HON'BLE SRI JUSTICE M.S.K.JAISWAL

Writ Petition No.1557 of 2007

ORDER:-

The writ petition is filed by 19 petitioners claiming themselves to be the unsecured creditors of the fourth respondent to a tune of Rs.20 lakhs with the following prayer:-

> "to issue any Writ, Order or Direction, preferably a writ in the nature of mandamus declaring the action of the respondent No.3 Andhra Pradesh State Financial Corporation in holding the sale including its confirmation, in respect of Land and Buildings together with the machinery belonging to the fourth respondent situate in Sy.No.110/A, Bellary Road, Kalyandurg, Kalyandurg Mandal, Anantapur District, pursuant to the sale notification dated 03.06.2006 as illegal, arbitrary and violative of Article 14 of the Constitution of India, thereby directing the respondents No.1 to 3 herein to put the said property for re-sale and pending the same direct the fifth respondent not to alienate the said property or otherwise change the nature of the said property."

2. The fourth respondent borrowed a loan of Rs.30 lakhs from the respondents No.1 to 3 for establishing a Rice Mill. He mortgaged the property, which is the subject matter of the writ petition. Since the fourth respondent committed default, the respondent-Corporation has taken possession of the mortgaged property and conducted the auction. The fifth respondent was the successful bidder for a total sum of Rs.36,50,000/-. On 30.08.2006 the sale was confirmed and the possession of the property was delivered to the fifth respondent. The fourth respondent filed I.P.No.42 of 2005 on the file of the Additional Senior Civil Judge, Anantapur, showing the respondent-Corporation and also the writ petitioners as his creditors. The total liabilities of the fourth respondent in the Insolvency Petition has been quantified at about Rs.95 lakhs, out of which, Rs.25 lakhs is said to be the

debt of the respondent-Corporation and the remaining Rs.70 lakhs payable by him to different persons including the writ petitioners. In the said Insolvency Petition, the fourth respondent also filed I.A.No.244 of 2005 which was however dismissed by the Insolvency Court with a direction to the respondent-Corporation to sell the mortgaged property by strictly following the procedure and at a price which should not cause prejudice to the general body of the creditors and the Corporation was further advised to take the assistance of the Official Receiver to guide the respondent-Corporation in fixing the appropriate market value.

3. The allegation of the petitioners is that the property mortgaged by the fourth respondent is worth more than Rs.85 lakhs but the respondent-Corporation being a statutory body has sold away the property to the fifth respondent for a sum of Rs.36,50,000/- which is far below the market value and thereby caused loss to the petitioners who are the unsecured creditors of the fourth respondent. It is further submitted that the respondent-Corporation has not adhered to the directions of the Insolvency Court in conducting the sale and hence the sale has to be set aside.

4. The fourth respondent though contested the present petition did not file any counter.

5. On behalf of the respondent-Corporation, a detailed counter is filed denying the allegations of the petitioners and further contending that the sale of the property was conducted strictly in accordance with law and there are no allegations of any *mala fides* or arbitrary action on the part of the Corporation in auctioning the property. It is averred in the counter that after taking over the possession of the property on 25.02.2005, auction notices were published on 06.03.2005, 18.06.2005, 30.09.2005 and 26.01.2006 in Eenadu Telugu daily newspaper calling for the bidders, that no bidders came forward to buy the mortgaged property, that subsequently another auction

notice was published in Eenadu Telugu daily newspaper on 03.03.2006, in response to which, the fifth respondent offered to purchase the Rice Mill for Rs.25 lakhs, that the respondent-Corporation persuaded the fifth respondent and convinced him to purchase the property for Rs.36,50,000/- which he accepted and accordingly the sale was finalized and it was confirmed on 30.08.2006 and the possession of the Rice Mill was delivered to the fifth respondent on 03.11.2006. The Corporation further submits that proper procedure was adopted in fixing the market value and after obtaining the information from the Registering Department, the upset value was fixed and the sale was conducted. Even in the affidavit filed by the petitioners in support the writ petition, in para 3 it is mentioned that the value of the property as per the valuation of the Registration Department is Rs.36,20,000/-. Having admitted that, the writ petitioners cannot contend that as per the valuation certificate, which they have obtained just prior to filing of the writ petition, the value is shown to be more than Rs.61 lakhs.

6. The respondent-Corporation further submits that the petitioners have no *locus standi* to question the actions of the Corporation and the prayer that is sought for in the writ petition cannot be granted in favour of the petitioners, more particularly, in view of the fact that the fourth respondent who is supposed to have the grievance, if any, did not even question the acts of the respondent-Corporation in auctioning the property.

7. The main grievance of the petitioners is that the respondent-Corporation has not acted *bona fidely* in auctioning the mortgaged property and knocking it down in favour of the fifth respondent for a sum of Rs.36,50,000/- as against the official valuation of the property being more than Rs.61 lakhs. The petitioners have not produced any material to show that they are the unsecured creditors of the fourth respondent. In the Insolvency Petition filed by the fourth respondent, their names do appear as

the debtors and different amounts are said to be due to the petitioners by the fourth respondent. According to the petitioners, they obtained the Valuation Certificate from the Sub-Registrar which shows the value of the property at Rs.61,76,000/-. However, in the affidavit filed in support of the writ petition, in para 3 it is specifically averred as under:-

> "I submit that the respondents 1 to 3 herein before putting the property for sale, approached the Sub-Registrar, Kalyandurg, Anantapur District, who has certified that the property that has been mortgaged and belonging to the 4th respondent in favour of respondents No.1 to 3 is value at Rs.36,20,000/- only. Based upon the said valuation, the respondents 1 to 3 herein have put the said property to auction and in which respondent No.5 became the highest bidder."

