IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2018

CORAM
THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.21360 of 2018
and W.M.P.No.25037 of 2018

A.Purushothaman,
Managing Director,
Hotel Happy Green Private Limited,
R.S.46/1, Mullodai Road (ECR),
Bahor Commune,
Puducherry-607 402. .. Petitioner

Vs.

Pondicherry Industrial Promotion Development and Investment Corporation Ltd.,
60, Romain Rolland Street,
Pondicherry-605 001. .. Respondent

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent to permit the petitioner to sell the house sites in (1) R.S.No.46/1 measuring 24132 sq.feet and (2) T.S.No.1795 measuring 4060 sq.feet and deposit the sale proceeds directly to the respondent corporation by the prospective purchasers and settle the loan amount giving concession available for One Time Settlement and crediting subsidy amount and clear the loan.

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For Petitioner : Mr.K.M.Vijayan, Senior Counsel for Mr.A.Arumugam

For Respondent : Mr.D.Ravichander, Additional Government Pleader (Puducherry)

O R D E R

The prayer in the writ petition is to direct the respondent to permit the petitioner to sell the house sites in (1) R.S.No.46/1 measuring 24132 sq.feet and (2) T.S.No.1795 measuring 4060 sq.feet and deposit the sale proceeds directly to the respondent corporation by the prospective purchasers and settle the loan amount giving concession available for One Time Settlement and crediting subsidy amount and clear the loan.

2. The petitioner is a hotelier having entered into the venture by borrowing loan to the tune of Rs.2.50 Crores from the respondent over a period of time from 30.01.2004 to 30.06.2010. In other words, the petitioner was sanctioned the loan amount stage by stage. The only grievance of the petitioner was that the respondent was charging interest, which the petitioner could not meet at the relevant point of time. Despite their sincere efforts to settle the entire loan amount, on account of the enormous charge of interest by the respondent, the petitioner could not do so. Hence, there was a default.

3. On 10.01.2012, the respondent issued a notice calling upon the petitioner to pay Rs.68,82,000/- on or before 31.01.2012 and avail the benefit of rescheduling of the loan. As the petitioner failed to avail such benefit, a possession notice under Section 29 of the State Financial Corporations Act, 1951, was issued on 23.02.2012. The order was put to challenge in W.P.No.6811 of 2012. The said writ petition was disposed of on 12.12.2012 with a direction to the respondent to consider the case of the petitioner sympathetically, if the petitioner fulfills certain conditions with respect to payment of interest.

4. The said order was taken on appeal in W.A.No.2878 of 2012. The relevant findings of the Division Bench in the judgment dated 04.12.2017 dismissing the appeal are usefully extracted to appreciate the facts better :

> "29. ..... though the loan was availed in the year 2007, so far payment has not been made towards the principal amount. Interest of Rs.95,68,345/- as on 31.10.2012 alone has been paid. Thereafter, the appellant has not paid any amount towards either the principal amount or the accrued interest from 31.07.2013. ...."

5. It is also observed in the said judgment that thereafter, there was a request made by the petitioner for restructuring the payment, based on which, the respondent Corporation also restructured the payment scheme and came forward by offering a concession of Rs.1,11,41,384/- towards waiver of interest. As the possession notice was challenged, there was a direction for restructuring of the loan and despite that there was no payment coming forth from the petitioner. In paragraph 36 of the said judgment, it was held as follows :

> "36. There is absolutely no bona fides on the part of the appellant in seeking for six months time. Action of the Pondicherry Industrial Promotion Development and Investment Corporation Ltd., does not come under any of the exceptions set out in the decision of the Hon'ble Supreme Court in Punjab Financial Corporation Vs. Surya Auto Industries reported in (2010) 1 SCC 297.

There is fairness in the action of the Pondicherry Industrial Promotion Development and Investment Corporation Ltd., Puducherry, in granting waiver of Rs.1,11,41,384/- towards interest. On the contra, there is no fairness or bona fides, in discharge of the amount due and payable to the Corporation, but there is an attempt to procrastinate payment. Though Thane Storm is stated to be a reason for the alleged economic loss, since 2011, no payment has been made towards the principal."

6. Thus, the Division Bench of this Court also felt that there was no bona fide in the claim of the petitioner and dismissed the writ appeal holding the possession notice dated 23.02.2012. Aggrieved over the same, the petitioner preferred a S.L.P.(C)No.8255 of 2018, which was dismissed on 16.04.2018 finding no legal and valid ground for interference.

7. In the meanwhile, the respondent issued a possession notice once again on 22.03.2018 after the dismissal of the writ appeal. The said notice was also once again challenged by the petitioner seeking a direction for restructuring of the loan in W.P.No.10824 of 2018, which was dismissed by this Court on 16.07.2018. During the course of arguments in the said writ petition, the petitioner sought for private sale of the secured assets/mortgage property, for which, this Court had given following finding in paragraph 4 :

> "4. The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that if the petitioner is permitted to sell the mortgaged property, then he would be in a position to settle the entire loan dues along with interest. However, the respondents are not permitting him to sell the property. When the proposal is submitted by the writ petitioner, the learned counsel appearing on behalf of the respondent, on instructions from the respondent, informed this Court that there is no possibility of granting any such leniency at this point of time and further, the property mortgaged in the loan account is insufficient to meet out the entire dues along with the interest. Thus, no purpose would be served even if the petitioner is allowed to sell his mortgaged property. This apart, the petitioner had not paid the dues and he is a chronic defaulter. The petitioner, being a continuous defaulter of repayment of loan amount, the respondent is not in a position to grant any further concession or otherwise as per the terms and conditions of the loan amount."

