

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.4581 OF 2008

ORDER:

Heard Mr.V.R.Reddy Kovvuri for petitioner, Mr.Vivek for respondents 1 and 2 and Mr.Nagabushana Rao for respondent No.3.

The petitioner prays for Mandamus declaring the proceeding dated 15.02.2008 and the auction notice dated 29.02.2008 of 2nd respondent as arbitrary and contrary to the provisions of State Financial Corporation Act, 1951 and the A.P. Revenue Recovery Act, 1864.

The circumstances relevant for the disposal of the writ petition are as under:

The 3rd respondent on 08.06.1985 borrowed amount from 1st and 2nd respondents. Admittedly, the 3rd respondent committed default in repaying the amount borrowed from the 1st and 2nd respondents. The 3rd respondent obtained mining lease from the competent authority. On 26.05.2006, the petitioner entered into a raising contract-cum-sale agreement with 3rd respondent for the lease standing in his name. For the purpose of executing the rights conferred through the contract dated 26.05.2006, the petitioner alleges that it has put in place plant, machinery and equipment which is firstly the property of petitioner and unencumbered. The submissions of learned counsel appearing for the parties have been confined to the jurisdiction and authority of respondents 1 and 2 to effect seizure of plant, machinery belonging to petitioner and consequent auction schedule through notice dated 29.02.2008.

As already noted, the petitioner asserts that the mortgage of 3rd respondent, if any, in favour of respondents 1 and 2 can be in respect of the mine or mining lease for which the 3rd respondent had right and cannot and could not be said to include plant, machinery and equipment established at the subject site by the petitioner. Therefore, the petitioner is entitled to remove and take away the plant and machinery, dehors any conditions. Pursuant to the interim directions of this Court, the petitioner has deposited amount and has removed and taken away the plant and the machinery from subject site. The petitioner prays for appropriate direction for refund of the amount deposited by the petitioner pursuant to the directions of this Court by declaring that the seizure of subject property is illegal and without authority.

The 1st and 2nd respondents filed counter affidavit setting out various circumstances which compelled the answering respondents to take recourse to seizure and sale of mortgage property. The crux of the submissions of petitioner relates to plant, machinery and equipment put in place by petitioner pursuant to raising contract and sale agreement dated 26.05.2006.

With the assistance of the learned counsel, I have perused the counter affidavit. It is contextual to notice that the counter affidavit is silent about any charge being created on the plant, machinery and equipment seized at site. Before proceeding further, this Court is of the view that the interim orders dated 30.03.2008, 12.12.2008 and 29.12.2009 ought to be excerpted.

"03.03.2008:

Sri Y.V.Ravi Prasad takes notice for respondents 1 and 2 and seeks ten days' time for filing counter-affidavit.

Post on 13-3-2008.

Pending further orders, respondents 1 and 2 shall not sell the machinery seized by them and belonging to the petitioner."

"12.12.2008

W.P.M.P.No.35600 of 2008

There shall be interim stay of all further proceedings pursuant to the auction held on 12.12.2008, subject to condition that the petitioner deposits an amount of Rs.21,50,000/- (Rupees twenty one lakh fifty thousand only) within a period of four weeks from today. Further, on such deposit the petitioner shall be permitted to lift the Ore or to conduct mining operations as per law. In default, the respondents are at liberty to proceed with the auction proceedings as held on 12.12.2008.

The money that required to be paid by the petitioner shall be paid to respondents 1 and 2 and the same shall be subject to the result of the writ petition."

"29.12.2009

W.P.M.P. No.36460 OF 2009

This court was pleased to pass the following order on 12-12-2008.

" There shall be interim stay of all further proceedings pursuant to the auction held on 12-12-2008 subject to condition that the petitioner deposits an amount of Rs. 21,50,000/- within a period of four weeks from today. Further , on such deposit the petitioner shall be permitted to lift the ore or to conduct mining operations as per law. In default, the respondents are at liberty to proceed with the auction proceedings as held on 12.12.2008.

The money that required to be paid by the petitioner shall be paid to the respondents 1 and 2 and the same shall be subject to the result of the Writ Petition."

However, as the said order was not complied with the petitioner filed the present application.

According to the petitioner as the interim order could not be complied with the respondents sold the material and realized an amount of Rs.10,50,000/- and the balance is only Rs. 11 lakhs and the petitioner states that if a weeks time is given from today he is prepared to comply with the said order.

Accordingly time is extended by one more week time for depositing that Rs.11 lakhs plus the expenditure incurred by the respondents during this one year towards watch and ward. If for any reason the amount is not deposited, as stated above, the respondent authorities are at liberty to sell the balance material."

Learned counsel appearing for the parties submit that the plant, machinery and equipment has been removed from the site by depositing the money as directed by this Court.

The short point for consideration is whether the seizure of plant, machinery and equipment through proceedings dated 15.02.2008, by respondents 1 and 2 is legal and authorised or not?

1st and 2nd respondents have fairly stated that the loan transaction is between respondents 1 and 2 on the one hand and 3rd respondent on the other. The loan transaction is anterior to raising contract dated 26.05.2006. So by simple understanding of chronology of events, it can be construed that in the probabilities of this case , the 3rd respondent did not and could not have created any charge/loan of plant/machinery in favour of respondents 1 and 2. As it is not the case of respondents 1 and 2 that in executing the raising contract an independent loan account is maintained with the petitioner and under a contract charge of subject property is created. The ownership of plant, machinery and equipment of petitioner is prima facie established and the burden is on respondents 1 and 2 to show that the seizure is legal and valid. Mr.Vivek has fairly stated that respondents 1 and 2 could not discharge the burden placed on them. Hence the writ petition is ordered as follows:

1. It is declared that the petitioner is entitled to remove and take away the plant and machinery established at subject mine.
2. The petitioner's claim for operating the mine cannot and could not be accepted. This prayer is rejected.
3. The petitioner pursuant to the orders dated 12.12.2008 read with order dated 29.12.2009 deposited Rs.11,00,000/- removed and taken away the plant and machinery belonging to it.

It is accepted and held by this Court that the respondent/Corporation does not have any charge on the plant and machinery to either retain or realize amount by sale of plant, machinery and equipment of petitioner for the amounts due and payable by Krishnaveni. The petitioner is entitled to take the plant and machinery unconditionally. As amount was deposited pursuant to the direction of the Court the restitution of amount is pursuant to acceptance of the petitioner's right to the plant etc. Therefore, respondents 1 and 2 are directed to refund Rs.11,00,000/- with simple interest at 9% per annum from the date of respective deposits till the date of repayment. The repayment shall be within one month from the date of receipt of a copy of this order.

No order as to costs.

S.V.BHATT, J

Date:20.04.2016

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