

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4187 of 2008

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1. M/S K.K. Glass Factory Pvt.Ltd, Pipra Kothi, East Champaran, through its Managing Director, Virendra Kumar Singh S/o late Jagarnath Singh Resident of Vilage Kuerpur, P.O. +P.S. Pipra Kothi, District- East Champaran.
 2. Virendra Kumar Singh S/o late Jagarnath Singh Resident of Vilage Kuerpur, P.O. +P.S. Pipra Kothi, District- East Champaran.

... .. Petitioner

Versus

1. The Bihar State Financial Corporation having its Office at Mazeherul Haque Path (Fraser Road), Patna represented through its Managing Director, B.S.F.C. Mazeherul Haque Path(Fraser road), Patna- 800001
2. The Managing Director, B.S.F.C. Cum Specified Authority, U/S 32(G) of S.F.C.S. Act, Mazeherul Haque Path(Fraser Road), Patna- 800001
3. The Branch Manager, Bihar State Financial Corporation, Branch Office- Ist Lane, Agrawa, Motihari, East Champaran.
4. The State Bank of India having its Central office at Madankama Road, Nariman Point, Bombay represented through its Branch Manager, State Bank of India, Bara Chakia Branch , P.O. Bara Chakiya, P.S. Chakia, Distt. East Champaran.
5. The Debt Recovery Tribunal, Bihar, Patna having its Office in East Boring Canal Road, Patna represented through its Recovery Officer, Debt Recovery Tribunal, Bihar, Patna.
6. The District Magistrate Cum Collector East Champaran, Motihari.
7. The Certificate Officer, Motihari, East Champaran.
8. The State of Bihar.

9(A). Rajeev Ranjan

9(B). Sanjeev Ranjan,

Both are Sons of late Mr. Chandras hekhar Dwivedi Both are Resident of Chandrasheel Bhawan, Banarpur Airport, P.O. +P.S.- Motihari, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Shrivastava, Advocate
For the State	:	Mr. Prabhat Kumar, Asst. Counsel to G.A.XI
For BSFC	:	Mr. Raj Nandan Prasad, Advocate
For the Pvt. Respondents:	:	Mr. Sandeep Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 15-01-2019

This writ application has been preferred for the
following reliefs:



“(a) To issue a writ in the nature of certiorari for quashing of the entire proceeding and process of Case No. 63 of 2002 pending before the Respondent no. 2 (Annexure-3) and the Requisition of certificate issued by the Respondent no. 2 dt. 16-8-2007 (Annexure-5) as the entire proceeding and Requisition of certificate vitiates on account of double jeopardy as the Bihar State Financial Corporation by filing of his written statement in P.T. No. 317/1998 and 318/1998 made his claim in the court of the Respondent No. 6.

(b) That the Respondent authorities i.e. Res No. 3 be directed to recalculate the interest and date on which the mortgaged assets of M/s K.K. Glass Factory (P) Ltd. Was taken in to possession i.e. up to 26-03-95.

(c) The Respondent No. 1 to 3 be directed to sell the mortgaged assets including Machineries & other immovable property of premises in question of the petitioner no. 1 & thereafter, direct the petitioner no. 1 to deposit the remaining outstanding dues/balance. As the factory in question was taken over by the Respondent no. 1 on 26-03-95 itself and a Notice was displayed by the Res. No. 1 mentioning therein that “Unit for sale” & after display of notice no inventory was ever handed over to the



petitioner.

(d) To issue a writ in the nature of mandamus commanding the Respondent no. 1 to 3, to handover the inventory prepared at the time of taking over possession of the mortgaged assets including movable properties, like machinery & others infrastructure.”

2. During pendency of the writ application since the mortgaged/hypothecated assets of the petitioners were sold out by the Bihar State Financial Corporation (hereinafter referred to as ‘B.S.F.C. or the Corporation’) in exercise of their power under Section 30 of the Bihar State Financial Corporation Act (hereinafter referred to as the “B.S.F.C. Act”), the petitioner filed Interlocutory Application No. 4163/2013 on 18.06.2013 with a prayer to quash the order dated 22.09.2010 bearing Memo No. 236/2-1/2010-11 (Annexure-6) issued under the signature of respondent no. 2. The petitioner also prayed for quashing of the order dated 30.03.2011 bearing Memo No. 345/2-1/2010-11 (Annexure-7) by which the Managing Director of the State Financial Corporation directed the authorized officer to enter upon the premises of the concern of the petitioner and to take possession of the mortgaged/hyotheated assets of the said concern on behalf of the corporation, after



