IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14497 of 2009

Titan Nayak .... ***Petitioner***

Mr. B. N. Udgata, Advocate

-versus-

Industrial Promotion and Investment Corporation of Orissa Ltd, Bhubaneswar and another .... ***Opposite Parties***

Mrs. M. Padhi, Advocate for Opposite Party No.1 (IPICOL)

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

Order No. **ORDER**
25.04.2022

12. 1. Titan Nayak has filed this petition against the Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL) -Opposite Party No.1 and Shri Ramesh Chandra Badajena (Opposite Party No.2) seeking a writ of mandamus to quash the sale letter dated 8th September, 2009 issue by the IPICOL confirming the sale of landed property of 2.177 acres at Mouza-Berhampura, District Khurda (hereafter 'the land in question') in favour of Opposite Party No.2 for a total sale consideration of Rs.2.20 lakhs.

2. While directing notice to issue in the present petition on 6th October 2009, it was directed that subject to the Petitioner depositing a sum of Rs.1 lakh with IPICOL within a period of four weeks, status quo as regards possession of the property in question would be maintained by the parties till further orders. However, if the Petitioner failed to deposit the amount within the time specified, the

amount already deposited by the Petitioner i.e. Rs.23,500/- would stand forfeited.

3. The background facts are that on 31st January 1995, the original promoter of M/s. Orissa Ply & Panels Pvt. Ltd. (OPPPL), which had borrowed a loan of Rs.5 Lakhs from IPICOL, expired. It must be mentioned here that land in question belonging to Sri Biranchi Narayan Nayak, the grandfather of the present Petitioner, was offered as collateral security for the term loan availed by OPPPL. With default being committed by OPPPL in repaying the loan of IPICOL and Orissa State Financial Corporation Ltd (OSFC), the OSFC took over the possession of the assets of OPPPL under Section 29 of the State Financial Corporations Act, 1951 (SFC Act). Those assets were disposed of and yet the sale price did not meet the dues of both IPICOL and OSFC. There was still a balance of Rs.3,42,80,739/- recoverable from the promoters as well as OPPPL as far as the dues of IPICOL was concerned. Accordingly, on 9th September 2002, a notice was issued by IPICOL to Sri Biranchi Narayan Nayak stating that he should pay the dues of IPICOL within 15 days failing which it would take over possession of the land in question under Section 29 of the SFC Act to realize its dues by way of sale of the land.

4. In response to the said notice, the Petitioner by letter dated 23rd September 2002, requested IPICOL to furnish details of the agreement signed by Sri Biranchi Narayan Nayak. IPICOL went ahead with attaching the property i.e. the land in question and issuing an advertisement on 2nd February, 2003 in a local newspaper for its sale through its Default Advisory and Disposal Committee (DAC). Notice was issued to the promoters and guarantors to remain

present at the DAC meeting scheduled on 26th February, 2003. Although the DAC meeting was held on that date, the Petitioner failed to attend it. IPICOL submits that the purpose of inviting the Petitioner to the DAC meeting was to provide him an opportunity of bettering the offer made by the prospective buyer.

5. On 19th September 2003, Sri Biranchi Narayan Nayak passed away. Advertisements were issued for sale of the land in question on 24th and 27th November, 2003. The DAC meeting, which was scheduled for 6th December, 2003, was rescheduled to 22nd December, 2003. The Petitioner was asked to attend the rescheduled DAC by IPICOL's letter dated 18th December, 2003. The Petitioner attended this DAC meeting held in the IPICOL's premises on 22nd December, 2003. The Petitioner was given a chance to match the offer at least equivalent to the valuation made by the Tahasildar, Khurda. The Petitioner however expressed his inability to do so. Again, on 10th August 2009, another DAC meeting was held. Thereafter, pursuant to several further advertisements, the DAC decided to sell the land in question in favour of the highest bidder i.e. Opposite Party No.2. The impugned sale letter was issued to him on 8th September, 2009 selling the said land in question to him for a consideration of Rs.2.20 lakhs on "as is where is and what so ever there is basis". A copy of the letter was sent to the Petitioner.

