

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5933 OF 2005

M/s Paliwal Glass Works and others ..Appellants

versus

State of Uttar Pradesh and others ..Respondents

WITH

CONTEMPT PETITION(C) NO.7/2006 IN CA NO.5933/2005

O R D E R

Civil Appeal No.5933 of 2005

This is an appeal for setting aside order dated 24.3.2003 passed by the Division Bench of the Allahabad High Court, Lucknow Bench, whereby the writ petition filed by respondent No.6 - M/s. Madan International Limited for quashing the (alleged) direction given by the State Government to the U.P. Financial Corporation (for short, 'the Corporation') to withdraw the recovery certificate issued against the appellants herein and communications dated 28.2.2003 sent by the Managing Director of the Corporation to District Magistrate, Firozabad and for directing Collector-cum-District Magistrate, Firozabad to confirm the sale of plot Nos. 428 and 429, Mehrabad, Shikohabad in its favour was admitted and an interim order was passed restraining the opposite party concerned, i.e., the appellants herein from transferring or alienating the property which was mortgaged to the Corporation to any person other than the writ petitioner and Collector, Firozabad was directed to proceed in accordance with law ignoring the directions, if any, given by the State Government, to which reference was made in communications dated 28.2.2003 sent by the Managing Director of the Corporation.

Yesterday, Shri Altaf Ahmed, learned senior advocate appearing for the appellants made his submissions. In the midst of his arguments, Dr. Rajiv Dhawan, learned senior counsel appearing for respondent No.6 invited the Court's attention to the last two lines of first paragraph of the reference order passed by the two Judge Bench on 21.09.2005 to show that the writ petition filed by his client before the High Court has become infructuous because the decision impugned therein had been withdrawn by the Corporation.

In view of the statement made by Dr. Dhawan, we asked Shri Rakesh Uttamchandra Upadhyay, learned counsel for the Corporation to ascertain from his client whether or not the communications impugned in the writ petition filed before the High Court had been withdrawn.

Today, Shri Upadhyay, on the basis of instructions given to him and the file made available by the officers of the Corporation, made a statement that communications dated 28.2.2003 sent by the then Managing Director of the Corporation to District Magistrate, Firozabad to cancel the recovery certificate and not to confirm the bid given by respondent No.6 had been withdrawn.

In view of the statement made by Dr. Rajiv Dhawan which has been supported by learned counsel for the Corporation, the writ petition filed by respondent no.6 before the High Court does not survive and is liable to be disposed of as infructuous.

Ordinarily, we may have required the High Court to pass appropriate order keeping in view of the developments which took place after filing of the writ petition, but having regard to the fact that the matter is already 10 years old and respondent No.6 has not been able to reap fruits of the highest bid given by it on 8.11.2002, we deem it proper to withdraw Writ Petition No. 1546 (M/B) of 2003 from the Allahabad High Court to this Court and dispose of the same as infructuous leaving the question of law framed on 21.09.2005 open to be decided in an appropriate case. Ordered accordingly.

Before parting with the case, we consider it necessary to notice the facts which show that the then Managing Director of the Corporation had manipulated the records and sent misleading communications dated 28.2.2003 to District Magistrate, Firozabad necessitating filing of the writ petition by respondent No.6. These are:

