

S.B. CIVIL WRIT PETITION NO.2811/2004
M/s. Som Prakash & Sons Bricks (P) Ltd.
vs.
Rajasthan Financial Corporation & ors.

Date : 2.6.2005

HON'BLE MR. PRAKASH TATIA, J.

Dr. Vineet Kothari, for the petitioners.

Mr. DS Rajvi) for the respondents.
Mr. BD Purohit)
Mr. SD Purohit)

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Heard learned counsel for the parties.

According to the petitioner, on account of severe cyclone on 3.6.1994, the petitioner's industrial unit suffered huge losses and its production activity came to a temporary halt.

According to the petitioner, despite several representations for rehabilitation package and further financial assistance submitted to RFC, DIC and Bank, nothing effective was done by these financial institutions, therefore, the petitioner approached this Court by filing SB Civil writ Petition NO.1066/1997. That writ petition was withdrawn by the petitioner with liberty to file fresh writ petition which was granted by this Court vide order dated

19.2.2001. It appears from the facts that in the writ petition no.1066/1997, this Court directed that if the petitioner is in position to deposit 1/3rd of the complete outstanding dues, then the RFC may hand over the possession of the unit to the petitioner. The petitioner could not pay 1/3rd of the amount and ultimately, the writ petition was dismissed on 19.2.2001.

According to the petitioner, the term loan of Rs.53.60 lakhs was sanctioned to the petitioner on 13.2.1990 and the petitioner was also sanctioned subsidy amount of Rs.7.80 lakhs on 23.3.1991. According to the petitioner, out of Rs.7.80 lakhs sanctioned amount of subsidy, the petitioner was paid only Rs.5.54 lakhs. The petitioner was also granted sickness certificate by DIC and according to the petitioner, therefore, the petitioner was entitled for further financial assistance but the RFC initiated proceedings under Sections 29 and 30 of the State Financial Corporation Act showing the demand against the petitioner amounting to Rs.1.05 crores as on 26.7.1996. The petitioner says that the amount is incorrect. It appears that the petitioner did not pay the amount, therefore, the possession of the petitioner's unit was taken over by RFC on 3.1.1997 or thereafter.

According to the petitioner, RFC itself assessed

the market value of the assets of the petitioner as on 1.9.1992 as Rs.73 lakhs approximately. According to the petitioner, thereafter, the land price appreciated, therefore, the value of the property increased but the RFC has decided to sell the unit for a consideration of Rs.20 lakhs which is the bid given by the respondent no.3.

The petitioner filed a suit for redemption of a mortgage against RFC being CO NO.77/2003 wherein ex parte stay order was granted by the trial court in favour of the petitioner on 23.4.2003. However, that temporary injunction application was dismissed on 3.6.2004 against which, the petitioner filed an appeal before this Court being S.B.Civil Misc. Appeal No.882/2004. Subsequently, subsequent to the filing of the present writ petition, the appeal of the petitioner was dismissed by this Court (by me) by order dated 14.9.2004. However, on the request of the petitioner, time was granted to it to furnish concrete proposal before the RFC and it was directed that if such proposal is submitted by the petitioner, the respondent RFC may consider the appellant's proposal on merits if they find it worth consideration. The appeal of the petitioner was dismissed by this court with above concession on 14.9.2004.

The present writ petition was listed in the Court on 16.7.2004 and this Court after taking into

consideration two applications filed by Shri Ajay Gupta and Shri Surendra Garg offering Rs.25 lakhs for the property in question, passed an interim order to maintain status quo regarding possession of the property.

On 20.4.2005, this Court while considering the application under Article 226(3) of the Constitution of India took note of the facts that according to the petitioner, the property is worth more than Rs.1 crore and has been assessed by the RFC itself having value of Rs.73 lakhs but is being sold on deferred payment basis for a consideration of Rs.20 lakhs payable in five years whereas the petitioner has produced offer of two persons who want to purchase the unit for a consideration of Rs.25 lakhs on down cash payment basis. This Court directed RFC to explain where it will be in the interest of RFC to sell the land on down cash payment within a period of fifteen days or it will be in the interest of RFC to adhere to the steps which they have taken.

After all above orders, the RFC rejected the petitioner's proposal by communication dated 9.5.2005 on the grounds that the unit was auctioned for Rs.20 lakhs on 24.3.2003 and approval has been granted on 24.3.2003 itself and the purchaser has deposited 25% of the sale consideration and as per the policy of the RFC since the sale had been made in auction and

sanction has been issued to the purchaser, the RFC is unable to consider the request of the petitioner when right of the purchaser has been created.

According to learned counsel for the petitioner, the respondents failed to file any affidavit to justify the sale of property in question at a price of Rs.20 lakhs on deferred payment basis and for rejection of the offer of the petitioner of Rs.25 lakhs down cash payment forthwith. It is also submitted that in view of the circular of RFC itself dated 1.8.1989, since no formal deed of sale has been executed and registered and possession has not been given, therefore, the RFC itself can withdraw the offer and from the sale contract.

