BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14070 of 2019
and
W.M.P(MD)No.10554 of 2019

N.R.Maharajan ... Petitioner

Vs

1.The Authorized Officer / Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
No.1112, Raja Plaza,
Avinashi Road, Coimbatore-641 037.

2.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Distribution Circle,
Tirunelveli-11. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to pay the outstanding amount of Rs.22,94,091/- as demanded by the second respondent board in Lr.No.SE/TEDC/TIN/AO/REV/AAO/HT/AS/F-HT-258/D-23/2019, dated: 15.04.2019 in respect of HT.SC.No.258 of M/s.HABERL Bulk Containers.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.Pala.Ramasamy
Additional Government Pleader for R.1

Mr.S.Deenadhayalan
Standing Counsel for R.2

ORDER

Heard the learned counsel on either side.

2. One M/s.HABERL Bulk containers availed mortgage loan from the first respondent bank. They failed to redeem the mortgage. The bank therefore initiated proceedings under SARFAESI Act. The bank invited tenders from prospective buyers. The petitioner's bid amount of Rs.2.25 Crores was the highest and sale certificate was issued in favour of the petitioner on 09.03.2017. The only question that arises for consideration in this writ petition is whether the electricity dues raised in respect of the mortgaged premises payable up to the date of purchase by the petitioner has to be borne by the petitioner or the first respondent.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. The first respondent filed

affidavit in objection and the learned Additional Government Pleader took me through its contents. The primary contention of the learned counsel is that the property was sold on 09.12.2016 in “AS IS WHERE IS” and “AS IS WHAT IS” basis condition. According to the bank, the property had been sold with all existing and future encumbrance whether known or unknown to the bank. He would argue that the petitioner before purchase ought to have made independent enquiry regarding encumbrances which may affect the property prior to submitting their bid. It is also pointed out that on account of nonpayment of charges, the electricity was disconnected on 06.01.2014. In the alternative, he contended that it is the petitioner who has to deal with the demand raised by TANGEDCO.

4. The learned Standing Counsel appearing for the bank would also argue that the liability is not a statutory but only a contractual liability and that it is only the erstwhile owner who has to bear the burden. Reliance is placed on the decision reported in ***1995 2 SCC 648 (Isha Marbles v. Bihar ESB)***. He pressed for dismissal of the writ petition.

5. The learned Standing Counsel appearing for TANGEDCO would submit that TANGEDCO proceeded against the property for enforcement of their dues and that they are not really concerned as to who clears the liability.

Whether it would be an erstwhile owner or the Bank or the writ petitioner is not their concern. Their concern is only recovery of their dues.

6. I carefully considered the rival contentions and went through the materials on record. The issue as to whether the liability in question is a contractual liability or a statutory charge is no longer *res integra*. The Hon'ble Apex Court in the decision reported in (***2020) 6 SCC 404 (Telangana State Southern Power Distribution Co.Ltd Vs Srigdhaa Beverages)*** had held as follows:

> *"9.We may also notice that there have been subsequent judicial pronouncements dealing with this aspect of electricity dues. A three Judge Bench of this Court has held that the dues under the terms and conditions of supply* ***partake the character of statutory dues*** *(Hyderabad Vanaspathi Ltd. v. A.P.State Electricity Board & Ors). The mere fact that agreements were entered into with every consumer only served the purpose of bringing to the notice of the consumer the terms and conditions of supply, but did not make the dues purely contractual in character."*

7. Therefore, the dues of TANGEDCO will have to be construed only as statutory dues. I consciously refrain from going into the sustainability or tenability of the demand raised by the second respondent. The said issue is left

open. The only question that I am called upon to answer is whether the writ petitioner has to answer the TANGEDCO's demand.

8. The learned counsel appearing for the petitioner draws my attention to the e-auction sale notice dated 01.11.2016. The auction was to be held on 09.12.2016. The writ petitioner had a genuine doubt and wrote to the Bank as to whether there are any statutory dues. The Bank responded vide letter dated 07.12.2016 in the following terms :

> *"01. There are no statutory dues in terms of ESI, PF, Electricity and others are pending. In case of any dues, the Bank assures to take care of the same.*
> *02. We undertake to complete the registration of the SEZ property."*

9. The petitioner was made to take part in the auction by holding out an assurance that there are no statutory dues. It is not now open to the first respondent now to turn around and take the stand and invoke the principle of caveat emptor. The Hon'ble Supreme Court in the decision reported in ***(2010) 6 SCC 193 (Eureka Forbes Limited v. Allahabad Bank)*** has held as follows:

“66. Maxim Nullus commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. In the present case Respondent Nos. 2 & 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon respondent Nos. 2 & 3 and in any case on the appellant.

76.There is a public duty upon all such officers / officials to act fairly, transparently and with a sense of responsibility to ensure recovery of public dues.

79.Inaction, arbitrary action or irresponsible action would normally result in dual hardship. Firstly, it jeopardizes the interest of the Bank and public funds are wasted and secondly, it even affects the borrower's interest adversely provided such person was acting bonafide. Both these adverse consequences can easily be avoided by the authorities concerned by timely and coordinated action. The authorities are required to have a more practical and pragmatic approach to provide solution to such matters. The concept of public accountability and performance of functions takes in its ambit proper and timely action in accordance with law. Public duty and public

> *obligation both are essentials of good administration whether by the State instrumentalities and/or by the financial institutions."*

The Hon'ble Madras High Court in the decision reported in ***2017 SCC OnLine Mad 1549 (DB) (S.Shanmuganathan v. Indian Overseas Bank)*** has held as follows:

> *"28. ...... So also, the statement that the auction purchaser should be beware of the title, even though it is sold by Bank does not also sound reasonable. The financial institutions, while issuing sale notification, discharge a statutory duty. So much of credibility is naturally fastened on the Bank. It is not expected from a Public Sector Bank, to state that purchaser shall be aware of encumbrances. Even though the auction purchaser should be aware of the encumbrances, which are visible by spot inspection and on enquiry, but the defect in title and the other materials on record shall be disclosed only by the secured creditor, as it would be within its exclusive knowledge. Therefore, it cannot be accepted that the auction purchaser should know each and every minute detail by site inspection. Therefore, the argument that the auction purchaser should be beware of encumbrances notwithstanding the failure of the Bank to disclose the relevant information is not tenable."*

Respectfully applying the ratio laid down in the aforesaid decisions, I have to necessarily hold that the first respondent cannot wriggle out of the assurances held out to the petitioner. In this view of the matter, the first respondent is directed to pay the amount demanded by the second respondent without prejudice to its independent right to question the same. In other words, the first respondent will have to make the said payment so that the petitioner can have a relationship with the second respondent with a clean slate. The direction to the first respondent to clear the impugned demand will not come in the way of the first respondent from independently questioning the sustainability of the aforesaid demand. This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.12.2022

Index : Yes / No
Internet : Yes/ No
MGA

To

1.The Authorized Officer / Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
No.1112, Raja Plaza,
Avinashi Road, Coimbatore-641 037.

2.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Distribution Circle,
Tirunelveli-11.

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.14070 of 2019

13.12.2022