

SUPREME COURT OF INDIA

Kerala Financial Corporation

Vs.

Vincent Paul & Anr.

C.A.No.3446 of 2003

(P.Sathasivam and B.S.Chauhan,JJ.,)

14.03.2011

JUDGMENT

P.Sathasivam,J.,

1. These appeals are filed against the judgments and orders dated 27.11.2001 and 22.01.2002 passed by the High Court of Kerala at Ernakulam in A.S. No. 557 of 2000 and O.P. No. 33834 of 2001 respectively.

2. Brief facts:

“(a) The Kerala Financial Corporation (in short "the KFC"), a Public Sector Undertaking, is a State Financial Corporation.

On 24.10.1977, a loan of Rs.50 lakhs was sanctioned by the KFC to a firm called Cable India (hereinafter referred to as "the Firm") on hypothecation of land and machinery. In view of consistent failure of the firm to repay the loan, on 11.09.1987, the KFC took over the firm under Section 29 of the State Financial Corporations Act, 1951 (in short "the Act"). On the same day, the Firm filed O.S. No. 2194 of 1987 with I.A. No. 1776 of 1987 for temporary injunction restraining the KFC from taking over the firm.

(b) On 07.10.1988, a notice was published by the KFC in Mathrubhumi Malayalam Daily inviting tenders from intending buyers for purchase of the property. The last date for submission of tender was 31.10.1988. Pursuant to the same, only one bidder, i.e. one Vincent Paul, submitted the tender quoting an amount of Rs. 7.5 lakhs as bid amount and also deposited the earnest money of Rs. 10,000/- as stipulated in the tender notice. On the same day, after discussion and negotiation between the KFC and Vincent Paul, the KFC issued a letter to the said Vincent Paul expressing its willingness to sell the property for Rs. 8.25 lakhs subject to certain conditions.

(c) By letter dated 01.11.1988, the Firm filed O.S. No. 2109 of 1988 before the Munsiff Court, Thrissur, seeking injunction to restrain the KFC from taking any action pursuant to the auction/sale proceedings and on the very same day the learned Judge directed to maintain status quo as on 31.10.1988.

(d) By letter dated 05.11.1988, the KFC informed Vincent Paul that further proceedings of the sale could be finalized only after vacating the temporary injunction ordered by the Munsif Court, Thrissur. On 10.11.1988, I.A. No. 1776 of 1987 in O.S. No. 2194 of 1987 filed by the firm was dismissed. On 17.01.1992, O.S. No. 2109 of 1988 was also dismissed and the injunction was vacated. Against the said order, on 26.02.1992, the Firm filed A.S. No. 56 of 1992 before the District Judge, Thrissur. In the meantime, on 03.02.1993, the first suit i.e. O.S. No. 2194 of 1987 itself was dismissed. Against the said order, the Firm filed AS. No. 146 of 1993 before the District Judge, Thrissur.

(e) On 06.12.1994, Vincent Paul filed a suit bearing O.S. No. 1522 of 1994 before the subordinate Judge, Thrissur for specific performance of the agreement of sale. Subsequent to the filing of the said suit, the appeals i.e. A.S. No. 56 of 1992 and A.S. No. 146 of 1993 were dismissed by a common judgment dated 10.04.1995 by the Addl. District Judge, Thrissur. The suit for specific performance i.e. O.S No 1522 of 1994, filed by Vincent Paul was also dismissed by the Sub-ordinate Judge, Thrissur, vide judgment dated 07.03.2000, holding that there is no concluded contract between the parties so as to entitle the plaintiff to a decree for specific performance. Against the said order, on 18.09.2000, Vincent Paul filed A.S. No. 557 of 2000 before the High Court of Kerala.

