

CASE NO.:
Appeal (civil) 7824-7828 of 2004

PETITIONER:
Syndicate Bank

RESPONDENT:
Estate Officer & Manager (Recoveries) & Ors

DATE OF JUDGMENT: 22/02/2007

BENCH:
Tarun Chatterjee & Altamas Kabir

JUDGMENT:
J U D G M E N T

I.A.NOS. 27-31, 32-36 & 12-16
IN
CIVIL APPEAL NOS. 7824-7828/2004

ALTAMAS KABIR, J.

All these appeals have been filed by the Syndicate Bank against the common judgment passed by the Division Bench of the High Court of Andhra Pradesh on 6th August, 2003, dismissing the several writ petitions filed by the Bank.

Briefly stated the facts leading to the filing of the Special Leave Petitions are that M/s. United Auto Tractors Private Limited, (for short 'the Company') one of the common respondents in all these appeals, applied to the Government of Andhra Pradesh for allotment of 100 acres of land in the industrial area for setting up of an industry for manufacturing agricultural tractors and implements. The Government of Andhra Pradesh by its letter dated 18th July, 1972 written by the Director of Industries allotted 51 acres of land in Nacharam Industrial Development Area, Hyderabad, to the company for setting up of the said industry. An Agreement was entered into on 3rd August, 1972 between the Government of Andhra Pradesh and the Company which required the company to pay to the Government the cost of the land plus development charges as determined by the Government. As a condition precedent to place the Company in possession of the plot, an initial payment of not less than Rs.2,46,840/- being 50% of the costs, was required to be paid. The Company agreed to execute a promissory note in favour of the Government for the balance unpaid cost of the land plus development charges.

Under the Agreement, the Government agreed to the Company raising money on the property agreed to be sold provided the financial agency agreed to pay on behalf of the Company so much of the amount advanced as loan to the Company as would remain due on the said promissory note. Financing agencies were required to obtain prior consent of the Government in case they advanced more than 60% of the value of the land.

Under the terms and conditions of the Agreement, the company was required to complete the construction of the factory building and other structures within 9 months and if the land was no longer required for the purpose for which it was allotted, the Company would relinquish and restore the land to the Government. The Agreement also contained the usual clauses of re-entry on breach of any of the covenants mentioned in the Agreement. It was also stipulated that till such time as the ownership of the property was transferred to

the company in the manner mentioned in the Agreement, the property would continue to remain the property of the Government.

On 3rd August, 1972, the Director of Industries, Andhra Pradesh, issued a letter permitting the Company to mortgage the allotted land to any scheduled bank and obtain financial assistance to set up the project.

In pursuance of a policy decision, the Government of Andhra Pradesh issued orders, being GOMs No. 1162 dated 4th December, 1973, directing the transfer of all the industrial estates and development areas, including the industrial area in question, to the Andhra Pradesh Industrial Infrastructure Corporation Ltd. (for short 'the APIICL') with effect from 1st January, 1974. Consequently, the industrial area with which we are concerned, together with all the rights in the land, stood vested in the APIICL. The APIICL immediately required the Company to take note of the vesting of the land in the Corporation and demanded payment of the balance 50% cost of the land. The Company however, failed to pay the same within the stipulated time. On the other hand, the Syndicate Bank appears to have advanced several loans to the Company subject to mortgage of the allotted land by deposit of Title Deeds. The Syndicate Bank treated the "No Objection Letter" of the Director of Industries dated 18th July, 1972 as the Title Deeds. Since the Company failed to discharge its obligations to the Syndicate Bank, proceedings were taken by the Bank for recovery in the Debts Recovery Tribunal, Bangalore, (for short 'the Tribunal') of the amount advanced to the Company for purchase of machinery and movable s which were hypothecated in favour of the Bank as security. The Tribunal allowed the Bank's application on 18th October, 1996 and held that the Bank was entitled to recover a sum of Rs.2,57,10,393/- from the Company and its Directors, including the Managing Director, jointly and severally, with costs, current and future interest on the principal amount at the rate of 21.5% per annum with quarterly rests from the dated of the application to the date of realization. The Tribunal accordingly issued a Recovery Certificate dated 30th December, 1996, certifying that in default of such payments as aforesaid, the amount due would be recoverable by sale of the hypothecated movables or mortgaged immovable properties.

While the said proceedings were being taken by the Bank, the APIICL by its proceedings dated 17th August, 1993, cancelled the allotment of land to the Company to an extent of 25 acres on the ground that the Company had failed to utilize the land allotted for setting up a unit for manufacturing tractors. The said order was not challenged by the Company and has since attained finality.

The Recovery Officer appointed for recovering the amount due to Syndicate Bank as decreed by the Tribunal, issued proclamation of sale deed dated 21st January, 1998 and auction sale notice in newspapers dated 8th March, 1998 proposing to auction the entire land measuring 51 acres which had initially been allotted to the Company for realization of the dues of the Syndicate Bank. The APIICL also filed its claim before the Recovery Officer contending that there was no valid and enforceable mortgage in respect of the lands in question and that the allotment of land to an extent of 25 acres had already been cancelled and proceedings for eviction of the Company from the land had already been initiated under the Andhra Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1968. Although, the Bank ultimately confined itself to the sale of the remaining 26 acres of land, the High Court, inter alia, held that the Company was not

entitled to mortgage the properties by way of deposit of title deeds in order to secure financial assistance from the Syndicate Bank since the land continued to remain with the Government in the absence of any deed of sale. It was also held that since the Syndicate Bank had advanced more than 60% of the value of the land without prior notice to the Government as was required by the Agreement, the APIICL, being the successor-in-interest of the Government, was not bound by the advances so made by the Syndicate Bank and the Syndicate Bank could not, therefore, have first charge over the property in question. The High Court also held that the order passed by the Recovery Officer on 12th August, 1998 rejecting the petition of the APIICL was erroneous, since the Recovery Officer could not have proceeded with the sale of the land belonging to the APIICL in the absence of any authorization and permission by the Presiding Officer of the Tribunal.

Consequent to its aforesaid findings, the writ petitions filed by the APIICL were allowed whereas those filed by the Syndicate Bank, the Company and Nacharam Industrial Association were dismissed.

When the Special Leave Petitions were taken up for consideration on 29th November, 2004, this Court passed the following order:-

"Leave granted.

In view of the competing claims to the 26 acres of land which form part of the land allotted initially by the Government to the M/s. United Auto Tractors Ltd. (UATL) and keeping in mind that both the appellant-Bank and APIIC have the right to sell the land (APIIC as the owner and Syndicate Bank as the mortgagee) we direct the sale of the land by a Committee to be set up consisting of representatives of both the bodies. The Committee shall settle the terms and conditions of sale and shall also have the property valued by a reputed valuer. The sale shall be held after public notice by open auction or by private negotiation between the Committee and such parties. Any such sale shall be subject to the confirmation of this Court. The sale proceeds shall be kept in the appellant Bank in a fixed deposit account to be opened in the joint names of the two bodies initially for a period of one year and shall be kept renewed pending further orders of this Court. The rights of the parties to the sale proceeds shall be determined at the hearing of these appeals. Before the sale takes place an inventory shall be prepared of the items of the machinery and other items to be sold. If there are any records of UATL in the property to be sold, the same shall be made available to the UATL by the Committee."

Pursuant to the aforesaid order, a Committee was constituted and after completion of formalities of having the property valued, an advertisement was published on 12th September, 2005 for sale of 26 acres of land situated at Industrial Park, Nacharam, Hyderabad. In the auction, which was conducted through sealed tenders, M/s. Celebrity Infrastructure Private Ltd., was the highest bidder, having

made a bid of Rs.42.1 crores for the land. 25% of the bid money was duly deposited by M/s. Celebrity Infrastructure Pvt. Ltd., but the balance of the purchase price offer was not deposited either within a period of 15 days from the date of opening of the sealed tenders or within the time extended by APIICL and Syndicate Bank. Ultimately, the offer of M/s. Celebrity Infrastructure Pvt. Ltd. was cancelled by APIICL and Syndicate Bank on 13th December, 2005. The cancellation of the offer made to M/s. Celebrity Infrastructure Pvt. Ltd. was challenged by M/s. Celebrity Infrastructure Pvt. Ltd. by way of separate applications, including I.A.Nos.17-21/2006, for an injunction to restrain APIICL and Syndicate Bank from handing over possession of the land in question to M/s. Paradigm Logistics and Distribution Pvt. Ltd. and also to restrain the Bank and APIICL from seeking confirmation of sale in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd.. The said applications were taken up for consideration on 3rd April, 2006 and were dismissed. The applications, being I.A.Nos. 12-16 and 32-36/06, made by APIICL and Syndicate Bank for confirmation of sale in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd. were directed to be listed for consideration after three weeks. It was specifically mentioned that the directions given would not in any way affect the claim of M/s. Paradigm Logistics and Distribution Pvt. Ltd. for confirmation of sale. It is pursuant to the aforesaid directions that these applications, as also I.A.Nos. 27-31, were listed for hearing before us.

