

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Date of Decision: 18th September, 2018

1) Letters Patent Appeal No. 1711 of 2017 (O&M)

<u>M/s Panchsheel Seeds</u>	Appellant
versus	
<u>State of Haryana and others</u>	Respondents

2) Letters Patent Appeal No. 2428 of 2017 (O&M)

<u>M/s Panchsheel Seeds</u>	Appellant
versus	
<u>State of Haryana and others</u>	Respondents

CORAM: **HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE**
 HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Sanjiv Gupta, Advocate, for the appellant.
 Mr. Deepak Balyan, Addl. Advocate General, Haryana,
 for respondent Nos.1 to 3.
 Mr. Sandeep Parkash Chahar, Advocate,
 for respondents No. 4 to 39.

KRISHNA MURARI, CHIEF JUSTICE

CM No. 5400-LPA of 2017 in LPA No. 2428 of 2017

Heard. For the reasons mentioned in the application, delay of 99 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1711 of 2017 and LPA No. 2428 of 2017 (O&M)

These are two connected appeals filed under Clause X of the Letters Patent directed against the common judgment and order dated 11.08.2017 passed by the learned Single Judge disposing of two writ petitions.

2. Civil Writ Petition No. 1003 of 2014 was filed by the appellant herein seeking a writ of certiorari to quash the auction notice issued by Sub Divisional Officer (Civil), Jhajjar, dated 16.01.2014 for auction of the property of the appellant. A further writ of mandamus was claimed

commanding the State-respondents not to auction the property of the petitioner-appellant described in the auction notice.

3. Civil Writ Petition No. 1004 of 2014 was filed by the private respondents seeking a writ of mandamus to command the State-respondents to auction the food grains and other perishable items and other properties of the appellants herein in terms of the order dated 07.11.2012 passed by this Court in Civil Writ Petition No. 20065 of 2012 and to make payment to the petitioners (private respondents herein) out of that sale proceeds towards the alleged outstanding dues against the appellants for purchase of the food grains.

4. Facts in brief giving rise to the dispute in nut-shell can be summarized as under:-

Appellant is a proprietorship firm running the business of production, processing and sale of agriculture certified seeds by procuring raw seeds from the farmers of nearby villages through its sole proprietor Rajpal Singh. For the purpose of advancement of business activities, the appellant obtained loan from Indusind Bank Ltd. Hisar and as a security of the said loan the stocks of food grains and commodities lying with the appellant were hypothecated with the bank. The said stock was also consisting of the seeds etc. purchased from the farmers of the adjoining villages which included respondent No.4.

5. Private respondent Nos.4 to 39 and certain other villagers lodged an FIR No. 539 dated 23.08.2012 against the appellant under Section 420 and 406 of the Indian Penal Code at Police Station, Jhajjar alleging that the appellant along with his brother had purchased huge quantity of grains and seeds from them but no payment was made for the same. Fearing arrest, the appellant approached the Court of Additional Sessions Judge, Jhajjar for

grant of anticipatory bail and an interim bail was granted to the appellant. During pendency of the bail proceedings, Additional Sessions Judge, Jhajjar passed an order dated 06.10.2012 directing the District Magistrate to constitute a committee to prepare an inventory of assets and liabilities. It may be relevant to quote the following from the order dated 06.10.2012 passed by Additional Sessions Judge, Jhajjar:-

“It has been projected that if a committee is constituted to prepare inventory of assets and the liabilities, then matter will be resolved with no much inconvenience to the parties. Keeping in view the peculiar facts and circumstances of the case, learned District Magistrate is hereby directed to constitute a committee to undergo this task. Complainant and five other aggrieved persons must be joined therein. Bank representative could also be joined in the committee. The Committee, will, however, not dispose any of the assets without due permission of learned District Magistrate. The District Magistrate may order for sale of perishable items as an interim measure. On finalization of the list, District Magistrate would be within his domain to order for sale of assets and properties disburse of proceeds to do order for sale of assets and proportionate disburse of proceeds to do the needful for the satisfaction of all the aggrieved ones and will instruct local police to proceed with the matter as per the requirements of the case in the changed scenario, viz, filing of cancellation report etc. in case all the parties agrees for amicable settlement. Now to come up on 06.11.2012 for awaiting progress report.”

6. In the meantime, Indusind Bank wherefrom the appellant had availed loan facility approached this Court by filing Civil Writ Petition No.20065 of 2012 seeking directions to the State authorities for sale of the entire perishable food grains lying in the godowns of the appellant in open market by public auction. This Court vide order dated 07.11.2012 disposed

sell the stock of food grains stocked in the godowns of the appellant by public auction. This court vide order dated 07.11.2012 disposed of the said writ petition by directing the Deputy Commissioner, Jhajjar to sell the stock of food grains stocked in the godowns of the appellant by a public auction and to utilize the sale proceeds towards liquidating the outstanding dues of the bank and balance to be paid to the farmers after verifying their claims from the record of the appellant.