- i) On an application made by appellant No.1, the Corporation sanctioned loan of Rs.75 lacs. The loan agreement was signed on 30.3.1996 for securing repayment of loan. The appellants mortgaged immovable property in favour of the Corporation.
- ii) After 3 years and 2 months, an application was made on behalf of appellant No.1 for rescheduling the loan. The Corporation accepted the request of appellant No.1.
- iii) Between August and October 2000, the appellants made efforts for disposal of 20 bighas land situated at Village Kishanpur, Tehsil Shikohabad but could not succeed.
- iv) In November, 2000, appellant No.1 filed Writ Petition No. 50875 of 2000 before the Allahabad High Court for declaring it as a sick industrial unit. The High Court passed order dated 23.11.2000 and directed the concerned authorities to decide the representation made by appellant No.1. Thereafter, several meetings were held by the functionaries of the Corporation, but no decision was taken on the issues of declaring appellant No.1 as sick industrial unit or for its rehabilitation.
- v) Since the appellants failed to pay the dues of the Corporation, advertisement dated 6.3.2001 was issued for sale of the mortgaged property.
- vi) Appellant No.1 challenged the aforesaid advertisement in Writ Petition No. 10564 of 2001. A Division Bench of the Allahabad High Court admitted the writ petition and stayed advertisement dated 6.3.2001 subject to the condition that appellant No.1 shall pay Rs.25 lacs by 14th April, 2001.
- vii) Appellant No.1 did not comply with the conditional order necessitating issue of recovery certificate dated 17/19.05.2001 under Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972 (for short, 'the 1972 Act'). The District Magistrate passed attachment order dated 6.11.2001 and fixed 2.2.2002 as the date of auction.
- viii) Appellant No.1 filed objections dated 24.12.2001 against the order of attachment and then filed Writ Petition No.3904 of 2002 for striking down Section 3 of the 1972 Act.
- ix) Between 2.2.2002 and 8.11.2002, several efforts were made

by the District Authorities to auction the mortgaged property but they could not succeed. Finally, in the auction held on 8.11.2002, respondent No.6 gave the highest bid of Rs.58 lacs.

- x) In the meanwhile, Writ Petition No.5847 of 2002 was filed by the appellants for quashing the auction proposed to be held on 2.2.2002. The same was disposed of as infructuous because the proposed auction was cancelled.
- xi) Sub-Divisional Officer, Shikohabad (Firozabad), under whose supervision the auction was conducted on 8.11.2002, sent communication dated 11.11.2002 to appellant No.1 giving it an option to deposit the amount of the highest bid with 5% additional amount as a condition for reconsideration of the auction. That letter reads as under:

"Office of Sub Divisional Officer, Shikohabad

Letter No. 459/R.A. dated 11.11.2002

M/s Paliwal Glass Works

Station road, Shikohabad

According to previous fixed date, today dated 08.11.2002 in the process of the Recovery of UPFC against M/s Paliwal Glass Works station road, Shikohabad, attached property GATA No.247/248 area 69 decimal, 248 area 1.32 decimal and 244/429 area 3.46 decimal situated at Meharabad (Shiohabad) has openly auctioned. According that the bidder Madan International Limited, 213, Anupam garden, New Delhi 68 Director Neelam Yadav's bid amount is Rs.58 lacs. It is more in the comparison of auction dated 02.02.2002 highest bid amount 56 lacs and auction dated 23.10.2002 highest bid amount 43 lacs.

You are informed that approval will be taken within one month from the date of above auction made. If you deposited total amount mentioned in R.C. or bid amount with 5% excess before approval of the auction than proceeding of auction can be reconsider. If you do not take appropriate action before 7.12.2002 regarding above auction than above made auction would be confirmed.

Sub Divisional Officer
Shikohabad (Firozabad)"

(copied from the SLP paper book)

- xii) Appellant No.1 and its partners did not avail the opportunity given by the Sub Divisional Officer and did not deposit the bid money with 5% excess amount. Instead, appellant Nos. 2 to 5 filed objections under Rule 285 of the U.P. Zamindari Abolition and Land Reforms Rules before Commissioner, Agra Division, Agra (for short, 'the Commissioner') and questioned the auction. The Commissioner took cognizance of the efforts made by the Corporation to auction the mortgaged property for recovery of its dues and passed detailed order dated 26.2.2003, paragraph 5 of which reads as under:

"5. Perusal of the file shows that 1/4th of the auction amount was deposited by auction buyer on the day of Auction and 3/4th amount within 15 days of the Auction. In such cases, the Auction not being approved, where no one had