It is also submitted that by this action of RFC, the petitioner will be put to irreparable loss and there will be chances of loss to the public money as the RFC will not be able to recover the full amount of assets of the petitioner and that will also cause loss to the petitioner.

According to learned counsel for the petitioner, in view of the order of this Court passed in SB Civil Misc. Appeal No.882/2004 dated 14.9.2004, the RFC should have considered the proposal of the petitioner in correct prospective and should have understood clearly from the order of this Court dated 20.4.2005

that the RFC should watch its own interest also.

Learned counsel for the respondent RFC and learned counsel for the purchaser vehemently submitted that the writ petition filed by the petitioner is not maintainable because of the simple reason that the petitioner has already filed a suit for the same relief in the year 2003 and injunction has been refused in this case and appeal against the order of the trial court was dismissed by this Court. Therefore, when the petitioner itself availed the remedy under law by filing regular suit, his petition is barred and cannot be entertained legally as well as because of the reason that the petitioner itself has chosen an effective alternate remedy.

Learned counsels for the respondents vehemently submitted that in view of the past conduct since at least 1997 that petitioner successfully delayed the recovery for 8 years and huge amount is due against the petitioner. Even the petitioner was given offer to save its property by this Court's order in its own writ petition. The RFC tried to sell the property fifteen times by issuing notice in newspaper by incurring huge amount but they could not get adequate price and ultimately when the bid has been finalised, the petitioner filed the suit in the year 2003 despite the fact that he withdrew the writ petition on 19.2.2001.

In view of the above, at least, the matter should be left to RFC because since 1997, the petitioner failed to give any concrete offer till his application for grant of injunction was rejected by the trial court and he could give offer only in the month of July, 2004 to nullify all the proceedings taken for recovery of the amount of RFC that too in a matter where the loan amount was secured by the mortgage of immoveable property and despite the fact that the petitioner failed to get any relief from the civil court. It is also submitted that in view of the judgment of the Hon'ble Supreme Court delivered in the case of U.P. Financial Corporation and others vs. Naini Oxygen & Acetylene Gas Ltd. and another reported in (1995) 2 SCC 754, the writ petition deserves to be dismissed as the Hon'ble Supreme Court held that such are not the matters where the High Court should step in and substitute its judgment for the judgment of the Corporation which should deem to know its interest better whatever sympathies the Court had for the prosperity of the company. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own right. The Supreme Court further held that unless its action is mala fide, even a wrong decision taken by it is not open to challenge. The Supreme Court further

held that it is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation.

I have considered the submissions of the learned counsel for the parties and perused the documents placed on the record.

It is clear from the above facts that the petitioner is defaulter since 1997. The petitioner's writ petition no.1066/1997 challenging the action of the respondents has already been dismissed by this Court on 19.2.2001. The petitioner was given liberty to file another writ petition. That liberty has not been availed by the petitioner. The petitioner filed a suit for redemption of mortgage and seeking relief of possession of the property in the suit. The interim relief sought by the petitioner was denied by the civil court and by this Court. However, the petitioner submitted two applications giving offer of Rs.25 lakhs for the property in question. The notices were issued to the respondents and interim order was passed in favour of the petitioner but the fact remains is that the petitioner preferred the writ petition and obtained order so that the petitioner may protect possession of the industrial unit. He failed. Petitioner's sought permission to file another writ petition but the petitioner has chosen remedy of suit.

The petitioner's injunction application and appeal are dismissed. Thereafter, the petitioner came with offer of two purchaser in the year 2004.

In commercial transaction by passing of time when the property goes from the hands, one may give very many offers. In this case, the petitioner after saying that the value of the property has been assessed by the RFC itself to the tune of Rs.73 lakhs approximately, has offered Rs.25 lakhs, therefore, the contention of the petitioner that the value of the property in question cannot be less than Rs.73 lakhs or it has increased, stands belied by the offer of the petitioner itself. Nothing has been said that why this offer was not given by the petitioner since 1997. The offer has been given by the petitioner when the RFC after making several attempts by issuing notice of auction, finalised the bid in favour of the third party and that too after more than one year from the finalisation of the bid and approval of the sale in favour of the respondent no.3. Therefore, this offer cannot be a ground to interfere in a matter where the respondents have not acted malafidely as there is no material to hold that the respondents acted malafidely.

The respondents were directed to consider the proposal of the petitioner and they held that since they have approved the sale, therefore, they cannot

withdraw from the sale. The ground given by the respondents cannot be said to be wholly arbitrary or illegal in any manner. This Court need not to go into the valuation of the property because the property was sold in the year 2003 and the offer has been given after one year and there may be very many factors which may have influence over the price of the property. A person who gives bid and is entitled to natural benefit at a particular point of time, then he is entitled for that benefit and it cannot be a reason for grievance to other party who was not vigilant to safeguard his own interest.

In view of the above discussion and in view of the judgment of the Hon'ble Supreme Court in the case of Naini Oxygen (supra), I do not find any merit in this writ petition and accordingly, this writ petition is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya