
(2018) 07 PAT CK 0079

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7762 Of 2013

Sushma Sinha

APPELLANT

Vs

Bihar State Financial Corporation And Ors

RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar State Financial Corporations Act, 1951 — Section 29, 30, 31

Citation : (2019) 1 PLJR 119

Hon'ble Judges : Anjana Mishra, J

Bench : Single Bench

Advocate : Ashok Kumar Sinha, Santosh Kumar Singh, Raju Giri, Manik Ved Sen, Subhash Chandra Bose

Final Decision : Dismissed

Judgement

The present writ application has been preferred for setting aside Memo No. 503 dated 12.2.2013 whereunder the industrial unit of the petitioner's

late husband known as M/s Sinha Industries was auction sold at a price of rupees fifty six lacs. The petitioner has also prayed for setting aside all

proceedings initiated by the Respondent No. 1 and 2 against M/s Sinha Industries as its owner Bhagirath Prasad Sinha died on 02.09.2012 prior to the order impugned in the present writ application.

The petitioner has further prayed for refund of the consideration amount by setting aside the auction sale of the unit in favour of the private

respondents and a direction to the respondent no. 1 and 2, after setting aside the impugned order and for withholding the confirmation of the auction

sale and execution of the sale agreement in favour of the private respondents. The further prayer of the petitioner is that the private respondents be

directed to restore possession of the industry together with its land, plant and machinery, to the petitioner who is the legal heir of the deceased

proprietor.

The brief foundational facts leading to the rise of the present application are as follows:-

4. That M/s Sinha Industries engaged in manufacturing diesel engine, centrifugal water pump, hand pump, spare parts, liner, piston, ring and valves, bearing SSI registration no. 23/24/02701/P.M.T. Dt. 1988 is a proprietorship firm of Bhagirath Prasad Sinha, who was the husband of the petitioner.

6. That the husband of the petitioner being the sole proprietor of M/s Sinha Industries applied for term loan of 14.06 lacs on 16/10/1986 to the Bihar

State Financial Corporation (respondent no.1). After project appraisal, the respondent no. 1 sanctioned a term loan of Rs. 15 lacs to M/s Sinha

Industries vide a letter dated 05/2/1987 (Annexure-2) issued for and on behalf of the respondent no. 1, under the signature of one Sri D.K. Jha, the

then Manager (App.) Gra-III.

7. That normal terms and conditions governing financial assistance after sanction of loan as contained in Annexure 1 of the sanctioned letter

dated 05/02/87 and duly signed by the then Manager Sri D.K. Jha (App.) Gra-III (Annexure-3) was received by the husband of the petitioner and he

accordingly sent letter of consent.

8. That the husband of the petitioner who was the proprietor of the said industry in order to secure repayment of loan equitably mortgaged by

depositing the title deeds with respondent No. 1 of the landed property on 11/3/87 of the nature and description whereof were contained therein.

The sanctioned loan amount was disbursed between March, 1987 and July, 1990 as a result whereof the unit came to be closed down. The proprietor

of the unit M/s Sinha Industries namely Bhagirath Prasad Sinha died on 2.9.2012 but after his death neither his legal heirs which included his widow

(the petitioner) was made party nor were they informed of the auction sale.

Soon after receiving the death certificate, the son of the proprietor sent a letter to the respondent No. 1 on 16.11.2012 regarding death of his father,

which was received in the office of the respondent on 17. 11. 2012 (Annexure-1 series), praying for some time in making payments of the amounts

due. The said letter was signed by Naresh Prasad Sinha as son of late Bhagirath Prasad Sinha. In the said letter, Naresh Prasad Sinha had filed the

said letter on behalf of M/s Sinha Industries and has also acknowledged the debt and has prayed for time of thirty days for making repayment thereof.

Despite the said letter the Respondent-Financial Corporation passed the impugned order dated 12.2.2013 for sale of the mortgaged / hypothecated

assets of M/s Sinha Industries. It is notable to mention at this stage that the notice of sale was published in the local Hindi daily newspaper 'Hindustan'

in which it was shown that there was a standing loan amount to the tune of rupees 235.76 Lacs (Annexure-4).