8. It is manifest from the above that even according to the writ petitioners when they verified the valuation of the property from the Registering Department, it was said to be valued at Rs.36,20,000/-. However, subsequently, they obtained the valuation certificate from the Sub-Registrar's Office to the effect that the value of the property is Rs.61,76,000/-. The contention of the Corporation which seems to be well-founded is that by showing larger extents of the property, the valuation certificate is obtained, which do not reflect the true market value of the mortgaged property.

9. The respondent-Corporation vehemently submits that the petitioners have no *locus standi* to question the actions of the respondent-Corporation, more particularly, in view of the stoic silence of the fourth respondent whose property was sold in auction. It is rightly submitted that if the fourth respondent has any grievance with regard to the manner and method of the sale having been held by the Corporation, it is he who can challenge it and as a matter of fact, the fourth respondent is working out his remedies in the

appropriate Forum. The petitioners cannot be heard saying that by the acts of the Corporation, their interests are adversely affected and they cannot sustain the writ petition with the prayer as stated above. The questions that are sought to be raised, even if permitted, are the complicated questions of fact and law, which cannot be adjudicated in the writ petition. As already stated, the competent Forum is seized of the matter on being approached by the fourth respondent, whose property has been auctioned for realizing the secured debt of the respondent-Corporation.

10. Learned Counsel further submits that the actions of the respondent-Corporation which is a statutory body created under the Special Enactment cannot be questioned, more particularly, by the third parties in writ proceedings. Even the aggrieved party whose interests are affected can question the acts of the respondent-Corporation only on the grounds of established violation of his rights by showing that the respondent-Corporation acted arbitrarily, unreasonably and in unfair manner. In support of his submissions, learned Counsel relied upon the two authoritative pronouncements of the Supreme Court.

In THE STATE FINANCIAL CORPORATION AND ANOTHER v. M/S.JAGDAMBA OIL MILLS AND ANOTHER[1], a three Judge Bench of the Supreme Court held as under in paras 13 and 14:-

> "13. The fairness required of the Corporation cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations.

[1] AIR 2002 SC 834

Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may, for the decision of the Corporation. As was observed by this Court in *U.P. Financial Corporation and Ors. v. Naini Oxygen & Acetylene Gas Ltd. and Anr. (1995)2 SCC 754*, in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in *Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd. and Ors.* (JT 1996 (6) SC 37), in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or, (b) where the State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short 'the Constitution'), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.

14. As was observed in *The Chairman and Managing Director, SIPCOT, Madras-8 and Ors. v. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and Anr. (JT 1995 (6) SC 283)* in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold in such that suitable bid may not be received at public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to

give wide publicity so as to get the maximum price. These are aspects which Corporations have to keep in view while dealing with disposal of seized units."

In PUNJAB FINANCIAL CORPORATION v. M/S.SURYA AUTO INDUSTRIES[2] at para 14, the Supreme Court laid down the law on the subject as under:-

> "14. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established under Section 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit de hors the financial implications of such exercise The corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the corporation is expected to act fairly and reasonably qua its borrowers/ debtors, but it is not expected to flounder public money for promoting private interests. The relationship between the corporation and borrower is that of creditor and debtor. The corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to Ors. The proceedings initiated by the corporation and action taken for recovery of the outstanding dues cannot be nullified by the Courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/ action is shown to be wholly arbitrary, unreasonable and unfair. The Court cannot sit as an appellate authority over the action of the corporation and substitute its decision for the one taken by the corporation."

11. From the above authorities, what is manifest is that the action of the Corporation can be questioned only on the grounds of they being arbitrary, *mala fide* or capricious. Even such allegations should emanate from the borrower whose properties have been subjected to attachment, seizure or sale. As already stated, the Corporation has followed the procedure and

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[2] AIR 2010 SC 266

before conducting the auction gave wide publicity in the local edition of Eenadu Telugu Daily Newspaper which has got the widest circulation on as many as five times i.e., on 06.03.2005, 18.06.2005, 30.09.2005, 26.01.2006 and 03.03.2006.

12. On behalf of the respondent-Corporation it is sworn to the fact that in spite of such wide publicity, none came forward to purchase the property and only after the last publication, the fifth respondent came forward and that too offered the price of Rs.25 lakhs, which after great deal of persuasion by the respondent-Corporation, the fifth respondent agreed to purchase the property for Rs.36,50,000/-. Therefore, the respondent-Corporation cannot be said to have acted in any manner prejudicial to the interest of the borrower, and the third party petitioners cannot question the same in the writ proceedings. Needless to say that the fourth respondent has already initiated appropriate steps to ventilate his grievance of his property being sold out at a price far below the prevailing market value by approaching the competent Court and the said proceedings should be disposed of uninfluenced by any of the observations made herein. There are no merits in the writ petition and the same is liable to be dismissed.

13. In the result, the writ petition is dismissed with costs. It is made clear that none of the observations made herein shall influence in any manner the competent Court in adjudicating the claim of the fourth respondent vis-à-vis the respondent-Corporation.

M.S.K.Jaiswal, J

3rd August, 2017

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