auction buyer has suffer financial loss. On the other hand the Government comes to disrepute. The Rule 285 (h) provided that a defaulter may get his property released by depositing all the amounts within 30 days from the date of auction. A defaulter must give an application to the Ziladhikari and deposit the balance amount within a period of one month but this amount had not been deposited by them. At this stage ordinarily no balance amount is deposited and the opportunity to deposit the dues within Rule 285(h) and to release his attached property remains no longer available to the defaulter. However, in the interest of justice, the learned counsel for defaulter was asked in the course of arguments that if his property was more valuable and be considered that it had been auctioned for lesser value this opportunity may now be given to him. Thereon, it was clearly pointed out by the defaulter that their financial condition was not good and they were not in a position to deposit the amount. In this situation it would be held that the defaulters have no interest in depositing the outstanding amount they intend to postpone the auction proceeding by one way or the other. In this case, several dates have been fixed for auction for a higher amount. The case of the objectors that the property was auctioned the lesser price in not sustainable. On examination of the case thoroughly, I find that the points raised by the objectors are baseless which have no justification for cancellation of the auction proceeding."

(xiii) On the one hand, the appellants repeatedly conveyed their unwillingness to pay the dues of the Corporation, just after two days of passing of order by the Commissioner, one of the partners, namely, Shri Rajiv Kumar Paliwal submitted representation dated 28.02.2003 to the Managing Director of the Corporation and requested that the recovery certificate may be withdrawn. The letter of Shri Rajiv Kumar Paliwal is reproduced below:

28.02.2003

The Managing Director,
U.P.F.C.,
Kanpur

Subject:Auction of property bearing Plot No.428/429 of
Mehrabad (within Municipal limits) Shikohabad.

Dear Sir,

It is respectfully to submit that R.C. is being executed for the last one year. The last auction was held on 8/11/02 for Rs.58 lacs.

Since property in question is costly, we humbly request you to kindly allow us to initiate sale proceedings by stopping action against R.C. as referred to above. Kindly note that the R.C. amount is approximately one crore rupees and we are hopeful to meet the full amount of R.C.

We will be highly obliged if R.C. is withdrawn without further loss of time as delay in action will cause us irreparable financial loss.

Submitted for your kind action.

Thanking you,

Yours faithfully,

For Paliwal Glass Works
(Rajiv Kumar Paliwal)
Partner."

(xiv) On the same date, the Managing Director of the Corporation recorded the following note:

"CRM (Kulsh)
Chairman UPFC

IDC spoke to me yesterday to withdraw RC & to allow them to pay their dues by sale of their property by them. They met me today. Let RC be withdrawn & permission be given to them for sale along with H.O. representative.

You are nominated as H.O. representative. Out of the sale amount Recovery charges of Collector who is selling property at 58 lakh will be adjusted along with our dues."

(xv) Simultaneously, the Managing Director of the Corporation sent two communications dated 28.02.2003 to District Magistrate, Firozabad, one in Hindi and the other in English. In the communication sent in Hindi, the Managing Director of the Corporation referred to the decision allegedly taken by the State Government for withdrawal of the recovery certificate. In the English communication, the Managing Director recorded that the State Government had issued instructions for withdrawal of the recovery certificate and the borrowers had informed about the possibility of bringing better buyer and directed the District Magistrate not to confirm the auction.

After perusing the communications sent by the Managing Director of the Corporation to District Magistrate, Firozabad, we enquired from Shri Rakesh Uttamchandra Upadhyay whether the file made available to him contains any document to show that the State Government had taken a decision and issued instructions for withdrawal of the recovery certificate issued against the appellants. In reply, learned counsel stated that the file does not contain any such document. He also gave out that representation dated 28.2.2003 made by Shri Rajiv Kumar Paliwal was neither sent to the State Government nor any communication was received from it on the issue of withdrawal of the recovery certificate and non-confirmation of the highest bid given by respondent No.6.

De-hors the statement of the learned counsel for the Corporation, we find that the representation made by Shri Rajiv Kumar Paliwal was addressed to the Managing Director of the Corporation and not to the Government. Even a copy thereof was not endorsed to the State Government. Therefore, the latter did not have any occasion to issue instructions for withdrawal of the recovery certificate.

From what we have mentioned above, it is clear that the then Managing Director of the Corporation had suo motu sent communications to the District Magistrate for withdrawal of the recovery certificate and in order to save himself from the accusation

of having acted for extraneous considerations, the concerned officer falsely recorded that he was acting on the basis of the decision taken by the State Government and/or the instructions issued by it. To put it differently, the then Managing Director of the Corporation had fabricated the record and mischievously incorporated the non-existent decision of the State Government for withdrawal of the recovery certificate.

