

MAHABIR SUGAR MILLS LTD. AND ORS. ETC.

v.

STATE OF U.P. AND ORS. ETC.

AUGUST 27, 1996

[K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

*U.P. Sugar Undertakings (Acquisition) Act, 1971 :*

*Proceedings pending before BIFR to streamline the working of the sick industry—Open to the appellants to make representation to BIFR which would dispose it of—Pending civil suits—Open to parties to agitate their rights in the suits—Decrees will be passed by Civil Court in accordance with law.*

*The Ishwari Khetan Sugar Mills (P) Ltd. & Anr. Etc. v. The State of Uttar Pradesh & Ors. Etc., [1980] 3 SCR 331, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2576-77 of 1981 Etc. Etc.

From the Judgment and Order dated 8.5.81 of the Allahabad High Court in W.P. Nos. 8135 and 4301 of 1990.

H.N. Salve, D. Dave, B. Sen, Yogeshwar Prasad, D.V. Sehgal, Mrs. Rani Chhabra, Pradeep Mishra, P.K. Bajaj, S. Kulshreshtha, R.K. Gupta, S.K. Gupta, Ashok K. Srivastava, S.D. Sharma and Rishi Kesh for the appearing parties.

The following Order of the Court was delivered :

*In C.A. Nos. 2576-77/81, 347/86, W.P. No. 7535-36/85 and CMP No. 18628/86 In C.A. No. 1292/86.*

These matters are disposed of together. We need not elaborately mention the facts leading to filing of these appeals and Writ Petitions. Suffice it to state that the validity of U.P. Sugar Undertakings (Acquisition) Act, 1971 was upheld by this Court in *The Ishwari Khetan Sugar Mills (P) Ltd. & Anr. Etc. v. The State of Uttar Pradesh & Ors. Etc., [1980] 3 SCR 331*. However, proceedings before the BIFR are pending to streamline the working of sick industry, namely, U.P. State Sugar Corporation. Shri H.N.

- A Salve, the learned senior counsel appearing for the appellants and Writ Petitioner in these cases, submitted that he had discussion with his clients after the case was last adjourned. He suggested that the appellants are proposing to make a representation to the BIFR for consideration of their cases and so it was not necessary to argue the case on merits. In that view,
- B we need not decide the case on merits. It would be open to the appellants to make representation to the BIFR and it would be open to the BIFR to entertain the representation and dispose it of.

- C The appeals and Writ Petitions are accordingly dismissed as withdrawn with the above observation. We make it clear that no issue of law or fact is left open in these cases.

- D Pending appeal, the appellant made an application in CMP No. 18628/86 for directions as regards the possession of the bungalow occupied by the Director of the appellant Company. When there was a conflicting claim as regards the possession, this Court had called for a report from the District Judge, Bulandshehar. In furtherance thereof, the District Judge submitted the report. On consideration of the report by proceedings dated January 09,1990 this Court passed the order as under :

- E "In this case, a report has been received from the learned District Judge as to the persons who are in possession of the property as on May 9, 1986. These are clearly prima facie findings in order to enable this Court to pass an interim order. We direct that the status quo regarding the possession, as reported by the District Judge
- F will continue till the disposal of the case.

- G We may make it clear that we do not pronounce regarding the title to the property in question and also regarding any question of mesne profits which the appellants may be entitled to. The appellants, if they so desire, may take the appropriate proceeding in the matter."

- H In view of the fact that we are now dismissing the appeals as withdrawn we make it clear that the order and the status quo order stand discharged. whoever seeks any positive directions as regards the possession of the bungalow, it would be open to the appropriate party to take such

procedure as is available at law. We give eight weeks' time from today to take such steps; until then the *status quo* order granted by this Court would continue for eight weeks only and no further. As regards the vesting and other incidental issues, it would be open to the appropriate parties to lay proceedings under Section 10 of U.P. Sugar Industry Undertakings Act before the prescribed authority which would decide the matter in accordance with law. It would be open to the prescribed authority to consider the question independently on its own merit in accordance with law and it would be open to the parties to place such material as is available to them at law.

*In C.A. No. 2578/1981*

Appeal is dismissed as infructuous.

