Syndicate Bank Through Manager, ... vs State Of U.P., Through Secretary, ... on 2 March, 2007

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Bench: R.P. Misra, Shishir Kumar

JUDGMENT

Shishir Kumar, J.

1. The present writ petition has been filed for quashing the order-dated 8.2.2006 passed by respondent No. 3, Annexure-1 to the writ petition, further prayer is to issue a writ in the nature of certiorari quashing the orders dated 10.2.2006 passed by respondent No. 4, Annexure-2 to the writ petition and 15.2.2006 passed by respondent No. 3, Annexure-12 to the writ petition. The further prayer is also to issue a writ in the nature of mandamus commanding the respondents to hand over the possession of the entire premises situate at A-1, Sector-59, Noida.

2. The facts arising out of the writ petition are that the petitioner, who is a nationalized bank, in usual course of business, granted a term loan of Rs. 3 Crores to respondent No. 7. A copy of the agreement dated 10.2.2003 between the petitioner and respondent No. 7 has been filed as Annexure-3 to the writ petition. The said hypothecation agreement was in respect of plant and machinery as well as all the other fixed assets. So far was 158 sewing machines and 13 embroidery machineries are concerned, the petitioner has a first charge upon the said assets whereas in respect of all other fixed assets, the petitioner has second charge inasmuch as the first charge in respect of other assets is with the Punjab National Bank. In the hypothecation agreement it has been mentioned that the factory is situate at A-1, Sector-59, Noida, U.P. It has been informed by respondent No. 7 accordingly. The agreement entered into between the petitioner and respondent No. 7 was duly registered with the Registrar of Companies on 11.3.2003. In pursuance of the aforesaid agreement, an amount of Rs,2,95,38,000/- was disbursed to respondent No. 7. However, respondent No. 7 defaulted in making the payment and in spite of the repeated reminders, did not make the payment. Compelled with the aforesaid circumstances a notice under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act of 2002) was issued to respondent No. 7 on 11.6.2004. Even after the receipt of the aforesaid notice, respondent No. 7 failed to make the payment, therefore, under the aforesaid circumstances, the petitioner decided to take possession of the secured assets in exercise of powers under Section 13(2) of the Act of 2002. The goods hypothecated of the petitioner

being situate at A-l, Sector 59, Noida, the petitioner sought help of the City Magistrate - vide its letter dated 28.2.2006 how directed the Station House Officer, Sector-58, Noida to provide adequate force so that the petitioner may be in a position to take the possession. The adequate force was provided to the petitioner and the petitioner invoked the provisions of Section 38(4) of the Act and took the possession of the secured assets over which the petitioner had the first charge on 31.1.2006. A copy of the possession notice Panchnama and inventory has been filed as Annexure-8 to the writ petition.

3. At the time of taking of the possession the Director of respondent No. 7 namely Sri Lokesh Chopra was present but he refused to put his signatures on the inventory, which was prepared in his presence. The possession having been taken a ay from the hands of respondent No. 7, the respondent No. 7 seems to have influenced respondent No. 5 through respondent No. 6 and a new dispute was sought to be created by respondent No. 6 alleging that the factory premises belong to respondent No. 6 and the petitioner has got no power to seal the factory premises of respondent No. 6. The petitioner was not given a copy of any such complaint was yet and was directed to meet respondent No. 4 on 3.2.2006 who had assumed the jurisdiction for making the inquiry on the alleged complaint. Respondent No. 4 demanded documents from the petitioner, which were duly supplied by the petitioner on 3.2.2006. The petitioner again demanded a copy of the complaint but the said complaint was neither supplied nor any document was given in support thereof. Respondent No. 5 in the capacity of respondent No. 3 passed an order on 8.2.2006 to the effect that the factory sealed by the petitioner may be released and the order be carried out immediately. A copy of the order has been filed as Annexure-1 to the writ petition. On the basis of the aforesaid order on 8.2.2006 an order was issued to the petitioner that they may remove the seal and the petitioner may obtain the possession of the machines at any time. The petitioner reacted to the said orders. Respondents No. 3, 4 and 5 have forcibly broken the seal and by use of the police force have obtained possession over the factory premises of the respondent No. 7 merely on the basis of the allegations made in the complaint by respondent No. 6. The petitioner was served with another notice/order by respondent No. 3 on 16.2.2006 by which respondent No. 3 has restrained the petitioner from seizing the secured assets and has put a condition that the petitioner must pay the stamp duty upon the unregistered lease agreement between M/S S.S.A. Laminators Pvt. Ltd. and respondent No. 7. The petitioner protested regarding the aforesaid move of respondent No. 3 by giving a detailed representation on 16.2.2006. Respondent No. 5 acting in the capacity of respondent No. 3 has invoked the provisions of Indian Stamp Act, which are not applicable, and the petitioner is under no obligation to pay any stamp duty upon the lease agreement between M/S S.S.A. Laminator Pvt. Ltd. and respondent No. 7. The petitioner has entered into the composite hypothecated agreement, which stands duly registered upon which appropriate stamp duty has also been paid. The conclusion draw by respondent No. 3 that the land, which was given to respondent No. 7, is based upon unregistered lease agreement is contrary to the records and show s mala fide of respondent No. 5. Respondent No. 5 in the capacity of respondent No. 3 seems to be acting as an agent of respondents No. 6 and 7. A show cause notice by respondent No. 3 purported to be under the Stamp Act is without jurisdiction and the petitioner who does not figure any here in the lease agreement we wither was a lessor or as a lessee is under no obligation to pay the stamp duty.

