

PRADEEP KUMAR SHARMA

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v.

U.P.F.C. RAJPUR ROAD, DEHRADUN & ORS
(Civil Appeal No. 7597 of 2012 etc.)

OCTOBER 19, 2012.

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[P SATHASIVAM AND RANJAN GOGOI, JJ.]

STATE FINANCIAL CORPORATION ACT, 1951:

s.29 - Default in repayment of loan -Property mortgaged by borrower, sold by State Financial Corporation - Held: By virtue of sub-s. (2) of s. 29 of the Act such transfer of property by the Corporation will vest in the transferee all rights in the property as if the transfer had been made by the owner thereof.

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CONSTITUTION OF INDIA, 1950:

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Art. 226 - Writ petition - Maintainability of - Held: In the instant case, essence of the dispute between the parties denuded the lis of a public law character - The issues raised by the writ petitioner before the High Court really pertained to the claim of better title of the writ petitioner to the property in question on the basis of the sale deed which was executed in favour of the writ petitioner by his vendors during the subsistence of the mortgage in favour of the Corporation and the rights of the appellant to the said property on the basis of the sale made in his favour by the Corporation - The writ petition did not involve any issue arising out of public law functions of the State or its authorities - In such a situation resort to the public law remedy should not have entertained by High Court - Order of High Court set aside.

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The subject property was mortgaged by the borrower, by deposit of title deed, with respondent no. 1, U.P. Financial Corporation (Corporation), in security of

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A the loan obtained by the borrower from the Corporation. When the borrower defaulted in payment, the Corporation invoked its powers u/s 29 of the State Financial Corporation Act, 1951 and issued an advertisement on 22.9.1996 for sale of the mortgaged property. As no
 B suitable offer was received, the Corporation again issued another advertisement on 20.10.2002. Meanwhile, the borrower executed a sale deed in favour of two persons, who in turn sold the property to one 'VDS' by sale deed dated 29.8.2001. Pursuant to the advertisement dated
 C 20.10.2002, the appellant in C.A. No. 7597 of 2012 (the appellant) submitted his offer, which was ultimately approved and the appellant deposited the entire amount with the Corporation. 'VDS' filed a writ petition before the High Court for quashing of the sale made in favour of the
 D appellant. The High Court by an interim order directed the writ petitioner to deposit Rs. 5 lacs and by the final order while disposing of the writ petition directed the Corporation to withdraw the said amount of Rs. 5 lacs and out of it to repay the appellant the amount paid by him to the Corporation. The High Court held that the sale
 E made in favour of the appellant stood cancelled.

Allowing the appeals, the Court

F HELD: 1.1 Under the provisions of s. 29 of the State Financial Corporation Act, 1951, the default in re-payment of any loan by an industrial undertaking vests in the Financial Corporation the right to take over the management or possession or both of the industrial concern along with the right to transfer the property
 G pledged, mortgaged, hypothecated or assigned to the Financial Corporation. By virtue of sub-s. (2) of s. 29 of the Act, such transfer of property by the Corporation will vest in the transferee all rights in the property as if the transfer had been made by the owner thereof. In the
 H instant case, the property in question was duly

advertised for sale. The appellant had offered the highest amount. The entire amount was paid and the sale was confirmed by the Corporation, though no sale deed was executed. The sale made by the Corporation in favour of the appellant was in exercise of the statutory powers vested in it. [para 12-13] [869-H; 870-A-B, E-G]

1.2 The issues raised by the writ petitioner before the High Court really pertained to the claim of better title of the writ petitioner to the property in question on the basis of the sale deed dated 29.08.2001 executed in his favour by his vendors during the subsistence of the mortgage in favour of the Corporation and the rights of the appellant to the said property on the basis of the sale made in his favour by the Corporation pursuant to the advertisement dated 20.10.2002. The essence of the dispute between the parties denuded the lis of a public law character. Nor was any issue arising out of public law functions of the State or its authorities involved. Neither the exercise of the statutory power under the Act by the Corporation in the matter of the sale of the property nor the process of the sale transaction was questioned in the writ petition either on account of lack of jurisdiction or abuse of authority. In such a situation resort to the public law remedy should not have entertained by the High Court and, instead, it ought to have required the aggrieved parties to seek their remedies in an appropriate manner and before the competent civil forum. The order dated 05.12.2006 passed by the High Court is set aside. [para 15, 16-17] [871-C-E-G; 872-B-D]

