

Jagat Castings Company (P) Ltd. and Others Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: July 30, 2010

Acts Referred: Constitution of India, 1950 " Article 226
State Financial Corporations Act, 1951 " Section 29

Citation: (2010) 4 BC 248

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Harish Malhotra and Tanuj Khurana, for the Appellant; A.K. Singh and Tauseeb Akhtar for R-2, for the Respondent

Judgement

S. Muralidhar, J.

The action of the Respondent No. 2 Uttar Pradesh Finance Corporation ("UPFC") in selling the properties of the

Petitioner No. 1 Company, which defaulted in repayment of a loan borrowed by it from the UPFC, by way of a private sale to the Respondent

No. 4 in exercise of its powers u/s 29 of the State Financial Corporations Act, 1951 ("SFC Act") is the subject matter of challenge in this writ

petition.

Background facts

2. The property at plot No. A-20, Sikandrabad Industrial Area, District Bulandshahar, Uttar Pradesh was leased to the Petitioner No. 1 company,

of which Petitioners 2 and 3 are Directors, for a period of 99 years by the Uttar Pradesh State Industrial Development Corporation by a lease

deed dated 28th March 1978. The UPFC remitted Rs. 1 lakh towards the cost of the plot whereas the Petitioner No. 1 paid Rs. 20,360/-. On the

leased land the Petitioner No. 1 erected a factory building by investing Rs. 10,49,000/-.

3. The Petitioner No. 1 states that on account of the riots that broke out in Meerut city in the months of July and August 1982, the inspection by

the Director of Industry, State of Uttar Pradesh, whose office was located in Meerut, was delayed. The commissioning of the plant could take

place only in October 1982 although the plant was completed in April of that year itself.

4. Petitioner No. 1 could sell goods worth Rs. 12 lakhs in the year 1983. Thereafter it underwent heavy losses on account of power shortage and

stiff competition in the market. It suffered a loss of Rs. 4,40,000/- in the year 1982 and a loss of Rs. 7,96,000/- in the year 1983. Petitioner No. 1

does not dispute that it could by May 1985 make a payment of only Rs. 1,24,575/- to the Respondent No. 2.

5. By a notice dated 19th April 1985, the Respondent No. 2 called upon the Petitioner No. 1 to pay the entire loan amount together with interest

up to 31st December 1984 in the sum of Rs. 9,36,046.34. This was followed by another notice dated 20th September 1985 whereby the

Petitioner No. 1 was called upon to make the payment of Rs. 10,49,888.68 which included the interest up to 30th September 1985. Petitioner

No. 1 claims to have paid Rs. 15,000/- on 17th October 1985, Rs. 10,000/- on 30th October 1985 and Rs. 5,000/- on 10th January 1986. It is

stated that a notice dated 15th May 1986 was sent to the Petitioner No. 1 at its address at New Delhi asking that the dues be cleared failing which

the unit would be taken over. This was followed by the impugned notice dated 6th January 1987 from the Assistant Collector in Delhi addressed

to Petitioner No. 1 stating that the Respondent No. 2 had filed an application before the said authority for a recovery of Rs. 4,44,061.17/-.

6. The Petitioners state that in October 1986 they learnt that the property of the Petitioner No. 1 had been sold by private negotiations by the

Respondent No. 2 to Cast India Industries, Bulandshahar, Respondent No. 4, for Rs. 8 lakhs. This was despite a valuation report submitted by

Petitioner No. 1 to Respondent No. 2 in terms of which the value of the property was Rs. 14,15,000/- as on 12th April 1983. According to the

Petitioners, the value of the property two years later would have been much higher and in the range of Rs. 20 lakhs.

The present petition

7. In the above background, the present petition was filed on 23rd January 1987 praying inter alia for the quashing of the notice dated 15th May

1986 whereby Respondent No. 2 took over the property of the Petitioner No. 1 as well as the notice dated 6th January 1987 issued by the

Collector at Delhi seeking to recover from the Petitioner No. 1 a sum of Rs. 4,44,061.17/-.

8. While directing notice to issue in the petition on 2nd February 1987, this Court stayed the proceedings pursuant to the notice dated 6th January

1987. The stay order thereafter continued but in the meanwhile the writ petition came to be dismissed for default. It was restored by the order

dated 15th September 2009 passed by this Court subject to the Petitioners paying costs of Rs. 25,000/- to the UPFC. By the same order, the

Petitioners were also directed to furnish a fresh security bond of an immovable property along with a non-encumbrance certificate. This order was

further modified by this Court on 23rd November 2009 permitting the Petitioners to furnish a fixed deposit receipt ("FDR") in the sum of Rs.