We have no doubt that if the aforesaid communications had not been issued by the Managing Director of the Corporation, respondent No.6 would not have spent time, money and energy in prosecuting unnecessary litigation and the High Court and this court would have been spared of the botheration to deal with unnecessary litigation.

With the above observations, the appeal is disposed of.

As a sequel to the above, all pending interlocutory applications are disposed of.

CONTEMPT PETITION(C) NO.7/2006 IN CA NO.5933 OF 2005

In view of the order passed today in Civil Appeal No. 5933 of 2005, the contempt petition is disposed of as infructuous.

.....J.
[G.S. SINGHVI]

.....J.
[V. GOPALA GOWDA]

NEW DELHI;J.
SEPTEMBER 26, 2013. [C. NAGAPPAN]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5950 OF 2005

Raj Kumar Paliwal and others ..Appellants

versus

Commissioner, Agra and others ..Respondents

O R D E R

This appeal is directed against order dated 21.3.2003 by which the learned Single Judge of the Allahabad High Court dismissed the writ petition filed by the appellants and declined their prayer for quashing order dated 26.2.2003 passed by Commissioner, Agra Division, Agra (for short, 'the Commissioner') and for permitting them to sell the mortgaged property in the open market.

We have heard Shri Altaf Ahmed, learned senior counsel appearing for the appellants, Dr. Rajiv Dhawan, learned senior counsel for respondent No.4 and Shri Rakesh Uttamchandra Upadhyay, learned counsel for U.P. Financial Corporation and carefully scrutinised the record.

A perusal of the order under challenge shows that the

learned Single Judge took cognizance of various writ petitions filed by the appellants and Civil Misc. Writ Petition No.7044 of 2003 filed by their sisters, namely, Smt. Asha Ghaube and Smt. Shobha Sharma questioning the recovery proceedings, which was dismissed by the Division Bench of the High Court on 18.2.2003 with scathing criticism of their conduct and observed:

"In the present case, objections were taken before the Commissioner stating that the attachment was not in accordance with law. Petitioners were not served with warrants of Z.A. Form 73 and 73 D. Rakesh Kumar Paliwal, one of the partners of firm died on 20.3.2000 before the auction was held and that the auction should have been held within thirty days of issuance of notification on Z.A. Form 74. The Commissioner has found that the property had been put to auction several times. The attachment took place immediately after the recovery certificate issued. Since the auction had been held on number of occasions and could not be finalized due to inadequacy of price, the service, of notice on Z.A. Form 69 was not relevant at all. He has also found that it was not necessary to issue fresh notification within 30 days as it was the adjourned date of auction on 2.2.2002 in which the highest bid was Rs.56 lacs. The proceedings were thereafter adjourned and fixed on 8.11.2002 in which the highest bid was Rs.58,00,000/- and since it was the adjourned date of auction, it is not necessary to re-notify the auction. 1/4th amount of the bid money was deposited on the date of auction and the rest amount had been got deposited within 15 days. The Commissioner found that in such cases, if the approval is not granted, the auction purchaser has to bear economic loss while on the other hand, the public also loses confidence in repeated public auction. The petitioner could have deposited the entire amount within thirty days.

Sri J.J. Munir, learned counsel for petitioner, submits that on the instructions of the State Government the U.P. Financial Corporation has written to the District Magistrate, Firozabad to withdraw the recovery. However, the said order has not been annexed. The Commissioner met this objection by stating that after the recovery certificate has been issued and the property has been put to auction on number of times as well as the auction has been held, which is subject matter of confirmation, the recovery certificate could not have been withdrawn.

The letter, conveying the decision of State Government to withdraw the recovery, has not been annexed. A copy of the Fax message, dated 28.2.2003, purportedly issued by the Managing Director of the Corporation to the District Magistrate, Firozabad, does not refer to any letter number or the date of receipt from the State Government to withdraw the recovery. It has been stated in this message that the borrowers have informed the State Government that there would be a better buyer of more than entire recovery certificate amount. Sri J.J. Munir was not able to inform the Court whether petitioners had made any representation to the State Government. The contents of the representation made and the information supplied to the State Government have not been brought on record. There is absolutely no material on record to show that the property valued is at Rs.4 crores. Petitioners have not relied upon any report of valuer in this regard. The Commissioner has observed in his order that the property has been put to repeated auctions and could only fetch Rs.58 lacs. The auction purchaser has deposited the entire amount.

