IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.20859 of 2017

T.Ashok Surana ... Petitioner

-Vs-

The Union of India,
Ministry of Finance,
Rep. By its Finance Secretary,
North Block, New Delhi 110 001. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the Act 54 of 2002, i.e.. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 is constitutionally valid only from 17.12.2002 and not from 21.06.2002 based on an expired Ordinance 2 of 2002 of an illegal Ordinance 3 of 2002 to save anything done or any action taken under Ordinance 2 of 2002 and that the Act 54 of 2002 came into force as decided in this writ petition.

For Petitioner : Mr.T.Ashok Surana
Party-in-person

For Respondents : Mr.Su.Srinivasan,
Assistant Solicitor General

O R D E R
(Order of the Court was made by Mr.T.S.Sivagnanam, J.)

Heard Mr.T.Ashok Surana, petitioner appearing in person.

2.This writ petition has been filed by the petitioner designed as a public interest litigation contending that Ordinance No.2 of 2002 was promulgated on 21.06.2002, allowed to lapse and it was revived illegally by issuance of fresh Ordinance No.3 of 2002 to save anything done or any action taken under the expired Ordinance No.2 of 2002. It is the submission of the petitioner that an Ordinance cannot have a saving provision to give it an effect of enduring nature. That the reason for the second Ordinance, i.e., Ordinance No.3 of 2002 made with the object of saving anything done under Ordinance No.2 of 2002 shall be of equally no legal effect. Thus, it is the submission that the notification in the Official Gazette issued on 20.09.2002 shall be deemed to have been made prior to the enactment or coming into force of Act 54 of 2002, namely, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Therefore, the petitioner would state that when the foundation itself goes, the superstructure cannot survive.

3.Thus, essentially, the petitioner's case is that if both the Ordinances are held to be inapplicable, then the Act cannot have retrospective effect and would have prospective effect.

4.Though the petitioner would state that he has approached this Court as a public interest litigant, there appears to be a clear personal agenda behind the said litigation on account of the fact that the petitioner admits in the hearing that if the petitioner's interpretation is to be accepted, certain proceedings initiated against him would lose its efficacy. We are not inclined to accept the submissions of the petitioner for the simple reason that the validity of Act 54 of 2002 was put to challenge and in the celebrated decision of the Hon'ble Supreme Court in Mardia Chemicals vs. Union of India, reported in (2004) 4 SCC 311, the provisions of the Act were upheld.

5.Thus, the petitioner cannot be permitted to now reopen the settled issue and seek to advance arguments which are presumed to be dealt with while deciding the validity of the enactment, in the light of paragraphs 2 and 3 of Mardia Chemicals judgment of Hon'ble Supreme Court which read as follows:

> "2. By means of the above noted bunch of cases some of those having been transferred to this court, the validity of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (for short 'the Act') has been challenged. Some writ petitions were filed in different High Courts on promulgation of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second Ordinance), 2002. However, the Act 54 of 2002 was enacted and enforced, vires of which is in question, more particularly, the provisions as contained in Sections 13, 15, 17 and 34 of the Act. Besides others, we may, for the sake of convenience, refer to the averments made and documents filed in Transferred Case Nos.92-95 of 2002- M/s. Mardia Chemicals Ltd. Etc. Etc. Vs. Union of India & Ors. Etc. Etc.
>
> 3. It appears that a notice dated July 24, 2002 was issued to the petitioner - Mardia Chemicals Ltd. by the Industrial Development Bank of India (for short 'the IDBI') under Section 13 of the Ordinance, then in

force, requiring it to pay the amount of arrears indicated in the notice within 60 days, failing which the IDBI as a secured creditor would be entitled to enforce the security interest without intervention of the court or Tribunal, taking recourse to all or any of the measures contained in sub-section (4) of Section 13 namely, by taking over possession and/or management of the secured assets. The petitioner was also required not to transfer by way of sale, lease or otherwise any of the secured assets. Similar notices were issued by other financial institutions and banks under the provisions of Section 13 of the Ordinance/Act to different parties who filed petitions in different High Courts."

(underlining made by us to supply emphasis)

6.Therefore, the prayer sought for in the writ petition cannot be granted and the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sra

To

The Finance Secretary,
Union of India,
Ministry of Finance,
North Block, New Delhi 110 001.

W.P.No.20859 of 2017

RJ(CO)
CA(05/09/2017)