4,45,000/- as security instead of an immovable property. The Petitioners furnished an FDR as directed to the Registrar General of this Court. It

must be mentioned here that Respondent No. 4 was being represented by an Advocate till about 1st December 1988. Thereafter none has been

appearing for the Respondent No. 4.

Submissions of counsel

9. Mr. Harish Malhotra, learned Senior counsel appearing for the Petitioners, stated on instructions that in view of the long pendency of the present

case for over twenty years, the Petitioners are not interested in getting the sale made in favour of Respondent No. 4 set aside. The petitioners were

confining the relief sought to challenging the validity of the demands raised by the UPFC for the recovery of a sum of Rs. 4,44,061.17. Since in

view of the above submission, it was plain that the Petitioners were not seeking any relief adverse to Respondent No. 4, no fresh notice was

thought necessary to be ordered to Respondent No. 4.

10. The principal submission of Mr. Malhotra was that the property of the Petitioner No. 1 were worth nearly Rs. 20 lakhs as on the date of its

sale and ought not to have been sold through private negotiation for a sum as low as Rs. 8 lakhs. Had the property been sold for its actual market

value as on the date of its sale, the amount recovered would have been more than sufficient to meet the entire outstanding balance owed by

Petitioner No. 1 to the UPFC. In fact, such sale would have left a substantial surplus which would have become payable to the Petitioner No. 1.

Mr. Malhotra relied upon the judgment of the Supreme Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another,

to submit that this was a case where the Respondent No. 2 had acted irresponsibly in selling properties worth around Rs. 20 lakhs by way of a

private negotiation. Even prior to issuing an advertisement inviting offers for the property, its present market value should have been determined

through an approved valuer. This should have been followed by a proper public notice, widely publicized, fixing the reserve price closer to the

actual value of the property. He submitted that the procedure adopted by the Respondent No. 2 was plainly arbitrary and illegal and resulted in a

valuable property being sold for an unrealistically low amount. What was worse was that the entire sum of Rs. 8 lakhs was not immediately

deposited by the buyer and after receiving just 30% of the amount he was granted the facility of paying the balance in instalments spread over five

years. Consequently, the demand raised against the Petitioner No. 1 for a sum of Rs. 4,44,061.17 after adjusting the sum for which the property

was sold was unjustified and arbitrary and deserved to be quashed.

11. Mr. A.K. Singh, learned Counsel appearing for the Respondent No. 2 first submitted that this Court had no territorial jurisdiction to entertain

this petition since no part of the cause of action arose in Delhi. He submitted that the loan was applied for and availed in U.P. The property sold

was in U.P. The setting up of the plant thereon by the Petitioner No. 1, the payments made towards the loan, the notices served by the UPFC

upon the Petitioner No. 1 for recovery of the loan, the sale of the immovable properties through private negotiation, all took place in U.P. It was

next submitted by Mr. Singh that the petition has not been filed by an authorized person as no resolution authorising Mr. V.N. Seth, the deponent

of the affidavit in support of the petition has been placed on record. Thirdly, it is submitted that the action taken by the Respondent No. 2 u/s 29 of

the SFC Act cannot be judicially reviewed by this Court in exercise of its jurisdiction under Article 226 of the Constitution. In support of this

submission, Mr. Singh relied upon the decisions of the Supreme Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, ,

State Financial Corporation v. Jagdamba Oil Mills (supra), Punjab Financial Corporation v. Surya Auto Industries AIR 2010 SC 266, Nibro Ltd.

Vs. National Insurance Co. Ltd., and M/s. Klen And Marshalls Manufacturers And Exporters Limited, Bangalore Vs. State of Jammu And

Kashmir And Another, and Director of Industries, U.P. and Others Vs. Deep Chand Agarwal, .

12. It is submitted by Mr. Singh that Respondent No. 2 adopted a fair procedure. It issued advertisements in four newspapers i.e. "Dainik Jagran"

and "Tarapta Manav" on 11th August 1986, and "Hindustan Times" and "Dainik Sanskriti Kranti" dated 13th August 1986 inviting offers for the

property of the Petitioner No. 1. He referred to various documents (filed by him on 19th July 2010) which were photocopies of the original

records with Respondent No. 2. These showed that several demand notices were issued by Respondent No. 2 to Petitioner No. 1 calling upon it

to repay the loan amount which it miserably failed to do. He then referred to the minutes of the negotiations held with the intending purchasers on

24th September 1986 for the sale of the property of Petitioner No. 1. He referred to the valuation report submitted on 5th September 1986 by the

Assistant Manager (Technical), UPFC which showed that the total value of the land, building, plant and machinery as on that date was Rs.

