

(1990) 12 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5356 of 1989

Vijay Kumar Khemka

APPELLANT

Vs

Rajasthan Financial Corporation and Others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (1994) 79 CompCas 560

Hon'ble Judges : V.S. Dave, J

Bench : Single Bench

Advocate : Saiyad Manzoorali, for the Appellant; B.L. Samdariya, Respondent Nos. 1 to 5, Deepa Ajwani, Respondent Nos. 6 and 7 and J.K. Dheengra, Respondent No. 8, for the Respondent

Judgement

V.S. Dave, J.—The petitioner in this writ petition has prayed that the sale of machinery, finished products and raw material, etc., lying in the factory premises of the petitioner by respondent Nos. 1 to 5, effected in favour of respondent No. 8 for a sum of Rs. 35,000 even though the property was worth about Rs. 6,00,000 be set aside as being illegal and mala fide and in contravention of the procedures and guidelines framed by the Rajasthan Financial Corporation. The petitioner has based this prayer on a decision of their Lordships of the Supreme Court in Swastic Automobiles and Others Vs. Bihar State Financial Corporation and Others, wherein their Lordships set aside the sale of the security by the Bihar State Financial Corporation in exercise of its powers under the State Financial Corporations Act as it was found difficult for their Lordships to sustain as the security which was valued at over Rs. 20,00,000 had been sold for a small amount that was actually due to the debtor by the Corporation. Hence this court while appreciating the facts has only to consider as to whether, in the facts and circumstances of the present case, the aforesaid decision of their Lordships is applicable or not ?

2. The admitted facts of the case are that the petitioner established an industry

in the name and style of Messrs. Jaiguru Weaving Factory in Jaipur having got it registered with the Director of Industries as a small scale industrial unit on May 10, 1966. He applied for a loan for Rs. 25,000 from respondent No. 1 and in that respect made an application in the prescribed form. The petitioner in his application for grant of loan stated that if the loan amount was sanctioned, under the terms the petitioner shall maintain a minimum margin of 75% in respect of proposed plant and machinery. In other words 75% of the investment was to be of the petitioner. The agreement was signed on April 9, 1983, and the valuation of the plant and machinery was got done on April 19, 1983, on which date the valuation officer after personally seeing the plant and machinery stated that the realisable value of each item is mentioned in a separate report but the total of which comes to Rs. 1,32,665 which is correct to the best of his knowledge and belief. The petitioner as per the report had installed the following machines ;

3. Lathe machine 12 feet, spinning machine, power press 10 H. P. motor, 3 H. P. motor, lathe machine 6 feet with motor and attachments, spinning lathe with motor and another spinning lathe heavy duty with motor.

4. According to the petitioner he had invested Rs. 4,34,000 of which Rs. 5,60,000 was invested from his own resources, Rs. 25,000 were given by respondent No. 1 as loan and Rs. 50,000 were given as loan by the Bank of Rajasthan. The petitioner except for one instalment failed to pay the amount due and respondent No. 1, therefore, in exercise of the powers vested u/s 29 of the State Financial Corporations Act (hereinafter referred to as "the SFC Act"), auctioned the machinery which is under challenge.

5. The petitioner's case is that he was also the treasurer of Jhotwara Hasthkala Vastu Utpadan Sahkari Samiti Ltd. (hereinafter referred to as "Sahkari Samiti") and this samiti opened a sales depot for selling its products in his factory premises after seeking approval by the Director of Industries, vide the latter's letter dated December 10, 1984. The petitioner invested another sum of Rs. 1,50,000 for purchasing weaving accessories. He produced on record the investment report prepared by the Handloom Inspector. The petitioner's case is that for various reasons he could not successfully run the business and due to personal problems he had to shift to Calcutta. He accordingly informed the Joint Director, Industries Centre (RFC), Jaipur, of his intention to go to Calcutta and also left his Calcutta address. He thereafter left for Calcutta. He learnt in April, 1989, that his factory has been taken over by the Rajasthan Financial Corporation after breaking open the locks of the factory including that of the premises where the hypothecated items of the bank were also kept. He immediately rushed to Jaipur and learnt that his property has been sold to respondent No. 8 for a sum of Rs. 35,000. The petitioner's case is that he had goods worth Rs. 5,81,590 inside the factory at the time when it was auctioned. The petitioner's breakup of the items is as under :

