

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.7824-7828 OF 2004

SYNDICATE BANK

APPELLANT(S)

VERSUS

ESTATE OFFICER AND MANAGER (RECOVERIES) & ORS RESPONDENT(S)

O R D E R

These appeals are before this Bench because a two-judge Bench of this Court felt that there is no clear cut authority on the question as to whether a property can be equitably mortgaged by depositing documents which may not be title deeds or registered document of title. In view of the decision which we propose to take, it is not necessary to answer this question in the present cases.

Briefly stated, the facts necessary for the decision of these cases are that M/s United Auto Tractor Ltd (for short, the 'Company') applied to the Government of Andhra Pradesh for allotment of land. The Government of Andhra Pradesh allotted 51 acres of land in the industrial Development Area, Nacharam, Andhra Pradesh to the Company, in terms of an order dated 18.7.1972. An agreement was

entered into on 03.8.1972 between the Government of Andhra Pradesh and the Company regarding payment of the cost of the land. The sale deed was to be executed and registered in the name of the Company only on full payment. We are mainly concerned with clause 8(a) and 8(b) of the said agreement which read as follows :

"8(a) Without prejudice to the rights of the State Bank of India or any other financing agency approved by the Government as first mortgagees, Government have a second charge on the land, buildings, plant and machinery which shall be converted into a first charge when the obligation of the financing agencies are liquidated.

8(b) If the Financing Institutions were to advance more than 60% of the value of the land, building, machinery and structure, prior agreement of the Government will be required."

It is not disputed that in terms of the aforesaid agreement, the Company had paid 50% of the total cost of land and was put in possession thereof. The company sought permission of the Government of Andhra Pradesh to mortgage their land which permission was granted *vide* letter dated 03.8.1972 which reads as under :

"In the circumstances stated in your letter second cited, you are hereby permitted to mortgage the 51 acres of land allotted in the Nacharam Industrial Development Area to any Scheduled Bank to obtain financial assistance to your project.

The agreement executed by you is returned herewith duly signed"

On the basis of the aforesaid clauses of the agreement and the letter mentioned hereinabove, the

company mortgaged the said land in favour of the appellant-Bank by depositing the letter of allotment and other documents showing its interest in the property.

The Government of Andhra Pradesh transferred all its industrial estates and development areas to M/s Andhra Pradesh Industrial Infrastructure Ltd. (for short, the 'APIIC'). It would be pertinent to mention that after reorganization of the State of Andhra Pradesh, it is the Telangana Industrial Infrastructure Limited which is the successor of the APIIC.

It appears that the APIIC felt that the entire land measuring 51 acres was not being used by the company and therefore, the APIIC cancelled allotment of 25 acres of land and allotment of 26 acres remained in favour of the company. It would not be out of place to mention that though initially the company as well as the appellant - Bank objected to the resumption of 25 acres of land; these objections were never pursued and in fact, the Bank withdrew its writ petition in this regard.

The company was unable to pay of its dues to the Bank and the appellant Bank filed O.A. No.425 of 1995 against the company before the Debt Recovery Tribunal, Bangalore for recovery of Rs.2,57,10,393/- on 3.7.1995. The said application was allowed by order dated 18.10.1996 and recovery certificate was issued in favour of the appellant Bank for recovery of the aforesaid amount along with interest at the rate of 21.5% per annum from 3.7.1995

till date of payment at quarterly rest. Notice for sale of entire 51 acres of land by public auction was issued by the Recovery Officer of the Debt Recovery Tribunal. The APIIC filed an objection sometime in March, 1998 that it had no objection to sale of 26 acres of land but since 25 acres of land stood resumed, the same could not be sold. A writ petition was also filed by the APIIC before the High Court of Andhra Pradesh questioning the validity of the proposed auction. It would be apposite to mention that one of the reliefs sought was as follows :

“(g) Sale of 26-00 acres of land which is allowed to be retained by the 3rd Respondent company would secure more than the decretal amount passed in OA No.425 of 1996 and therefore, inclusion of 25-00 acres of land i.e. plot no.A-27/2 belonging to the IInd petitioner Corporation in the proposed sale by the 1st respondent herein by way of public auction is unwarranted, arbitrary, and opposed to the principles of natural justice.”

The objections filed by the APIIC before the Debt Recovery Tribunal were dismissed. Being aggrieved by the same, the APIIC filed a writ petition before the High Court on or about 1.9.1998. Thereafter the Recovery Officer issued another notice of public auction and the APIIC filed another writ petition challenging the proposed auction. In the meanwhile, the APIIC also issued show-cause notice to the company as to why the balance land of 26 acres should not be resumed. The allotment of this land was also cancelled and the amount paid by the Company was forfeited. The Company filed a writ petition challenging

the action taken by the APIIC before the Andhra Pradesh High Court. The Andhra Pradesh High Court held that since no sale deed had been executed in favour of the company there was no title deed in favour of the company and thus no valid mortgage entered into operated by deposit of the letter of allotment and other similar documents. It was also held that the Director of Industries could not have issued letter dated 3.8.1972 permitting the company to create a charge.

We are of the opinion that the Reference need not be answered in the peculiar facts and circumstances of the case since in our opinion the State of Andhra Pradesh and its successor viz., the APIIC and the Telangana Industrial Infrastructure Ltd., are estopped from challenging the validity of the mortgage.