Learned counsel for the petitioner submitted that though the Financial Corporation in its meeting held on 21.5.2007 decided to sell the mortgaged

assets of M/s Sinha Industries on 21.5.2007 itself, yet the notice was published only in the year 2012, thereby permitting the loan to surmount to an

alarming limit and the notice for sale was published only in the year 2012, after the death of the husband of the petitioner, who was the sole proprietor

of the said industrial unit.

Learned counsel for the petitioner further contended that though the petitioner is desirous of getting out of debt trap by depositing 25% of the total

consideration price, the authorities were determined not to permit the same and proceeded to sell it to the auction purchaser and by their Memo No.

503 dt. 12.2.2013, the mortgaged properties were auction sold for a consideration amount for rupees fifty six lacs only, and the purchasers were made

to make an initial cash down payment to the tune of Rupees Fourteen lacs which included earnest money of rupees one lac. The purchaser (private

respondents herein) were to deposit 75 per cent of the remaining consideration amount i.e, forty-two lacs, treating it to be the terms loan to the

purchaser on the Corporation's usual terms and conditions to be repaid in four years, in sixteen quarterly installment of each of Rs. 2,62,500/-

(Annexure-5).

Learned counsel for the petitioner further submitted that the petitioners are also desirous of depositing 25 % of the total consideration price on the

same terms and conditions on which the industrial unit together with its mortgaged/ hypothecated properties as has been sold to the auction purchaser

to the respondent Financial Corporation but without giving any notice to the

petitioner and without giving her an opportunity to arrange for the money or even to arrange for another purchaser who would pay adequate value of the property, the Corporation has proceeded to finalize the auction sale with them. It was further submitted that the petitioner being the widow of the sole proprietor of M/s Sinha Industries, is willing to offer the sale price as Auction-purchaser on the same terms and conditions.

Learned counsel for the petitioner submitted that the owner of the unit M/s Sinha Industries namely, Bhagirath Prasad Sinha, died leaving behind his

widow (petitioner), two sons namely, Naresh Prasad Sinha, Navin Kishore and three daughters namely, Kanchan Kumari, Chanchala Kumari and

Suman Kumari. After the death of their father and the husband of the petitioner, all the coparceners have got equal share in the landed property of the

mortgaged property of the industrial unit known as M/s Sinha Industries. It was submitted that without giving notice to the co- sharer including the

petitioner, the auction sale was affected in favour of the private respondent which is wholly, arbitrary and against the settled principles of law.

It was further submitted that the prevailing market rate of the land was four lacs per decimal and the total valuation of that land, the existing market

rate came to Rs. 1,43,00,000/- which was besides the valuation of the structure raised thereon. It was contended that the valuation of the plant and

machinery, even after deduction of its depreciation would come to Rs. 25,00,000/-. It was thus contended that in view of such valuation, the sale of the

aforementioned unit for a meagre amount of Rs. 56 lacs, was wholly unreasonable and against the practice procedure laid down to attract the best

offer for sale.

Learned counsel for the petitioner submitted that when the same came to be known, they sent a letter dated 28.2.2013 to the respondent Managing

Director, to grant her some time so that she could make payments of the amounts due but despite the same, on 7.6.2013 the respondents took over the

possession over the mortgaged property of late Bhagirath Prasad Sinha vide letter dated 7.6.2013 (Annexure-7) which was apparently passed during

the pendency of the writ application.

Learned counsel for the petitioner, thus filed an interlocutory application bearing I.A. No. 5286 of 2015, wherein the petitioners prayed for an order of

status quo for restraining the respondent 4, 5 and 6 (auction purchaser) from

disposing the moveable properties and other factory equipments as well as from demolishing the factory building which had been auctioned in their favour, without giving any notice to the successors/ heirs of the deceased proprietor of M/s Sinha Industries at P.S. Chandi. However, no order could be passed thereon as the Bihar State Financial Corporation (BSFC) informed the Court on 03.03.2016, by Mr. Raju Giri, appearing on behalf of the BSFC informed the Court that the auction sale had reached its finality, inasmuch as not only possession was handed over to the private respondents on 20.06.2013, but even the sale deed has been executed and registered on 03.01.2016. Thus, the prayer for status quo was apparently not entertained. Another I.A. No. 469 of 2016 has also been filed for amending the prayer portion and prayed for further reliefs as enumerated therein which, however, was not pressed as is evident from the order dated 17.4.2017.

