Himmat Mal Vs. State of Rajasthan and ors.

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SooperKanoon Citation : sooperkanoon.com/771666

Court : Rajasthan

Decided On : Jan-24-2008

Reported in : 2008(2)WLN104

Judge : Gopal Krishan Vyas, J.

Appeal No. : S.B. Civil Writ Petition No. 353/2007

Appellant : Himmat Mal

Respondent : State of Rajasthan and ors.

Judgement :

Gopal Krishan Vyas, J.

1. In this writ petition, the petitioner seeks to challenge the validity of notices Annexs. 9 and 10 issued by the respondent Rajasthan Financial Corporation (in short, to be called 'the Corporation' hereinafter) for auction sale of the industrial units qua the unit of the petitioner.

2. Facts of the case narrated in the writ petition are that the petitioner purchased an old factory from the Corporation for a sale consideration of Rs. 11.01 lakh and paid Rs. 3.5 lakh. The Corporation, however, did not clear the old dues of the Vidhyut Vitaran Nigam department towards electricity bills which were in tune of about Rs. 1.75 lakh, therefore, no new electricity connection was provided by the

Vidhyut Vitaran Nigam and, in the absence of that, the petitioner was not able to start and run the factory. The petitioner has advanced contention that inspite of repeated requests the Corporation did not clear the old dues of the Vidhyut Vitaran Nigam as per the State Government policy. Since the outstanding amount of the sale consideration was not deposited by the petitioner, the Corporation took possession of the factory and now, the Corporation is auctioning the factory despite the facts that the Corporation authorities had informed the petitioner that notices were sent to him in routine as to all defaulters and, therefore, he need not worry and the matter with regard to old electricity dues was being proceeded with.

3. It is argued by learned Counsel for the petitioner that though the petitioner purchased the old factory for a sale consideration of Rs. 11.01 lakh but, in fact, there were outstanding dues against the previous owner and as such the petitioner was not provided electricity connection by the Vidhyut Vitaran Nigam Ltd. and he could not run his business which ultimately resulted in non-payment of the instalments towards the sale consideration. It is vehemently argued by learned Counsel for the petitioner that the reason for non-payment of instalments is wholly attributable to the Corporation itself and the Corporation cannot shift its burden upon the shoulders of the petitioner. Moreover, the Corporation concealed the actual state of the unit with regard to old dues of electricity bills of the previous owner and, in the absence of being provided with electricity, it was not possible for the petitioner to start production in the factory.

4. In the reply filed by the respondents, it is specifically stated that all the allegations levelled by the petitioner are totally false. In fact, after purchasing the said unit initially he made payment of Rs. 3,30,000/- and, thereafter, only Rs. 20,000/- were paid by the petitioner on 22.03.2005 towards the first instalment; but, thereafter, till today, no instalment was deposited by the petitioner. According to the respondents, the petitioner failed to carry out the terms and conditions of the contract which he entered into with open eyes with the Corporation. It is contended by the respondents that despite notices issued to the petitioner, he paid no heed and while adopting delay-tactics, the petitioner has filed the present writ petition stating wrong facts. Therefore, the writ petition deserves to be dismissed.

5. It is submitted by learned Counsel for the respondents that due to non-payment of instalments, the possession of the unit was taken over on 20.12.2006 and the same was put to auction. It is pointed out that the earlier loanee had defaulted upon payment of the instalments and, therefore, the unit was taken over but at that time, as against the earlier loanee, there was total outstanding amount of RSEB in the sum of Rs. 1,68,809/- and an outstanding sum of Rs. 3,25,061/- towards sales tax. On proportionate basis, the respondents paid a sum of Rs. 33,870/- against the outstanding amount of the RSEB and a sum of Rs. 65,220/- against sales tax on 02.06.2004. As per the respondents, it is entirely incorrect statement made by the petitioner that the against the dues of the outgoing loanee all the outstanding amount was to be paid by the respondents. In fact, it was the duty of the petitioner to take a separate electricity connection if he had such a need. But, the petitioner failed to do so and, now, it is stated by him that no information was given by the respondents with regard to the outstanding amounts.

6. It is also argued by learned Counsel for the respondents that only vague and bald statement have been made by the petitioner with regard to getting electricity connection and no documentary evidence whatsoever has been filed by the petitioner for any such request made by him either to the Corporation or the Vidhyut Vitaran Nigam Ltd. In these facts and circumstances, with a view to safeguarding the public money ultimately possession of the unit was taken over on 20.12.2006 and the action was taken by the respondents for the reason that the petitioner failed to deposit the remaining instalments which had gathered over a period of two and a half years.

7. In the rejoinder, by way of filing Annex.-11, it is submitted by the petitioner that he filed an application to the Assistant Engineer, Jodhpur Vidhyut Vitaran Nigam Ltd. on 13.03.2007 for extending him electricity connection and, upon the said representation, it was replied by the Assistant Engineer/Revenue Officer that if the amount of Rs. 1,35,886/- is deposited by the petitioner first, then, he will be entitled for deduction of interest as per the amnesty scheme. While inviting attention towards the said reply, it is vehemently argued by learned Counsel for the petitioner that the said reply clearly reveals that the petitioner was not provided electricity connection, therefore, he was unable to run the factory and this reason

is of course attributable to the Corporation. It is argued by learned Counsel for the petitioner that in this situation the entire proceedings for taking over possession from the petitioner is arbitrary and illegal.

8. I have heard learned Counsel for the parties and perused the entire record of the case.

9. It is admitted position of the case that the petitioner purchased the old factory from the Corporation for a sale consideration in the sum of Rs. 11.01 lakh and having initially deposited an amount of Rs. 3,30,300/- the petitioner deposited only Rs. 20,000/- against the first instalment and, thereafter, not a single penny was deposited by the petitioner against the instalments of the sale consideration whereas he had already taken over possession of the land and factory. It is obvious from the record that no such grievance was raised by the petitioner before either the respondent Corporation or the Vidhyut Vitaran Nigam for electricity connection and compelling him to deposit outstanding of the previous owner.

10. Bald allegations have been levelled by the petitioner and when such plea was taken by the respondents in the reply, then, in rejoinder to reply it is stated that the petitioner filed representation also to the Vidhyut Vitaran Nigam for giving him electricity connection vide Annex.-11 dt. 17.03.2007, that is, after filing of the writ petition.

11. Upon perusal of Annex.-11, it is revealed that in the said representation also, it is nowhere stated by the petitioner that he may be granted a fresh electricity connection and, more so, he made prayer that he is ready to deposit the outstanding of the earlier owner of the factory.

12. In the above circumstances, it is apparent that the conduct of the petitioner is not at par with fairness, He failed to deposit the instalments upon which the Corporation proceeded to take action for taking over possession and, then, took possession of the land and factory. In my opinion, there is nothing wrong committed by the Corporation because the petitioner had failed to deposit the remaining instalments of the sale consideration of the unit purchased from the Corporation by the petitioner. It is revealed from the pleadings in the writ petition

that the petitioner is shifting the burden upon the Corporation while narrating vague and bald allegations with regard to not being able to run the factory in the absence of electricity connection. I do not find any case made out for interference in exercise of extraordinary jurisdiction of this Court. Equities belie the case of the petitioner.

13. Consequently, the writ petition is dismissed.