Godavari Sugar Mills Ltd. vs. State of Maharashtra 2011 (2) SCR 180 = 2011 (2) SCC 439; and *Kisan Sahkari Chini Mills Ltd. and ors. vs. Vardan Linkers and others* 2008 (6) SCR 528 = 2008 (12) SCC 500 - relied on.

A Case Law Reference:

2011 (2) SCR 180 relied on para 16

2008 (6) SCR 528 relied on para 16

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7597 of 2012.

From the Judgment & Order dated 05.12.2006 of the High Court of Uttaranchal at Nainital in Writ Petition No. 196 of 2003 (M/B).

C**WITH****C.A. No. 7598 of 2012.**

D Madhu Tewatia, Chander Shekhar Ashri, Shrish Kumar Misra, Naresh Kaushik, Sanjeev Kumar Bhardwaj, Rishi Jain, Lalita Kaushik, Akshay Verma, Sushma Verma, Prashant Chaudhary, for the Appearing parties.

The Judgment of the Court was delivered by

E**RANJAN GOGOI, J. 1. Leave granted.**

2. Both the appeals are directed against the judgment and final order dated 05.12.2006 passed by the High Court of Uttaranchal in CrI. Misc. Writ Petition No. 196 of 2003 (M/B).

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3. A recital of the facts stated by the appellant Uttar Pradesh Finance Corporation (UPFC) in the appeal filed by it would suffice for the purpose of the adjudication that is required to be made in the present appeals.

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4. A term loan of Rs. 4.55 lacs was sanctioned by the UPFC to one M/s. Sangam Ice Cream (hereinafter shall be referred to as the borrower), a proprietorship concern owned by one, Smt. Nisha Devi Jaiswal. To secure the repayment of the aforesaid loan together with the interest due thereon, the borrower had created an equitable mortgage, by deposit of title

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deeds, of land measuring 192.34 sq. meter or 0.048 acres bearing Khasra No. 496 along with the constructions standing thereon located at Mauza Niranjapur, Pargana Kendriya Doon Tehsil and District Dehradun. A

5. After sanction of the aforesaid loan, the borrower availed a part thereof but defaulted in payment of the installments due. As such default became chronic and persistent, the UPFC invoking its power under Section 29 of the State Financial Corporation Act, issued notice dated 20.12.1994, calling upon the borrower to clear all the dues failing which recovery of proceedings including sale of mortgaged property was contemplated. As despite the said Notice the dues of the Corporation remained unpaid an advertisement was issued in the newspaper "Doon Darpan" on 22.09.1996 for sale of the mortgaged property. The Corporation, however, did not receive any suitable offer pursuant to the advertisement issued. The fresh second advertisement, nevertheless, came to be issued only in the edition of "Amar Ujala" on 20.10.2002. It appears that, in the meantime, the sole proprietor of the borrower firm, Smt. Nisha Devi Jaiswal, executed a sale deed in respect of the land in favour of two other persons, i.e. Deepak Kumar Bishnoi and Smt. Sarita Rani, who, in turn, sold the said property to one Vishnu Dutt Sharma by sale deed dated 29.08.2001. B
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6. Pursuant to the second advertisement dated 20.10.2002 published in the edition of Amal Ujala, one Pradeep Kumar Sharma submitted his offer of Rs. 4.50 lacs along with a bank draft of Rs. 50,000/- as earnest money. The UPFC issued another advertisement in the edition of "Dainik Jagaran" dated 01.11.2002 indicating a price offered by Pradeep Kumar Sharma for the property in question and calling upon the borrower / members of the public to submit their better offer, if any. Evidently, there was no response to the aforesaid advertisement dated 01.11.2002 published in the "Dainik Jagaran". Therefore on 31.12.2002, the Corporation accorded F
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A its approval for the sale of the land in favour of Shri Pradeep Kumar Sharma and on 14.01.2003, a deposit of another sum of Rs. 1.75 lacs was made by the aforesaid Pradeep Kumar Sharma. On 27.02.2003, the balance amount of the offered price i.e. Rs.2.25 lacs was tendered to the Corporation.