Rs. Plant and machinery and accessories 3,08,500 Finished and semi-finished goods 63,000 Raw material and finished goods in the godown 59,890 under lock

and key of the bank Handloom machine and accessories of Shakari Samiti
1,50,000

6. His further case is that the respondents not only handed over the machine and plant to respondent No. 8 but mala fide handed over the building of the factory also to respondent No. 8 which action of the Rajasthan Financial Corporation has been set aside by the civil court, vide judgment and decree dated November 16, 1989. The petitioner's grievance is that the action of respondents Nos. 1 to 5 is absolutely illegal and mala fide. Goods worth about Rs. 6,00,000 have been auctioned for Rs. 35,000 only in the garb of proceedings u/s 29 of the State Financial Corporations Act and the whole proceedings are illegal and mala fide. His further case is that the Rajasthan Financial Corporation is governed by the procedure and guidelines prescribed which have been deliberately flouted. The petitioner's further case is that information of change in address was notified as early as 15th September, 1987, but no notice was sent to the changed address. Further, the Rajasthan Financial Corporation had no jurisdiction, express or implied, to have sold the movable property in shape of katories and tagaries and also the goods belonging to Sahkari Samiti which were worth Rs. 1,50,000.

7. The case of the Rajasthan Financial Corporation is that when the possession report regarding taking over the assets of the petitioner's industry was prepared on February 5, 1989, the following items were found :--

Lathe machine 12 feet with motor.

8. Spinning lathe, power press, drill machine without motor, spinning frames channel, grinder, weaving accessories, machine frame, tagaries shaft and pulley.

9. The following things were found missing :

1-3 H. P. motor, 1-spinning lathe with motor ; with heavy duty, spinning lathe with motor, 1-6 feet lathe machine with motor and attachment of lathe.

10. A notice about the shortage was given to the petitioner. It is submitted that notice of payment of over-dues had also been sent from time to time but all the notices sent from time to time were returned unserved. The further case is that the petitioner had not notified the change of address and hence all the notices were sent to his Jaipur address. Several arguments have been made on either side and learned counsel for the parties took me through the various clauses of the agreement and the procedure and guidelines.

11. The respondents' submission is that the writ petition should be dismissed because there are mixed questions of law and fact in the case and further that it cannot be said as to how much amount worth of goods were lying in the factory when it was taken over in accordance with Section 29 of the State Financial Corporations Act. It is submitted, the Rajasthan Financial Corporation was no longer under an obligation as per terms of the agreement to furnish the copies of the documents concerning the sale proceedings, etc., and to explain as to what was the valuation of the goods lying inside the factory. It is also submitted that

as many as 3 registered letters had been written from time to time which have been placed on record to show that they have been returned undelivered and the notice of auction was also published in daily newspapers. It is submitted that there is absolutely no illegality in the procedure adopted by the answering respondents and the writ petition deserves to be dismissed.

12. On behalf of respondent No. 8 it is submitted that he is a bona fide purchaser for value in an open auction and the sale cannot be set aside. It has been vehemently argued on behalf of the respondents that the petitioner has not paid any instalment of the loan and has left the place without information and he has no right to invoke the extraordinary jurisdiction of this court.

13. I have gone through the entire documents placed on record and also perused the original file placed before me by learned counsel for Rajasthan Financial Corporation.