4. There is a specific legislation namely Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which permits the petitioner to take action against the borrowers who have defaulted in payment of loan extended to them. The said Act empowers the petitioner not only to take physical possession of the assets but also to transfer the assets and realize the dues. In aid to the said action, which the petitioner is empowered to take, Section 14 commands respondent No. 2 to assist the petitioner in taking possession of the secured assets. There is no provision under the Act, which empowers respondents No. 2 to 5 to decide as to whether the asset is secured asset and pursuant to that the premises can be sealed. There is no power of adjudication conferred upon respondents No. 2 to 5 under the Act of 2002 to decide whether to seal a factory premise or not to seal the factory premise? Even other wise there is no provision, know in law under which respondents No. 2 to 5 can issue a direction to release the seal, which has been put in exercise of statutory power conferred upon the petitioner. The petitioner was not given deliberately a copy of the alleged plaint by respondent No. 6 though the petitioner specifically demanded the same. There is no material on the record on which it can be said that the premises in question are under the lease of respondent No. 6. On the contrary it is respondent No. 7 in hose favour a lease agreement was executed by one M/S S.S. A. Laminators Pvt. Ltd. away respect to industrial property No. A-1, Sector-59, Noida. None of the documents supplied by the petitioner has been taken into consideration by the respondents before passing the order dated 8.2.2006. Respondents No. 2 to 5 cannot vest themselves with a jurisdiction, which is not directed under the Act. As such, the action taken by respondents No. 2 to 5 is contrary to the provisions contained under the Act of 2002. The action of respondent No. 5 is clearly mala fide. Till 31.1.2006. Respondent No. 5 was acting within the purview of Section 14 of the Act of 2002 and immediately thereafter respondent No. 5 on the behest of respondent No. 6 which show s that it is the business concerned running by the family members of respondent No. 7 and respondents No. 6 and 7 are the sister concernes. This has specifically been stated by the petitioner in its reply-dated 4.2.2006. Respondent No. 7 in a similar manner has fully squandered Rs. 25 Crores which it had obtained from Punjab National Bank and a CBI inquiry has been registered against the Directors of respondent No. 7 which is still pending. Respondents No. 6 and 7 are involved in an agreement with an intention to run away with the huge loan amount, which as was disbursed, to them. In such a situation respondent No. 5 should have taken into consideration all these factors but he is siding respondents No. 6 and 7 who are involved in bank frauds.

5. Sri Kapil Chopra who is in fact looking into the affairs of respondent No. 6 is the son of Sri Lokesh Chopra who is looking after the affairs of respondent No. 7. In the garb of the alleged complaint, respondent No. 7 ants to utilize the property placed with the petitioner and this by proxy is trying to destroy the machines and thereby destroying the security of the petitioner. The respondent No. 5 is siding respondent No. 7 in such an attempt by entertaining the complaints of respondent No. 6 and taking action having no jurisdiction to do so. The machineries installed are very heavy machines, which cannot be even transported by trucks. These are sophisticated embroidery machines which are fully computerized and shifting of such machines from the premises ill-result in destruction of the secured assets. Even in the agreement it is a condition that the petitioner can retain the possession of the secured assets itself and defaulted borrowers ill be under an obligation to keep the custody of the property in good condition. Respondent No. 6 who is no body but respondent No. 7 itself does not have any right to restrain the petitioner from pursuing their legitimate remedy as

provided under the Act of 2002. Even other wise the appropriate jurisdiction is as to whether respondents No. 6 and 7 can seek adjudication under Section 17 of the Act, which permits a person, aggrieved to approach the Debt Recovery Tribunal by ay of an appeal? The assets of the petitioner ill be vested and it ill be an ultimate loss to the public money under the hands of the petitioner. As the orders passed by the respondents are holly illegal and without jurisdiction and against the provisions of law, as such the petitioner had no option except to file the present writ petition.

6. The writ petition was entertained by this Court and the respondents were granted time to file counter affidavit. As the counter and rejoinder affidavits have been filed, with the consent of the parties, this writ petition is being disposed of finally.

7. Sri Manish Goel who appears for the petitioner has submitted that the action of respondents No. 3 and 5 is without jurisdiction and the impugned action of the respondents is mala fide. From the perusal of the orders passed by the respondents they have not disclosed any source of power under which the orders came to be passed against the petitioner. Merely on the basis of an application of a third party who is not a borrower and ignoring the terms and conditions of the loan agreement the respondents No. 3 to 5 issued orders abusing their powers reclaiming the possession delivered to the petitioner on 31.1.2006. It has also been submitted that respondent No. 6 is manufacturing garments and is a sister concern of M/S Lokesh Garments to whom the loan facility was extended by the petitioner. Respondents No. 6 and 7 are engaged in the same business and the son of Lokesh Chopra who is managing M/S Lokesh Garments is looking into the affairs of M/S Kapil Fashions. This fact has clearly been stated in para 33 of the writ petition, which has been admitted by the respondent No. 7 in para 34 of their counter affidavit.