12,17,850/-. He submitted that only three offers of Rs. 7 lakhs, Rs. 7.60 lakhs and Rs. 8 lakhs respectively were received from three different

parties. Ultimately, the offer of Rs. 8 lakhs made by Mr. Mohd. Saleem of M/s. Amity Industries, Bulandshahar on 6th September 1986 was

accepted. The proposal of Mr. Saleem was recommended for acceptance with the condition that he shall pay 30% of Rs. 8 lakhs as down

payment immediately and that the balance amount would be paid in the next five years in equal half-yearly instalments which would bear current

rate of interest from the date of acceptance of the offer. The opinion of the Chief Recovery Manager of the UPFC was that the machines were

non-saleable which was the reason why the offer was less than the valuation. However, since the unit was lying closed and the assets were

deteriorating, the sale at Rs. 8 lakhs was termed as a "better proposition". It is submitted that as on 24th September 1986, the total outstanding

amount was Rs. 13,79,000/- of which only Rs. 1.79 lakhs had been paid. After adjusting Rs. 8 lakhs for which the property of Respondent No. 1

was sold, a sum of Rs. 4 lakhs was still "unrecovered" and, therefore, a notice was issued to the Petitioner No. 1 at Delhi through the Collector,

Delhi for recovery of the sum of Rs. 4,44,061.17. Mr. Singh submitted that there was no illegality committed by the Respondent No. 2 and,

therefore, no indulgence should be granted to the Petitioner.

Preliminary Objections overruled

13. It is not correct on the part of learned Counsel for the Respondent No. 2 to contend that no part of cause of action has arisen within the

territorial jurisdiction of this Court. The recovery by the UPFC of alleged balance sum of Rs. 4,44,061.17 from Petitioner No. 1 after adjusting the

sale amount was sought to be made through the Collector at Delhi for which a notice was issued on 6th January 1987 to the Petitioner's address at

New Delhi. Therefore, a part of cause of action, that is the recovery of the balance amount allegedly owed by Petitioner No. 1 to Respondent No.

2, arose in Delhi.

14. This Court finds no merit in the other preliminary objection of the learned Counsel for Respondent No. 2 that the deponent of the affidavit in

support of the writ petition, Mr. V.N. Seth was not duly authorized by the Petitioner No. 1 to file the writ petition. The recovery notices dated

17th November and 17th December 1986, copies of which are part of the compilation filed by Mr. Singh, were addressed to "Shri Vinay Narayan

s/o Late Shri Jagat Narayan Seth, Director, Jagat Casting Co. (P) Limited". The notice dated 7th January 1987 addressed to Petitioner No. 1 was

served on the address of Petitioner No. 2 in Delhi. Therefore, the UPFC has itself accepted the authority of Petitioner No. 2 who admittedly is the

Director of Petitioner No. 1.

Limited scope of the present petition

15. The Petitioners are not questioning the execution of the sale deed in favour of Respondent No. 4 on account of the long pendency of the

present writ petition. The Petitioners have confined their prayer to questioning the attempted recovery of the aforementioned sum of Rs.

4,44,061.17 from them by the UPFC. It is in that context that they seek to demonstrate that the procedure adopted by the Respondent No. 2 in

disposing of the property of Petitioner No. 1 was seriously flawed and arbitrary and has fetched an unusually low price of Rs. 8 lakhs for a

property worth nearly Rs. 20 lakhs. Therefore, the question of this Court judicially reviewing the action of UPFC u/s 29 of the SFC Act to take

over the property of Petitioner No. 1 does not arise. What is in issue, however, is the legality of UPFC's actions thereafter resulting in the demand

for the sum of Rs. 4,44,068.17/-. Consequently, the decisions relied upon by learned Counsel for UPFC on the scope of interference by this

Court with the action of a SFC u/s 29 SFC Act have no application to the present writ petition.

How should an SFC deal with properties taken over by it?

16. What should a State Financial Corporation (SFC) that takes over the assets of a defaulter do while dealing with such assets has been the

subject matter of some of the decisions of the Supreme Court. Once a SFC takes over the assets of a defaulting borrower, it becomes the

property of the SFC which has to be thereafter dealt with as the assets of a company substantially controlled by the State would. The property

taken over acquires the characteristic of a public asset which has to be disposed of in a manner that fetches the best possible price for the asset.