14. So far as the objection of the respondents regarding the petitioner's bona fides in approaching this court is concerned, in my opinion, it has been raised only to be rejected. There is nothing on record to show that the petitioner acted mala fide. The only grievance which could be raised is that he had not paid the dues for long and, therefore, being a defaulter should not be heard. I regret, this argument cannot be accepted. Since the petitioner was a defaulter in repaying the loan, the Rajasthan Financial Corporation had a legal right under the Act to recover the dues and I have no hesitation in accepting the respondents' argument that Section 29 of the State Financial Corporations Act gives ample power to the Rajasthan Financial Corporation to take over the industry and realise its amount by putting it to auction, but the Rajasthan Financial Corporation has to follow the mandate of law and principles of natural justice. The petitioner has a right to show that the procedure required to be followed for proceeding u/s 29 of the Act had not been correctly followed. If the procedure laid down has not been followed and there is room to doubt that the right of the petitioner has been seriously infringed or that the action of the Rajasthan Financial Corporation is arbitrary or unreasonable, it is always open to the petitioner to invoke the extraordinary jurisdiction of this court. In the instant case, therefore, it has to be seen as to whether the procedure and guidelines have been correctly followed or not and whether a serious prejudice has been caused to the petitioner and further whether his right has been infringed or not. The respondents have placed on record, exhibit R 1-1, i.e., pro forma No. FR 28, the possession report regarding taking over of the assets of the petitioner's plant, machinery and other goods. I have quoted above the particulars of the plant and machinery which have been found at the time of taking over as per the possession report, annexures A to R 1-1. It is highly regrettable that though in the heading details of the plant and machinery have been mentioned but it required the description also to, be given which is absolutely vague in this case. It is also not borne out from this report that any valuation has been got done about the plant and the machineries which were found in factory. Not only that

even the number of the machine frames, katories, tagaries, weaving accessories, weaving frames, etc., have not been given. As per procedure laid down it was essential under Clause 5-14 that the realisable value of the assets was to be calculated. Clause 5-15 reads as under :

"Realisable value of assets, considering its market condition, etc., should be intimated to regional manager and manager F & R, head office through a D.O. letter by the branch manager within at least one month of taking over of the assets in pro forma No. F. 32 MRV has to be calculated as per procedure laid down in Schedule 3-10."

15. The petitioner in his writ petition has given a detailed notice to the Rajasthan Financial Corporation annexure 12 on March 29, 1989, along with which lists were attached about the goods which were in the premises of the factory along with their valuation. The same has been denied for want of knowledge. In my opinion this is not the manner in which the financial institution which is a creation of the statute is expected to function. It was absolutely essential for the respondents to have not only faithfully prepared an inventory of the goods but also to have got them valued and/or realisable value should have been properly calculated. It was also to be seen as to what were the goods which were hypothecated with the Rajasthan Financial Corporation and whether they had any nexus with the functioning of the factory or not. It is borne out from a perusal of annexure R. 1-1 that there were many items which did not form part of the industry for which the loan was raised and were wholly unconnected with the object. Besides this, the movable property was also found, neither the number of which has been given nor the valuation nor the quality. A serious question, therefore, arises whether it was open to the respondents to have auctioned each and every item which was found within the premises even without ascertaining as to whether they formed part of the industry or not. Even from the list which has been prepared I have reason to believe that the valuation could be far more than what has been recovered by the Rajasthan Financial Corporation in sale to respondent No. 8.

16. The conduct of the petitioner in this case was far from satisfactory--his long silence and non-payment of instalments can hardly be appreciated and this court would have not entertained this writ petition at all had not the conduct of the officials of the Rajasthan Financial Corporation been unfair in handling with the goods in the manner done and auctioning the property of large amount for a meagre amount of Rs. 33,000. The price fetched in auction of the goods which included movables and immovables is scandalously low and I have no hesitation in holding that this case is squarely covered by *Swastic Automobiles and Others Vs. Bihar State Financial Corporation and Others*, I would accordingly allow this writ petition, set aside the sale in favour of respondent No. 8 and direct the property to be restored to the petitioner. Respondent No. 8 shall be entitled to get back the amount of Rs. 35,000 along with 18 per cent. interest on the amount from the date of payment to the date of refund. Respondent shall also

get Rs. 2,000 and half of this amount shall be borne by both the parties. Cost is also imposed on the petitioner despite his success as due to his conduct respondent No. 8 has been put to this position.

17. The petitioner shall deposit 50 per cent. of the amount due up to date within three months and shall continue to pay the instalments month by month, the first being payable after three months till restoration of the machinery which should not be in more than six months.

18. The petitioner shall deposit another 25 per cent. within six months of the date of receiving the machinery. Regarding balance of 25 per cent. and continuing interest the parties shall get it settled by civil court where the suit is pending.