

(2011) 09 MAD CK 0148

Madras High Court

Case No: Writ Petition No. 7440 of 2011 and M.P. No"s. 1 and 2 of 2011

K.S. Palanisamy

APPELLANT

Vs

The Regional Manager, Tamil
Nadu Industrial Investment
Corporation Limited and
Mohamed Fazal

RESPONDENT

Date of Decision: Sept. 16, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- State Financial Corporations Act, 1951 - Section 29, 29(1), 29(4)

Citation: (2011) WritLR 865

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: D. Krishnakumar, for the Appellant; R. Balasubramanian, for R 1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has filed the present writ petition seeking for a direction to the first Respondent Tamil Nadu Industrial Investment Corporation Limited (TIIC) to accept the offer made by the Petitioner to an extent of Rs. 70,99,000/- for the property belonging to Sri Ananth Mansion (Boarding and Lodging), Hosur comprised in S. No. 968/1A2, Sennathur Village, Krishnagiri Road, Hosur measuring to an extent of 2623 square feet along with superstructure, which was brought under public auction vide notice dated 17.2.2011 published in the Daily Thanthi Tamil newspaper.

2. The writ petition was admitted on 24.3.2011. Pending the writ petition, this Court had granted an interim injunction. Aggrieved by an order of interim injunction, the

Respondent TIIC has filed a vacate injunction application in M.P. No. 2 of 2011 together with supporting counter affidavit dated Nil (May, 2011).

3. It was the stand of the Petitioner that on account of default made by the owners of the Sri Ananth Mansion for the sum borrowed, the Respondent TIIC brought the property for auction. The auction notice was published in Daily Thanthi newspaper on 17.2.2011. It was stated that the intended purchaser should submit a closed tender on or before 2.3.2011 and the auction was to be held on 2.3.2011 at 11.00 a.m. For the purpose of participating in the auction, the bidder should submit a demand draft drawn in favour of TIIC for a sum of Rs. 1 lakh as an E.M.D. Immediately on being declared as a successful bidder, they should submit 10% of the bid amount after the conduct of the public auction. The Petitioner was one of the interested party. He had obtained the tender form on 1.3.2011. He also took demand drafts from two banks for Rs. 7,10,000/- which he intends to deposit on being declared successful. But, when he went to the auction with the demand drafts, he was informed that the first Respondent did not take possession of property as the matter was pending before this Court in a writ petition and the borrower had sold the property to the second Respondent, for which an FIR has also been lodged. It was stated that the second Respondent was also the bidder in the said auction. The valuation report was obtained by the TIIC and the value was assessed for more than Rs. 65 lakhs. But the Respondents did not quote the upset price in the auction. Though the Petitioner had quoted Rs. 70,99,000/- and had kept demand drafts for Rs. 7.10 lakhs towards 10% of the bid amount, it was stated that the first Respondent received the tender from the second Respondent in an open tender and had accepted his offer for a sum of Rs. 56 lakhs. The Petitioner on coming to know that he was cheated by the first Respondent, had made a complaint. He had also submitted that when his offer was more than Rs. 14 lakhs than the second Respondent, there was no reason to disqualify him and not to accept his bid amount.

4. In the counter affidavit filed by the Respondents, they have denied the statement made by the Petitioner. It was stated that nothing prevented the Petitioner in participating in the public auction sale held on 2.3.2011. The second Respondent alone had participated in the sale and he had quoted the highest amount of Rs. 56 lakhs. After private negotiation, he had increased it to Rs. 59 lakhs. It was in conformity with the corporation valuation norms. Hence the sale was confirmed in favour of the second Respondent. It was stated that the corporation had fixed the outstanding loan amount of the subject concerned as starting price. If there is no prospective buyer in the auction, the authority can reduce the starting price at the auction spot and continue the auction sale. Since the corporation was aiming at maximum recovery, no upset price was fixed. The auction sale price will be confirmed by the corporation based on the value of the property and the loan outstanding. It was stated that before auction, no tender was received and an open offer was made only by the second Respondent. Since the Petitioner never

submitted tender nor participated in the auction sale, his contention cannot be accepted.

5. In order to verify the veracity of the claim made by the Petitioner and also with a view to get maximum price for the property since public funds were involved, this Court had directed the counsel for the Petitioner to inform whether his client was willing to buy the property and whether he was willing to offer the entire sale price as quoted by him. Therefore, the matter was adjourned to 30.08.2011 and 06.09.2011. On 16.09.2011, the counsel for the Petitioner had produced the demand drafts in favour of the first Respondent drawn on various banks amounting to a sum of Rs. 71 lakhs. The following are the details of the demand drafts produced by the Petitioner:

Sl.No	Date	Bank Name & Branch	D.D.No.	Amount
1	29.08.2011	KarurVysya Bank, Tiruchengode	819301	35,50,000/-
2	29.08.2011	ICICI Bank, Salem	12098	11,00,000/-
3	14.09.2011	Indian Bank, Vellalapatti	318921	10,55,000/-
4	27.08.2011	Indian Bank, Vellalapatti	318877	9,00,000/-
5	29.08.2011	State Bank of India Salem	494282	2,50,000/-
6	30.08.2011	State Bank of India George Town, Chennai	688406	49,000/-
7	30.08.2011	State Bank of India George Town, Chennai	688407	49,000/-
8	30.08.2011	State Bank of India George Town, Chennai	688408	49,000/-
9	30.08.2011	State Bank of India George Town, Chennai	688409	49,000/-
10	30.08.2011	State Bank of India George Town, Chennai	688410	49,000/-
			TOTAL	71,00,000/-

The cheques were handed over to the Deputy Manager, TIIC (by name Meenakshi Sundaram), who was present in the Court. He had also signed as having received the demand drafts.

6. In the light of the same, the only question is whether the sale of the subject property can be made in favour of the Petitioner. Though the second Respondent was served, he had not appeared in person or through any counsel. The contention raised by the Petitioner that he had taken 10% of the bid amount and was present in

the auction has to be accepted because he had produced those demand drafts and their details. Therefore having paid 10% amount and participated in the open auction, the contention of the Petitioner that he had intended to purchase it for Rs. 71 lakhs has to be accepted.

7. In the present case, though the Respondent TIIC had stated in their counter that they were satisfied with the offer of the second Respondent and they had confirmed the sale in favour of the second Respondent, dated 3.3.2011, it has to be seen whether the Respondent TIIC had acted reasonably and in consistent with the object under which the State Financial Corporation Act was created. In paragraph 4 of the affidavit, the Petitioner had stated that the valuation report obtained by the TIIC showed that the property was worth around Rs. 65 lakhs. In dealing with the said averment, in paragraphs 5 and 6 of the counter affidavit, it was stated as follows:

5...This Respondent submits that the valuation of the property given by the panel valuer, is one of the indication for the auction of the property. This Respondent corporation adopts the procedure based on loan outstanding and the value of the property in the public auction. The value stated by the Petitioner in his Affidavit is presumptive value.

6...This Respondent submits that the Corporation fix the outstanding loan amount of the subject concerned as the starting price. If there is no prospective buyers to that amount, the Auctioning Authority can reduce the starting price at the auction spot itself and continue the auction sale. As the Corporation is aiming for maximum recovery, no up set price is fixed. However, the auction sale price will be confirmed by the Corporation based on the value of the property and the loan outstanding.

8. Therefore, it can be safely taken that the valuation report obtained by them showed that the property was worth Rs. 65 lakhs. It is also not fair on the part of the Respondent TIIC not fixing the upset price before auction. In fact, the entire transaction looks non transparent. This Court has no hesitation to accept the statement of the Petitioner that he was intending to participate in the auction and had wanted to quote higher amount. But he was denied that opportunity. If the Petitioner was not serious, then he would not have purchased the demand drafts for Rs. 7.10 lakhs, dated 1.3.2011 from two banks, i.e., Lakshmi Vilas Bank and ICICI Bank, Sankari.

9. In this context, it is necessary to refer to a decision of the Supreme Court in Falcon Retreat (P) Ltd. v. EDC Ltd. reported in (2006) 13 SCC 223 and in paragraph 11, it was observed as follows:

11... it is expected to act fairly and in accordance with law. As long as it acts within the parameters of the law, and its action is not found to be arbitrary or unreasonable, it is entitled to take a decision which is in the interest of Respondent 1 Corporation..... it is always open to the Respondent to take necessary steps to safeguard the interest of Respondent 1 Corporation which includes inter alia the

consideration of other offers made by other parties.

