

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WA.No.157/2019 & CMP.No.1509/2019

A.Purushothaman

.. Appellant /
Writ Petitioner

Versus

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

.. Respondent /
Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 10.12.2018 in WP.No.21360/2018 which was filed seeking for a writ of mandamus directing the respondent to permit the petitioner to sell the house sites in [1]RS.No.46/1 measuring 24132 sq.ft., and [2] TS.No.1795 measuring 4060 sq.ft., 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.

For Appellant : Mr.Ar.L.Sundaresan,
Senior counsel assisted by
Mrs.Al.Gandhimathi
For Respondent : Mr.D.Ravichander

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.D.Ravichander, learned counsel accepts notice on behalf of the respondent.

2 The appellant is the writ petitioner in WP.No.21360/2018 and he has filed the said writ petition, praying for issuance of a writ of mandamus, directing the respondent to permit him to sell the house sites RS.No.46/1 admeasuring to an extent of 24132 sq.ft., and in TS.No.1795 admeasuring to an extent of 4060 sq.ft., 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 and the said writ petition, after contest, came to be dismissed vide impugned order dated 10.12.2018 and challenging the legality of the said order, the present writ appeal is preferred.

3 The facts leading to the present round of litigation have been narrated in detail and in extenso in the judgment dated 04.12.2017 made in WA.No.2878/2012 filed by the very same appellant herein/writ petitioner against the very same respondent and the writ appeal came to be dismissed and challenging the same, the appellant/writ petitioner had filed SLP [C] No.8355/2018 before the Hon'ble Supreme Court of India, which also came to be dismissed vide order dated 16.04.2018.

4 The appellant/writ petitioner is the Managing Director of M/s.Hotel Happy Garden Private Limited, Puducherry and it has availed the following loans:-

	Date of Sanction	Amount sanctioned in Lakhs	Condition
I Loan	30.01.2004	85	Loan amount has to be repaid with interest on quarterly basis in 24 quarterly instalments up to 2013.
II Loan	13.02.2007	35	Loan amount has to be repaid with interest on quarterly basis in 28 quarterly instalments up to 2015.
III Loan	29.11.2007	46	Loan amount has to be repaid with interest on quarterly basis in 28 quarterly instalments up to 2015.
IV Loan	24.03.2010	36	Loan amount has to be repaid with interest on quarterly basis in 32 quarterly instalments up to 2019.
V Loan	30.06.2010	34	Loan amount has to be repaid with interest on quarterly basis in 24 quarterly instalments up to 2017.

5 Since it defaulted in payment of the loans, the respondent had issued notice dated 10.01.2012, calling upon the

appellant herein/writ petitioner to remit a sum of Rs.68,82,000/- and it was not complied with and therefore, the respondent had invoked section 29 of the State Financial Corporation Act, 1951, by issuing Notice dated 23.02.2012 to take possession of the Hotel.

6 The appellant/writ petitioner made a challenge to the said Notice by filing WP.No.6811/2012. When the writ petition came up for hearing, the learned Senior Counsel appearing for the appellant/writ petitioner made a submission on instructions that the appellant would pay a sum of Rs.95,68,345/- representing the interest as on 31.10.2012 within the stipulated period and taking note of the same, an interim conditional order was passed on 12.12.2012.

7 Despite the said undertaking, the appellant/writ petitioner had filed WA.No.2878/2012. A Division Bench of this Court, after taking the factual aspect, especially with regard to the conduct of the appellant/writ petitioner as well as the settled legal positions, had dismissed the writ appeal vide judgment dated 04.12.2017 and as already indicated, the said order was put to challenge in SLP [C] No.

8355/2018 before the Hon'ble Apex Court, which came to be dismissed on dated 16.04.2018. Thereafter, the respondent had issued the Possession Notice on 22.03.2018 and it was put to challenge by the appellant/writ petitioner by filing WP.No.10824/2018 and also prayed for restructuring the loan and vide order dated 16.07.2018, the writ petition came to be dismissed. It is also brought to the knowledge of this Court that WA.No.57/2019, preferred against the said dismissal order, also came to be dismissed on 10.01.2019 by this Court.

8 In WP.No.21360/2018, which is the subject matter in this writ appeal, the appellant/writ petitioner would aver among other things that he may be permitted to sell the properties given as securities, viz., the residential plots in RS.No.46/1 and TS.No.1795, which according to him would fetch Rs.4.50 Crores and it may be directly remitted to the respondent/Corporation.