8. After observing so, this Court had dismissed the writ petition holding that the petitioner was unable to settle the loan dues along with the interest for the last eight years and there is no scope in this matter even if the same was extended by way of rescheduling his loan or by extending time.

9. The respondent once again issued possession notice dated 14.08.2018, after the dismissal of the aforesaid writ petition. Now the present writ petition is filed for a Writ of Mandamus directing the respondent to permit the petitioner to sell the mortgage property privately, wherein, an order of interim stay was granted to keep the said notice in abeyance.

10. The conduct of the petitioner only shows that he has been litigating the same issue again and again even after the same had attained finality before the Hon'ble Supreme Court. Admittedly, this is the third possession notice issued by the Corporation, which has been stalled by the petitioner. Though it is an abuse of process of court, failing to realise that each day's delay would add to the interest payable by the petitioner, he is litigating the same issue before this Court. All the submissions, which have been made before this Court now, have already been raised and decided before the learned Single Judge, Division Bench and also the Supreme Court.

11. At this juncture, it is relevant to note that the Hon'ble Apex Court in Chander More v. Lt. Governor, (2014) 11 SCC 744 held as follows :

> "21. We may briefly refer to some of those decisions which elaborate the principle and extend their application to proceedings before a writ court. But before we do so, we need to say what is trite, namely, the doctrine of res judicata being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilised society in the world. It is founded on a twofold logic, namely, (1) that there must be finality to adjudication by the competent court; and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of res judicata even to inter partes decisions that may be erroneous on a question of law. That the doctrine is applicable even to writ jurisdiction exercised by the superior courts in this country is settled by a Constitution Bench decision of this Court in Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara [AIR 1964 SC 1013] wherein this Court observed:

> "17. … Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."

22. The principles of constructive res judicata which are also a part of the very same doctrine have been held to be applicable to writ proceedings, by another Constitution Bench decision of this Court in Devilal Modi v. STO [AIR 1965 SC 1150] wherein this Court observed:

> "8. It may be conceded in favour of Mr Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."

23. Reference may also be made to the Constitution Bench decision in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715] wherein this Court once again reiterated that the principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to or essentially

connected with the subject-matter of the litigation. This Court observed:

> "35. … an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Civil Procedure Code was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

24. It is in the light of the above authoritative decisions of this Court no longer open to the appellants to contend that the principles of constructive res judicata would not debar them from raising the question which, as observed earlier, could and indeed ought to have been raised by them in the previous round of litigation. The High Court was, in that view of the matter, perfectly justified in holding that the plea sought to be raised by the appellants in the purported exercise of liberty given to them by the orders of this Court dated 9-4-2008 in Lt.Governor v. Shiv Chander More [Lt. Governor v. Shiv Chander More, (2008) 4 SCC 690] was not legally open and should not be allowed to be urged."

12. As held in the above decision, in this case also not once, but twice finality was arrived at by the competent court. The Corporation has been put to jeopardy (i) due to financial loss ; and (ii) by the unnecessary repeat exercise due to the conduct of the petitioner. As the above decision squarely applies to the facts of the case, the writ petition is hit by the principle of constructive res judicata and the same deserves to be dismissed.

13. Further, before this Court an attempt was made to seek permission to bring the property for a private sale. This Court had also given an opportunity to bring a purchaser for a value that may be acceptable to the respondent Corporation. But the petitioner could get only an agreement entered with one Govindaraj agreeing to sell the property for a sum of Rs.2,87,94,000/- and the time agreed is six months, while, the amount payable is Rs.5,06,89,152/-, which is almost double the value.

14. Learned counsel for the respondent opposed the writ petition alleging that even if the properties are sold in public auction, it would be insufficient to meet the entire dues along with interest. Therefore, no purpose would be served, if the petitioner is allowed to sell the mortgaged property on his own.

15. This is the very same finding given by the learned Single Judge in the previous round. Learned counsel appearing on behalf of the respondent opposed that such an act of agreement entered into by the petitioner fixing the time as six months is a delaying tactics and nothing short of an exercise of procrastination and there is no bona fides in his deeds.

16. The respondent, being the State owned Corporation, has to put the properties for sale in public auction and the same has to be made in a transparent manner and the petitioner cannot have any grievance over the same. It is also open to the petitioner himself to participate in the auction or if there are any prospective purchasers, with whom the petitioner intends to sell the property, they could be asked to participate in the auction to quote higher bid amount to purchase the property.

17. In the light of the above facts and the earlier orders of this Court, the petitioner cannot maintain the present writ petition.

18. Accordingly, this writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

Pondicherry Industrial Promotion Development
and Investment Corporation Ltd.,
60, Romain Rolland Street,
Pondicherry-605 001.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.84711
+1cc to Mr.A.Arumugam, Advocate, S.R.No.84733

W.P.No.21360 of 2018

SR(CO)
rrs 02/01/2019