10. Further, the Supreme Court in [Gajraj Jain Vs. State of Bihar and Others](#), had emphasized the need for getting valuation report on the property to be sold and also the need to give advance publicity over the value of the property. The Supreme Court also held that the assets shall not be bid for the dues of the corporation, but the aim is to fetch market price of the property. In this context, the following passage found in paragraph 14 of the said judgment may be usefully quoted, which reads as follows:

14... In the case of S.J.S. Business Enterprises (P) Ltd.¹ it has been held that the financial corporation, in the matter of sale u/s 29, must act in accordance with the statute and must not act unreasonably. In this case, the Corporation fails on both the counts. It has neither complied with the provisions of Sub-sections (1) and (4) of Section 29, nor has it acted fairly. The test of reasonableness has been laid down in the above judgment in which it is held that reasonableness is to be tested against the dominant consideration to secure the best price. Value or price is fixed by the market. In the case of a going concern, one has to value the assets shown in the balance sheet (Datta, S.: Valuation of Real Property, p. 198). In our view, if the object of Section 29 of the Act is to obtain the best possible price then the Corporation ought to have called for the valuation report. This has not been done..... If publicity and maximum participation is to be attained then the bidders should know the details of the assets (or itemised value). In the absence of the proper mechanism the auction-sale becomes only a pretence..... Lastly, in this case, the price of the assets is pegged to the dues of the Corporation and Central Bank of India. The assets are agreed to be sold to Respondent 4 not for the market price but against repayment of dues of the Corporation plus a promise to discharge the liability of Central Bank of India. Therefore, the Corporation, Respondent 2, has not acted reasonably. It has not taken any steps to secure the best price. In fact it has failed to protect the interest of Central Bank of India, which is having the second charge on the assets transferred to Respondent 4 as well as the mortgagor which would be entitled to the balance of the sale proceeds, if any. It was contended that as the bids were withdrawn, the offer of Respondent 4 was accepted. Even assuming for the sake of argument, that there were no offers except the offer of Respondent 4, it shows that value of the assets was Rs 198.85 lakhs (i.e. Rs 28.85 lakhs + Rs 170 lakhs). No reason has been given why Respondent 2 did not insist on downright payment of Rs 198.85 lakhs.

11. Further, the Supreme court in Jammigumpula Sivaiah v. A.P. State Financial Corporation reported in (2004) 13 SCC 653 in paragraph 5 had observed as follows:

5. It is, however, to be noted that even in Haryana Financial Corpn. case², this Court has held that the Corporation must always try and realise the maximum price. It has been held that the assets must be sold by following a procedure which is transparent and acceptable, after due publicity.

12. Subsequently, the previous judgments of the Supreme Court in the matter of interpretation of Section 29 of the SFC Act came to be reviewed by the Supreme Court in [Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others](#), and following guidelines were laid down in paragraph 19, which reads as follows:

19. From the aforesaid, the legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

...

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

...

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

13. In the very same judgment, in paragraphs 17 and 18, it was observed as follows:

17. ...The Court held that it was always expected that the Corporation would try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in

its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out. The Court approved the view expressed in Gem Cap2 and found it to be more in line with the legislative intent behind enacting the Act.

18. Recently in S.J.S. Business Enterprises (P) Ltd. v. State of Bihar ⁷ while reiterating the aforesaid legal position, it was held that reasonableness of the action of the Financial Corporation u/s 29 of the Act should be tested against the dominant consideration to secure the best price.

14. If it is seen in the above context, the sale made in favour of the second Respondent for Rs. 59 lakhs is far below the value found in the valuer's report. The value fixed by the valuer was not denied in the counter affidavit. Further, the Respondent TIIC had not adopted the guidelines issued by the Supreme Court in the matter of sale and no publicity regarding the upset price was made. Their attempt to peg the starting price for the loan received by the borrower is also disapproved by the Supreme Court and it had insisted on obtaining the market price.

15. In the light of the above, the writ petition will stand allowed. Since the Respondent TIIC was already paid Rs. 71 lakhs as noted above in the open court, they are entitled to encash the same and execute a sale deed in favour of the Petitioner. This exercise shall be carried out within a period of four weeks from the date of receipt of copy of this order. The parties are allowed to bear their own costs. Consequently connected miscellaneous petitions stand closed.