9 The writ petition was entertained and the respondent has filed a counter affidavit and took a stand that the very same offer was made during the course of arguments in WP.No.10824/2018 and in paragraph No.4 of the said order, the said request came to be rejected and ultimately, the writ petition itself came to be dismissed on 16.07.2018.

10 The learned Judge, taking note of the factual aspects, found that despite seeking leave to sell the secured assets,

which came to be rejected, the appellant/writ petitioner cannot re-agitate the same issue and by placing reliance upon the judgment of the Hon'ble Apex Court reported in 2014 [11] SCC 744 [Chander More Vs. Lt.Governor], found that the principles of constructive res judicata would equally apply and having found that though an opportunity was provided to the appellant/writ petitioner to bring the purchaser, the appellant/writ petitioner managed to get only an agreement, agreeing to sell the property for a sum of Rs.2,87,94,000/-, whereas the amount due and payable is Rs.5,06,89,152/- and further found that the plea made by the appellant/writ petitioner, cannot be considered and hence, dismissed the writ petition as devoid of merits vide impugned order dated 10.12.2018 and challenging the same, the present writ appeal is filed.

11 Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mrs.AL.Gandhimathi, learned counsel for the appellant/writ petitioner would submit that the secured properties/assets are very valuable and if those properties are auctioned through the respondent/Corporation, it may not fetch higher and required price and therefore, the appellant/writ petitioner may be permitted to sell the properties by way of private sale which would definitely fetch a higher sum and the entire proceeds will be credited to the loan account maintained by the respondent-Corporation and hence, prays for interference.

12 Per contra, Mr.D.Ravichander, learned counsel appearing for the respondent had invited the attention of this Court to the typed set of documents and would submit that the appellant/writ petitioner has so far filed three writ petitions and two writ appeals and the present writ appeal is the third writ appeal and so far successfully stalled the recovery proceedings and also drawn the attention to paragraph No.4 of the order dated 16.07.2018 made in WP.No.10824/2018 and would submit that similar request was made, which came to be rejected expressly and as such, it is not open to the appellant/writ petitioner to file a separate writ petition for the very same relief and the learned Judge has taken note of the facts as well as the settled legal position and has rightly reached the conclusion to dismiss the writ petition and would further submit that the appellant/writ petitioner lacks bona fide and prays for dismissal of the writ appeal with exemplary cost.

13 This Court has considered the rival submissions and also perused the materials placed before it.

14 It is not in dispute that the appellant/writ petitioner did not clear the dues on time and though indulgence was shown to him, to pay at least a portion of the amount, he had failed to clear the same. The judgment dated 04.12.2017 made in

WA.No.2878/2012 filed by the appellant herein against the respondent gives a clear picture as to the delaying tactics adopted by the appellant/writ petitioner. It is to be pointed out at this juncture that as against the dismissal of the said writ appeal, the Special Leave Petition preferred by the appellant/writ petitioner before the Hon'ble Apex Court, also came to be dismissed vide order dated 16.04.2018.

15 As rightly pointed out by the learned counsel appearing for the respondent, the appellant/writ petitioner made a challenge to the Notice of the respondent dated 22.03.2018 made in WP.No.10824/2018 and during the course of argument, the appellant/writ petitioner also made a similar offer as that of the offer made in the present writ petition and the said request came to be rejected expressly and it is relevant to extract the relevant portion, viz., Paragraph No.4 of the said order:-

''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 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.''

16 As against the dismissal of WP.No.10824/2018, the appellant/writ petitioner filed WA.No.57/2019, which also came to be dismissed by this Bench vide Judgment dated 10.01.2019. In the considered opinion of the Court, the offer made by the appellant/writ petitioner is rather to seek the leave of this Court to sell the properties by way of private sale and the said offer, in the considered opinion of this Court, lacks bona fide and as already pointed out, despite very many indulgence shown, the appellant/writ petitioner had failed to utilise the said indulgence. The Recovery action came to be initiated as early as in the year 2012 and though nearly six year had elapsed, the respondent-Corporation is unable to realise their dues in exercise of its power under section 29 of the State Financial Corporation Act, 1951.

17 In the considered opinion of the Court, the learned Judge has properly appreciated all the relevant aspects and rightly reached the conclusion to dismiss the writ petition. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the said reasons assigned and the finds no merit in the writ appeal.

18 In the result, the writ appeal is dismissed, confirming the order dated 10.12.2018 made in WP.No.21360/2018. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP
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.5199
+1cc to Mrs.Al.Gandhimathi, Advocate, S.R.No.5307

WA.No.157/2019

GP (CO)
CS/04/03/2019