The counter-affidavit filed by the Bihar State Financial Corporation as well as the private respondents clearly aims at a denial of the relief sought for by the writ petitioner and the Respondents (both sets) have stated that the petitioner is not entitled to any relief under Article 226 of the Constitution of India for the reasons detailed hereunder.

So far as the respondent Bihar State Financial Corporation is concerned, it has been submitted that M/s Sinha industries was sanctioned a term loan of fifteen lacs on 05.02.1987, for setting up an industrial unit and out of the aforesaid sanctioned amount of rupees fifteen lacs, the concerned has availed a sum loan of rupees 14.95 lacs for bringing the unit into production. However, the concerned unit, failed in making payment of dues of the Corporation. As such, the Corporation issued a legal notice under Section 30 of the Bihar State Financial Corporation Act on 28.2.1992. However, the promoter failed to comply with the direction as stated in the legal notice and consequently the mortgaged assets of the units were advertised for sale on 28.6.1995, but due to non- availability of any reasonable tender, the mortgaged assets were re- advertised on 14.6.2007. The Corporation, again, did not receive any reasonable tender and the mortgaged assets of the unit was not sold but the dues continued to surmount against the promoters to an alarming position. Finally, the Corporation again issued legal notices under Section 30 and 29 of Bihar State Financial Corporation Act on 06.02.2012, directing the promoter of the concern to discharge the total liabilities of Rs.

2,51,00,000.00 within 21 days from the service of the notice failing which the Corporation will be at liberty to advertise the mortgaged security of the concern and to sell the same either by public auction or by negotiation or otherwise and without the help of the court (Annexure R/1).

It was pointed out by learned counsel appearing on behalf of the Bihar State Financial Corporation, that earlier pursuant to the sale advertisement

dated 14.6.2007, the Corporation had received only two tenders from Shri Prabhat Kumar and others and secondly from M/s Shiv Durga Builders

Private Limited on 18.3.2011 and 7.5.2012 respectively, for a sum of Rs. 15.45 lacs and Rs. 32.00 Lacs respectively, for purchase of mortgaged assets of the concern.

It was further submitted that after receipt of the tenders, the Corporation issued a Letter to the Promoter of the concern on 2.12.2011 vide Memo no.

227, for making payment of dues within 30 days time, but the promoter failed to comply the request issued by the Corporation. The Corporation again

issued a letter under Memo No. 278 dated 06.02.2012 under registered post requesting the promoter to make payment of the Corporation, but the

promoter failed to do so. Consequently, on 28.8.2012 a negotiation for sale of the unit was entered into and during negotiation Sri Prabhat Kumar &

Ors raised their offer to the tune of Rs. 56 lacs. The Corporation again advertised the unit on 19.10.2012 in the daily newspaper "Hindustan"

disclosing highest offer of Rs. 56 lacs in order to attract a better offer, requesting for such offers within a 30 day period, but no offer was received. In

this advertisement the promoter of the concern was also informed to keep himself in contact with the Respondent Corporation and if sale order is

issued, then a copy of the sale order shall be sent to him through registered post for retaining the unit on matching terms and conditions within 21 days.

Meanwhile, the promoter of the unit expired and his son Naresh Prasad Sinha, on 16.11.2012 requested for 15 days time for payment of

Corporation's dues. The request of Shri Sinha was allowed and communication in this regard was issued vide Letter No. 163 dated 10.12.2012

under registered post. However, Mr. Sinha did not make any payment and submitted a request again on 13.12.2012 to give further one month's

time which was granted again but even after lapse of time granted to him, no payment was received by the Corporation.

Consequently, the sale order was issued in favour of Sri Prabhat Kumar & Others on 12.02.2013 under Memo No. 503 (Annexure-5 of the writ

petition) intimating the promoter of the unit for retaining the unit on matching terms and conditions as per sale order within 21 days time, but the legal

heirs of the deceased promoter did not retain the unit and submitted a letter on 28.02.2013 for granting some more time to deposit the dues of the

Corporation which was replied by the Corporation on 05.03.2013 under registered post. After expiry of stipulated period of 21 days as mentioned in

the sale order the auction purchaser deposited initial cash down payment of Rs. 14 Lacs i.e. 25% of the sale consideration amount of Rs. 56 lacs on

08.03.2013 and also executed sale cum payment of balance loan agreement on 19.03.2013.

