

GAHC010015992014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5128/2014

INDIAN OIL CORPORATION LTD.
A BODY CORPORATE WITH ITS HEAD OFFICE AT G-9 ALI YABAR JUNG
MARG. BANDRA EAST, MUMBAI, HAVING OFFICE THROUGHOUT THE
COUNTRY INCLUDING ITS NORTH EAST INTEGRATED STATE OFFICE
NEISO, SITUATED AT EAST POINT TOWER, BAMUNIMAIDAM, GHY-21.

VERSUS

THE UNITED BANK OF INDIA and 5 ORS.
IMPHAL BRANCH MAHATMA GANDHI AVENUE THANGAL BAZAR,
IMPHAL- 795001.

2:SRI SARUNGBAM DWIJENDRA SINGH

S/O. LT. S.CHAOYAIMA
CANCHIPUR
INDO-MYANMAR ROAD
NATIONAL HIGHWAY NO.-39
IMPHAL.

3:M/S. DWIJENDRA PETROLEUM STATION

REPRESENTED BY ITS PROPRIETOR
SRI JOHN L. KARUNG
S/O. SHRI JONAL KARUNG
NEW LAMBULANE
PO. and PS.-IMPHAL
IMPHAL
MANIPUR - 795 001.

4:SMTI. S. ASOK KUMAR SINGH

CANCHIPUR
INDO-MYANMAR ROAD
NATIONAL HIGHWAY NO.39
IMPHAL.

5:SMTI. N. TONGBI DEVI

CANCHIPUR
INDO-MYANMAR ROAD
NATIONAL HIGHWAY NO.39
IMPHAL.

6:RECOVERY OFFICER NO.-11

DEBTS RECOVERY TRIBUNAL
B. BARUAH COLLEGE ROAD
GHY.- 6

Advocate for the Petitioner : MR.M K CHOUDHURY

Advocate for the Respondent : MS.A DASR-3 and 4

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18-07-2023

Heard Mr. M. K. Choudhury, learned Senior Counsel assisted by Mr. P. Bharadwaj, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned Senior Counsel assisted by Ms. S. Musahary, learned counsel for the respondent No.1. None appears for the respondent Nos. 2 to 6.

2. In brief, the case of the petitioner is that it is a public sector undertaking and had awarded retail outlet to respondent no.3, namely,M/s Dwijendra Petroleum Station, represented by its Proprietor, Sri John. L. Karung vide agreement dated 23.1.2004 and 12.9.2011. The retail outlet was set up on a plot of land which is covered by schedule-B of lease deed dated 01.11.1993, which was subsequently registered on 31.3.2004. As a lessee in respect of the said land, the petitioner has been paying rent to the respondent No.2, namely, Sri Sarungbam Dwijendra Singh. The petitioner came across an auction sale notice published in the local newspaper on 01.04.2012, wherein it was stated that the auction would be conducted by the Recovery Officer, Debts Recovery Tribunal, Guwahati in connection with DRPC No.712 dated 27.08.2008 issued in O.A No. 38/2007.

3. The learned Senior counsel for the petitioner contends that the lease commenced from 01.11.1995 and was for a period of 30 years. Accordingly, it is contended that the lease was pre-existing lease and that fraudulently the lease hold land was mortgaged to the respondent No.1 Bank without any

intimation / information to the petitioner. Accordingly, on the ground that the creation of lease was suppressed from the respondent No.1 Bank and that the petitioners have a legal right to operate on the lease or land, the present writ petition has been filed under Article 226 of the Constitution of India to assail the auction sale proposed in respect of lease-hold land by the Recovery Officer, Debt Recovery Tribunal, Guwahati as well as the auction sale notice dated 01.04.2012.

4. The learned Senior counsel for the petitioner further contends that while mortgaging the land on which the retail outlet was operating, the respondent No.2 had made a false statement that he was the dealer of the petitioner Corporation, which was not correct because the Indian Oil Corporation Ltd. had taken the land on lease and was operating the retail outlet where the respondent No.3 was appointed as a Dealer.

5. Per contra, the learned Senior counsel for respondent No.1 has questioned the maintainability of the writ petition on the ground that the Recovery Officer, Debt Recovery Tribunal was competent to adjudicate the issue raised in the present writ petition. The Learned Senior counsel has further submitted that although the United Bank of India is arrayed as respondent No.1 but he is informed that the United Bank of India has been merged with the Punjab National Bank and that the reorganised entity is in the name of Punjab National Bank and that the United Bank of India has no independent existence at present.

