

In the High Court of Judicature at Madras

Dated: 28.05.2015

Coram:

The Honourable Mr. Justice V. Dhanapalan
and
The Honourable Mr. Justice G.Chockalingam

W.A. No. 1549 of 2011

1. M/s. Jagajothi Spinning Mills
Nos: 2 & 3, Karur Road
Gandhipuram Railway Colony Post
Erode - 638 002.

Rep by Managing Partner
V.Subramaniam

2. Mr. V. Subramaniam
Managing Partner
M/s. Jagajothi Spinning Mills
Nos: 2 & 3, Karur Road
Gandhipuram Railway Colony Post
Erode - 638 002.

3. Mr. V. Natarajan
Partner
M/s. Jagajothi Spinning Mills
Nos: 2 & 3, Karur Road
Gandhipuram Railway Colony Post
Erode - 638 002.

4. Mr. V. Vadivelu
M/s. Jagajothi Spinning Mills
Nos: 2 & 3, Karur Road
Gandhipuram Railway Colony Post
Erode - 638 002.

5. Mr. S. Jayakumar
Partner
M/s. Jagajothi Spinning Mills
Nos: 2 & 3, Karur Road
Gandhipuram Railway Colony Post
Erode - 638 002.

-vs-

1. Tamilnadu Industrial Investment
Corporation Limited, rep by its Managing Director,
No: 473 Anna Salai
Nandanam
Chennai - 600 035.

2. Tamilnadu Industrial Investment Corporation Ltd.
rep. by its Branch Manager,
Dr. Gobinath Building - II Floor
No: 405/1, Perundurai Road
Erode - 638 011.

3. M/s. Rajaguru Spinning Mills Ltd.
rep. by its Director, Bajaj Balu @ Balu
Veppadai, Pallipalayam
Thiruchengode Taluk
Namakkal District.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.07.2011 passed by the learned Single Judge in Writ Petition No. 18709 of 2010.

Petition filed seeking for a writ of Certiorarified mandamus, calling for the records of the Respondents 1 and 2 in and by their proceeding in the auction sale held on 31.5.2010 under the auction notice published on 18.5.2010 in Thina Thanthi a daily news paper in Advertisement No. TIIC/CBE/ RO/2010-11/04 and quash the same and consequently direct the respondents 1 and 2 to receive the entire loan amount due from the petitioners and discharge the mortgaged properties to them.

For Appellants : Mr. M.S. Krishnan
Senior Counsel for
M/s. A.S. Baalaji

For resps. 1 & 2 : Mr. K.V. Sundararajan

For 3rd Respondent : Mr. Ramesh for
Mr. Srinath Sridevan

.. .. .

सत्यमेव जयते
J U D G M E N T

V.DHANAPALAN, J.

Heard Mr. M.S. Krishnan, learned Senior Counsel appearing for the appellants; Mr. K.V. Sundararajan, learned counsel appearing for respondents 1 and 2 and Mr. Ramesh, learned counsel appearing for the 3rd respondent.

2. Being aggrieved by the order dated 15.07.2011 passed by the learned Single Judge in W.P. No. 18709 of 2010, the writ petitioners have come up with the present Writ Appeal.

3. The case of the writ petitioners as put forth by them before the learned single Judge is as follows :

" One M/s. Jagajothi Spinning Mills, Erode, 1st appellant / 1st petitioner, was started in the year 1980; in the year 1995, for purchase of machineries, a sum of Rs. 90 lakhs was borrowed from the Tamil Nadu Industrial Investment Corporation Ltd., hereinafter referred to as TIIC;; due to certain dispute amongst the partners, the mill was closed in the year 2004 and hence, the mortgage loan borrowed had become a non performing asset; the TIIC had brought the mortgaged property for public auction on 01.10.2009; in the said auction one V.Jayachandran and V.Vijaya, son and wife of one V.Vadivelu, were the highest bidders; the highest bidders deposited a sum of Rs. 30.60 lakhs; however, TIIC refusing to accept the balance amount from the highest bidders, brought the properties in question for sale by way of a fresh public auction on 31.05.2010; contending that the fresh auction held on 31.05.2010 was illegal, the successful bidders of the first auction conducted on 01.10.2009 namely V. Jayachandran and V.Vijaya filed a writ petition before this Court in W.P. No: 13441 of 2010; according to the petitioners, even according to TIIC, as on 15.07.2010, the outstanding amount was Rs.1,42,04,988/- but the value of the properties mortgaged was Rs.5,58,73,000/- as on 21.06.2010; therefore when sale of a portion of the property is sufficient to satisfy the amount due to TIIC, the respondents not only brought the entire property for sale but they also sold it for a meagre price of Rs.3,20,00,000/- to the 3rd respondent viz. M/s. Rajaguru Spinning Mills Ltd., Thiruchengode Taluk, Namakkal District; though the petitioners sent a letter dated 17.05.2010 offering to clear the dues in its entirety, the respondents did not accept the said offer and hence, the present writ petition."

