring title through auction sale. Lastly it is contended that in a case of this nature, the best that is legally permissible under the Rules is to deliver symbolic possession of a tenanted shop to an auction purchaser (as in this case respondent No. 5) who has become the owner and landlord of the petitioner in respect of shop by operation of law thereby acquiring rights to receive the rent from the petitioner in place of respondent No. 3 and in case if he has to obtain possession of shop then has to file a civil suit under the Rent Laws i.e. M.P. Accommodation Control Act against the petitioner in Civil Court and on establishing one of the grounds falling u/s 12(1) of the Act claim eviction of petitioner from the shop in question. This in substance, were the submission of learned Counsel for the petitioners in support of their case.

6. In reply, learned Counsel for the respective respondents contended that firstly writ being not a proper and adequate remedy to adjudicate the grievances, the same be not entertained. In the second place it is contended that the proper remedy of the petitioner is to file an appeal before the Tribunal against the impugned action, as provided under the R.D.B. Act. In the third place, it is contended that since the issue involved in the writ is a mixed question of law and fact and requires adjudication of facts such as, whether petitioner is a lawfully inducted tenant, etc., the same cannot be adjudicated in writ and it is for this reason also, the petitioner be asked to invoke the remedy available under the R.D.B. Act. In the fourth place, it is contended that the impugned action is supportable under the Rules framed for taking possession. This in substance, were the submission in reply.

7. Having heard the learned Counsel for the parties and having examined the issue raised by the parties. I am inclined to call upon the Tribunal constituted under the R.D.B. Act to decide the issue in appeal as contemplated u/s 30(1) of the R.D.B. Act.

8. In my considered view, the issue involved in the writ insofar as its legal implications are concerned are far reaching. Indeed they have caused concern to this Court while hearing this writ. Though this Court has refrained from examining them on merits due to constraints in writ jurisdiction, yet prima facie, the impugned action does not appear to be legally sustainable on its face value. It, however, needs to be probed on facts before any finding one way or other is returned. As observed supra, a writ Court enjoins a limited jurisdiction to examine only the legal issue on admitted facts. In this case, even if, this Court records a legal finding on either side, the same will not bring to an end the factual controversy in view of stand taken by the parties. It may be that to avoid the verdict from the High Court in writ, the respondent Nos. 3 and 5 who alone are contesting respondents and are the creature of this action for their sole benefit have set up a false factual defence. But the fact remains that a factual defence is set up to somehow defend their action which apparently look to this Court to be prima facie illegal. Since, the R.D.B. Act in question is a new legislation, it is all the more necessary for the Tribunal to examine the issue in

great depth and in the light of legal provisions applicable to the issue and keeping in view the observations contained in two decisions of Supreme Court reported in the case of Allahabad Bank Vs. Canara Bank and Another, , and Union of India and Another Vs. Delhi High Court Bar Association and Others,

9. Section 30 of the R.D.B. Act provides for an appeal against the order of Recovery Officer to Tribunal. Sub-section (2) provides rather empowers the Tribunal to make such inquiry as it deems fit before any orders are passed.

10. With a view to enable the Tribunal to examine the issue in its correct and proper perspective and to do complete justice between the parties. I purpose to formulate the issues/ questions for being answered by the Tribunal. Indeed, powers of writ Court under Articles 226 and 227 of the Constitution of India by their very nomenclature are extraordinary in nature. They are unfettered. When any Tribunal constituted under the Act fails to exercise its judicial powers or exercise the powers dehors to the object for which the Act is enacted or exercise the powers mala fide and arbitrary resulting in loss, inconvenience and injury to a citizen, the writ Court can pass any orders to prevent such abuses and correct the errors of law. The Tribunal while deciding the appeal shall focus, concentrate and give its specific finding to the issues framed by this Court:

"1. Whether Recovery Inspector of Tribunal has jurisdiction/authority to issue impugned letter, dated 5.10.2002 (Annexure P-10), and call upon the person in possession of shop (auctioned to auction purchaser) pursuant to decree passed under the R.D.B. Act?