(f) On 17.09.2001, the KFC invited fresh tenders for the sale of assets. One K.K. Ummer Farook responded to the tender by making an offer of Rs. 55,55,555/- for the land and building which was the highest amount among the four offers received. In the meantime, by judgment dated 27.11.2001, the Division Bench of the High Court allowed A.S. No.557 of 2000 filed by Vincent Paul, consequently decreed the suit filed by him. Against the said judgment, the KFC filed Civil Appeal No. 3446 of 2003 before this Court by way of special leave petition. Challenging the same judgment, K.K. Ummer Farook filed Civil Appeal No. 3450 of 2003 before this Court by way of special leave petition. K.K. Ummer Farook also filed O.P. No. 33834 of 2001 before the High Court praying for direction to convey the property being the highest bidder in the second tender and the same was dismissed as infructuous by the High Court vide judgment dated 22.01.2002. Against the said judgment, K.K. Ummer Farook filed C.A. No. 3451 of 2003 before this Court by way of special leave petition.”

3. Heard Mr. Rajendran Nair, learned senior counsel for the appellant in C.A.No.3446 of 2003, Mr. V. Giri, learned senior counsel for the appellant in C.A. Nos. 3450 and 3451 of 2003 and Mr. C.S. Rajan, learned senior counsel for respondent No.1 in C.A. Nos. 3446 and

3450 of 2003, Mr. R. Sundarvardan, learned senior counsel for respondent No.2 in C.A.No.3446/2003 and respondent No.3 in C.A.No.3450 of 2003.

4. During the course of hearing, Mr. P.V. Dinesh, learned counsel appearing for the KFC filed additional affidavit stating that the KFC, formed in 1953, is a statutory Corporation constituted under the Act and more than 95% of the shares are held and controlled by the State Government. The Board is constituted under Section 10 of the Act. According to him, the Managing Director is appointed by the State Government and its Chairman is the nominee of Small Industries Development Bank of India (in short "SIDBI") and substantial re-finance is granted from SIDBI for sanctioning loans. He pointed out that the procedure for the sale is as per the standing orders and recovery policy as approved by the Board from time to time and the recovery policy may change every year for settlement of NPA loan accounts. According to the procedure that was followed in 1988, a sale proclamation shall be published in a local daily newspaper in Vernacular language with details of property and date of opening tender or auction. The tender has to be submitted to the Managing Director at the Head Office and the opening of tender/auctioning has to be conducted at the Head Office. The sale will be confirmed by the Managing Director. Officers of the Corporation will value the properties and 80% of that valuation will be considered as upset price for the purpose of sale of properties.

5. He further pointed out the procedure which has been followed in the present case. He stated that the notice to defaulter/promoter under Section 29 was issued and thereafter, the assets were taken by the Branch/District Manager authorized by Managing Director. Valuation of assets was done by the officers of KFC. Land valuation was done by the Legal Officer in consultation with Village Officer concerned and by conducting local enquiry for fixing market value. Valuation of building, plant and machinery was done by Technical Officer based on the norms approved by the Institute of Engineers. The tender notice was published in two newspapers for the sale of the property.

6. Though these details have been furnished by the counsel for the KFC during the course of hearing, the fact remains that the State Government has not framed rules or guidelines for sale of public properties by way of tender or auction. KFC is incorporated under Section 3 of the Act. Section 29 of the Act empowers the KFC to attach and sell the security in discharge of debts. It gives KFC the right to take over possession of the security offered while taking the loan and the right to transfer/sale the same as if KFC is the owner. The money acquired after such transfer/sale of the secured property shall be used in discharge of debts due to KFC including all expenses incurred by it. The residue amount, if any, is to be paid to the person entitled. Section 31 of the Act also provides the same remedy but the procedure goes through the District Judge. In terms of this Section, KFC has to apply to the District Judge in whose jurisdiction the property may lie for an order of sale. However, Section 29 provides for speedy recovery.

7. The procedure of attachment and sale of property though available under the Code of Civil Procedure, 1908, it shall apply only when there is a decree at the instance of any of the

parties. In the present case, the KFC had not proceeded through the Civil Court but has taken independent action under Section 29 of the Act.