It is relevant to mention here, that the promoter of the unit had no intention of making payment of the dues of the Corporation because even after

every persuasion, he failed to come forward to pay a single penny to the Corporation.

Furthermore, the Corporation had also announced several exit policies for its defaulting units under OTS-04, OTS-06, OTS-09 & OTS-10 and ILRS-

08, but the Promoter of the present unit never approached the Corporation for settlement of its dues.

It is further submitted by learned counsel appearing on behalf of the Corporation that the Corporation had invoked Section 29 of the S.F.C. Act and

had issued sale order under Memo No. 503 after completing all formalities laid down for the sale of mortgaged assets of the defaulting units. Since all

the formalities had been followed prior to the issuance of the sale order and notices had been sent to the late husband vide Annexure-R/1 dated

06.02.2012, which is evident from Annexure R/1 whereas R/2 dated 16.11.2012. Such letters also clearly indicate that the petitioner's son had

been communicating on behalf of the Sinha Industries, Chandi, Nalanda with the Respondent and had acknowledged the debt of their father. It is

further evident from letter dated 14.12.2012, which indicates the amount due as against Sinha Industries, that a further one month's time for

payment of the dues of the Corporation was granted. However, after the lapse of the aforementioned period and since no payment had been received

from the petitioners, the sale order was finalised issued in favour of Shri Prabhat Kumar and others on 12.02.2013 with intimation to the promoter of

the unit for retaining it on matching terms and conditions as per the sale order within twenty-one days. However, the promoter did not retain the unit

and submitted a letter dated 28.02.2013. Learned counsel for the Respondent-Corporation thus submitted that despite the aforementioned period

granted to the promoter, the petitioners failed to respond to the matching offer. Thereafter, the purchaser was permitted to deposit the initial cash

down payment of Rs. 14 Lacs. It is thus submitted that the sale-deed having now been executed after affording an ample opportunity to the petitioner

to make matching offer, there was no reason why the petitioner's writ application could be maintained before this Court as there is no patent

illegality in the orders passed by the Corporation.

Drawing the attention of this Court to a judgment delivered in Civil Appeal No. 2062 of 2002 with C.A. No. 6063 of 2002 (KSIIDS Vs. Cavalate India

Ltd.), the Respondent-Corporation submitted that the guidelines for exercise of jurisdiction under Article 226 of the Constitution of India has been

clearly enunciated by the apex court in the aforementioned judgment and the Court held that:-

I. The High court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit as an appellate Authority over the acts and

deeds of the Financial Corporation and seek to correct them. The Doctrine of fairness does not covert the writ Courts into appellate Authority over

administrative Authority.

II. In the matter between the Corporation and its debtors a writ Court has no say except in two situations:-

(a) There is a statutory violation on the part of the Corporation or

(b) Where the Corporation act unfairly i.e. unreasonably.

It was further held by the Apex Court, that unless the action of the Financial Corporation is patently malafide, even a wrong decision taken by it, is not

open to challenge. The Apex Court has further held that fairness cannot be a one way affair. The Fairness required of Financial Corporation cannot

be carried out to the extent of disabling it from recovering what is due to them. While not insisting upon the borrower to honour its commitments

undertaken by him, the Financial Corporation cannot be shackled hand and foot in the name of fairness. Thus it was contended that the Corporation

has not taken any action against the Promoter/Petitioner, which may be termed

as malafide and unreasonable. The promoters/petitioners, having themselves stepped in to pray for time have been given sufficient opportunity to make payment of the Corporation dues as per terms and conditions executed by them, but it was only failure on their part in making payment of dues, that the Corporation was left with no option but to recover its dues by invoking the provisions of Section 29 of the S.F.C. Act.

It was further contended by the learned counsel for the respondent that the petitioner cannot unilaterally lay blame on the Corporation for default made by her or by her deceased husband. The Promoter of the concern had taken loan from the Corporation for establishment of the unit and against the loan they had executed an agreement and guarantee bond with the Corporation and had agreed for payment of the corporation's dues as per stipulated repayment scheme. Accordingly, it was their responsibility to make repayment of dues of the corporation. However, having failed to do so, the Corporation as per terms of the agreement had invoked the provisions under Section 29 of the S.F.C. Act for recovery of the loan due to the Corporation.