The respondents 1 and 2 filed a counter affidavit before the learned single Judge contending that,

" The respondent Corporation sanctioned a term loan of Rs. 90.00 lakh on 28.12.1995 to the petitioner M/s.Jagajothi Spinning Mills for expansion of the unit; the borrower defaulted in repayment of loan; inspite of so many concessions granted, the borrower failed to repay the loan; disputes also arose in the management and since there was no scope for revival of the unit, the respondent Corporation took possession of the mortgaged assets and brought the same for sale in public auction four times; in the 3rd auction conducted on 29.01.2009, the machineries alone were sold for Rs.30 lakhs; in the 5th auction held on 01.10.2009, Rs.200 lakhs was the highest offer made by V.Jayachandran and V.Vijaya, who were none other than the son and wife of one of the partners of the 1st petitioner Spinning Mill; after negotiations the highest offer was fixed at Rs. 230 lakhs; the respondent Corporation vide its letter dated 01.12.2009 gave a final chance upto 15.12.2009 to the petitioner

Spinning Mill to settle the loan amount in full; the partners did not respond; the respondent Corporation communicated the letter of confirmation to the highest bidder on 21.12.2009; they also failed to remit the balance sale consideration within the stipulated time; hence the respondent Corporation forfeited the amount deposited and informed the same to the highest bidder vide its letter dated 31.03.2010; the assets were brought for re-auction on 31.05.2010; 15 bidders participated in the auction including M/s.Rajaguru Spinning Mills Pvt. Ltd. who offered the highest bid of Rs.320 lakhs; the respondent Corporation confirmed the offer in favour of M/s. Rajaguru Spinning Mills, Namakkal, vide letter dt. 22.06.2010, who inturn remitted the entire sale consideration; the assets were handed over by the Corporation to the successful bidder on 15.07.2010; the sale proceeds were credited in the loan account of the borrower concern and the surplus sum of Rs.1,75,00,000/- is lying with the respondent Corporation; the respondent Corporation had given ample opportunity to the petitioners and has waited for about 15 years to enable the petitioners to settle the loan account; the respondent Corporation obtains refinance from other banks and financial institutions for the loans advanced and it has to repay the same and if borrowers does not repay the loan in time, the Corporation will be put to heavy loss and therefore, the respondent was justified in its action. "

4. Both the writ petitions namely W.P. Nos: 13441 and 18709 of 2010 were taken up together by the learned single Judge and was disposed of by a common order dated 15.07.2011. Paragraphs 19 to 22 of the order reads thus,

"19. In view of the averments made on behalf of the petitioner, as well as the respondents and in view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that it would not be appropriate for this Court to interfere with the auction sale conducted on 31.5.2010, by the Tamilnadu Industrial Investment Corporation Limited in respect of the mortgage properties in question.

20. From the decisions cited before this Court, it is clear that the writ jurisdiction, under Article 226 of the Constitution of India, cannot be invoked to set aside the sale, in respect of the properties concerned, unless it is found that the auction of the respondent Corporation was unfair, unreasonable or in violation of any statutory provision. Even a wrong decision taken by the Tamilnadu Industrial Investment Corporation Limited is not open to challenge unless the same is found to be mala fide in nature. The power of judicial review, under Article 226 of the Constitution of India, cannot be made use of to convert

the Writ Courts into an Appellate Forum, with regard to the administrative actions of the respondent Corporation. Unless such actions are found to be arbitrary and mala fide in nature, or in violation of any statutory provision, this Court would be reluctant to interfere with the same.

