

Rakesh Verma vs Union Of India & Ors on 17 August, 2022

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~4(Appellate)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 10686/2022 & CM APPL. 31044/2022, CM APPL. 31045/2022

RAKESH VERMA

Through: Mr.Ratnesh
Mr.Rahul Raman, Advs.

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versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Raghvendra Shukl
Sr.Panel Counsel with Mr.Anil Devlal, Govt
Pleader. For R-1/UOI
Ms. Sangeeta Sondhi with Mr.Mohit Bhadu,
Adv. for R-4/ Indiabulls Housing Finance
Ltd.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR
ORDER

% 17.08.2022

1. The prayer clause in this petition under Article 226 of the Constitution of India reads thus:

"PRAYER It is therefore most respectfully prayed before this Hon'ble Court that this Hon'ble Court may be pleased to:

I. Issue an appropriate writ/order/direction in the nature of Mandamus/Certiorari or any other writ directing the Respondent Financial Institution to not charge the Pre-EMIs or full EMIs from the Petitioner homebuyer;

II. Issue a Writ in the nature of Mandamus/Certiorari or any other writ directing the Respondent Financial Institution to charge all the Pre-EMIs/full EMIs till the possession is not delivered from the Respondent Builder/alike real estate developers;

III. Issue a Writ in the nature of Mandamus/Certiorari or any other writ directing the Respondent Financial Institution to refund the Pre-EMIs/full EMIs paid by the Petitioners to the Petitioner and recover the same from the Respondent Builder;

IV. Issue a Writ in the nature of Mandamus/Certiorari or any other writ directing the Respondent State to frame clear and strict guidelines to regulate the transactions pertaining to the subvention scheme prevalent in the real estate sectors;

V. Issue guidelines to the effect that the Respondent Financial Institution ought to not to auction the property of any real estate builder without the consent of the Petitioner along with other homebuyers who have invested their hard earned money;

VI. Pass an appropriate order or direction against Respondent No. 2 for initiating strict action against the Respondent Financial Institution for violating the rules and regulations laid down by Respondent No. 2 as a regulator for the banking sector; and/or VII. Pass appropriate guidelines to be followed by the Respondent Financial Institution herein for release/disbursal of funds to Real Estate Companies in case of loans sanctions against any real estate project so that such acts are not repeated in future; and or VIII. Pass an appropriate order or direction appointing a committee of experts to examine the grounds raised by the Petitioner in their representation submitted to the Respondent(s) with a direction to submit a report in a time bound manner, and/or IX. Pass appropriate orders or directions to the Respondent No. 1 to frame guidelines and monitoring system where the citizens/aggrieved people submitting their objections can be monitored in a transparent and time bound manner; and or X. Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the present case."

2. Mr. Ratnesh Sharma, learned Counsel for the petitioner submits that, on merits, in a batch of identical writ petitions headed by WP(C) 10223/2021 (Ashish Tiwari v. Union Bank Of India), a Coordinate Bench of this Court has, on 31st January, 2022, granted interim relief by directing the respondents not to take any coercive steps against the petitioners. The said interim order, he submits, continues to remain in effect till date.

3. It appears that there are other writ petitions pending before other Benches in which no such interim order has been passed. However, learned Counsel are ad idem that, even in the said cases, the prayer for interim relief has not been rejected.

4. On the last date of hearing, I had apprehensions regarding the maintainability of the present petition, as the financial institutions in question are private financial institutions, with whom the petitioner has private contracts. Ms. Sondhi has, in fact, sought to fortify my initial impression by referring to para 33 of the judgment of the Supreme Court in Federal Bank Ltd. v. Sagar Thomas¹, which reads thus:

"33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public

nature (2003) 10 SCC 733 casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

(Emphasis supplied)

5. Ms. Sondhi submits that, as the petitioner is essentially seeking enforcement of regulatory guidelines issued by the RBI to regulate grant of loans by banks and financial institutions, the case would squarely fall within the enunciation of the law in para 33 of Federal Bank¹ supra.

6. Federal Bank¹, in para 18, however, also holds thus:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

(Emphasis supplied)

7. As such, a writ petition can lie against the private bank or a private financial institution which is discharging public or statutory functions, provided the writ seeks enforcement of such public or statutory function 2.

8. Mr. Ratnesh Sharma points out that, in para 52 of the report in Peerless General Finance & Investment Co Ltd v. RBI 3, the Supreme Court has held, in unequivocal terms, that regulations governing deposits and loans by the private financial institutions or banks, issued by the RBI, are statutory in nature. He, therefore, submits that they could not be regarded as mere regulatory guideline but have statutory force and that, therefore, applying para 18 of Federal Bank¹, enforcement of such guidelines can be sought by way of a writ petition.

9. The submission, prima facie, appears to have force. At any rate, it would not be proper, given the said submission, to dismiss the writ petition as not maintainable at this stage.

10. As a prima facie case of maintainability has been made out, and the only ground on which Ms. Sondhi seeks to distinguish the order passed by the Coordinate Bench in Ashish Tiwari is that, in the said order, the issue of maintainability had not been considered, in the interests of maintaining consistency and uniformity, I am inclined to pass orders in terms of the order dated 31st January 2022 passed by the Coordinate Bench in Ashish Tiwari.

Refer Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 (1992) 2 SCC 343

11. Accordingly, issue notice to show cause as to why rule nisi be not issued. Notice is accepted by Mr. Raghvendra Shukla on behalf of Respondent 1 and by Ms. Sangeeta Sondhi on behalf of Respondent 4.

12. Let notice issue to Respondents 2 and 3 by all modes, returnable on 12th January, 2023.

13. Counter affidavits, if any, be filed within four weeks with advance copy to learned Counsel for the petitioner who may file rejoinder before the next date of hearing.

14. Till the next date of hearing, the respondents shall stand restrained from taking any coercive steps against the petitioner.

15. Re-notify on 12th January, 2023.

C. HARI SHANKAR, J AUGUST 17, 2022/kr