Learned counsel for the Corporation further submitted that the petitioner was aware about the action being taken by Corporation as her son had repeatedly requested the Respondent Corporation to provide him time to make payment of the dues of the Corporation and on his request the Corporation had given sufficient opportunity with effect from 02.12.2011 to 25.01.2013.

Nevertheless, the petitioner or her deceased husband or son had never made any attempt to make payment of the dues of the Corporation since its inception. Consequently, the dues against the petitioner concern surmounted and had become an alarming amount to the tune of Rs. 2.84 Crores (Approx) came to be due against the concern on 31.08.2012. At present it would have risen to more than Rs. 3 Crores. The petitioner however was now making attempts to seek sympathy of the Hon'ble Court by stating his family affairs. However, the deceased promoter during his life time has never made payment against the dues of the Corporation and when the Corporation has invoked the provisions of Section 29 of the S.F.C. Act, the petitioner has raised hue and cry.

Learned counsel for the Respondent-Corporation also urged that the contention

of the petitioner that the Valuation of the unit was not done, is also patently wrong, as the Corporation duly got the valuation reports of the unit estimated by the Branch Level Valuation Team, (BLVT) which submitted its report on 24.05.2011 and then on 26.03.2012. The Central Valuation Team (CVT) had also submitted its report assessing the unit to be valued at Rs. 31.25 lacs. Accordingly, after much negotiations, the assets have been sold at a consideration amount of Rs. 56 lacs. Answering the issues raised by the petitioner, that the heirs of the deceased proprietor are having equal share in the rented property which was mortgaged in the favour of the Corporation by the Industrial unit M/s Sinha Industries, the learned counsel has submitted that the Corporation has got first charge over the assets and only after satisfying the dues of the Corporation, can the family members claim a share in the same. Moreover, in an effort to get the "Best offer", the Corporation had properly advertised the unit for sale and after perusal of the best offer, the sale has been finalized. Thereafter, the petitioner was also afforded the opportunity to make a matching offer. Moreover, the purchaser had deposited the consideration amount as per the terms of the sale order and the agreement had been executed by the Respondent for payment of the balance loan, the possession of the unit was taken over by the Corporation and handed over to the purchaser on 20.06.2013. The Sale deed of the unit has also been finally executed in favour of the purchaser and registered on 03.01.2016. It was thus contended, that with the finalization of the sale-deed and the handing over of the possession of the mortgaged assets to the auction-purchaser, the present application has been rendered infructuous and is fit to be dismissed.

It is further submitted by learned counsel for the Respondent that the Corporation has fully followed the directions of the Hon'ble Court as rendered in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and Others reported in (1993)2 SCC 27 9 wherein the opportunity to the promoter of the unit has been given at all stages to make payment of dues but despite repeated offers to the promoter from the year 2011 vide Memo No. 227 dated 02.12.2011 and also Memo No. 278 dated 06.02.2012, the promoter failed to make any payment. As such by no stretch of imagination can the action of the Respondent Corporation be said to be unfair and unreasonable so as to warrant interference under Article

226 of the Constitution of India.

It was also submitted by learned counsel for the respondent that as per the Deed of indenture made on 11th March, 1987 between the proprietor

Bhagirath Prasad Singh who was also the guarantor at paragraph No. 6 of the said indenture, it has been clearly stated as follows:-

“The guarantee herein contained shall not be determined or affected by the death of the guarantee but shall in all respects and for all purposes be

binding and operative until repayment of all moneys due to the corporation as aforesaid.”

Learned counsel for the Corporation has referred to a decision of the Apex Court passed in the case of Haryana Financial Corporation and another

Vs. Jagdamba Oil Mills and another reported in (2002) 3 SCC 496 wherein at paragraph No. 6, 8, 9, 10 to 16, a principle has been clearly explained as

to how the discretion available to them being a quasi judicial authority can be exercised:-

“10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice.

