

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 628 of 2011

1. Bank of Baroda, A banking company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Mandvi, Baroda and an Assets Recovery Management Branch at B-3, Connaught Place, New Delhi-01, Through its Assistant General Manager Shri D. Narayanswami

---- Petitioner

Versus

1. State of Chhattisgarh, Department of Revenue, Through its Secretary D.K.S. Bhavan, Raipur, Chhattisgarh
2. The District Collector, Durg, District-Durg, Chhattisgarh
3. Om Hydro Mech. Pvt. Ltd. Through its Director, Having its registered office at Om Tower, Church Road, M.I. Road, Jaipur- 302 001
4. Priya Engineering Co. Limited, Through its Director, B-6/4, Community Centre, Safdarjung Enclave, New Delhi

----- Respondents

For Petitioner	:	Mr. Ankit Singhal, Advocate
For State/Resp. No. 1 & 2 :		Smt. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04.08.2020

1. The present writ petition was filed in December, 2010 challenging the memo Annexure P-1 dated 16.09.2010 issued by the Collector; whereby the auction proceedings initiated by the petitioner-bank has been nullified and in addition, the Collector has informed the petitioner-bank that since the property never stood in the name of nor in the revenue records the property stood in the name of M/s Priya Engineering Co. Ltd hence no charge should had been created

on the said property in favour of M/s Priya Engineering Co. Ltd. That it was further ordered that any auction proceedings under such circumstances gets nullified.

2. While filing the writ petition, the petitioner had sought for the following reliefs:

“10.1 That this Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of writ or certiorari or Quo Warranto or any other writ or orders as may be deemed appropriate and set aside the impugned order/memo dated 16.9.2010 (Annexure P-1) passed by the Respondent No. 2 and;

10.2 That this Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of writ of mandamus directing the Respondent No. 1 and 2 to execute the lease deed and/or mutation order in favour of M/s Priya Engineering Co. Ltd. Respondent No. 4 with regard to Industrial land admeasuring 26 acres comprised in Khasra Nos. 113/1 and 114/1, situated at Heavy Industrial Area, Village-Hathkhoj, Bhilai, District-Durg, Chhattisgarh.”

3. It would be relevant at this juncture to mention and refer to the brief factual matrix of the case. From the pleadings available what is reflected is that in the year 1966, the erstwhile State of Madhya Pradesh on 18.04.1966 executed a lease deed over the land measuring 64 acres in favour of M/s Jain and Rai. The said lease was executed for the establishment of an industry. Subsequently, on 20.09.1972, the State of Madhya Pradesh further granted permission to M/s Jain and Rai to transfer 26 acres of land from the total allotted 64 acres in favour of one M/s Jain Industries. The transfer deed was also executed on 31.10.1972. Subsequently on 07.09.1974, the

State of Madhya Pradesh again granted permission to M/s Jain Industries to transfer the said 26 acres of land in favour of the Respondent No. 4 i.e, M/s Priya Engineering Co. Ltd.

4. It is pertinent to mention at this juncture that though the permission was granted for such transfer on 07.09.1974, no transfer deed or lease deed was executed in favour of M/s Priya Engineering Co. Ltd.. The property stood in the name of M/s Jain Industries without there being any transfer in favour or a lease in favour of M/s Priya Engineering Co. Ltd. That only on the alleged permission to transfer of the land Respondent No.4 seems to have approached the petitioner-bank for certain loan after mortgaging the said 26 acres of land. That on 02.03.1976, the Respondent No. 4 i.e., Priya Engineering Co. Ltd. is said to have deposited certain documents in this regard to the petitioner-bank on the basis of which loan for an amount of Rs. 50 lacs was issued in favour of M/s Priya Engineering Co. Ltd.
5. However, the said borrower ie., the Respondent No. 4 is said to have defaulted in repayment of the loan and the outstanding which stood upon the Respondent No. 4 payable to the petitioner-bank arose to Rs. 2,88,96,224/-. For the recovery of the said amount, the petitioner-bank initially filed a civil suit before the Competent Court of Law. However, after the enactment of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 came into force the civil suit stood transferred to D.R.T.-Delhi.

