

(2012) 08 P&H CK 0247

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 196 of 2012 (O and M)

Food Corporation of India

APPELLANT

Vs

M/s Omkar Rice Mill and Others

RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Surya Kant, J; R.P. Nagrath, J

Bench: Division Bench

Advocate: Hari Pal Verma, for the Appellant; Vikas Mohan Gupta, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Surya Kant, J.

This Letters Patent Appeal is preferred by the Food Corporation of India (for short-FCI) against order dated 4.11.2011, passed by learned Single Judge, in CWP No. 17568 of 2010 (M/s Omkar Rice Mills Vs. State of Punjab and others) wherein respondent No. 1-Rice Mill sought a direction to appellant-FCI to allot paddy for the custom milled rice, which was declined by the FCI on the plea that respondent No. 1-Rice Mill was obligated to discharge the liability of defaulter rice mill, namely, Govind Rice Mill, said to have been purchased by respondent No. 1-Rice Mill. The learned Single Judge has set aside the objection of the appellant-FCI holding as follows:

I cannot see the reasonableness or soundness of disentitling the purchaser of a rice mill premises by the only fact that previous owner had committed default. A disability ought to be personal and cannot attach to the property unless the liability itself could be fastened on the property. There could be defaulting miller but there could be no such thing like defaulting mill. It will defeat all cannons of logic to inflict a handicap purchaser of the premises whose previous owner had committed a

default. The petitioner is entitled to the relief as sought for and the clause referred to above shall not be used against the petitioner for enforcement. Any allotment shall be as per rules and policies.

2. The glaring facts are that M/s Govind Rice Mill, was owned by Anil Kumar S/o Raj Kumar. Respondent No. 1-Rice Mill (M/s Omkar Rice Mill) is owned by Vaneeta Rani wife of Lalin Garg S/o Raj Kumar. The husband of proprietor of respondent No. 1-Rice Mill, admittedly is the real brother of owner of M/s Govind Rice Mill as Lalin Garg and Anil Kumar are sons of Raj Kumar.

3. M/s Govind Rice Mill was amongst several rice mills against whom CBI registered and investigated a case of supply of BRL i.e. Below Rejection Limit and BPFA (Beyond Prevention of Food Adulteration Act) custom milled rice by them. On the recommendations of the CBI, vide memo dated 7.9.2009 (Annexure P-6), appellant-FCI informed the Government of Punjab that there were 89 rice mills including M/s Govind Rice Mill who were found responsible for supplying custom milled rice BPFA during KMS 2004-05 and all these rice mills stood black listed for future transactions. No sooner did the CBI registered FIR No. RCCHG-2006 against M/s Govind Rice Mill, respondent No. 1-Rice Mill is said to have purchased M/s Govind Rice Mill, on the basis of registered sale deed dated 9.10.2006 (Annexure P-1) for a sale consideration of Rs. 3,37,500/-. The transaction not only includes the rice plant worth crores but also the land measuring 6 kanals.

4. It is by now well settled that " a writ Court does not require the facts to be tested on the touchstone of stringent principles of burden of proof attributed to criminal jurisprudence for the formation of its opinion". (Ref. decision dated 10.7.2012 in Civil Appeal No. 5055 of 2012 Asha Vs. Pt. BD Sharma University of Health Sciences and others.) If the facts on record are sufficient to infer a bogus and sham sale transaction it would be obvious that respondent No. 1 did not approach this Court with clean hands and whoever enters the Court premises with dirty hands, is not entitled to any relief in exercise of discretionary jurisdiction under Article 226 of the Constitution.

5. Applying these principles to the facts of the case in hand, where it is undisputed that proprietors of both the rice mills are family members as one of the rice mill is owned by the daughter-in-law of Raj Kumar, the other rice mill is owned by his another son. The rice-mill in default has been ostensibly sold for a paltry sale consideration of Rs. 3,37,500/- which fact speaks volumes that it was not a bona fide sale transaction for fair consideration. Such an undervalued sale consideration is ordinarily not accepted even in a distress sale.

6. Suffice it would be to observe that the sale transaction was a device to wriggle out of the legal consequences of CBI investigation which culminated into black listing of M/s Govind Rice Mill and heavy recoveries against defaulting Mills. In our considered view this was a fit case where the learned Single Judge should not have accorded

seal of approval to a fraudulent transaction meant to defeat the public exchequer, public interest and cause invasion of stamp duties and registration charges.

7. It was not a case where the first respondent pleaded or proved "due diligence", rather proximity of relationship between vendor and vendee and the under current circumstances when sale-deed was executed loudly speak of their collusion and connivance.

8. Reliance is placed by respondent No. 1-Rice Mill on a report said to have been submitted by a Committee of three officers in March, 2012 (Annexure R-1/2) which does not and cannot whittle down the categoric findings returned against M/s Govind Rice Mill by the CBI in relation to the supply of BPFA rice for KMS 2004-05. The aforesaid report has been obtained by respondent No. 1-Rice Mill after filing of this appeal and is not worthy of reliance.

9. The appellant-FCI, was thus, fully justified to insist upon respondent No. 1-Rice Mill to make good the loss caused by M/s Govind Rice Mill as a pre-condition for allocation of paddy for milling in the subsequent years. Respondent No. 1-Rice Mill has otherwise also stepped into the shoes of M/s Govind Rice Mill and is obligated to discharge the later's liability.

10. It is, however, stated at Bar that respondent No. 1-rice Mill has now deposited the defaulted amount of M/s Govind Rice Mill along with interest. If that is so and if there is no other disqualification attached to respondent No. 1-Rice Mill and if other lawful conditions imposed by the appellant-FCI are fully complied with, there shall be no legal impediment against allocation of paddy to respondent No. 1-Rice Mill, however, subject to the terms and conditions to be imposed in accordance with policy decisions. For the reasons aforestated and subject to what has been permitted in the penultimate paragraph of this order, the appeal is allowed; impugned order dated 4.11.2011 passed by the learned Single Judge, is set aside and the writ petition filed by respondent No. 1-Rice Mill is dismissed with cost of Rs. 25,000/-.