This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction

between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak V. Union of

India. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial

action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot

do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the

administrative authorities; they have a certain amount of discretion available to them. They have “a right to choose between more than one possible

course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred”. (as per Lord Diplock in

Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside (ALL ER at p. 695f.). The Court cannot substitute its

judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable

that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene,

M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (ALL ER pp. 682H-683A)

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation

to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently

used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself

properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which

are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly,

there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

The private respondents herein, being Respondents No. 5, 6 and 7 have also entered appearance. The private respondents, who are the purchasers,

have submitted that the writ application is wholly misconceived and devoid of any merit as the allegations levelled against the Bihar State Financial

Corporation, on the face of it, are devoid of any merit and are belated and thus fit to be rejected. It has been submitted that the petitioner's late

husband Shri Bhagirath Prasad Sinha, did not avail of the OTS Scheme, 2006 nor did they take any step to repay the dues under OTS Scheme of the

Corporation introduced in the year 2009-10. It was further submitted that when the original promoter failed to take any interest in the aforesaid

schemes and showed total apathy towards payment of the dues of the B.S.F.C., the Corporation took a conscious decision for sale of the unit for

realization of the dues of the Corporation, which was a bonafide exercise of power by the B.S.F.C. Accordingly, the unit was advertised along with

other defaulting units.

It was further submitted that the writ petitioner has also tried to make factually incorrect statement, as no decision was taken to sell the unit on

21.05.2007 as has been stated in paragraph No. 12 and 13 of the writ application. It was further submitted that such an allegation against the

Corporation is misconceived, as the impugned order, on a plain reading, indicates that the Board of Directors of the Corporation had delegated its power to the Managing Director vide Item No. 14067 in its meeting held on 21.05.2007 and the Managing Director in exercise of the power delegated to him by the Board of Directors, has passed the impugned sale order dated 12.02.2013 which is wholly legal and valid in the eye of law. Moreover, the petitioner's unit had been defaulting since the last twenty-five years and there being no effort whatsoever, by the promoter to run the unit and pay the dues of the Corporation, the Corporation was at last constrained to take coercive action against the petitioner's unit for recovery of the dues which is wholly valid and tenable for all financial institutions so that it can survive. It was further contended, that so far as the valuation of the assets of the petitioner's unit which had been mortgaged by the Corporation, the said exercise was duly undertaken by them, and after receiving offers in pursuance of the advertisement issued by them, the Corporation negotiated with viable buyers before finally and issuing the sale notice. The contention of the petitioner that they had no notice of the sale can well be controverted by their own documents/annexures, wherein, they have repeatedly prayed for granting them time to deposit the money. Even after the sale, the respondent Corporation had afforded them sufficient opportunity to give a matching offer so as to retain the unit. However, the petitioner chose not to exercise the option nor did she apply for any more time. Thus, now that the answering respondents have finalized the deal, and the contract between themselves and the Corporation stands concluded by registration of the sale deed and also the agreement for payment of loan, it is not open for the petitioner to challenge the same. Thus, learned counsel appearing on behalf of the private respondents contended, that the petitioner's contention in paragraph No. 25 and 26 is also misconceived as the proprietor of the unit was also the owner of the land which had been mortgaged in favour of the Corporation for establishing the unit on the said plot of land in the name and style of M/s Sinha Industries. Thus the Corporation was fully and legally entitled to sell the mortgaged assets in case of default in making payment of interest in installment in exercise of powers conferred to it under Section 29 and 30 of the Bihar Financial Corporation Act. Thus, at this stage, when the sale has been completed and registration of the same has been done, it is settled law that the Court would not

interfere in the case of a concluded contract. Thus, the writ application is devoid of any merit and is fit to be dismissed.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the parties. The writ application has been filed for setting aside

the sale by the wife of the original promoter on the sole ground that the petitioner had not been noticed before the finalization of the sale. Thus, the

crucial point to be decided by this Court is as to whether any prejudice was occasioned to the petitioner and as to whether the Respondents have

acted reasonably and fairly in the case of the petitioner.

