

Reflex Industries and anr. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/485604

Court : Allahabad

Decided On : May-13-2004

Reported in : 2004(4)AWC3471

Judge : M. Katju and ;R.S. Tripathi, JJ.

Appeal No. : C.M.W.P. No. 267 of 2001

Appellant : Reflex Industries and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : S.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. This writ petition has been filed for a mandamus directing the respondent Nos. 1, 2 and 5 to release the petitioner's, factory at D-100 Sector II, NOIDA, District Gautambudh Nagar and to restrain respondents from interfering with the petitioner's business carried out in the aforesaid factory.

2. Heard learned counsel for the parties.

3. The facts of the case are that respondent No. 3 Smt. Poonam Suri purchased the industrial plot in question along with building thereon from the previous owner M/s. Wazid Sons Exports Ltd., New Delhi by a registered sale deed dated 23.6.1987. The respondent No. 4 was allegedly in occupation of the said premises as tenant under its earlier owner M/s. Wazid Sons Exports Ltd. and as such he became the tenant of the respondent No. 3 by operation of law. The respondent Nos. 3 and 4 decided to enter into fresh terms of tenancy and as such executed a registered lease deed dated 17.7.1987 with respect to the aforesaid disputed plot on a monthly rent of Rs. 10,000 vide Annexure-1. Respondent No. 4 who was only the tenant of respondent No. 3 handed over possession of the disputed premises to respondent No. 3 on 10.4.1997 and respondent No. 3 obtained possession certificate. Hence respondent No. 3 came into possession of the disputed premises w.e.f. 10.7.1997.

4. The petitioner is a proprietorship firm of which Gurmeet Singh is the sole proprietor dealing in electronic goods. In connection with its business Gurmeet Singh contacted the respondent No. 3 offering to purchase the aforesaid industrial plot/shed No. 100 Block-D in Sector II, NOIDA and on 13.1.1998 the NOIDA issued the transfer memorandum in his favour vide Annexure-3. Accordingly transfer-cum-sale deed was executed on 31.3.1998 and possession certificate was issued on 1.4.1998 by the respondent No. 3 handing over actual and vacant possession of the said factory vide Annexure-4. It is alleged in para 10 that on 19.1.1999 all of a sudden and without any prior notice or information the respondent No. 5 sealed the factory of the petitioner. The petitioner made enquiry and it was revealed that there were outstanding trade tax dues against respondent No. 4 who was the tenant of respondent No. 3. The petitioner made representations vide Annexures- VI to IX that there were no such tax dues against the petitioner and the respondent No. 3 and hence the impugned recovery action of the respondent No. 5 was illegal. It is alleged in para 15 of the petition that the petitioner has a licence of importer and exporter and he is suffering a set back in his business and is incurring huge loss. It is alleged in para 23 that the respondent No. 3 was in no way concerned as he has made a transfer of vacant possession of the factory building. It is alleged that the petitioner's factory has been sealed without giving opportunity of hearing.

5. A counter-affidavit has been filed and we have perused the same. In para 3 (i) it is alleged that the respondent No. 4 M/s. Krison's Electronics System Pvt. Ltd. Company is owned by one family, Its Managing Director, Shri R. K. Surf is husband of respondent No. 3 Smt. Poonam Suri. No other outsider persons are involved in the said company. The respondent No. 3 is the wife of the Managing Director, Ramesh Kumar Suri. The land in question was purchased by respondent No. 3 on behalf of Ramesh Kumar Suri for business purpose as disclosed in the transfer deed 23.7.1987 photo copy of which is Annexure-C.A. 1. Respondent No. 4 was already operating before the purchase of the said plot. The plot was actually purchased by the respondent No. 4 through respondent No. 3 who is the wife of the respondent No. 4. The new deed of tenancy itself mentioned that payment of any dues of electricity or water supply is to be made by the tenant, but regarding other dues nothing has been mentioned in the said agreement, and it appears that the other dues are to be recovered from the landlord. The respondent No. 3 had neither purchased the land in question for her business nor did respondent No. 3 establish any business on that plot till the date of sale to the petitioner. The respondent Nos. 3 and 4 along with the petitioner have devised a novel tactics to dupe the Government revenue in making sale and purchase of the plot. The petitioner is playing one of the important roles in the said game. It was the duty of the petitioner before purchasing the said Industrial plot to enquire about the huge dues against respondent No. 4. The handing over of the possession was a transaction between husband and wife which was fraudulent. The petitioner had purchased the property on 13.1.1998 which was after the recovery proceeding had been initiated against the respondent No. 4. The recovery proceeding was against the respondent No. 4 for Rs. 1,65,18,777.

6. In para 22 it is alleged that a huge amount of Rs. 2,35,90,606 have to be recovered from respondent No. 4. The sole game of the parties was only to avoid payment of tax dues. It was the duty of the petitioner to enquire about any dues on respondent No. 3 or 4 but he did not do so.

7. On the facts of the case, we find no merit in this petition. It is evident that the whole transaction of sale by respondent No. 3 to the petitioner was fraudulent and collusive and was an attempt to avoid huge tax recovery.

8. It is well settled that fraud vitiates all proceedings vide decision of the Supreme Court in Ram Chandra Singh v. Savitri Devi, 2004 (54) ALR 400 and the Division Bench judgment of this Court in Dr. Raghvendra Pratap Singh v. Director of Higher Education, 2003 (6) AWC 5549 : 2003 (52) ALR 185. In these decisions the earlier decisions of the Supreme Court and this Court relating to fraud have been discussed in great detail and hence we are not reiterating the same. In this case we are of opinion that the whole transaction was to avoid tax recovery and there was fraud and collusion between the petitioner and respondent Nos. 3 and 4.

9. In our opinion, the contention of the respondent No. 3 that she has nothing to do with the respondent No. 4 is a wholly fraudulent plea. The respondent No. 3 is wife of the Managing Director of the respondent No. 4.

10. As regards the plea that the respondent No. 4 is a limited liability company and hence dues of the company cannot be recovered from any one else. We are of the opinion that the doctrine of piercing the veil of corporate personality is applicable in this case. This doctrine has been discussed in great detail by the Division Bench decision of this Court in Writ Petition, No. 382 of 2003, decided on March 13, 2003', Naresh Chander Gupta v. District Magistrate and Ors.. In that decision this Court has referred to the Supreme Court decisions in Subhra Mukherjee v. Bharat Coking Cal Ltd., (2000) 3 SCC 312 : Calcutta Chromotype Ltd. v. Collector of Central Excise, AIR 1998 SC 1651 ; Horizons Limited v. Union of India, (1995) 1 SCC 478 ; Delhi Development Authority v. Skipper Construction Co. Pvt. Ltd., 1996 AWC (Supp) 1.20 (SC) (NOC) : (1996) 4 SCC 622 ; C.I.T. v. Minakshi Mills, AIR 1967 SC 819 ; Jugilal Kainapat v. C.I.T., AIR 1969 SC 93 ; Tata Engineering and Locomotive Company Limited v. State of Bihar, 1964 (6) SCR 895 : AIR 1965 SC 40 and State of U. P. v. Renusagar Power Co., (1988) 4 SCC 59, etc., In view of the doctrine of piercing the veil of corporate personality has been applied. In our opinion it should be applied In this case also as the attempt is to avoid huge tax dues.

11. For the reasons given above, this petition is dismissed.