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

WRIT PETITION No.37006 of 2012

ORDER:

This writ petition is filed for a mandamus, declaring the auction notice issued by the 2nd respondent in APSFC/MR & R/949, dated 16.11.2012, proposing to conduct auction of the petitioner's unit, namely, Gangaram Stone Crushers on 01.12.2012, without resolving boundary dispute since from the date of purchase of the said sick unit, as illegal and arbitrary.

2. Heard both sides and perused the material available on record.

3. The petitioner is alleged to have purchased a sick unit, namely, M/s.Durga Stone Crushers in Sy.No.32 of Jaigiri village, Hasanparthy Mandal, Warangal District in an auction, conducted on 28.01.1998 by the respondent corporation, for an amount of Rs.6,52,000/-. As per the conditions of the auction, the Corporation has to handover the unit admeasuring Ac.1.20 gts with boundaries. Out of the total bid amount of Rs.6,52,000/- the petitioner paid initially at Rs.15,000/- towards EMD and an amount of Rs.3,05,000/- on 28.01.1998. The Corporation sanctioned Rs.3,00,000/- towards working capital after deducting the arrears of Rs.62,000/- by way of two instalments. The petitioner claims that so far the Corporation has not handed over the auctioned property with specific boundaries and the said issue is pending since 1998.

4. It is stated that survey was conducted on the request of the respondent Corporation by the competent authority and it was found that 50% of the earth ramp towards tall end side is situated out side the extent of Ac.1.20 gts. Though the petitioner approached the A.P.Pollution

Control Board for permission to run stone crusher, the authorities have rejected the same on 26.06.2006 on the ground that the proposed site is located very near to the village road of about 10 m, which is not meeting the siting guidelines, since the machinery was installed in propitiatory area by the Corporation. The petitioner stated that still the respondent Corporation used to demand the term loan given towards machinery and instalments towards working capital. The petitioner stated that he paid more than Rs.12,00,000/- including watch and ward charges of Rs.34,624/- with a hope that the respondent Corporation would set right the sick unit by fixing boundaries and by getting NOC from the Pollution Control Board. The petitioner stated that though earlier he filed W.P.Nos.17001/2000, 21008/2007 and 7868/2008 for different reasons, but the Corporation failed to clear the obligation to make the unit in running condition. The petitioner issued legal notice to the Corporation on 01.01.2011 seeking damages of Rs.5 crores. However, instead of settling all the issues, the respondent Corporation, in a mechanical manner, issued the impugned notification.

5. Even though the learned Counsel appearing for the petitioner submitted his arguments on different aspects but the same need not be adverted to in detail for the simple reason that in respect of the same property and same dispute, between the same parties, the writ petitioner filed three writ petitions previously. The third and the last writ petition bearing W.P.No.7868 of 2008 was filed by the writ petitioner when the respondent/Corporation issued a sale notice in the year 2007. The present writ petition is filed when the respondent/Corporation once again issued the sale notice in the year 2012 which is impugned in the writ petition. The grounds on which the present sale notice is challenged is in

paramateria with the grounds that were urged by the writ petitioner in his previous writ petitions.

6. The contentions that are now urged by the writ petitioner were raised in the third writ petition filed by him bearing W.P.No.7868 of 2008. Learned Single Judge of our High Court vide Judgment dated 10.04.2008 adverted to all the contentions and rejected the same. For the sake of brevity, the findings of this Court in the third writ petition filed by writ petitioner can be extracted in stead of once again adverting to the contentions now urged by the writ petitioner. The Judgment of this Court dated 10.04.2008 reads as under:-

> "This writ petition is third in succession filed by petitioner No.1who was unsuccessful in his previous two attempts to stall the sale proceedings. It is not in dispute that for purchasing a unit sold by the respondents in an auction, petitioner No.1 was sanctioned a loan of Rs.6,52,000/-, which included Working Capital of Rs.3,00,000/-. He claims that he has paid Rs.9,00,000/- towards discharge of the said loan amount, but admits that there is still outstanding loan amount. He approached this Court by way of Writ Petition No.17001 of 2000 questioning sale notice, dated 30.08.2000 and he has also filed O.S.No.235 of 2001 on the file of II Additional Junior Civil Judge, Warangal. He was unsuccessful in both the said cases. When another sale notice was issued on 20.09.2007, he filed Writ Petition No.21008 of 2007 and the same was dismissed as infructuous in view of latter sale notice issued by the respondents on 02.12.2007. The present writ petition is filed questioning the said sale notice.
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> The learned counsel for the petitioners submitted that at the time of handing over the site with the plant, the respondents failed to ensure that the entire machinery is included within the boundary of the property sold to petitioner No.1 and that as a result of the boundary dispute with the neighbours, he was disabled from running the plant and discharging the loan amount.

He, therefore, submitted that due to the reasons solely attributable to the respondents, the industry purchased by petitioner No.1 could not be run and the loan could not be repaid and, therefore, there is no justification for the respondents to sell the property on the ground of nonpayment of arrears. He also submitted that the application for O.T.S. is still pending and that even before disposal of the same, it is not proper for the respondents to sell the property.

The question whether there was a boundary dispute or not cannot be gone into in this writ petition, since such dispute, which involves appreciation of facts and evidence, can be adjudicated only by a civil Court. If the petitioners suffered any damage on account of failure of the respondents to handover the site with clear boundaries, the same cannot be a ground for them to withhold repayment of the loan amount. In my considered view, the petitioners' liability to discharge the outstanding loan amount is independent of the dispute, if any, with the respondents on the latter's failure to handover the site with clear boundaries. If petitioners suffered any loss on account of the same, they are not precluded from approaching the Court of competent jurisdiction claiming damages. But on this ground, they cannot be permitted to withhold the loan amount and the respondents cannot be prevented from realizing the same by exercising the powers under Section 29 of the State Financial Corporation Act, 1951.

As regards the contention of the learned counsel for the petitioners that the application for O.T.S. is pending, I deem it appropriate to direct the respondents to consider the same if it is already filed and take a decision thereon before the unit is sold in pursuance of the impugned notice."

7. It is manifest from the above that the writ petitioner has been challenging the action of the respondent/Corporation on the self-same grounds repeatedly even though there are no changed circumstances. I have no hesitation in mind that the writ petitioner is indulging in vexatious

litigations so as to protract the same by filing the writ petitions repeatedly whenever the first respondent is taking action in accordance with law. Therefore, the present writ petition is liable to be dismissed with costs which are quantified at Rs.25,000/-.

8. In the result, the writ petition is dismissed with exemplary costs of Rs.25,000/- (Rupees twenty five thousand only) to be paid by the petitioner to the 2nd respondent/Corporation.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.Jaiswal, J

31st August, 2017

Dsr/smr