8. Coming to the decree for specific performance granted by the High Court in favour of Vincent Paul, by notice under Ex. B1, KFC invited tenders from intending buyers for purchase of immovable property attached by them. The last date for submission of tender was 31.10.1988. Vincent Paul submitted a tender quoting an amount of Rs. 7.5 lakhs as bidding amount. He also deposited a sum of Rs.10,000/- for earnest money deposit as stipulated in the tender notice. One of the conditions of tender was that the successful bidder whose bid is accepted should pay 25% of the purchase price offered within one week, if and when the tender is accepted, the balance amount be paid within one month thereafter. When the tender was opened on 31.10.1988, the amount quoted by Vincent Paul was noticed as the highest one. After discussion and negotiation between the KFC and Vincent Paul, the price was ultimately fixed at Rs. 8.25 lakhs. Thereafter, letter dated 31.10.1988 (Ex. A2) was issued by the KFC to Vincent Paul calling upon him to pay the balance amount of Rs.8.15 lakhs after appropriating Rs.10,000/- paid by him towards Earnest Money Deposit. According to Vincent Paul- the plaintiff, as per Ex. A2 the plaintiff has to deposit 25% of the amount payable within a week thereof i.e., on or before 05.11.1988 and the balance amount within one month thereafter. It is his grievance that inasmuch as the defendant- KFC did not abide by the agreement to sell despite his compliance, he filed suit for specific performance. On the other hand, it was contended by the defendant-KFC that there was no concluded contract and Ex. A2 has not been accepted by the plaintiff. According to them, Ex. B1 was only a tender notice and the suit for specific performance is not maintainable and in any event is barred by limitation since it was filed only in 1994. Though the trial Court accepted the case of the defendant and dismissed the suit, the High Court in appeal filed by the plaintiff granted decree for specific performance.

9. Whether the plaintiff-Vincent Paul has made out a case for discretionary relief of specific performance? For this, it is useful to refer the letter dated 31.10.1988 of the KFC addressed to Vincent Paul which reads as under:

"KERALA FINANCIAL CORPORATION
HEAD OFFICE: VELLAYAMBALAM, T
RIVANDRUM-695 033 No. BL.1158/R/88
Date : 31.10.1988
Shri Vincent Paul Pellissery House
P.O. Ammadam, Trichur.

Sir, Sub: Sale of the assets of M/s Cables India Punkunnam, Trichur.

Ref: Your tender letter dated 31.10.1988 and further discussion with us.

With reference to the above we may inform that we are agreeable to sell the assets viz. the landed properties comprised in Sy. Nos. 1856/6 (19 cents) and 1856/7 (43

cents) together with building thereon and machinery including the electrical fittings and accessories for Rs.8,25,000/- subject to compliance of the following conditions:-

1. 25% of the sale consideration should be remitted to us within a week from the date of confirmation of the transaction.
2. The balance should be remitted in a lump sum within one month from the date of remittance of the initial payment.
3. All the formalities in this regard should be complied within two months. Leaving the amount of Rs.10,000/- remitted on 31.10.1988, the balance consideration amounting to Rs.8,15,000/- should be remitted to the Corporation to execute the sale deed and transfer the possession to you.

Yours faithfully, Sd/-
MANAGER (RECOVERY)"