It appears from the records of the case that during the life time of the promoter, who was also the proprietor and the guarantor of the unit, several

opportunities were given to him for repayments of dues. It is also evident from Annexure-1, that the acknowledgement of the debt was made on

behalf of Sinha Industries, Chandi, Nalanda, by his son Naresh Prasad Sinha, wherein he had stated that his father had expired on 02.09.2012 and that

he had sought for a time of thirty days to make payment of the dues. Thereafter, again on several occasions, he communicated with the Corporation

seeking time for making re-payment of the dues of M/s Sinha Industries which was duly granted to him by the Corporation. It also appears from

Annexure-6 dated 28.02.2013 that the petitioner herself, namely, Sushma Sinha on behalf of M/s Sinha Industries, Chandi, Nalanda, had acknowledged

notice of the sale and in the said letter also, she has prayed for some time of a couple of months, so that she could make payment. Thus, it cannot be

said that the petitioner was not aware of the advertisement for sale and the consequent action which followed the said advertisement, as they had

along been communicating with the Corporation. It is further clear that, under such circumstances the authorities had given the petitioner several

offers and reminders after the final advertisement for sale, but the petitioner did not act upon the same and once the sale has been finalised, have now

approached this Court for action of annulling the sale, which is wholly untenable and misconceived as the Courts would not normally interfere in a

concluded contract. Thus, in my considered opinion ample opportunity was afforded to the petitioner by the Corporation and it cannot be inferred that

the Corporation had not afforded the petitioner a matching offer before finalizing the sale to the prejudice of the petitioner.

Moreover, it is also evident that the promoter of M/s Sinha Industries, the late husband of the petitioner, had not availed of any of the schemes for

repayment being the OTS Scheme of 2006 or OTS settlement Scheme of 2009 and thus the contention that the Corporation had deliberately allowed

the loan to surmount and had not taken necessary action earlier against the original proprietor/promoter/guarantor of the Industrial Unit which is

indicative of their arbitrary and unfair exercise of their power, also cannot be acceptable to this Court for the reason that they themselves had not

availed of the opportunities given by the Corporation. Thus, the reasonableness of the action of the respondent cannot be assailed, as even after the

sale order the Corporation has extended to the unit the proposal for accepting a matching offer to the petitioner in case a unit makes it.

However, even, at the last stage when the sale was being finalized, the petitioner did not rise to the offer, though she accepts in her letter that she is

acting on behalf of M/s Sinha Industries.

So far as the contention of the petitioner that there is a distinction between Section 29 and 31 of the Bihar State Financial Corporation Act and that the

Corporation could have acted only under Section 31 of the aforementioned Act, the said argument cannot be acceptable to this Court as the

respondent Corporation has got on record the agreement of guarantee executed by the proprietor as guarantor of M/s Sinha Industries which was the

loanee. Since the proprietor of M/s Sinha Industries was also the guarantor, the attempt by the petitioner to place reliance on the judgment reported in

(2008) 5 SCC 176 (Karnataka State Financial Corporation Vs. N. Narasimahaiah and others) is wholly misplaced for the reason already referred to

above as a separate proceeding under Section 31 need not be proceeded.

Having heard learned counsel for the parties and upon due consideration of facts and circumstances of the case, it is evident that the action of the

Respondent Corporation cannot be held to be unreasonable as it had afforded ample opportunity to the petitioner for making repayment of the dues of

the Corporation right from the time it went into default till date the finalization of the sale the Corporation. Moreover, after due consideration, the

Corporation had also extended to the petitioner an opportunity to place a matching offer. It was only after the petitioner failed to respond to any

such letters that the Corporation proceeded to accept the advance of the price

fixed from the private respondents. Thus, the entire action cannot be said to have been initiated against the promoter or petitioner in a malafide and unreasonable manner, so as to render the same to be lacking in fairness or reasonableness. Over and above, the petitioners have failed to show any adequate cause for not responding to the offers extended by the Corporation and, therefore, this Court while exercising its jurisdiction under Article 226 of the Constitution of India, cannot sit as an appellate authority over the action and deeds of the Financial Corporation so as to reverse its action taken in the interest of the financial institution for recovery of its dues from its defaulting units. It is well settled that the doctrine of fairness does not extend so as to permit the writ courts to be converted into an appellate authority over a quasi judicial or administrative authority.

Thus, for the reason stated herein above, this court does not find the action of the Corporation to be unreasonable and would refrain from interfering in a concluded contract, especially because the petitioners have failed to prove that there has been any violation of statutory provisions on the part of the Corporation.

In the result, the prayer of the petitioner being wholly untenable on facts and law, the writ application is held to be devoid of any merit and stands dismissed.