21. In the present case, it is found that the respondent Corporation had brought the properties in question for sale, by public auction, due to the default committed by the borrower in the repayment of the loan borrowed. It is found that the respondent Corporation had followed the necessary procedures, by obtaining a valuation report and by advertising in the newspapers, before bringing the properties in question for sale, by public auction. There is nothing shown on behalf of the petitioner to convince this Court to arrive at the conclusion that the auction of the respondent Corporation, by bringing mortgaged properties for sale, by public auction, was mala fide in nature or that such auction was in contravention of certain statutory provisions. The decision of the Supreme Court, reported in Kerala Financial Corporation Vs. Vincent Paul and another (CDJ 2011 SC 256), had been made, in view of the peculiar facts and circumstances of the said case. As such, it cannot be said that the auction procedures followed by the respondent Corporation in bringing the mortgaged properties for sale, by way of a public auction, held on 31.5.2010, is invalid in the eye of law.

22. It is for the petitioners, in Writ Petition No.13441 of 2010, to approach the appropriate civil forum, if they are so advised, to establish their rights, if any, and to avail the available remedies on the ground of alleged breach of the terms and conditions of the auction sale, held on 31.5.2010, by the respondent Corporation. In such view of the matter, this Court is constrained to hold that the reliefs sought for by the petitioners in the above writ petitions cannot be granted. As such, the writ petitions are liable to be dismissed. Hence, they are dismissed. No costs."

5. The successful bidders of the public auction held on 01.10.2009 namely V. Jayachandran and V.Vijaya, petitioners in W.P. No: 13441 of 2010 had not filed an appeal against the order dated 15.07.2011. Only the borrower namely M/s. Jagajothi Spinning Mills and its partners, petitioners in W.P. No: 18709 of 2010 had filed the present appeal. Therefore, in this writ appeal, we are concerned only about the correctness or otherwise of the act of the respondent Tamil Nadu Industrial Investment Corporation Limited in bringing the mortgaged property to sale in public auction.

6. We have heard Mr. M.S. Krishnan, learned Senior Counsel appearing for the appellants; Mr. K.V. Sundararajan, learned

counsel appearing for respondents 1 and 2 - T.I.I.C. and Mr. Ramesh, learned counsel appearing for the 3rd respondent - M/s. Rajaguru Spinning Mills Ltd., Namakkal District and perused the materials made available on record.

7. Assailing the order passed by the learned single Judge, Mr.M.S.Krishnan learned Senior Counsel appearing for the appellants submits that the auction sale dated 31.05.2010 is illegal and void because the valuation report of the property was not obtained prior to the sale and only later the valuation report dated 21.06.2010 was sent to the appellants. The reserve price for the property was not fixed by the respondents before the conduct of the auction sale. He submitted that only after filing of W.P. No: 13441 of 2010, the possession of the auctioned property was handed over to the 3rd respondent herein on 15.07.2010 and therefore, the order passed by the learned single Judge is vitiated both in law and on facts.

8. On the other hand, Mr. K.V. Sundararajan, learned counsel appearing for respondents 1 and 2 - T.I.I.C., submitted that the appellant was sanctioned with the term loan of Rs.90 lakhs on 28.12.1995 and the mortgage deeds were also duly executed in May 1996. As the appellant had defaulted in payment of loan, the loan was foreclosed through a letter dated 01.03.2005 and from then onwards, the respondent Corporation had been taking all possible steps to bring the machineries and the property for auction sale on several occasions. Even before that the appellant had removed some part of the machineries and the remaining machineries were sold in public auction on 29.01.2009. According to the learned counsel, the respondent Corporation had followed all the procedure established in law before bringing the property for auction; the borrowers were given so many opportunities to settle the dues and since no amount was forthcoming, the respondent Corporation was compelled to bring the properties for public auction. He also submits that only after due paper publication the properties were brought to sale every time and thus, the respondent Corporation had followed all the steps in accordance with law in this case and prays for dismissal of this writ appeal.