10. According to the plaintiff-Vincent Paul, it was agreed to by him as to the offer of Rs. 8.25 lakhs by the KFC and in view of the fact that he has remitted a sum of Rs.10,000/- on 31.10.1988 as Earnest Money Deposit, he was ready to pay the balance amount but the sale was not completed due to failure on the part of the KFC. Learned senior counsel for Vincent Paul submitted that communication dated 31.10.1988 is a concluded contract and no further confirmation is required in this regard and the plaintiff has to pay the balance amount and the KFC has to execute the sale deed and transfer the possession to him. The stand taken by the learned senior counsel for Vincent Paul was totally denied by the KFC by submitting that the communication dated 31.10.1988 is not absolute but subject to confirmation by Vincent Paul within a week. Admittedly on receipt of the communication dated 31.10.1988 from the KFC, the plaintiff had not sent any reply in the form of confirmation of the said transaction as provided in clause (1) of Ex. A2. In such circumstance, it cannot be contended that there is a concluded contract between the KFC and Vincent Paul. After 31.10.1988, KFC sent another letter on 05.11.1988 intimating the plaintiff that further proceedings can be finalized only after vacating the temporary injunction ordered by the Munsif Court, Thrissur. The said letter has not been disputed by Vincent Paul. Inasmuch as the KFC has agreed to sell the property in question for Rs.8.25 lakhs subject to compliance of three conditions mentioned in Ex. A2, unless the other party to the contract, namely, Vincent Paul conveys his willingness within a week with regard to the terms stipulated therein, he cannot take advantage of mere remittance of a sum of Rs.10,000/- towards Earnest Money Deposit as stipulated in Ex. B1. These aspects have been correctly appreciated by the trial Court and it rightly dismissed the suit filed by Vincent Paul. On the other hand, the High Court, on an erroneous assumption as to the communication dated 31.10.1988 concluded that there was a valid contract and granted a decree for specific performance. We are unable to accept the reasoning of the High Court for granting decree for specific performance in favour of Vincent Paul.

11. During the pendency of the appeal filed by Vincent Paul in the High Court, the KFC invited fresh tenders for the sale of assets of the Firm on 17.09.2001. One K.K. Ummer

Farook responded to the tender by making an offer of Rs. 55,55,555/-for the land and building which was the highest amount among the four offers received. By letter dated 17.11.2001, the KFC informed K.K. Ummer Farook that they are unable to proceed with the sale in view of the pendency of A.S. No. 557 of 2000 before the High Court. In the meantime, by judgment dated 27.11.2001, the Division Bench of the High Court allowed A.S. No.557 of 2000 filed by Vincent Paul, consequently decreed the suit filed by him. Against the said judgment, the KFC filed Civil Appeal No. 3446 of 2003 and K.K. Ummer Farook filed Civil Appeal No. 3450 of 2003 before this Court by way of special leave petition. K.K. Ummer Farook also filed O.P. No. 33834 of 2001 before the High Court praying for direction to convey the property being the highest bidder in the second tender and the same was dismissed as infructuous by the High Court vide judgment dated 22.01.2002. Against the said judgment, K.K. Ummer Farook filed C.A. No. 3451 of 2003 before this Court. It is not in dispute that while ordering notice in the S.L.P.(C) No 7072 of 2002 (C.A. No. 3446 of 2003) filed by the KFC even on 12.04.2002, this Court stayed the execution of the decree for specific performance which shows that the land and building and all accessories are with the KFC and the same position continues even today.

12. We have already concluded that the decree for specific performance granted by the High Court cannot be sustained. We also observed in the earlier part of our judgment that though the KFC has initiated proceedings under Section 29 of the Act, admittedly, the State has not framed Rules or guidelines in the form of executive instructions for sale of properties owned by them. Till such formation of Rules or guidelines or orders as mentioned above, we direct the KFC to adhere the following directions for sale of properties owned by it:

“(i) The decision/intention to bring the property for sale shall be published by way of advertisement in two leading newspapers, one in vernacular language having sufficient circulation in that locality.

(ii) Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) by inviting tenders from the public; or

(c) by holding public auction; or

(d) by private treaty. Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

(iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.

(vii) Reserve price means the price with which the public auction starts and the auction bidders are not permitted to give bids below the said price, i.e., the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffer substantial injury by the sale.”

13. In view of our discussion and conclusion, we are satisfied that the KFC has not strictly followed the above procedure in bringing the property for sale. Accordingly, we set aside the judgment and order passed by the High Court granting decree for specific performance in favour of Vincent Paul and all other sale transactions either in the form of tender or auction in respect of the property in question. We direct the KFC to first issue the advertisement calling for tenders by way of public auction by following the directions mentioned above. Before resorting to such recourse, if the KFC has accepted any deposit from any of the parties by way of tender or bid, the same shall be returned within a period of 30 days to the respective parties with simple interest @ 9% p.a. from the date of such deposit till it is repaid to the parties concerned.

14. All the appeals are disposed of on the above terms.