preparation of inventory as per the norms of the corporation and then to handover the taken-over assets to the purchaser after proper compliance of the terms and conditions of sale order issued by Memo dated 22.09.2010. By the impugned order (Annexure-7) to I.A. No. 4163/2013, the Managing Director had also advised/directed the Branch Manager of the B.S.F.C., Motihari to prepare an inventory and take charge of the mortgaged assets of the concern in presence of the borrower or his authorized representative/agent or in presence of two independent witnesses in case the borrower concern does not cooperate in handing-over the possession of the mortgaged assets. It was further directed that in the event of resistance being offered by the borrower concerned in taking over the possession of the mortgaged assets of concern and if there is apprehension of breach of peace, necessary police help by approaching the local authorities may be taken.

3. By filing another Interlocutory Application being I.A. NO. 4164/2013, the petitioner sought to implead Mr. Chandra Shekhar Dwivedi who was the purchaser as respondent no. 9. Respondent no. 9 has entered appearance through his learned Advocate.

Brief Facts of the case



(I) The B.S.F.C./Corporation sanctioned the two term loans of Rs. 56.80 Lakhs and Rs. 18.28 Lakhs to the petitioner concerned for setting up a Glass products unit. Out of the sanctioned loan, petitioner availed Rs. 41.72 Lakhs in A/C -I and Rs. 17.85 Lakhs in A/C-II. Land, Building and Plants of the concern/unit were charged and mortgaged in favour of B.S.F.C. It is stated that the loan was disbursed against the loan agreement executed by the Directors of the petitioners concerned but there was default in payment of the corporation's dues, for which a legal notice dated 12.12.1992 was issued and the Corporation in exercise of its powers under section 29 and 30 of the BSFC Act took over possession and advertised the mortgaged assets for sale. It is an admitted position that the Corporation initiated its action for taking-over possession of the mortgaged/hypothecated assets by affixing notice as back as on 26.03.1995. In paragraph – 3 of the supplementary affidavit filed on behalf



of the petitioner No. 2 it is admitted that the Corporation had taken over the physical possession of the petitioner's concern under Section 29 of the BSFC Act with all assets. The date of taking over of the assets is also admitted in paragraph – '6' of the said affidavit. In the Interlocutory Application filed on 18.06.2013 the case of the petitioners is that the unit was taken-over for sale on 26.03.1995 and was sold on 30.03.2011 but without considering the substantive objection filed on behalf of petitioner no.2 on 08.10.2010.

II. The main objection of the petitioners is with regard to the valuation of the mortgaged assets, as according to them the sale of the mortgaged assets has taken place on much below price if compared with the minimum value of the land in terms of Bihar Stamp (Prevention of Under Valuation Instruments Rule, 1995 and Amendments 2006), it is stated that the total area which was mortgaged with the Corporation was 150 decimals which is



equivalent to one Bigha and three Kathas, which has been sold at a meager sum of Rs. 76.50 Lakhs. It is the case of the petitioner that the valuation of the said properties was not less than Rs. 2 Crores at the relevant time. It is also submitted that the sale was effected without preparing any inventory or without going through the valuation of the land determined by the district administration. It has further been stated on behalf of the petitioners that the Branch Manager of the Corporation instituted a false and scandalous case against the petitioners with respect to alleged removal of mortgaged assets on 03.02.2011 which was registered as Piprakothi P.S. Case No. 26/2011, but upon investigation the said case was found to be false and accordingly a report was submitted in the court of learned C.J.M. which was also accepted.

III. In Interlocutory Application being I.A. No. 4163/2013 the petitioner has challenged the auction sale of mortgaged assets to



respondent no. 9 and with the said application he has brought on record a copy of the objection petition dated 08.10.2010. A statement has been made that the representation was sent to the Corporation vide Speed Post. It is submitted that in the objection petition the petitioners had given a statement that they will have no objection if the outstanding against the unit in question are realized through sale of the assets. The objection as to valuation was the only issue which was raised in the objection petition.

