

(2001) 08 P&H CK 0219

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6457 of 1999

Jasbir Kaur and Another

APPELLANT

Vs

Punjab State Industrial
Development Corporation Ltd.,
Chandigarh and Another

RESPONDENT

Date of Decision: Aug. 23, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14
- State Financial Corporations Act, 1951 - Section 29, 31

Citation: AIR 2002 P&H 74 : (2002) 1 ILR (P&H) 292

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: Sunil Chadha, for the Appellant; R.S. Rai, Gautam Dutt and Rohit Ahuja, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

Is the action of the Punjab State Industrial Development Corporation Limited in ordering that "the possession of the properties Including collateral securities". "mortgaged/hypothecated property for the recovery of outstanding dues" Illegal and violative of the principles of natural justice? This is the short question that arises for consideration in this petition.

2. A few facts as relevant for the decision of this case may be briefly noticed.

3. M/s. Royal Cements Limited (Respondent No. 2) undertook a project to set up a unit for the manufacture of cement. This company was promoted by three brothers viz. M/s. Kuldip Singh, Harmeet Singh and Jagjit Singh (petitioner No. 2). The promoters had applied to the respondent-Corporation for the sanction of loan. On September 25, 1996 an amount of Rs. 250 lacs was sanctioned by way of loan.

Another amount of Rs. 30 lacs was sanctioned by way of a bridge loan. On March 31, 1997 an amount of Rs. 2 crores was disbursed. On May 9, 1997 the company got another amount of Rs. 35 lacs. It is also the admitted position that on March 31, 1997 the company had availed of a subsidy of Rs. 24 lacs. Thus, a total amount of Rs. 259 lacs was availed of by the company.

4. The company did not repay a penny out of the loan. Since the amount had fallen due, the respondent-Corporation finally decided to exercise power u/s 29 of the State Financial Corporations Act, 1951. A copy of the communication dated May 11/21, 1998 issued by the respondent-Corporation Indicating its intention to proceed u/s 29 is at Annexure P-1 with the writ petition. Having got a scent of the letter, the company filed Civil Writ Petition No. 8565 of 1998 in this Court. This petition was posted before a Bench of this Court on June 12, 1998. On June 15, 1998, the Corporation took possession of the Industrial unit as well as possession of the two houses belonging to the petitioners in the present writ petition.

5. It deserves mention that petitioner No. 1 is the wife of Mr. Harmeet Singh, the Director of the company. Petitioner No. 2 herein was initially the promoter of the company. He is alleged to have withdrawn at some stage. The exact date has not been given. However, he is the brother of both the Directors of the company viz. Kuldip Singh and Harmeet Singh. It is the admitted position that possession of the houses belonging to the two petitioners was taken over by the respondent-Corporation on June 15, 1998. This was done in pursuance to the order dated June 15, 1998 passed by the Additional Managing Director of the Corporation. A copy of this order is at Annexure P-2 with the writ petition. The possession of the industrial unit was also taken over u/s 29 of the Act.

6. Since the order dated June 15, 1998 had been passed during the pendency of C.W.P. No. 8565 of 1998, the company sought permission to amend the writ petition. The amended petition was filed so as to challenge the order dated June 15, 1998. This prayer for amendment was allowed. The amended petition was taken on record. It was heard and dismissed by a Bench of this Court vide its order dated March 23, 1999. The order was upheld.

7. A fact which deserves mention is that after the possession of the premises including the houses had been taken over, a Civil Miscellaneous No. 13633 of 1998 was filed during the vacation in Court. By an ex parte order passed on June 22, 1998 a direction for the restoration of the possession of the houses was given by a learned single Judge of this Court. In pursuance to this order. Mr. Chadha, learned counsel for the present petitioners, states that the possession was restored.

8. After the dismissal of C.W.P. No. 8565 of 1998 the present petitioners have approached this Court with the prayer that the order dated June 15, 1998, a copy of which has been produced as Annexure P-2 with the writ petition, be quashed. It is alleged that they were merely Guarantors and as such the provisions of Section 29

could not have been invoked against them. No notice or opportunity was given to them. On these premises, it is alleged that the order is illegal and deserves to be quashed.

9. The claim made by the petitioners has been controverted In the reply filed on behalf of the respondents. It has been inter alia averred that the promoters/Directors of the company had not made any payment. During a visit to the unit it was found that the plant and machinery had been removed. Only land was available. Thus, order u/s 29 was passed, Still further, a F.I.R. No. 37 under Sections 406/420/34, I.P.C. IPC was lodged at Police Station. Machhlwara. The other averments made in the petition have been controverted. It is maintained that the action of the respondent-Corporation in taking over the unit as also the collateral securities was legal and valid. The petitioners have not filed any replication to controvert the averments made in the written statement.

10. Learned counsel for the parties have been heard. Mr. Chadha, learned counsel for the petitioners, has made a three-fold submission. He has contended that the provisions of Section 29 cannot be invoked to take possession of the property belonging to the Guarantors. Secondly, it has been submitted by the counsel that the action of the Corporation is violative of the principles of natural justice. Lastly, it has been contended that the Corporation could not have proceeded against the Guarantors without recovering the money from the borrower. The claim made on behalf of the petitioners has been controverted by Mr. R.S. Rai, learned counsel for the respondent-Corporation.

11. The three questions that arise for consideration are :--

1. Is the action of the respondents in ordering the take over of the two houses which had admittedly been mortgaged, contrary to the provisions of Section 29 of the Act?
2. Is the order violative of the principles of natural justice?
3. Was the Corporation debarred from proceeding against the Guarantor till the property belonging to the company viz. the unit had been sold?

Regarding-1

12. The State Financial Corporations Act, 1951 was promulgated to provide for the establishment of the Financial Corporations. It was calculated to promote industry and secure public dues. Thus, a mechanism for providing facilities and ensuring recoveries was made. Section 29 was incorporated to ensure speedy recovery of dues. It was inter alia provided that in a case where a person makes default In repayment of loan or any instalment thereof, the Corporation shall have the right to take over the management and possession of the industrial unit. Additionally, it was armed with the power to "realise the property pledged/mortgaged/ hypothecated or assigned to the Financial Corporation".

13. Mr. Chadha contends that in view of the plain language. Section 29 only empowers the Corporation to take over the unit or the property belonging to the industrial concern. It does not entitle the Corporation to realise the dues from the property of a Guarantor. Is it so?

14. The basic purpose of Section 29 is to ensure a speedy recovery of the public dues. In order to achieve this objective the Corporation has been given the power to take over the industrial unit as also the property which is pledged/mortgaged or hypothecated etc. The provision is not restricted to the property belonging to the industrial concern. Any property which has been mortgaged or pledged can also be taken over. Keeping in view the plain language and the dominant purpose of the provision, we find no reason to give it a restricted meaning. An interpretation which may defeat the object has to be avoided.

15. Mr. Chadha submits that Section 31 of the Act specifically deals with the property belonging to a Guarantor. It has been provided that the Corporation can enforce the liability of a surety. In view of the provision in Section 31, a restricted meaning should be given to the provision in Section 29.

16. We are unable to accept this contention. Section 31 makes a provision for enforcement of claims. It is primarily procedural in nature. In any case, the power u/s 31 is "without prejudice to the provisions of Section 29 of the Act". Thus, the power u/s 29 is available irrespective of the mechanism provided u/s 11. Thus, the contention of the counsel cannot be accepted.

17. Mr. Chadha has relied upon the judgment of their Lordships of the Allahabad High Court in [Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another](#), . Reference has been made to the observations In paragraph 9.

18. On a perusal of the judgment, we find that even in this case it was held by their Lordships that "the right given to the Corporation u/s 29 will extend to the property of the surety also." Thus, the decision does not help the petitioners. Still further, we may notice that in [Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others](#), . It was inter alia observed that "there cannot be any fetter on the power of the Corporation u/s 29 to take possession of the property of the surety also." A similar view had also been taken by a Division Bench of the Kerala High Court in [Thressiamma Varghese Vs. Kerala State Financial Corporation and Others](#), .

19. Another fact that deserves mention is that petitioner No. 1 is the wife of the promoter and Director of the company. Petitioner No. 2 was one of the three promoters. Even if he is presumed to have withdrawn at a subsequent stage, he still remains the brother of the other two Directors. Everything is a part of the family. To exclude their property would not promote any public interest.

20. Thus, the first contention raised by the learned counsel for the petitioners is rejected. It is held that the provisions of Section 29 can be invoked by a State Financial Corporation to take over the property of the industrial concern as well as that of the surety or a Guarantor. Since the petitioners had admittedly mortgaged their property, the action of the Corporation in ordering the taking over of the two houses was absolutely legal and valid.

Regarding 2

21. Mr. Chadha contended that the Corporation was required to comply with the principles of natural justice before proceeding u/s 29 against the petitioners. He submitted that no notice having been given to the petitioners, the impugned order is vitiated. Is it so?

22. On a perusal of Section 29 it is clear that no provision for the issue of a notice to either the industrial concern or any other person has been made. Still further, in the very nature of things, it appears that the omission to provide for notice etc. is intentional. The purpose is to ensure speedy recovery of public dues. The legislative intent is to secure public funds. The action has to be taken speedily. Loss of time can result in loss to the State Exchequer. Delay can defeat the desired objective. Thus, the Parliament has advisedly omitted to provide for any kind of opportunity. The exclusion of opportunity appears to be intentional. Thus, we desist from reading the principles of natural justice, into the provision. We apply the text literally to the context.

23. Mr. Chadha has relied upon the following observations of their Lordships of the Orissa High Court in [Kharavela Industries Pvt. Ltd. Vs. Orissa State Financial Corporation and Others](#), :--

"The Financial Corporation before passing an earlier order of taking over afforded sufficient opportunity to the industry inasmuch as the Corporation gave due notice to the industry as to the default position and further its decision to take over possession on failure of industry to pay the instalments. Subsequently the industry made some payments. The said order was never given effect to. But the Corporation passed subsequent order of taking over of industry and no further notice was given to the industry though in the meantime there had been some payment by industry as aforesaid."

24. The above observations do not help the petitioners. A perusal of the above observations shows that various communications had been sent to the industrial concern before proceedings u/s 29 had been initiated. It is not the petitioners' case that such communications had not been sent in this case. Still further, the company has been impleaded as respondent No. 2. It had approached this Court through C.W.P. No. 8565 of 1998. The family was aware of everything. They have not been taken by surprise. In this situation, it is clear that the petitioners had more than an adequate notice.

25. A reference has also been made to the decision in [Smt. Hiranyaprava Samantray Vs. Orissa State Financial Corporation and Others](#), . This was a case where the truck belonging to the Guarantor was to be auctioned. It was held that the liability of the Guarantor is co-extensive with that of the borrower. However, a notice "to the Guarantor regarding the intended auction u/s 29 by the Corporation" should have been given. The purpose of such notice is to ensure that the property is not sold away for anything less than the actual value. That occasion has not yet arisen in the present case.

26. Mr. Chadha has also referred to the observations of a Division Bench of this Court in [Subhari Papers \(P.\) Ltd. Vs. Haryana Financial Corporation and Others](#), . This was a case where the Corporation claimed to have given a notice to the industrial concern. The possession of the property was taken even before the alleged notice had been served. In this situation, the action was held to be arbitrary and unfair. The decision was on its own facts. The Bench was not confronted with the issue as to whether or not the principles of natural justice are applicable. Thus, we cannot read the observations of the Bench to mean that principles of natural justice are applicable or that the defaulting party is entitled to an opportunity before an order for the takeover of the management or property is passed.

27. The principles of natural justice cannot be put in a "straight jacket". No firm formula can be laid down. In a case where loss of time can result in avoidable complications, it is permissible to exclude the principles of natural justice. The basic purpose of Section 29 is to ensure speedy recovery of funds. To obviate delay, the Parliament appears to have advisedly omitted to provide for the grant of an opportunity. It would not be fair to add to the provision.

28. A fact which deserves mention is that the company which has been impleaded as respondent No. 2 had taken the loan in the year 1997. It had not paid a penny. It had removed the machinery. A criminal case is pending against it. It had approached this Court through a petition. The possession of the houses had been taken. Mr. Chadha concedes that the petitioners were evicted from the houses. An application for restoration of possession was moved by the husband of petitioner No. 1. Yet, the petitioners claim that they had no notice of the proceedings. The pretended innocence is only a device to challenge the order. In the facts and circumstances of this case, we find that no injustice has been caused to the petitioners.

29. Thus, even the second contention raised on behalf of the petitioners is rejected.

Regarding-3

30. Mr. Chadha contended that the Corporation should have recovered the dues from the industrial concern. It is only after it had recovered the amount from the company that it could have proceeded against the petitioners or other Guarantors for recovery of the remaining dues. Since the Corporation has not yet sold the land

belonging to the industrial concern, it should not be allowed to proceed against the Guarantors.

31. Admittedly an amount of Rs. 259 lacs had been disbursed to the company in the year 1997. The unit has not paid a penny so far. The machinery which was bought has already been removed. Mr. Rai points out that an amount of Rs. 6,19,59,000.00 was outstanding against the industrial concern. The bare piece of land measuring 39 kanals 19 marlas was got assessed. Its value was fixed at Rs. 56 lacs. Despite four advertisements published in various newspapers, nobody has even offered the reserve price of Rs. 56 lacs. Thus, the land has not been sold. In the meantime, the liability of the promoters and the Guarantors has increased. In this situation, the action of the Corporation in proceeding to recover the public funds from not only the property of the industrial concern but also of the Guarantors is perfectly legal and valid.

32. Thus, even the third submission made on behalf of the petitioners cannot be accepted.

33. Mr. Chadha submitted that if a reasonable time is given, the petitioners can make alternative arrangements and handover vacant possession.

34. We would have normally accepted this submission. However, in the present case, we find that the conduct of the promoters including petitioner No. 2 has been unfair. They had taken a substantial amount of money from an agency of the State. They did not pay a penny. Still further, instead of allowing the Corporation to take over possession of the concern for either running the unit or selling it, they had removed the entire machinery and taken it away. In this situation, the respondent-Corporation had no choice but to proceed to recover the dues from all available sources including the Guarantors. The action of the Corporation in the facts and circumstances of this case is in public interest. It promotes the purpose of law. It is in conformity with the provision of the Act. The conduct of the company and its promoters leaves a lot to desire. Thus, the order calls for no interference.

35. Another fact which deserves mention is that the order dated June 15, 1998 has already been upheld in C.W.P. No. 8565 of 1998. Admittedly, the order passed by the Bench on March 23, 1999 was not challenged by the company or any of its promoters. As the challenge to the order at the instance of the husband of petitioner No. 1 and the brothers of petitioner No. 2 has already been negated by a Bench of this Court and the order has attained finality, we find no ground to Interfere with the impugned order.

36. No other point has been raised.

37. In view of the above, we find no merit in the petition. It is, consequently, dismissed with costs. The costs are assessed at Rs. 50,000/-.