6. According to IPICOL, as per the valuation obtained and furnished by the Tahasildar, Khurda, the total value of land admeasuring Ac.2.177 decimal was Rs.1,30,620/-. The offer by the bidder i.e. Opposite Party No.2, Sri Ramesh Chandra Badajena was the highest and more than the official valuation of the land in question. Consequently, the DAC decided to sell the land in question in his

favour at a consideration of Rs.2.20 lakhs subject to the condition that 10% of the said amount would be paid immediately and the balance 90% within 15 days from the date of issue of the sale letter, without interest.

7. The case of the Petitioner is that the said amount did not reflect correctly the market value of the land and was far too less when compared thereto. On 15th September 2009, the Petitioner wrote to IPICOL alleging that sufficient opportunity not being given to the Petitioner to repay the loan amount. The Petitioner nevertheless made an offer of a sum of Rs.2.35 lakhs for the land in question. On 17th September 2009, 10% of the said offer amount was deposited with the IPICOL by the Petitioner to demonstrate his bona fides. This was followed by the filing of the present petition in which this Court on 16th October, 2009 passed an order, which has been referred to hereinbefore. The sum of Rs.1 lakh was then paid by the Petitioner to IPICOL on 3rd November, 2009.

8. When the present petition was taken up for hearing on 3rd August 2021, the following order was passed:

> "1. This matter is taken up through Hybrid mode.
>
> 2. List this matter on 31.08.2021 in order to enable the learned counsel for the opp. party No.1 to take instruction regarding compliance of the ratio decided in the case of ***Kharvela Industry Private Ltd. v. Odisha State Financial Corporation Ltd.*** reported in ***AIR 1985 (Orissa) 153***."

9. On the next date, i.e. 23rd March 2022, the following order was passed:

> "1. Mrs. Padhi, learned counsel appearing for the IPICOL-Opposite Party No.1 states that as per her instructions the Petitioner owes IPICOL nearly Rs.51,22,23,000/-. Counsel

for the Petitioner pleads ignorance and seeks time for instructions.

2. At his request, list on 25th April, 2022."

10. Today, learned counsel for the Petitioner stated that he is yet to receive instructions from the Petitioner. Considering that a number of adjournments have already been granted and sufficient opportunity has been given to the Petitioner for this purpose, the Court did not accede to the request for a further adjournment.

11. Mrs. M. Padhi, learned counsel appearing for IPICOL produces the calculation, which showed that as of 15th February 2022, the Petitioner owed IPICOL Rs.51,22,28,363.81. The fact remains that the Petitioner had an interim order in his favour for well over 10 years now. No amount has been paid to IPICOL during this period by the Petitioner. The original promoter, Mr. Sukanta Chandra Nayak of OPPPL having expired on 31st January, 1995 itself, the unit is stated to have stopped functioning and the factory was seized by the OSFC on 31st March, 1998 itself.

12. The grievance of the Petitioner that no notice was issued to him prior to putting the land in question to sale through public auction does not appear to be entirely correct. The undisputed position appears to be that the Petitioner did participate in the DAC meetings but had been unable to repay any portion of the outstanding loan apart from the deposits made pursuant to the order of the Court. Therefore, the Court is unable to agree with the submission that no proper notice was given to the Petitioner. Although the Petitioner may have deposited Rs.1,23,500/- thus far in this Court, the fact remains that the Petitioner owes IPICOL well over Rs.50 Crores and

the sale of the land in question is hardly going to cover for that huge debt.

13. The decision in ***Kharavela Industries Pvt. Ltd. v. Orissa State Financial Corporation Limited, AIR 1985 Ori. 153*** reiterates the settled legal position that even if the SFC Act does not expressly provide for issuance of any separate notice to the guarantor, the principles of natural justice are not excluded therefrom. However, as far as the present case is concerned, the Court is satisfied that the Petitioner was given sufficient opportunities to make payment and to also participate in the auction to improve the bid offered by the highest bidder. The Petitioner did not avail of such opportunity. Consequently, the Court is not impressed with the argument that there has been any violation of the principles of natural justice.

14. There is no merit in the present petition and it is dismissed as such. The interim order is hereby vacated.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda