

RAJASTHAN HIGH COURT

Satya Narain Girdhari Lal

Vs.

Rajasthan Financial Corporation

D. B. C.S. A. No.930 of 1998
(Shiv Kumar Sharma and Guman Singh, JJ.)

16.04.2008

JUDGEMENT

Shiv Kumar Sharma, J.

1. The Rajasthan Financial Corporation (for short 'RFC') granted term loan in the sum of Rs. 1,55,000/- to Ram Niwas Gupta (for short 'RNG') who established factory for manufacturing and processing Sodium Silicate at 246, *Saloda Industrial Area, Gangapur City*. Since RNG committed default in making payment of installment the RFC issued a legal notice under Section 29 of the State Financial Corporations Act, 1951 and took possession of the unit on February 7, 1987. Land, building and machinery of the unit were put to open auction and the sale was finalized and possession of the entire unit was handed over to the appellant on February 28, 1989 after executing agreement on February 27, 1989 by RFC in favor of appellant. RNG filed writ petition seeking declaration of the said transfer as null and void. Learned single Judge vide order dated August 28, 1998 allowed the writ petition. Hence this appeal.....

2. We have heard learned counsel for the parties.

3. A look at the material on record demonstrates that writ petition was dismissed in default on May 16, 1995. RNG thereafter filed restoration application which was allowed by learned single Judge on November 15, 1996 in the presence of counsel for RNG and RFC. Since counsel for appellant was not present on that date, it was necessary to make aware either to appellant or his counsel about the restoration of the writ petition. Learned single Judge however did not choose to do so and decided writ petition setting aside the auction sale made by the RFC in favor of the appellant. Direction was also issued to take back the possession of the unit from the appellant.

4. Principles of natural justice demand that opportunity of effective hearing be afforded to the appellant who is in possession over the property before dispossessing him from it.

5. Their Lordships of the Supreme Court in *Lord Shiva Birajman in HB Yogalaya v. State of U. P.*¹ indicated in para 11 thus :-

"Admittedly, the appellants are in possession and enjoyment of the properties. In the earlier proceedings of 1976, the respondents had undertaken not to demolish the buildings or dispossess the appellants except in accordance with law. Otherwise also principles of natural justice demand that a show cause notice and hearing be given before demolishing or dispossessing a person from the properties of which he is in possession."

6. Since the impugned order is against the principles of natural justice we have no option but to quash it.

7. For these reasons, we allow the appeal and set aside the impugned order. We remit the matter to the learned single Judge with a request to decide it afresh on merits after affording opportunity of hearing to the appellant. The appellant if he so choose may file reply to the writ petition within one month from today. The parties are directed to appear before the learned single Judge on May 19, 2008. Looking to the fact that the matter is very old, we request learned single Judge to decide it as expeditiously as possible. There shall be no order as to costs.

Appeal allowed.

Cases Referred.

1. (2004) 13 SCC 518