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IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No. 18837 of 2022
(Through hybrid mode)**

Odisha Jesuit Society, ***Petitioner***
Bhubaneswar

-versus-

State of Odisha and others ***Opposite Parties***

Advocates appears in the case:

For petitioner: Mr. Suryakanta Dash, Advocate

For Opp. Parties: Mr. G.N. Rout, ASC
Mr. Amitav Das, Advocate
Mr. Rakesh Nayak, Advocate

CORAM:

**JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA**

Date of Hearing on 10.11.2022, 02.12.2022,17.02.2023 and 02.05.2023

Date of judgment: 18.05.2023

ARINDAM SINHA, J.

1. Petitioner is purchaser from Odisha State Financial Corporation [(OSFC)/opposite party no.4]. The purchase was made by deed of transfer dated 29th January, 2003 executed by the corporation in favour

of petitioner. Three recital clauses and first witness clause are reproduced below.

“xx xx xx xx xx xx xx xx

Whereas the transferor has taken over possession of the industrial concern, M/s. Green Valley Limes (P) Ltd. on 21.11.96 with a view to exercising the right of the transferor to transfer and realize the mortgaged and hypothecated property.

Whereas the assets available at the time of takeover U/s.29 of the SFCs Act, 1951; were offered for transfer to general public by calling for offers.

Whereas the transferee offered to transfer the assets more fully described in the schedule below on outright transfer basis for a consideration of Rs.25,00,000.00. (Rupees Twenty five Lakh only).

xx xx xx xx xx xx xx xx

NOW THIS INDENTURE WITNESSETH AS FOLLOWS

*That in consideration of Rs.25,00,000/- the transferee has paid the full amount i.e., Rs.25,00,000/- to the Corporation to which the Corporation duly hereby acknowledge and **do hereby convey and transfer the right, title over the schedule land, building and other structures thereon** with subservient right of light, air, passage to the*

public road and drainage and all other easement right which the borrower enjoyed to the exclusion of the borrower and his successor in favour of the transferee and the transferee being already in possession of the schedule property in terms of a separate agreement to transfer, shall be deemed to be the owner in possession from this day and shall enjoy all easement right as stated above.

xx xx xx xx xx xx xx xx”

(emphasis supplied)

2. Mr. Dash, learned advocate appears on behalf of petitioner and submits, the corporation took possession of the industrial unit, in exercise of power under section 29 in State Financial Corporations Act, 1951. His client thereafter sought for settlement of the property, in its favour. There was direction by the administration to do so. A third party appealed against the direction and the Additional Sub-Collector passed order dated 27th August, 2015 saying that the transfer is invalid. His client petitioned for revision. By impugned order dated 29th April, 2020, the revision was disallowed.

3. Mr. Nayak, learned advocate appears on behalf of OSFC. He too submits, the appeal was at instance of a third party. It ought not to have been entertained. His client duly acted in exercise of power under

section 29. He draws attention to letter dated 17th August, 1999, written by his client to the Tahsildar. Text of the letter is reproduced below.

“With reference to the above, this is to inform you that the assets (land & building) of the erstwhile unit M/s. Green Valley (P) Ltd., Gochhapada Road, Phulbani were seized by the Corporation u/s.29 of SFCs Act 1951 on dated 21.11.96 due to non-payment of dues and subsequently sold in favour of M/s. Orissa Jesuit Society, Loyola Bhawan, 58, Forest Part, Bhubaneswar on outright purchase basis. The purchaser has taken over possession of the land and building on 20.7.99.

Now for transfer of title deed in the name of the purchaser, you are requested to inform us the cess dues lying against the old unit, so that appropriate action for payment of the said dues shall be taken at our end.”

4. Mr. Rout, learned advocate, Additional Standing Counsel appears on behalf of State. He draws attention to order dated 27th August, 2015 made by the Additional Sub-Collector. He demonstrates from reasoning given therein that the lease was for industrial purpose. Conditions of the lease had not been fulfilled by the lessee. Initially the land was recorded in Anabadi Khata and, therefore, purpose and conditions of the lease became important. Since lease conditions were violated, the land was be returned to Government Khata and it was so

directed. There is nothing wrong in impugned order. The lessee did not have authority to mortgage the land.

5. He draws attention to paragraph-8 in the counter filed by State. The paragraph is reproduced below.

*“8. That, the Appellate Authority on receipt of field report of the Amin engaged for field verification has observed that the purpose of lease and the condition of lease was not fulfilled by the lessee. Further, observed that **the lessee has not obtained any written permission from Collector, Kandhamal for transfer of the whole land or part of lease land as per the condition of the lease. Since, the Odisha State Financial Corporation has no right, title and interest over the lease land which was granted by the Government for Industrial purpose. The Mortgage and the subsequent sale transactions without written permission is void.**”*

(emphasis supplied)

He next draws attention to lease deed dated 10th June, 1981, granted by the authority to lessor Ganesh Lime Products Private Limited. He relies on a clause and provisos thereunder, reproduced below.

*“ii. That **the Lessee shall not without the consent in writing of the Lessor assign or underlet or otherwise part with the possession of the whole of the demised land or***

any part thereof, which consent shall not be unreasonably with-held.

PROVIDED THAT in the case of reconstruction of the Lessee or amalgamation of the Lessee with any new Company or Corporation formed to take over the Lessee this Covenant shall not apply to a transfer of the demised land to such reconstructed or new Company or Corporation.

*PROVIDED FURTHER that **this Covenant shall not apply to any transfer or assignment of the said demised land or any part thereof by way of mortgage for securing loans for the under taking and/or for completing the construction work of the factory or other works of the Lessee and/or in favour of the Trustees of Debenture Trust in respect of any issue of debentures or debenture stock which may be here-after issued by the Lessee.***

ORISSA (emphasis supplied)

He also relies on another clause, reproduced below.

“ii. That upon the breach or non-observance of any of the conditions of the Lessee herein granted, the Lessor may declare that the Lease has been determined and the Collector, Boudh-Kandhamal or any Officer or person appointed on that behalf by the Lessor shall be entitled to re-enter and take possession of the demised land and of the buildings and other structures erected thereupon and materials thereof, as well as the stores and stocks.

PROVIDED HOWEVER that before such re-entry the Lessor shall give to the Lessee written notice of his intention so to do and the Lessee shall have the right to remedy the breach or non-observance complained of within three months from the date of such notice in which event the Lessor shall not be entitled to re-enter and take possession.

On query from Court Mr. Rout submits, there was no necessity to initiate resumption proceeding. This was because of said appellate order and impugned order in revision, whereby transfer made to petitioner was found to be illegal. On further query from Court Mr. Rout refers to impugned order, wherein upon reliance of field verification report of the Tahsildar, there is clear record that petitioner was and still is in possession. Mr. Dash points out, impugned order also records the possession by possession letter dated 20th July, 1999.

6. First and foremost, it must be said that transfer to petitioner was made, as aforesaid, by deed of transfer dated 29th January, 2003. Transferor was the financial corporation and transferee, petitioner. Question does not arise of breach of covenant by original lessee, who was not transferor. The question that does arise is whether opposite party no.4 could have so transferred.

7. Section 29 in State Financial Corporations Act, 1951 clearly mandates the financial corporation to have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property, inter alia, pledged or mortgaged to the Financial Corporation. Furthermore, provision is also that any transfer of property made by the corporation, in exercise of its powers, shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property. Other provisions are also there in the section. As such, it is sufficient that the transfer was duly made and there is no challenge thereto. The challenge or resistance by State is based on violation of covenants made by original lessee of lease conditions. However, here, the right and interest of the lessee stood transferred not by it but by the corporation, as permissible by law.

8. We have looked at original lease deed dated 10th June, 1981, including relied upon clauses, reproduced above. We notice that second proviso under first sub-clause (ii) relied upon by State, clearly says that the covenant does not apply to any transfer or assignment of the demise or any part thereof by way of mortgage on, inter alia, securing loan for the undertaking. There is nothing on record to show that the mortgage of the property created by original lessee was illegal. Accordingly, the

corporation acted in exercise of its power to deal with the demise that it had taken possession of being the property mortgaged to it for financial accommodation obtained by original lessee.

9. Impugned order in revision is set aside and quashed. Concerned authority, Mr. Dash submits is the Collector, who is directed to carry out direction in order dated 24th September, 2014 made by the Assistant Settlement Officer (ASO), within four weeks of communication. This is because petitioner is assignee of the lease on same terms by operation of section 29.

10. The writ petition is disposed of.

(Arindam Sinha)
Judge

(S.K. Mishra)
Judge

Sks