6. It is also submitted that under the provision of Section 31 (B) of the Recovery of Debts and Bankruptcy Act, 1993, notwithstanding anything contained in any other law for the time being in force, the respondent No.1 Bank would have priority over the security assets i.e the mortgaged land. Accordingly, it is submitted that as the respondent No.2 is the debtor of the respondent No.1 Bank and the bank's dues pertain to the year 2006, when the account of the respondent No. 2 had become NPA and accordingly, it is submitted that the recovery certificate was drawn up by the Debts Recovery Tribunal, Guwahati for a sum of Rs.53,56,871/- with future interest @ 14.5% per annum. It is submitted that the present outstanding with interest would be a huge amount and accordingly, it is submitted that as the dues recoverable by the respondent No.2 has been adjudicated by the Debts Recovery Tribunal, Guwahati, no case is made out for setting aside or quashing of the auction proceeding to recover the dues of the respondent No.1 bank. In support of priority of the dues of the respondent No.1 Bank, learned Senior counsel for the respondent No.1 has cited the case of Superintendent of Central Excise & Customs Vs M/s. Kotak Mahindra Bank Ltd & Anr reported in Civil Appeal Nos. 6900-6901/2011 decided by the Hon'ble Supreme Court of India on 12.8.2021.

It is also submitted that notwithstanding the projection made by the petitioner that the lease deed was executed on 01.11.1995 but in this case, the respondent No.2 had created equitable mortgage by deposit of title deed on 16.3.2002, whereas the lease deed was registered only on 31.3.2004, which was subsequent to the creation of the mortgage. Accordingly, it is submitted that the respondent No. 1 Bank would have priority over the mortgaged land .

7. It is noted that in the proceeding before the Recovery Officer in connection with OA 38/2007, the petitioner herein had appeared before the Recovery Officer, Debt Recovery Tribunal Guwahati and moved an application bearing Petition No. 95/2012 not to sale the properties described in Schedule-B of the recovery certificate, inter alia, on the ground that the land was leased out to the Indian Oil Corporation on 01.11.1995, for which the mortgage

was non est in the eye of law and that the respondent No.2 had played a fraud upon respondent No.1 Bank by mortgaging the leased-out of land to the respondent No.1. However, both the contentions were rejected by the Recovery Officer mainly on the ground that the petitioner had not approached the Civil Court for declaration of their rights and the petitioners had not preferred any appeal against the judgment and order passed by the Debt Recovery Tribunal, Guwahati in the original proceeding of OA No. 38/2007.

8. In view of order proposed to be passed, the Court is not entering into merit of the stand taken by the learned Senior Counsel for the petitioners as well as learned Senior Counsel for respondent No. 1 Bank.

In the considered opinion of the Court the petitioners have approached the Recovery Officer, Debts Recovery Tribunal, Guwahati, with a plea that the Recovery Officer, Debts Recovery Tribunal, Guwahati, ought to have disposed of the petition no. 95/2012 on its own merit. The relevant facts which are partly narrated herein before is also available with the Recovery Officer, Debts Recovery Tribunal. Therefore, there is no impediment on the part of Recovery Officer of Debts Recovery Tribunal to adjudicate and decide the Petition No. 95/2012 on its own merit.

9. Accordingly, the court is inclined to relegate the petitioner once again to approach the Recovery Officer, Debts Recovery Tribunal, Guwahati alongwith certified copy of this order. On appearance of the petitioner, the learned Recovery Officer, Debts Recovery Tribunal, Guwahati shall restore the Petition No. 95/2012 to file and expeditiously hear and dispose of the said petition preferably within a period of one month from the date of receipt of a certified copy of this order.

10. It is clarified that the Court has not entertained the merit of the stand taken by the learned Senior Counsel for the parties. Accordingly the Recovery Officer, Debts Recovery Tribunal, Guwahati shall adjudicate the matter on its own merit without being influenced by any observations made in this order.

11. In order to enable the Recovery Officer to decide the matter on merit, the impugned order dated 7.6.2013 is interfered with and set aside. Accordingly, the said order shall not prejudice the parties when the Petn. No. 95/2012 will be heard on merit.

12. Writ petition stands partly allowed to the extent as indicated above.

JUDGE

Comparing Assistant