Clauses 8(a) and 8(b) of the agreement quoted hereinabove clearly envisage that the vendor i.e. State of Andhra Pradesh had permitted the Company to raise loans from the State Bank of India or other financing agencies approved by the Government as the first mortgagee. In fact, the Government was to have a second charge on the land in question. The Government therefore very clearly gave up its normally accepted right of first charge in favour of the financial institutions who gave loans to the industries set up in the industrial areas. Presumably this was done to encourage industrialization. It was only if the financial institutions were to advance more than 60%

value of the land that prior approval of the government was required.

In our opinion, the letter dated 3.8.1972 of the Director of Industries was permission on behalf of the Government of Andhra Pradesh. No challenge was ever raised by the Government of Andhra Pradesh to the authority of the Director to issue such a letter. We may also note that till the land was transferred to the APIIC the Government of Andhra Pradesh did not raise any challenge to the mortgage in question.

Even after the APIIC took over the industrial areas it only cancelled the allotment of 25 acres of land and the balance of 26 acres of land remained with the company. The APIIC sold 25 acres of land and it is not disputed before us that the cost of 26 acres of land stood fully paid. Even in the application filed by the APIIC before the Debt Recovery Tribunal and in the earlier writ petitions filed by it, the objections of the APIIC was to the sale of 51 acres of land and it had clearly stated that sale of 26 acres of land which had been allowed to be retained by the company was sufficient to secure the interest of the appellant - Bank.

In view of these factors, we have no hesitation to come to the conclusion that the APIIC was estopped from filing the writ petition and its successor namely the Telangana Industrial Infrastructure Ltd has no right either in law or in equity to claim that 26 acres of land

should not have been sold.

The State of Andhra Pradesh in the agreement had permitted the company to raise loans by mortgaging the property in question. The Director of Industries vide letter dated 3.8.1972 has specifically permitted mortgage of the allotted land in favour of any scheduled Bank. The APIIC had, both in its original objections filed before the Debt Recovery Tribunal and the writ petitions filed by it, only claimed that 25 acres of land which it had resumed should not be sold. There was no objection to the sale of 26 acres of land. The appellant - Bank is a scheduled Bank. Public money is involved and therefore, we are of the view that the interest of both parties can be met by ordering the repayment of the principal amount along with the reasonable interest to the Bank and the balance amount be paid to the Telangana Industrial Infrastructure Ltd.

In fact, this 26 acres of land was sold pursuant to the orders of this Court for about a sum of Rupees fifty five crores and that amount has now swelled to more than Rs.109 crores. This amount is more than sufficient to satisfy the interests of the appellant - Bank and the Telangana Industrial Infrastructure Ltd.

The interest @ 21.5% along with quarterly rests determined by the Debt Recovery Tribunal is too high and not justified in the facts of these cases. The original amount payable to the appellant Bank was Rs.2,57,10,393/-

and on this amount we allow interest at the rate of 12% per annum with yearly rests. The entire amount payable inclusive of interest works out to Rs.38,95,51,163/- as on date i.e. 20.2.2019. We may note that these calculations have been verified by both the parties.

In view of the above discussion, we dispose of these appeals, set aside the impugned judgment passed by the High Court and direct that out of the amount now lying in the court pursuant to the auction sale of the property, a sum of Rs.38,95,51,163/- shall be paid to the appellant - Bank by the Registry of this Court within a period of two weeks and the balance amount shall be paid to the Telangana Industrial Infrastructure Ltd.

.....J
[S.A. BOBDE]

.....J
[SANJAY KISHAN KAUL]

.....J
[DEEPAK GUPTA]

NEW DELHI;
FEBRUARY 20, 2019.

ITEM NO.102

COURT NO.3

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.7824-7828/2004

SYNDICATE BANK

Appellant(s)

VERSUS

ESTATE OFFICER AND MANAGER (RECOVERIES) & ORS.

Respondent(s)

([TO GO BEFORE THREE HONBLE JUDGES] PART HEARD BY HON. S.A. BOBDE, HON. SANJAY KISHAN KAUL AND HON. DEEPAK GUPTA, JJ. IA 41585/2017 (Application on behalf of the appellant for expediting hearing and / or fixing the appeals on an early date).EARLY HEARING APPLICATION)

WITH SLP(C) No. 23723/2007 (IV-A)

Date : 20-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s) Mr. Rakesh Khanna, Sr. Adv.
Mr. Adarsh B. Dial, Sr. Adv.
Ms. Sumati Anand, Adv.
Ms. Ananya Datta Majumdar, Adv.
Mr. Rajiv Nanda, AOR

Mr. Adarsh B. Dial, Sr. Adv.
Ms. Sumati Anand, Adv.
Ms. Ananya Datta Majumdar, Adv.
Mr. Rajiv Nanda, AOR

For Respondent(s) Mr. V. Giri, Sr. Adv.
Mr. S. Udaya Kumar Sagar, AOR
Mr. Mrityunjai Singh, Adv.

Mrs. Manik Karanjawala, AOR

Mr. Mukesh K. Giri, AOR

Mr. Anil Kumar Tandale, AOR

M/s Venkat Palwai Law Associates, AOR

Mr. Devadatt Kamat, AAG
Mr. V. N. Raghupathy, AOR
Mr. Javedur Rahman, Adv.
Mr. Rajesh Inamdar, Adv.

Mr. Delep Goswami, Adv.
Mr. Anirrud Goswami, Adv.
For Mr. Jay Kishor Singh, AOR

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

Civil Appeal Nos.7824-7828/2004

These appeals are disposed of in terms of the signed order.

As a sequel to the above, pending interlocutory applications,
if any, stand disposed of.

SLP(C) No.23723/2007

As jointly prayed for, list the matter on 27.02.2019.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)