*In C.A. No. 1292-93/86 and W.P. No. 378/86*

These matters are disposed of together. We need not elaborately mention the facts leading to file these appeals and Writ Petitions. Suffice it to state that the validity of U.P. Sugar Undertaking (Acquisition) Act, 1971 was upheld by this Court in *The Ishwari Khetan Sugar Mills (P) Ltd. & Anr. Etc. v. The State of Uttar Pradesh & Ors. Etc.*, [1980] 3 SCR 331. However, proceedings before the BIFR is pending to streamline the working of sick industry, namely, U.P. State Sugar Corporation. Shri H.N. Salve, the learned senior counsel appearing for the appellants and Writ Petitioner in these cases submitted that he had discussion with his client after the case was last adjourned. He suggested that the appellants are proposing to make a representation to the BIFR for consideration of their cases and so not necessary to argue the case on merits. In that view we need not decide the case on merit. It would be open to the appellants to make representation to the BIFR and it would be open to the BIFR to entertain the representation and dispose it of. The appeals and Writ Petitions are accordingly dismissed as withdrawn with the above observation. We make it clear that no issue of law or fact is left open in these cases.

*In C.A. 1294/86 and W.P. No. 391/86*

These matters are disposed of together. We need not elaborately mention the facts leading to file these appeals and Writ Petitions. Suffice

A it to state that the validity of U.P. Sugar Undertakings (Acquisition) Act, 1971 was upheld by this Court in *The Ishwari Khetan Sugar Mills (P) Ltd. & Anr. Etc. v. The State of Uttar Pradesh & Ors. Etc.*, [1980] 3 SCR 331. However, proceedings before the BIFR is pending to streamline the working of sick industry, namely, U.P. State Sugar Corporation. Shri H.N. Salve, the learned senior counsel appearing for the appellants and Writ Petitioner in these cases, submitted that he had discussion with his clients after the case was last adjourned. He suggested that the appellants are proposing to make a representation to the BIFR for consideration of their cases and so not necessary to argue the case on merits. It that view we need not decide the case on merit. It would be open to the appellants to make representation to the BIFR and it would be open to the BIFR to entertain the representation and dispose it of.

The appeals and Writ Petitions are accordingly dismissed as withdrawn with the above observation. We make it clear that no issue of law or fact is left open in these cases.

*SLP (C) Nos. 9931-32/1991*

Leave granted.

E We have heard the learned counsel on both sides.

The appeals arise from the order of the High Court made in Writ Petition No. 9690/1990 dated January 24, 1991. The appellants have sought for directions against the bank for the realisation of the dues belonging to the undertakings. The High Court in the impugned order passed as under :

"For the above reasons and having regard to the circumstances of the case, while we cannot grant all the reliefs prayed for in these writ petitions, they are disposed of with the following directions :

G (i) Neither the Central Bank of India nor the State Bank of India (respondents 1 and 2 respectively in W.P. No. 9690 of 1990 and sole respondents in W.P. No. 19630 and 19629 respectively) shall pay any further amounts to respondents 3 and 4 or any other person out of the principal of the said deposits or interest accruing thereon. The said deposits and Bank Guarantees shall be subject

to the orders that may ultimately be passed by the Supreme Court in appeals now pending before it, namely civil appeals Nos. 712 and 713 of 1977. If the said appeals are dismissed, it is obvious that the amount covered by the Bank Guarantees has to be paid over to the Central Bank/Food Corporation of India. If, however, the said appeals are allowed, the amount will go to the scheduled undertaking, which should go towards the discharge of arrears which accrued prior to 2.3.1970. In that event, any surplus amount accruing on account of the difference in interest should firstly be available for discharging the said arrears for recovering which the Receiver was appointed. Of course, this direction shall be subject to any directions to the contrary given by the Supreme Court in the said appeals.

(ii) Within a period of one year from today it shall be open to the Government or the Collector under the provisions of the U.P. Zamindari Abolition and Land Reforms Act to issue appropriate orders of attachment or restraint, as the case may be, calling upon the respondent Banks to pay the surplus interest amount to them. If such orders are issued, the Bank shall obey the same subject, of course, to orders to the contrary if any by any court or competent authority.

(iii) The bank may consider, and indeed it will be well advised in taking steps for recovering the amounts paid by it or loan given by it, as the case may be, to respondents 3 and 4. That is, however, a matter for the bank to decide.

This order does not preclude the petitioner Corporation from adopting such remedies as are open to it under law, including civil suits, for establishing its claims and contentions. Similarly, this order does not preclude the Government, Collector or any other authority from recovering the amounts which they claim are due to them either from respondents 3 and 4 or from any other person liable in that behalf in accordance with the procedure prescribed by law. If any proceedings are already initiated in that behalf they can also be continued according to law."

We are informed that both the appellant as well as respondent have

A filed civil suits which are pending disposal. Under these circumstances, we think that it is not necessary for us to go into the question. It would be open to the parties to agitate their rights in the suits and decrees will be passed by the Civil Court in accordance with law.

B The appeals are accordingly dismissed. No costs.

G.N.

Appeals dismissed.