2. If the Recovery Inspector has the power to issue such order, then under what provisions of R.D.B. Act and/or Rule such power is conferred on him?

3. Whether order for eviction of a tenant in occupation of a property sold in execution of a decree to auction purchaser can be passed by the Recovery Officer/ Recovery Inspector under the R.D.B. Act/Rules and if so, under which Section/ Rule of the R.D.B. Act/Rule?

4. Whether in a case where the property of a judgment debtor/borrower is in possession of a tenant, can the Recovery Officer while issuing a certificate of sale in favour of auction purchaser direct delivery of actual possession or only symbolical one to auction purchaser?

5. Whether in the facts of this case, Recovery Officer/Recovery Inspector followed due procedure as contemplated in the R.D.B. Act and the Rules framed thereunder by giving adequate opportunity to the petitioner before passing impugned order dated 5.10.2002?

6. Whether, petitioner is a lawful tenant of respondent No. 3-borrower in occupation of shop in question?

7. Whether petitioner is entitled to be placed in possession of the shop by restoring the status quo ante as it existed prior to 5.10.2002 (i.e. prior to

passing of the impugned order) and directing the auction purchaser-respondent No. 5 to file suit to claim actual possession of shop in question by making out a ground u/s 12(1) of M.P. Accommodation Control Act?

8. What is the role played by the Recovery Inspector who has signed the impugned order dated 5.10.2002 (Annexure P-10) and whether, in the event of impugned action being held to be illegal and arbitrary, any departmental action against the concerned recovery inspector is called for?

11. In my considered view, the aforesaid issues/questions does arise out of the controversy involved in this matter. As observed supra, this Court has purposefully formulated these questions so that proper inquiry into the facts and law and also the powers of Recovery Officer/Recovery Inspector under the R.D.B. Act can be determined with reference to the provisions of the Act and Rules framed thereunder. The petitioner is, however, granted two weeks" time to present the appeal before the concerned Tribunal exercising jurisdiction over the issue u/s 30 of the Act and challenge the impugned order dated 5. 10.2002 (Annexure P-10). The parties to appear before the Tribunal on 3rd of March, 2003 to enable the Tribunal to decide the appeal to be filed by the petitioner within a period of three months from the date of parties appearance. No party to the appeal will be allowed to raise any objection about the maintainability of appeal on any of the grounds including the ground of limitation. Needless to observe, Tribunal shall decide the appeal strictly in accordance with law and keeping in view of observation made by this Court, supra, on the questions formulated and the law laid down by Supreme Court in the aforementioned two cases and any other case having bearing over the issue. The Tribunal will be free to hold inquiry as it may deem fit as contemplated u/s 30 of the R.D.B. Act for doing real justice between the parties. This Court has already stayed the operation of impugned order. It shall remain in force till the final disposal of the appeal, with a further direction that respondent No. 5 i.e. auction purchaser will not alienate the shop in question, nor will create any alternation, modification of any nature whatsoever and nor shall sell it to defeat the rights of the petitioner in the said shop. It is further directed that respondent No. 5 shall be bound by the orders passed by the Tribunal and will have to act accordingly, no sooner the verdict is pronounced. The respondent No. 5 is directed to give/furnish an undertaking on affidavit before the Tribunal on 3rd March, 2003 to this effect, failure to furnish the undertaking as directed shall be treated as a default on the part of respondent No. 5 in complying the writ issued by this Court and Tribunal will be free to pass orders in accordance with law. It is made clear that parties shall not be allowed to indulge in any delaying tactics and appeal shall be disposed of strictly within a period of three months as an outer limit.

12. In view of aforesaid discussion and directions, this petition is partly allowed.

13. The Registrar to forward a copy of this order to concerned Tribunal for information and its compliance.

No costs.

C.C. with three days.