How the assets of the State should be disposed of was explained by the Supreme Court in Ram and Shyam Company Vs. State of Haryana and

Others, in the following words (SCC at p. 276):

Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of

private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some,

the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that

while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other

hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be

done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State

may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property

may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public

purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing

else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction

it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment

or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the

owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest

number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available

price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm.

(emphasis supplied)

17. In *State Financial Corporation v. Jagdamba Oil Mills*, a three Judge Bench of the Supreme Court, while overruling an earlier judgment of the

Supreme Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, , opined that it would be open to the SFC, in

the event of the borrower defaulting, to take over the management or possession or both of the assets of the defaulter and thereafter deal with the

property. Although it was opined that the detailed guidelines issued in *Mahesh Chandra* placed unnecessary restrictions on the exercise of the

power by the SFC u/s 29 of the SFC Act, it was observed that ""it is always expected that the Corporation will try and realize the maximum sale

price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

18. The subsequent judgment of the Supreme Court in *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, reiterated the

requirement of the SFC having to be fair and transparent in the manner in which it deals with the assets of a defaulter. In para 18 of the said

judgment it was observed as under:

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to

purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an

opportunity must be given to the possible purchaser who is required to purchase the property on "As is where is basis" to inspect it and to give a

considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.

19. Recently in Punjab Financial Corporation v. Surya Auto Industries even while it was held that the High Court cannot sit as an appellate

authority over the action of a SFC, note was taken of the decision in Jagdamba Oil Mills and other decisions referred to hereinbefore which

emphasise that the SFC has to get the best possible price for the assets taken over by it.

20. The settled position in law as explained in the above decisions appears to be that while it is not necessary that in every case there must be a

public auction of the properties taken over by a SFC, it should adopt a procedure that ensures that the properties fetch the best possible price.

The procedure must be transparent and fair.

21. In light of the settled legal position, the facts of the present case may be examined. The UPFC did have on its record the valuation report

furnished by the Petitioners indicating the value of the assets to be Rs. 14,15,000/- as on 12th April 1983. Learned Counsel for Respondent No. 2

candidly stated that although there is a reference in the record to four advertisements having been issued in the four newspapers on 11th August

1986 and 13th August 1986, copies of such newspaper advertisements are not available in the record.

22. This is a bit strange particularly when there is in the record a letter dated 17th July 1986 written by M/s. Durga Industries to the UPFC stating

that it was responding to the ""advertisement in Economic Times dated 12th July 1986 regarding the sale of assets belonging to M/s. Jagat

Castings...."" No such advertisement has been placed on record. In fact, it is not even the case of the UPFC that such advertisement was issued.

The next offer by M/s. Hukum Chand Vegetable Oil & Solvent Industries was dated 4th September 1986 where it is mentioned that the said offer

is ""in reference to your advertisement in newspapers"" without mentioning the name of any one newspaper. That offer was for a sum of Rs.

7,60,000/-. It may be recalled that both the above offers were not accepted.

23. What is particularly intriguing is that the UPFC did not choose to have the property of Petitioner No. 1 which it took over valued by an

approved valuer even before it advertised the sale of such assets. The valuation report placed on record indicated the value of the assets as Rs.

12,17,500/-. It is dated 5th September 1986. Clearly this valuation was got done after the advertisement had been issued and after two of the

offers had been received. One day after the above valuation, on 6th September 1986, the following letter was written by one Mohd. Salim of M/s.

Amity Industries to UPFC:

Bulandshahar

Dt. 6.9.1986

The Regional Manager,
U.P. Financial Corporation,
Bulandshahr.

Dear Sir,

Re.: Offer to take over the assets of M/s. Jagat Castings Pvt.

Ltd. Sikandrabad.

I propose to take over the assets of M/s. Jagat Castings Pvt. Ltd., Sikandrabad Industrial Area, Sikandrabad and offer of Rs. 8,00,000/-

(Rupees eight lakhs) for the same.

Enclosed herewith please find cheque for Rs. 25,000/- (Rupees twenty five thousand only) towards earnest money against this offer.

I am at present running an industry of electronic goods as Amity Industries, Bhoor Crossing, Bulandshahr. I have been an active and major partner

in M/s. Azad Welding Works, Bulandshahr and M/s. Electrical Engineering Industries which are basically mechanical Engineering Units and have

been doing iron castings also. I have also worked in Iraq in India's leading construction company M/s. Jaiprakash Associates Private Limited and

have been travelling extensively all over gulf and Europe and therefore, I am fully aware of the Export potential of the cast iron products abroad. I

have about 25 years experience of manufacturing business.

Other distinguish business people of the same industry will also join me in running this work smoothly.

Thanking you,

Encl: As above.