B 7. While the matter was so situated, Vishnu Dutt Sharma who had purchased the property by the sale deed dated 29.08.2001 instituted a suit, i.e. O.S. 75/2003 contending that on 06.02.2003, while he and his family members were away, possession of the property in question was taken over by the Corporation. Restoration of possession was the principal relief C prayed for in the aforesaid suit. Thereafter, stating that from the written statement filed in the suit by the Corporation it transpired that the property purchased by him (Vishnu Dutt Sharma) stood mortgaged in favour of the Corporation on account of a loan D taken by the original owner thereof and that pursuant to the said Notice published in the newspaper "Dainik Jagaran" dated 20.10.2002, the property had been purchased by one Pradeep Kumar Sharma, a Writ Petition was filed impleading the UPFC and its Managing Director as the first and second respondents, E Deepak Kumar Bisnoi and Sarita Rani as the third and fourth respondents and the purchaser Pradeep Kumar Sharma as the fifth respondent.

F 8. In the said Writ Petition, the prayer made was for quashing of the sale made in favour of the fifth respondent and for transfer of the property to the writ petitioner and further for restoration of possession of the same. The High Court while entertaining the Writ Petition passed an interim order dated 28.05.2003 permitting the writ petitioner Vishnu Dutt sharma G to make a deposit of Rs. 5 lacs in which event it was directed that the "accommodation in question shall be handed over to the petitioner subject to further orders of this court." By the said order, the High Court also directed that the sale deed will not H be executed in favour of the fifth respondent Pradeep Kumar Sharma.

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9. The writ proceeding before the High Court of Uttaranchal was contested by the UPFC as well as by the purchaser i.e. the fifth respondent, Pradeep Kumar Sharma. The Corporation had taken a specific stand before the High Court that the sale in favour of fifth respondent was finalized by the Corporation and the entire offered price was tendered by the fifth respondent. The Corporation had also contended that the property being subject to an equitable mortgage by deposit of title deeds could not have been validly transferred by the mortgager/ original owner i.e. Nisha Devi Jaiswal to the third and fourth respondents in the Writ Petition and in turn the said respondents could not have transferred the property in favour of the fifth respondent so long as the mortgage subsisted.

10. Thereafter, by the impugned final order of the High Court dated 05.12.2006, the Writ Petition was disposed of by directing the UPFC to withdraw the amount of Rs. 5 lacs deposited in the High Court by the writ petitioner, Vishnu Dutt Sharma, and out of the said amount to repay the fifth respondent, Pradeep Kumar Sharma, the amount of Rs.4.50 paid by him to the Corporation along with 9% interest thereon. Specifically, the High Court in its order dated 05.12.2006 had ordered that the sale made in favour of fifth respondent, which had not been confirmed, stood cancelled. Aggrieved by the aforesaid order, two separate appeals have been filed by the UPFC and the fifth respondent in the Writ Petition i.e. Pradeep Kumar Sharma. The writ petitioner, Vishnu Dutt Sharma, is the principal respondent in both the appeals.

11. We have heard Ms. Madhu Tewatia, learned counsel for the appellant - fifth respondent and Mr. Shrish Kumar Misra, learned counsel for the appellant Corporation. We have also heard Shri Naresh Kaushik and Shri Akshay Verma, learned counsel for the respondents.