IV. There are other facts appearing from the records of the writ application which relate to the transactions between the petitioners and the State Bank of India. Those are not relevant to be discussed much in detail here but briefly stated the petitioners concerned had defaulted in payment of the outstanding in their cash credit account with the Bank for which the Bank had initiated action before the Debts Recovery Tribunal. Not only that when it was found that the petitioners had indulged in getting cash



credit facilities illegally, the Bank referred the matter to the Central Bureau of Investigation (in short the “CBI”) which resulted in lodging of R.C. No. 43(A)/1991 for the offences alleged under Sections 120B read with Section 409 I.P.C. and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. In course of hearing, this court has been informed by learned counsel for the petitioners that the said case has resulted in a conviction of the accused-petitioner no.2 and appeal therefrom is pending before this court.

V. In the aforementioned facts and circumstances placed before this court by learned counsel for the petitioners, a prayer has been made at this stage to quash and cancel the sale effected in favour of respondent no. 9.

4. Mr. Shri Prakash Shrivastava, learned counsel representing the petitioners has in fact put his all concentrations over the challenge made to the sale of the mortgaged assets in favour of respondent no. 9. It is worth mentioning that in the original application the petitioners came with a challenge to the



entire proceeding of Case No. 63/2002 and the requisition of certificate issued by respondent no. 2 on 16.08.2007 as contained in Annexure – 2 & 5 respectively, in course of hearing, those issues have not been addressed and because of subsequent developments which took place during pendency of the writ application whereunder the mortgaged assets were sold to respondent no. 9, the whole emphasis of learned counsel for the petitioners has remained over the sale aspects of the mortgaged assets.

5. It, however, appears from perusal of Annexure-2 to the writ application that the same is the order-sheets of the case No. 63/2002. A Notice was issued to the petitioner's concern and its promoters/directors calling upon them for filing their objection petition on the application under Section 32(G) of the B.S.F.C. Act, 1951 filed by the Corporation for recovery of a sum of Rs. 3,14,00,279.51 (Three Crores Fourteen Lakhs Two Hundred Seventy Nine & Paisa Fifty One).

6. It appears that the objection petition was filed and then the Managing Director, BSFC cum Specified Authority under Section 32(G) of the SFC's Act held that a sum of Rs. 3,99,50,676.00 in Account-I and Rs. 1,62,09,017.00 in Account-II total being Rs. 5,61,59,693.00 was recoverable as on



28.02.2007 along with *pendente lite* and future interest @ 12.5% + 2% penal interest. It is pursuant to the final order dated 09.02.2007, the Specified Authority under the Corporation had issued requisition in form no. II under Section 5 of the Bihar and Orissa Act – IV of 1914 (Annexure-5) requesting the Certificate Officer of the District Office, Champaran to recover the aforesaid amount.

7. Perusal of the writ application shows that there is no procedural challenge to the order of the Specified Authority. The petitioner has come up with a statement that it is because the bank officials and the officers of the Corporation delayed in processing of the loan and financing that led to misutilization of crores of Rupees and it is because he refused to make payment to one Sri B.N. Roy, the Zonal Manager, State Bank of India, the petitioner no.2 was made an accused in Vigilance Case. Perhaps, realizing that these issues cannot be gone into by the writ court sitting in its writ jurisdiction under Article 226 of the Constitution of India, Mr. Shrivastava has not gone into these aspects. While challenging the sale of Mortgaged Assets allegedly at a lower price, Mr. Shrivastava contended that it was incumbent upon the B.S.F.C. to give a wider circulation to its sale notice but in this case wide



publicity was not given. He has relied on the judgment of the Hon'ble Apex Court in the case of **Chairman & Managing Director SIPCOT, Madras and others Vs. Contromix Pvt. Ltd. by it's Director (Finance) Seetharaman, Madras and another reported in AIR 1995 SC 1632.**

8. The writ application has been opposed by the Corporation and its authorities. It is stated that the total dues against the petitioner as on the date of advertisement, i.e., 28.02.2007 was Rs. 561 Lakhs which was not paid by the Corporation despite legal action taken against them and the advertisement earlier made, therefore subsequent sale advertisement notice was issued. It is further stated that the mortgaged assets of the petitioner's company was evaluated by BLVT who evaluated the assets to the tune of Rs. 66.76 Lakhs. The mortgaged assets of the company was also evaluated by the external valuers M/s Mulyankan, who evaluated the assets to the tune of Rs. 67.11 Lakhs. The CVT at head office evaluated the assets to the tune of Rs. 76 Lakhs. After valuation of the assets, the tenderers were asked to come to the head office at 11.00 A.M. on 28.04.2010 for negotiation of the cost of assets, however the letter could not be delivered to the tenders by the postal department, hence a communication in this regard was



issued again.