7. In compliance of the order dated 07.11.2012 passed by this Court, Deputy Commissioner, Jhajjar conducted an auction of the food grains stored in the godowns of the appellant. The case set up by the appellant in the writ petition is that out of the sale proceeds a sum of ₹ 1,53,34,000/- was paid to the Indusind Bank towards its outstanding dues and a total sum of ₹ 95,59,985/- was paid towards the outstanding dues of the farmers. After the aforesaid payment to the bank and other claimants, the petitioner-appellant was granted regular bail by the Court of Additional Sessions Judge, Jhajjar vide order dated 25.09.2013.

8. It is further pleaded by the appellant that another set of private persons again approached this Court by filing Civil Writ Petition No. 21688 of 2013 claiming that the appellant has not repaid their outstanding dues and a direction was sought to the State authorities to auction the property of the petitioner-appellant for realization of their outstanding dues. This Court disposed of that writ petition vide order dated 30.09.2013 directing the Deputy Commissioner, Jhajjar to decide the legal notice given by the private respondents in this regard.

9. It is a specific case set up by the appellant that instead of deciding the legal notice as directed by this Court, taking shelter of the order, respondent No.3-Sub Divisional Officer (Civil), Jhajjar, issued an

auction notice published in newspaper 'Dainik Bhaskar' dated 16.01.2014 inviting bids for public auction of the properties of the appellant-petitioner for 23.01.2014 which was subject matter of the challenge by the appellant. Civil Writ Petition No. 1004 of 2014 was filed by the IInd set of private respondents seeking a mandamus for auction of the properties of the appellant herein in terms of the order dated 07.11.2012 passed by this Court in Civil Writ Petition No. 20065 of 2012 and to make payment to them out of the sale proceeds.

10. Learned Single Judge clubbed both the writ petitions and disposed of them by a common judgment impugned in these two connected appeals directing Deputy Commissioner to re-auction the immovable property of the appellant in accordance with law as early as possible in compliance of the order passed by Additional Sessions Judge, Jhajjar. In the back drop of the above facts, following questions arise for our consideration and adjudication:-

- i) Whether the learned Single Judge could have issued a direction for auction of the property belonging to the appellant for realization of the alleged private loan without there being any adjudication in that regard by a competent Court of law?
- ii) Whether Additional Sessions Judge, Jhajjar while considering the matter of bail could have passed an order directing auction of the property of the alleged accused?

11. At this juncture, it may also be relevant to notice filing of Civil Writ Petition No. 20065 of 2012 by Indusind Bank Ltd. and the order dated 07.11.2012 passed by this Court while disposing of the said writ petition.

Said captioned writ petition was filed by Indusind Bank Ltd. seeking a writ

of certiorari for quashing the orders passed by Deputy Commissioner, Jhajjar on 27.08.2012 and 28.08.2012 putting seals upon the godowns of the appellant. A further writ of mandamus was prayed to remove the seals and to allow the periodical fumigation of the entire stocks available in the godowns to save the perishable food grain commodities from rotting due to humidity and insects and also to permit sale of the entire perishable food grain commodities in open market by public auction and to appropriate the sale proceeds towards outstanding dues of the bank being a secured creditor. A Division Bench of this Court after hearing the parties disposed of the writ petition on the basis of consensus between the parties though expressing doubt with respect to lack of jurisdiction with the State respondents to sell the godowns arbitrarily by making following observations:-

“9. Without commenting on the merits of the action of official respondents since respondent no.7 had chosen not to contest the arbitrary action of the official respondents and their lack of jurisdiction in the way they have sealed the godowns, the present writ petition is disposed of in the following terms which will be in supersession of the directions issued by the Addl. Sessions Judge, Jhajjar dated 6.10.2012 :-

i) The Deputy Commissioner, Jhajjar shall ensure that the stock of food grains lying in the godowns of respondent no.7, inventory of which had already been prepared on 10.9.2012 (Annexure P-11) shall be sold by public auction after proper advertisement and publicity which shall be held on 30.11.2012.

ii) The petitioner-bank and respondent no.7 through its proprietor shall be associated with the auction proceedings along with the representatives of the aggrieved farmers. The sale proceeds of the items sold shall be deposited in the Treasury and thereafter, the amount due to the bank as per its demand inclusive of interest till the date of disbursement shall be paid to the bank within ten days from the receipt of its demand.

iii) The committee formed by the Deputy Commissioner, Jhajjar shall ascertain the claims of aggrieved farmers and recommend payment out of balance auction amount, if any, left to the said farmers after verifying the claims made. The said payment shall be disbursed to the farmers by 31.12.2012.

iv) The balance of the auction amount shall be disbursed to respondent no.7 within one week after 31.12.2012 after deducting the expenses incurred on the auction proceeding.”