6. On 09.01.2006, the DRT-Delhi allowed the application and a decree was passed for an amount of Rs. 2,88,96,224/- with interest @ 19.5 %. Subsequently, DRT-Delhi is said to have put the 26 acres of land for auction who had put the said property for auction on 03.08.2009 and in the auction proceedings, the Respondent No. 3 emerged successful in the auction proceedings.
7. It is at this juncture, the District Collector, District: Durg moved an objection before the DRT-Delhi highlighting the fact that the property was never leased in favour of M/s Priya Engineering Co. Ltd. No such lease deed was in favour of the said Respondent No. 4 neither does the revenue records reflect the property to be in the name of M/s Priya Engineering Co. Ltd.. Thus, the charge created by the Bank in favour of M/s Priya Engineering Co. Ltd. itself is bad-in-law and the auction proceedings initiated also is unsustainable. The DRT-Delhi subsequently on the application moved by the auction purchaser for a return of the entire sale consideration, allowed the said application as the petitioner-bank could not execute/provide the title/right in favour of the auction purchaser.
8. Considering the objection of the Collector-Durg, which he had raised on 01.08.2009, the DRT-Delhi vide order dated 01.10.2010 directed the CMD of the petitioner-bank to monitor the compliance through a negotiation between senior officers of the bank by approaching the Chief Secretary of the State of Chhattisgarh requesting him/her to issue necessary directions in pursuant to the order passed by the Tribunal. Subsequently, it has been informed by the counsel for the

petitioner that later on, the auction was cancelled and the entire sale consideration was refunded back to the auction purchaser on 16.09.2010.

9. The petitioner now through the present writ petition intends to challenge Annexure P-1 dated 16.09.2010 issued by the Collector District: Durg, (C.G.); whereby the impugned memo was issued directing the Bank that since no charge was created in favour of M/s Priya Engineering Co. Ltd, the said property could not have been mortgaged by M/s Priya Engineering Co. Ltd. and the auction proceedings also, therefore, is void *ab-initio*.
10. Having perused the records and on considering the submissions made by the counsel for the petitioner, this Court is of the opinion that the relief sought for by the petitioner cannot be granted at this juncture for the reasons as has been pointed by the District Collector. It stands established that there was no lease deed or a transfer deed of the 26 acres of land/property in the name of the Respondent No. 4 company neither was the name of the M/s Priya Engineering Co. Ltd. entered in the revenue records so as to establish their title/right over the said property.
11. From the facts given, it appears that the petitioner-Bank had processed the loan in favour of the M/s Priya Engineering Co. Ltd. without scrutinizing the aforesaid factual matrix of the case and seems to have accepted the mortgage without these documents in-respect-of the title/right of the property. If the petitioner-Bank has granted the loan by accepting the said property in mortgage over

which the borrower did not have any title/right created would mean, that the petitioner-Bank alone has to be held responsible for granting of a loan without properly processing the title documents of the land.

12. Under the circumstances, this Court at this juncture cannot issue a writ in favour of the petitioner-Bank asking the State Government to create a title/right in favour of the Respondent No. 4 ie., M/s Priya Engineering Co. Ltd. enabling the petitioner-Bank to recover the outstanding amount. This said or this petition should had been filed by the petitioner before the loan was sanctioned in favour of the Respondent No. 4 company. If the petitioner-Bank processes the loan on the basis of imperfect title/right to the property it is the Bank alone, who would be responsible for any such loss caused to the Bank on such count. Admittedly, the plot which has been put to auction never stood in the name of the Respondent No. 4 company nor was any lease deed or transfer deed executed in their favour and along with the same, any charge created upon the said land towards repayment of loan becomes automatically void and the auction proceedings also for the same reason, gets nullified.

13. The petitioner-Bank cannot be permitted to improve upon their documents at this stage enabling them to recover the dues payable or dues recoverable from the Respondent No. 4 nor can this High Court by exercising its writ jurisdiction under Article 226 issue such directions as has been claimed by the petitioner in para 10.2 of the relief clause.

14. A perusal of the pleadings of the State Government in their return would reveal that initially lease deed itself was issued for a period of 99 years starting from 06.06.1960 up till 08.06.2059. However, there was a condition that after the expiry of every 30 years term, the lease was required to be renewed for re-fixation of annual rent. The State Government have specifically pleaded that no such renewal of the said lease deed as has been got done in between nor the annual rent has got revised or re-fixed. The State Government has also in their reply taken a stand that the transfer deed in favour of M/s Jain Industries also had a specific clause of the requirement of proper permission from the lessors the State Government, before creation of any charge by the bank, which again does not seem to have been followed while the loan was being sanctioned by the Bank to the Respondent No. 4-company.
15. With all the aforesaid reasons, this Court does not find any merits in the present writ petition and the same, therefore, deserves to be and is accordingly, dismissed.
16. Needless to mention that the petitioner-Bank, however, would be at liberty to pursue any other remedies available to them for recovery of the outstanding amount against the Respondent No. 4.

Sd/-
(P. Sam Koshy)
Judge