9. It is further stated that during negotiation one tenderer Sri Chandra Shekhar Dwivedi (respondent no. 9) raised his offer to Rs. 76 Lakhs. The offer in hand was again advertised for obtaining better offer in daily Newspaper 'Hindustan' on 02.08.2010. In response to the said advertisement no fresh offer was received, consequently a sale order under memo dated 22.09.2010 was issued in favour of the tenderer under intimation to the petitioner's company with an advise to retain the assets on matching terms and conditions of the sale order. The petitioner's company did not retain the assets during the stipulated period, on the other hand, the purchaser made payment of the 25% of the consideration amount and executed sale cum payment to balance loan agreement on 23.03.2011. The mortgaged assets was thereafter handed over to the purchaser on 01.04.2011. The representative of petitioner no. 2 has stood witness to the handing over of sold assets to respondent no. 9.

10. The Corporation has also opposed the prayer of the petitioner for quashing of the entire proceeding and process of Case No. 63/2002 as according to the Corporation the challenge to the said action is not maintainable in the writ



jurisdiction. In this regard reliance has been placed on Section 32(G) of the SFC's Act.

11. It has also been submitted referring to the counter affidavit of the Corporation that the Corporation had taken over the properties on 26.03.1995, and it was advertised along with other defaulting units in 1995 itself, thus, the advertisement in the year 2007 was the second advertisement. The advertisement of 2007 was never put to challenge on any ground whatsoever. In this regard, attention of this court has also been drawn to paragraph-6 of the supplementary affidavit of the petitioners wherein they have stated that the property in question was taken-over by affixing notice including display board by notifying unit for sale on 26.03.1995.

12. Learned counsel representing the Corporation submits that from the facts apparent on the record it would appear that there was no purchaser of the unit and with much difficulty after about 15 years the Corporation could realize at least a sum of Rs. 76.50 Lakhs from the sale of the mortgaged assets. It is pointed out that from the statements made in the counter affidavit of the Corporation it would appear that the petitioner concern was given an opportunity to retain the assets but despite the opportunity so given, the petitioner concern



failed to avail the same.

13. Learned counsel submits that Annexure-‘6’ to the I.A. No. 4163/2013 is a reasoned order of the Managing Director of the Corporation passed on 21.09.2010 by which the sale of the mortgaged assets in favour of respondent no. 9 was made and a copy thereof was sent to the petitioner concerned with a specific statement that if they so wish they were retained the unit on matching terms and conditions as contained in the sale order. Annexure- ‘A’ to the counter affidavit is the take-over and handover report dated 01.04.2011 duly containing the description of land & building with inventories of the plant and machinery. It is witnessed by two representatives of petitioner no. 2. It is thus submitted that two years after handing over of the assets to Respondent N. 9, filing of I.A. No. 4163/2013 is thoroughly misconceived and is liable to be dismissed.

14. As stated above, the stand of the petitioners was that they have no money, had no objection to the sale of the assets except that of the valuation.

15. Respondent no. 9 has also appeared and opposed the writ application. It is his stand that no irregularity has been committed from any angle in the matter of sale of the mortgaged assets and that he is holding the assets in accordance



with the sale order and on payment. Copies of the receipts showing payments as per Annexure-3 series. It is submitted that the sale order has been challenged after about three years.

Consideration

16. Having heard learned counsel for the parties and on perusal of the records, this court finds that at this stage the whole dispute has boiled down to a challenge to the sale of mortgaged/hypothecated assets to respondent no. 9. It is worth mentioning some of those facts and events which have taken place during pendency of the writ application. This writ application was preferred on 04.03.2008. On 01.04.2010, four weeks time was granted to 'B.S.F.C.' to file counter affidavit. It is not in dispute that prior to filing of the writ application, the Corporation had advertised the unit for the second time for sale. The said sale notice/advertisement was not under challenge in the writ application and therefore it can be easily concluded that the petitioners had no objection to the sale of the units by the Corporation in exercise of the power its power under Section 30 of the SFC's Act.