12. It is worthwhile mentioning here that in compliance of the aforesaid order dated 07.11.2012 passed by this Court, perishable items stored in the godowns of the appellant were put to auction and out of the sale proceeds realized approximately a sum of ₹ 1,53,34,000/- was paid to the Indusind Bank towards its outstanding dues and a total sum of ₹ 95,59,985/- was utilized for liquidating the outstanding dues of the farmers. Thus the order passed by this Court stood complied with and there does not appear to be any dispute in that regard. However, when the IInd set of private respondents approached this Court again by filing Civil Writ Petition No. 21688 of 2013 which was disposed of vide order dated 13.09.2013 by directing the respondents’ authorities to decide the legal notice, the respondents’ authorities issued the impugned auction notice.

13. Learned counsel for the appellant vehemently contends that without noticing and appreciating the aforesaid facts and circumstances of the case, learned Single Judge passed the impugned order upholding the notice and directing re-auction of the immovable property of the appellant. It is further submitted that insofar as the outstanding dues, if any, of the private respondents is concerned, the same cannot be realized by way of a public auction conducted by the State respondents without going through the due process of law. Thus what is required is an adjudication of the existence of the outstanding loan and a direction that the same was recoverable. In the said circumstances also, the realization cannot be made by a public auction but it can only be through execution proceedings in case there exists a decree. It is further pointed out that even if there exists any dues outstanding

qua the Indusind Bank, the same also cannot be permitted to be realized through such a public auction without following the procedure prescribed by law.

14. In reply, learned Additional Advocate General appearing for the State of Haryana and Mr. Sandeep Parkash Chahar, learned counsel appearing for the private respondents No.4 to 39 have tried to justify the impugned order. It is submitted that since the order passed by the learned Single Judge tends to do substantial justice between the parties, as such it does not require any interference.

15. We have considered the arguments advanced by learned counsel for the parties and perused the record.

16. It is well settled that powers conferred upon the functionaries of the State for realization of any money by way of a public auction is not available to be exercised for realization of any private loan or dues. Realization of any money due through the mode of public auction can only be resorted to in case it is public money under the statutory provisions. Otherwise in case of amount due being private, there has to be an adjudication by a competent court of law and that adjudication should be executable through process of law.

17. In the case in hand, admittedly the amount due to private respondents, if any, is purely a private due not covered under any statutory provision, hence, the same is not liable to be realized by the State respondents by resorting to public auction of the property of the appellant. The shelter being taken by the respondents that the impugned auction is being carried out under the judicial orders passed either by Additional Sessions Judge while considering the bail of the appellant or by this Court dated 30.09.2013, is totally misplaced and out of context.

18. We find no legal justification for the Additional Sessions Judge to pass an order for auctioning the property while considering the matter of bail and said condition could not have been imposed upon the appellant-accused at the time of grant of bail. Thus, in our opinion, the order passed by Additional Sessions Judge in this regard was totally without jurisdiction.

19. In so far as the order dated 07.11.2012 passed in Civil Writ Petition No. 20065 of 2012 is concerned, it is not in dispute that the said order was confined only to stock of food grains lying in the godowns and the same undisputedly carried out by auction of the same and sale proceeds having been utilized for making payment to Indusind Bank and private respondent Nos. 4 to 39.

20. Appellant also cannot take refuge behind the order dated 13.09.2013 passed by this Court in Civil Writ Petition No. 21688 of 2013 to say the impugned notice being totally illegal and without jurisdiction, inasmuch as this Court vide order dated 13.09.2013 only directed respondent No.2 to take a decision on the legal notice issued by the private respondents. It may be also relevant to extract the operative part of the order which reads as under:-

“Having heard the learned counsel for the petitioners and without expressing any opinion on the merits of the case, including the issue of limitation, if any, the Deputy Commissioner, Jhajjar-respondent No.2 is directed to look into the matter, consider the grievance of the petitioners, raised vide their legal notice dated 25.06.2013 (Annexure P-5) and decide the same, at an early date by passing an appropriate order thereon, in accordance with law, but in any case within a period of two months from the date of receipt of a certified copy of this order.

With the observations made above, the present petition stands disposed of.”

21. A perusal of the aforesaid order clearly goes to show that this Court did not express any opinion on the merits of the case and a simple direction was issued to Deputy Commissioner, Jhajjar to look into the matter and to decide the legal notice dated 25.06.2013 given by the private respondents herein. The authorities, however, either misreading the said order or taking shelter of the same issued the impugned notice for auction of the properties of the appellant without any jurisdiction and authority of law.

22. In view of the facts and circumstances and the position of law discussed hereinabove, the impugned auction notice dated 16.01.2014 for auction of the property of the appellant (Annexure P-12 of the writ petition) is not liable to be sustained and is hereby quashed and the State-respondents are restrained from proceeding with the auction of the property belonging to the appellant in pursuance to the said notice. Thus the Civil Writ Petition No. 1003 of 2014 filed by the appellant herein was liable to be allowed and stands allowed.

23. The other Civil Writ Petition No. 1004 of 2014 filed by the IInd set of private respondents is accordingly liable to be dismissed and thus stands dismissed.

24. Both the Letters Patent Appeals stand allowed and the impugned judgment of the learned Single Judge stands set-aside.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

18.09.2018

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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No