9. The fact that the appellant / petitioner borrowed a term loan of a sum of Rs.90 lakhs in the year 1995, the mill was closed in the year 2004 due to interse dispute between the partners and that the loan availed from the respondent Corporation had become a non performing asset are all not disputed. A bare perusal of the material documents filed before this Court would reveal that the respondent Corporation had been making all possible efforts to get back the loan amount over a period of time and all its efforts went in vain. Even these two public auctions, one held on 01.10.2009 and 31.05.2010, were stated to be the 5th and 6th attempt made by the respondent Corporation to bring the properties for sale. If that could be the position, we can imagine the plight of the respondent Corporation in a situation where it was unable to recover the amount advanced as loan. The learned Senior counsel appearing for the appellants / borrower contends that the public auction held on

31.05.2010 is illegal and void since the valuation report of the property was not obtained prior to the sale and that the reserve price for the property was not fixed by the respondent Corporation. Meeting out this point, the learned counsel appearing for the 2nd and 3rd respondents would submit that Section 29 of the State Financial Corporation Act does not stipulate any specific procedure for bring the property on public auction and that TIIC had formulated certain procedures based on the past experiences to bring-out the best price. As per the procedure being followed by the respondent Corporation, a surveyor inspects the property in question; the survey report is kept in a sealed cover; the upset price is not fixed in the publication; the bidder have to make the offer quoting their best price; as per the circulars issued by TIIC, after the 3rd auction if the bid amount is more than 50% of the assessed value, then the property can be sold to the highest bidder who had quoted more than 50% of the assessed value. Thus, in the present case also, according to the respondent Corporation, they have followed the usual procedure and conducted the public auction and the offer of the 3rd respondent with a price of Rs. 3.20 crores was accepted by them. It is also on record that the 3rd respondent had paid the entire amount of Rs.3.20 crores and possession of the property was handed over to them. More over, when the appellant pleads that the act of the respondent Corporation in bringing the mortgage property to sale inspite of the fact that the borrower was ready to re-pay the loan amount is illegal, it is for the appellant to prove that they were really in a position to clear the dues and that the respondent Corporation with an ulterior motive and malafide intention, instead of accepting the repaid sum, had brought the properties for sale. In the case on hand, though the appellant / petitioner had pleaded so, they have not produced any material worth mentioning by this Court to support their plea. A mere statement that the action of the authorities was malafide cannot be the basis for setting aside the sale. It is contended by the borrower that they were ready and willing to re-pay the entire loan amount and despite that, the respondent Corporation had proceeded with the auction sale. If that is so, we fail to understand as to what prevented the borrower from repaying the loan all the years between 1995 to 2009 ?. More over, after the public auction held on 31.05.2010, the 3rd respondent M/s. Rajaguru Spinning Mills Ltd., Namakkal District, had taken possession of the property.

10. When we were hearing this writ appeal, on 03.03.2015, in order to verify the position of the property in question, we directed the borrower to inspect the property and file a report. Accordingly, a report had indeed been filed on 23.03.2015. The said report reads thus,

" As per the orders of this Hon'ble Court dated 03.03.2015, I had proceeded to Erode for inspection of the property on 21.03.2015, after duly intimating the counsel for auction purchaser and the counsel for TIIC.

The property in question is situated on the Erode - Karur Main Road. Total extent of the property is 3.76 acres. Around 11 a.m. the inspection commenced in the presence of

Mr.Murugesan, Deputy Manager, TIIC, the auction purchaser, Mr.S.Balu, Managing Director of M/s.Rajaguru Spinning Mills Ltd., and they had co-operated well for the inspection. Photographer was arranged while inspection and photos were taken in the premises which is enclosed herewith. The auction purchaser has erected spindles (spinning machineries) in the premises. A compound wall has been constructed dividing one portion of the property and in that portion, auto-looms (machineries) have been erected, which has a separate electricity connection. "

11. From the above report it is clear that, as contended, the 3rd respondent had invested some more money into the property and had erected various machineries and that the unit is in operation. At this distant point of time, we do not propose to unsettle the settled position by allowing the writ appeal.

12. For all the aforesaid reasons, we find no error or illegality warranting our interference in the impugned order passed by the learned Single Judge. Accordingly, this writ appeal stands dismissed. Connected miscellaneous petition is also closed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Managing Director,
Tamilnadu Industrial Investment
Corporation Limited
No: 473 Anna Salai
Nandanam
Chennai - 600 035.
2. The Branch Manager,
Tamilnadu Industrial Investment
Corporation Ltd.
Dr. Gobinath Building - II Floor
No: 405/1, Perundurai Road
Erode - 638 011.

+1 cc to M/s.Srinath Sridevan, Advocate,SR.25743

+2 cc to M/s.A.S.Baalaji, Advocate,SR.25708.

Ca(co)
krd 24/6

Pre - delivery order in
W.A. No:1549 of 2011