17. During pendency of the writ application, in terms of its advertisement, the Corporation received some offers including the offer of respondent no. 9. A negotiation took



place and respondent no. 9 raised his offer to Rs. 76.50 Lakhs. It is an admitted position from the records that the sale order dated 21.09.2010 (Annexure-6 to I.A.No. 4163/2013) was served on the petitioners concern giving them an opportunity to match the offer and retain the mortgaged assets. The petitioners though came to know about the sale order dated 21.09.2010 but did not move this court by filing an appropriate application to challenge the said sale order at the earliest opportunity. The sale order was given effect to, the assets were already taken-over way back in the year 1995 which was never challenged and then on 01.04.2011 those assets were handed-over to respondent no. 9. Still the petitioners did not challenge the action of the Corporation and virtually no step was taken to question the sale for about three years. It is only thereafter that the petitioners moved this court by filing I.A. No. 4163/2013 on 18.06.2013. It is thus apparent on the face of the record that respondent no. 9 had no notice of the pending *lis*, the subject matter of the *lis* (present writ petition) was totally different from that of what was sought to be introduced for the first time by filing the Interlocutory Application on 18.06.2013.

18. As stated above, even the advertisement of the year 2007 in which the valuation of the property was duly



disclosed was not under challenge and hence by no stretch of imagination it can be said to be a case of *lis pendent* transfer of mortgaged assets. The complete silence on the part of the petitioners in not challenging the action of the Corporation immediately after passing of the order dated 21.09.2010 by the then Managing Director of the Corporation would prove fatal for the petitioners as being a writ court, this court would not be willing to set aside the sale of which neither the advertisement was under challenge nor the order for sale was challenged by the petitioners at the earliest opportunity.

19. This court is of the opinion that if challenge to sell of mortgaged assets of the defaulter units which was in fact waiting for sale for the last 15 years is allowed at the will of the borrower/defaulter at any point of time, such sale would lose their sanctity.

20. In the present case, as is apparent from the record, the unit was taken over sometime in the year 1995 and it was advertised but nobody came to purchase the unit. The second advertisement had taken place in the year 2007 and at the relevant time, the valuation was also done. Mr. Shrivastava has at one stage submitted that the Corporation was required to give a wide publicity to its notice for sale of mortgaged assets.



He has also relied upon the judgment of the Hon'ble Supreme Court in the Case of **Chairman & Managing Director SIPCOT, Madras and others Vs. Contromix Pvt. Ltd. by it's Director (Finance) Seetharaman, Madras and another reported in AIR 1995 SC 1632**. In the case of SIPCOT (supra) the unit was sold within two years after taking-over. In that case also sale was advertised twice. Second time the offer came which was less than the value of the assets, therefore the tenderer was called for a negotiation. In course of negotiation the offer was enhanced to Rs. 38 Lakhs which was accepted by the Financial Corporation. The sale was challenged by the borrower on the ground that Market value of the assets would be Rs. 72.60 Lakhs and sale for on 38 Lakhs was invalid in view of **Mahesh Chandra Vs. Regional Manager U.P. Financial Corporation** reported in **(1993) 2 SCC 279**.

21. One of the submissions before the Hon'ble High Court was that SIPCOT had acted in haste and hurry. The Hon'ble Single Judge quashed the sale of mortgaged assets subject to certain direction including that the petitioner shall deposit Rs. 20 Lakhs on or before 31.12.1993 and a further sum of Rs. 18 Lakhs on or before 20.01.1994.

22. The Hon'ble Division Bench also concluded



that the sale was not conducted in accordance with the guidelines laid down by the Apex Court in Mahesh Chandra's Case inasmuch as (i) the sale was not held by auction and was held by inviting tenders followed by negotiation; (ii) the price for which properties were sold was low and (iii) before accepting the offer of Rs. 38 Lakhs no intimation was given to respondent no. 1 so as to enable it to make a higher offer.

23. On a challenge made to the judgments of the Hon'ble High Court, the Hon'ble Apex Court in paragraph-12, 13 and 14 held as under:

“12. 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 every body 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 is such that suitable bid many not be



received at public auction. In the event, the 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 considerations which govern the sale of public property have been held to be applicable to a sale of property by the State Financial Corporations under Section 29 of the Act in Mahesh Chandra case (1992 AIR SCW 3629) (Supra). In that case this Court has held that sale by public auction is universally recognized to be the best and most fair method and is beyond reproach and, if it is not possible to adopt the said method, sale may be held by inviting tenders, but in that event every endeavour should be made to give wide publicity to get the maximum price. The said decision cannot, therefore, be construed as laying down that a sale by tender is impermissible and invalid. The learned judges, in that case, have referred to the decisions of this Court in Sachidananda Pandey v. State of West Bengal, (1987) 2 SCR 223: (AIR 1987 SC 1109) and Haji T. M. Hassan v. Kerala



Financial Corporation, (1988) 1 SCR 1079 : (AIR 1988 SC 157) wherein it has been held that one of the modes of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. It cannot, therefore, be said that a sale by inviting tenders is ipso facto invalid. The validity of such a sale will have to be considered in the light of the facts and circumstances of the particular case.

13. In the facts and circumstances of this case, it cannot be said that the failure on the part of SIPCOT to sell the property by public auction and selling it to respondent no. 2 by inviting tenders is bad for the reason that the said property has not received the best price in the market. As indicated earlier in response to the first advertisement no offer was received from anybody and in response to the second advertisement also only one offer was received from respondent No. 2 and that too was only for Rs. 14.26 lakhs. Through negotiations SIPCOT was able to secure a revised offer of Rs. 38 lakhs, which was more than the amount of Rs. 36.44 lakhs, at which the unit had been valued. Respondent No. 1 had sufficient



opportunity, during the pendency of the matter in the High Court as well as in this Court, to secure an offer higher than Rs. 38 lakhs made by respondent No. 2, but he has not been able to bring any higher offer. In the circumstances it cannot be said that the price at which the unit was sold was low. The sanction of the loan of Rs. 44.80 lakhs in 1987 cannot afford a basis for holding that the value of the unit in 1993 could not be less than Rs. 44.80 lakhs. The value of the plant and machinery could have fallen on account of its being used during the period from 1987 to 1993 or due to the same getting outdated. If the value of the unit was higher than Rs. 38 lakhs it would have been possible for respondent No. 2 to obtain a better offer. His failure to do so negatives the inference that the sale price of Rs. 38 lakhs is low. Similarly, the failure on the part of SIPCOT to give intimation to respondent No. 1 before accepting the offer of Rs. 38 lakhs made by respondent no. 2, is of little consequence in the facts of this case because respondent No. 1 has had sufficient opportunity both before the High Court as well as in this Court to obtain a higher offer, but he has failed to



do so.

14. In these circumstances no fault can be found with the action of SIPCOT in selling the unit to respondent No. 2 for Rs. 38 lakhs and the Judgment of the High Court, in setting aside the said sale cannot be upheld.”

24. In the opinion of this Court, the word “wide publicity” has to be understood in the facts and circumstances of the case. The Hon’ble Supreme Court has also held so in the judgment referred by Sri Shrivastava, learned Advocate.

25. In the present case, where the Unit was waiting for sale after second advertisement and for last 15 years, it cannot be said that wide publicity was not given to the sale notice. In fact the judgment cited by Mr. Shrivastava would go against the petitioner in this case. In the present case validity of sale has to be considered in it’s own facts and circumstances keeping in mind that vide Annexure- ‘6’ petitioner was admittedly intimated about the offer of Rs. 76.50 Lakhs and was given an opportunity to match the offer and retain the mortgage assets. This writ application is pending in this court for last more than 10 years but at no point of time petitioner came with a better offer. No issue of valuation was raised while filing the writ application. Unfortunately none of the parties has brought



on record the copies of the sale notice. It is not the case of the petitioner that the sale notice did not mention the valuation and/or the sale amount of Rs. 76.50 Lakhs is less than the valuation mentioned in the sale notice.

26. Learned counsel for the respondent no. 9 has relied upon the judgment of the Hon'ble Apex Court in the case of **Valji Khimji & Co. Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. And others** reported in **(2008) 9 SCC 299** to submit that the Hon'ble Supreme Court has held that once sale is confirmed certain rights accrue to the auction purchaser. It is submitted that no doubt in the said case the sale was conducted by the court in a liquidation proceeding but the principles will equally apply in case of the sale conducted by the Corporation in exercise of its power under Section 30 of the SFC's Act.

27. The only objection of the petitioner as disclosed in the objection petition dated 08.10.2010 is with regard to the valuation of the land, in my opinion the Corporation has well explained that aspect of the matter by pointing out as to how the valuation was done and then in course of negotiation the respondent no. 9 raised his offer to Rs. 76.50 Lakhs on which the sale was effected.



28. This court is satisfied that in the given facts and circumstances discussed above the writ application as well as I.A. No. 4163/2013 are devoid of merit and those are accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	09.01.2019
Uploading Date	15.01.2019
Transmission Date	