12. The detailed recital made hereinabove clearly indicates that the property in question was duly advertised for sale pursuant where to the fifth respondent had offered the highest

A amount. On acceptance of the said offer by the UPFC, the
 entire amount was paid and the sale was confirmed by the
 Corporation. No sale deed was however executed by the
 Corporation in favour of the fifth respondent. It also appears that
 B before the property was put up for sale by the Corporation, the
 original owner, Smt. Nisha Devi Jaiswal had sold the same to
 the third and fourth respondents, who, in turn, had sold the same
 to the writ petitioner by sale deed dated 29.08.2001. The
 aforesaid sale by the original owners to the vendors of the writ
 petitioner and, thereafter, by said vendors to the petitioner
 C himself was made when the property stood mortgaged in favour
 of the UPFC. It is in the above circumstances, that the writ
 petitioner had approached the High court seeking interference
 with the sale of the property made in favour of the fifth
 respondent pursuant to the advertisement dated 20.10.2002
 D issued by the UPFC and further for transfer of the property in
 favour of the writ petitioner besides restoration of possession
 thereof which was taken over by the Corporation.

13. The sale made by the UPFC in favour of the fifth
 respondent was in exercise of the statutory powers vested in
 E the Corporation by Section 29 of the State Financial
 Corporation Act, 1951. Under the aforesaid provisions of the
 Act default in re-payment of any loan by an industrial
 undertaking vests in the Financial Corporation the right to take
 over the management or possession or both of the industrial
 F concern along with the right to transfer the property pledged,
 mortgaged, hypothecated or assigned to the Financial
 Corporation. By virtue of sub-section (2) of Section 29 of the
 Act such transfer of property by the Corporation will vest in the
 transferee all rights in the property as if the transfer had been
 G made by the owner thereof.

14. No serious issue either with regard to the validity of
 the exercise of the power under the Act or the manner of sale
 of the property by the Corporation pursuant to the advertisement
 dated 20.10.2002 had been raised in the Writ Petition. What
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was contended before the High Court is that the Writ Petitioner, Vishnu Dutt Sharma, had purchased the property by sale deed dated 29.08.2001 without any knowledge or information of the mortgage created by the original owner, Smt. Nisha Devi Jaiswal in favour of the Corporation and that the sale pursuant to the advertisement was also without notice to him. A right to the property based on certain equitable principles was also claimed to strengthen which, the offer covered by the interim order of the High Court dated 28.05.2003 was made by the writ petitioner.

15. The issues raised by the writ petitioner before the High court really pertained to the claim of better title of the writ petitioner to the property in question on the basis of the sale deed dated 29.08.2001. The validity of the sale deed dated 29.08.2001 executed in favour of the writ petitioner by his vendors during the subsistence of the mortgage in favour of the Corporation and the rights of the fifth respondent to the said property on the basis of the sale made in his favour by the Corporation pursuant to the advertisement dated 20.10.2002 are the issues that arose in the Writ Petition. Broad and expansive though the powers of the High Court under Article 226 may be, adjudication of the aforesaid questions, some of which also required proof of certain basic facts, in our view, was not appropriate in the domain of public law. Though the High Court in its order dated 05.12.2006 did not expressly say so, the affect of the several directions issued by it, in fact, amounts to an adjudication of the issues outlined above.

16. The essence of the dispute between the parties denuded the lis a public law character. Nor was any issue arising out of public law functions of the State or its authorities involved. In such a situation resort to the public law remedy should not have entertained by the High Court. (*Vide Godavari Sugar Mills Ltd. vs. State of Maharashtra*¹). Even if the vindication of the writ petitioner's rights under the sale deed

1. (2011) 2 SCC 439 [para 8(vi)]

- A dated 29.08.2001 is ignored and we are to proceed on the basis that the writ petitioner questioned the sale made by the Corporation, the writ petitioner would not be entitled to an adjudication of the rights of the parties inter se but at best to a judicial review of the administrative action of the Corporation
- B with regard to the sale made (*Vide Kisan Sahkari Chini Mills Ltd. and ors. vs. Vardan Linkers and others*²) But as already noticed neither the exercise of the statutory power under the Act by the Corporation in the matter of the sale of the property nor the process of the sale transaction was questioned in the
- C Writ Petition either on account of lack of jurisdiction or abuse of authority. In the above facts, the High Court should have refused an adjudication of the Writ Petition and, instead, ought to have required the aggrieved parties to seek their remedies in an appropriate manner and before the competent civil forum.
- D 17. In view of the above discussions, we allow both the appeals and set aside the order dated 05.12.2006 passed by the High Court of Uttarakhand at Nainital.

R.P.

Appeals allowed.