A number of writ petitions have been filed by petitioners to stall the auction proceedings. The last attempt was made by them

by filing writ petition through their sisters, and this court had already held that they do not come before the Court with clean hands. The judicial proceedings cannot be used to manipulate and obstruct the proceedings."

In his order, the Commissioner considered various objections filed by the appellants against the highest bid given by respondent No.4 and rejected the same by assigning cogent reasons. The Commissioner also gave an opportunity to the appellants to purchase the mortgaged property by paying higher price but the appellants did not avail the same.

The learned Single Judge opined that the writ petition filed by the appellants was nothing but another attempt to subvert the proceedings initiated by the Corporation for recovery of its dues.

In our opinion, the reasons recorded by the learned Single Judge for refusing to quash the order of the Divisional Commissioner are legally correct and the impugned order does not call for interference under Article 136 of the Constitution.

It is also apposite to mention that by a separate order passed today, we have disposed of C.A. No.5933 of 2005 - M/s. Paliwal Glass Works and others v. State of Uttar Pradesh and others. In that order, we have extensively referred to the background facts and held that the State Government had not taken any decision to withdraw the recovery certificate issued against the appellants and the Managing Director of the Corporation had sent misleading communication to District Magistrate, Firozabad in that regard. A reference has also been made to communication dated 11.11.2002 sent by Sub-Divisional officer, Shikohabad to the appellants giving them an opportunity to deposit the bid amount + 5%, but they did not avail the opportunity and filed objections under Rule 285 of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, which were rejected by the Commissioner.

In view of the above, it must be held that this appeal is wholly meritless and is liable to be dismissed as such. Ordered accordingly.

As a sequel to the above, all pending interlocutory applications are disposed of.

.....J.
[G.S. SINGHVI]

.....J.
[V. GOPALA GOWDA]

NEW DELHI;J.
SEPTEMBER 26, 2013. [C. NAGAPPAN]

ITEM NO.101 COURT NO.2 SECTION XI
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5933 OF 2005

M/S. PALIWAL GLASS WORKS AND ORS. Appellant (s)

VERSUS

STATE OF U.P. AND ORS. Respondent(s)
(With appln(s) for exemption from filing O.T., directions, taking additional document on record, permission to file additional documents, PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS and office report)
WITH CONMT.PET.(C) NO. 7 of 2006 IN CIVIL APPEAL NO.5933/2005
(With office report), CIVIL APPEAL NO. 5950 OF 2005

Date: 26/09/2013 These Appeals and Petition were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Altaf Ahmed, Sr. Adv.

Mr. Bhargava V. Desai, Adv.
Mr. Siddhartha Chowdhury, Adv.
Mr. Shreeyas Mehrotra, Adv.

For Respondent(s)
No.6

Dr. Rajeev Dhawan, Sr. Adv.
Mr. Gautam Narayan, Adv.
Mr. T.V.S.R. Shreyas, Adv.

Mr. Rakesh Uttamchandra Upadhyay, Adv.

Mr. Mukul Singh, Adv.
Mr. Anuvrat Sharma, Adv.

Mr. Shirish Kumar Mishra, Adv.
Mr. Ajay Kr. Singh, Adv.
Mr. S.N. Pandey, Adv.

UPON hearing counsel the Court made the following
O R D E R

Civil Appeal No.5933 of 2005 is disposed of in terms of the signed order.

In view of the order passed today in Civil Appeal No. 5933 of 2005, the contempt petition no. 7 of 2006 is disposed of as infructuous.

Civil Appeal No. 5950 of 2005 is dismissed in terms of the signed order.

As a sequel to the above, all pending interlocutory applications are disposed of.

| (Parveen Kr.Chawla)
| Court Master

| | (Phoolan Wati Arora)
| | Court Master

[signed orders are placed on the file]