Yours faithfully,

Sd/-

(Mohd. Saleem)

Amity Industries,

Bhoor Crossing,

Bulandshahr

24. What is intriguing is that the above letter makes no reference to any advertisement in the newspaper. Further there is a unilateral statement by

Mr. Mohd. Saleem that he "proposes to take over the assets", when in fact he is supposed to be making an offer. The offer is only for Rs.

8,00,000/-. One day earlier, the value of the property was determined at Rs. 12,17,500/-. It is also plain that Mr. Mohd. Saleem made no request

for making payment of Rs. 8 lakhs in instalments. There is no such letter of Mr. Mohd. Saleem on record. Yet, when negotiations purportedly took

place on 24th September 1986, two of the officers i.e the Chief Recovery Manager (Head Office) and Senior Manager (Head Office) of the

UPFC stated that "the matter was also negotiated with Mr. Mohd. Saleem who refused to enhance the offer of Rs. 8.00 lacs. Mr. Saleem

however agreed to pay 30% as down payment and balance amount in five years and also to bear the statutory liabilities of UPSIDC and UPSEB

etc.

25. Extraordinarily, the above offer was accepted although it was less than the valuation by over Rs. 4 lakhs. Why should a purchaser who offers

to pay Rs. 8 lakhs be permitted to make a down payment of only 30% and be given the facility of paying the balance in equal half-yearly

instalments over five years? There are no satisfactory answers to the above query. To this Court, it appears that that the above manner of disposal

of a property, which was valued by the Respondent No. 2 itself to be Rs. 12.17 lakhs, for Rs. 8 lakhs is wholly unacceptable. It is vitiated by

arbitrariness. In the first place, such valuation should have been done prior to inviting offers. The advertisement published inviting offers should have

fixed a reserve price not less than the above valuation. No offer less than such a reserve price could have been accepted. Even though it is

contended by learned Counsel for the Respondent No. 2 that the market was not good and no good offer was forthcoming, such explanation

appears to be unacceptable in the facts of the present case for the simple reason that only three offers are shown to have been received and that

too without any reference to any reserve price. What is even more disconcerting is that the purchaser was permitted to pay only 30% of the sum of

Rs. 8 lakhs when clearly what the Respondent No. 2 was seeking to recover was the outstanding loan amount in the sum of Rs. 12 lakhs owed by

the Petitioner No. 1. Why should the Respondent No. 2 put itself to further risk by only accepting 30% of Rs. 8 lakhs from the purchaser of the

assets is beyond imagination. This action of the Respondent No. 2 cannot by any stretch of imagination be construed to be either fair or reasonable

or consistent with the duties and responsibilities of a SFC u/s 29 of the SFC Act.

26. In its counter affidavit filed in the present writ petition, it is stated by the UPFC that a sale deed was executed in favour of the purchaser on

17th November 1986. In other words, by paying only 30% of Rs. 8 lakhs as a down payment, the purchaser was able to get a sale deed in his

favour for a property worth Rs. 12.17 lakhs. This can only be termed as extraordinary. Again, this action cannot be accepted as being reasonable

or fair in the circumstances of the case.

27. Mr. Singh sought to argue that this was standard practice in the State of Uttar Pradesh that if 30% of the sale price is paid, a sale deed will be

executed. This Court would not like to comment on what the "standard practice" in the State of Uttar Pradesh is. However, as far as the action of

the SFC seeking to recover outstanding amount from its borrowers and dealing with their properties u/s 29 of the SFC Act, the execution of a sale

deed in respect of such properties in favour of the purchaser by accepting only 30% of the bid amount is wholly unacceptable. It subjects the

Respondent No. 2 to further uncovered risk with no assets to back such an action. By no prudent practice of a financial institution can such action

be condoned as being acceptable.

Conclusion

28. For the aforementioned reasons, this Court is of the considered view that the procedure adopted by the Respondent No. 2 in the instant case

for disposing of the assets of the Petitioner No. 1 was wholly unacceptable in law by any yardstick of a reasonable and prudent person.

29. Consequently, the attempt made by the Respondent No. 2 to recover a sum of Rs. 4,44,061.17 from the Petitioner No. 1 company cannot be

termed reasonable. This Court has, therefore, no hesitation in quashing the recovery notice dated 15th May 1986 issued by the Regional Manager,

UPFC, Bulandshahar and the notice dated 6th January 1987 from the Collector, Delhi for the aforementioned sum. As a result, the FDR deposited

by the Petitioner No. 1 in the Court will be returned to it by the Registry within a period of four weeks.

30. The writ petition is disposed of in the above terms with no order as to costs.