Mr. R.F. Nariman, learned senior advocate, appearing in support of I.A.Nos. 27-31 filed by M/s. Paradigm Logistics and Distribution Pvt. Ltd. submitted that the applicant had matched the offer made by M/s. Celebrity Infrastructure Pvt. Ltd. and pursuant to the allotment letter dated 20th December, 2005 and 27th December, 2005, deposited the entire consideration amount of Rs.42.10 crores on 2nd January, 2006, by way of a Pay Order. After observing the terms and conditions of the sale an allotment letter dated 2nd January, 2006, was issued to the applicant company by the Zonal Manager, APIICL. It was stated therein that pursuant to the decision of the Committee at the meeting held on 2nd January, 2006, M/s. Paradigm Logistics and Distribution Pvt. Ltd. was provisionally allotted land to the extent of 26 acres situated at Industrial Park, Nacharam, Hyderabad at a total price of Rs.42.10 crores for setting up its I.T. projects and that necessary steps were being taken to obtain confirmation of sale from the Supreme Court in favour of the applicant. M/s. Paradigm Logistics and Distribution Pvt. Ltd. thereafter filed I.A.Nos. 22-26/06 for being impleaded as parties to the proceedings and such applications were duly allowed on 3rd April, 2006. M/s. Paradigm Logistics and Distribution Pvt. Ltd. also filed I.A. Nos. 27-31, inter alia, for confirmation of sale of the property in question in favour of the applicant.

Similar applications have been made by Syndicate Bank, being I.A.Nos. 12-16/-06, and APIICL, being I.A.Nos. 32-36, for confirmation of sale of the land in question in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd. for a sum of Rs.42.10 crores.

It transpires that apart from M/s. Paradigm Logistics and Distribution Pvt. Ltd., there were some other bidders who were interested in the property in question. The said parties were also given an opportunity to make offers which were higher than that made by M/s. Celebrity Infrastructure Pvt. Ltd. Although, higher offers were, in fact, made by some of the interveners, including M/s. Coromandel Preftrate Pvt.

Ltd., ultimately none of the interveners were in a position to deposit even 50% of the bid amount. In the process however, M/s. Paradigm Logistics and Distribution Pvt. Ltd. raised its offer to Rs. 50 crores.

Since in our view M/s. Paradigm Logistics and Distribution Pvt. Ltd. had deposited the entire amount of bid money as far back as on 2nd January, 2006, and there being no other bidders who were in a position to match the offer with positive results, we are of the view that the sale in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd. as suggested both by Syndicate Bank and APIICL should be confirmed. We, accordingly, confirm the sale in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd. for a consideration of Rs.50 crores, subject to deposit of the balance sum of Rs. 7.90 crores within a period of two months from date. The sale deed shall be executed and registered by APIICL as the Vendor and by Syndicate Bank as the Confirming Party in favour of M/s. Paradigm Logistics and Distribution Pvt. Ltd.

It is made clear that M/s. Paradigm Logistics and Distribution Pvt. Ltd. shall not make any claim as regards interest on the sum of Rs.42.10 crores. which had been deposited by them on 2nd January, 2006 and the same will be appropriated towards the sale proceeds.

As directed in the order of 29th November, 2004, the sale proceeds shall be kept by Syndicate Bank in a fixed deposit account to be opened in the joint names of the Bank and APIICL initially for a period of one year. The same shall be kept renewed until further orders of this Court. As also indicated in the order of 29th November, 2004, before the sale is completed an inventory shall be prepared of the items of the machinery and other items to be sold. If there are any records of M/s. United Auto Tractors Ltd. in the property to be sold, the same is to be made available to the said company by the Committee appointed by the said order to conduct the auction and to complete the sale. This disposes of I.A.Nos. 27-31, 32-36 and 12-16.

Let the main appeals be listed for hearing in due course.