8. The Securitization Act does not permit respondents No. 3 to 5 to adjudicate any dispute of any nature between the bank and its borrower or to declare any action under the Securitization Act to be bad or in any manner restrain the bank in exercising its right under the Act for the purpose of dispute which may also include a third party. The Act contemplates a remedy in the form of an appeal to be preferred by that person under Section 17 of the Act. Sub-sections (2) and (3) of Section 17 deal with the scope of the proceeding of the appellate forum namely Debt Recovery Tribunal. Hence respondents No. 3 to 5 are complete strangers to pass an order in the nature as they have passed. The aforesaid exercise on the part of respondents No. 3 to 5 is totally without jurisdiction and contrary to the specific provisions contained under the Act. Even other se no law permits the respondents No. 3 to 5 to pass an order releasing the said premises in favour of third person. The order authorizes illegal grabbing of public property and it is for this reason that the respondent No. 5 has been implicated in his personal capacity. In the counter affidavit filed on behalf of respondent No. 5, the respondent No. 5 has not given any source of power under which he was authorized to pass an order contained in Annexures- 1,2 and 11 to the writ petition.

9. Respondents No. 3 to 5 have been given a limited power under Section 14(1) of the Act. However, the said power is merely step-in-aid of the bank to take possession or control over the secured assets. The District Magistrate or respondents No. 3 to 5 have not been given any independent power to interfere in the affairs of the bank. Respondents No. 3 to 5 are under the obligation to discharge the duties was provided under Section 14 of the Act. Under Section 14 of the Act no

inquiry is permissible on the behest of respondents No. 3 to 5 nor it is within the domain of the respondents to restrain the bank in taking possession of any secured assets.

10. In support of the aforesaid contention the petitioner has placed reliance upon a judgment of the Karnataka High Court reported in 2006 (129) Company Cases- 478 Citybank NA v. Sundeep Singh and Anr. and reliance has been placed upon para 8 of the judgment which is quoted below:

> 8. On the same day i.e. on March 1,. 1980, although the relevant files had been removed from his office, the Zonal Engineer 9Buildings), City Zone, Municipal Corporation served a notice on petitioner No. 1 the Express new spapers Pvt. ltd. to show cause by action should not be taken for demolition of the Express Buildings under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. It read was under:
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> Number 79/B/ua/cz/80XXIII dated 1.3.1980.
>
> You are hereby informed that on your property situated at Bahadurshah Zafar Marg bearing numbers 9 and 10, you have started unauthorized construction of excess basement beyond sanction and construction of upper basement without sanction was show n red in the sketch below.
>
> Therefore, I, L.S. Pal, Zonal Engineer (Building) was authorized by the Commissioner under D.M.C. Act, 1957 vide Section 49 to serve upon you notice and call upon you to appear in my office within three days of the receipt of this notice during office hours with al relevant records and documents relating to the above construction to explain was to why under Sub-clause I of Clause 343 as to issuing for demolition of unauthorized construction should not be issued.
>
> Please further note under Sub-clause I of Clause 344 you are ordered to stop construction work on this land failing which under Sub-clauses 2 and 3 action ill be taken against you and the construction ill be demolished at your risk and cost.
>
> Sd/- L.S.Pal)
> Zonal Engineer (Bldg.)
> Office Address: City Zone,
> Municipal Corporation.
> Delhi.
>
> Served on:
>
> M/s Indian Express Ne spapers (P) Ltd. 9/10, Bahadurs hah Zafar Marg, Delhi.

> Three days after i.e. on march 4, 1980, a second press release was issued from the Raj Niwas, the official residence of respondent No. 2. It was sent by a special courier to all newspaper offices to justify the action of respondent 2 in initiating any inquiry and the mode that had been prescribed for holding the inquiry. It stated:
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> In regard to the unauthorized deviations from the sanctioned plan and construction of about 23,000 sq.ft. in the lower basement and upper basement, the spokesman indicated that the show cause notice had been issued by the Corporation authorities. Further action would be taken in the light of the reply received by the party concerned.

11. On the stand taken by respondents No. 6 and 7 it has been submitted that from the argument raised it has been admitted by the counsel for respondent No. 7 that he is appearing on behalf of respondents No. 6 and 7 but no counter affidavit has been filed on behalf of respondent No. 6. The plea taken by the respondent to this effect that the respondent has passed an order on the basis of the complaint of respondent No. 6 and the said order has been passed after giving opportunity to the petitioner and upon a fact finding inquiry conducted by respondent No. 4, therefore, it cannot be said that the orders passed by the respondent is in any ay arbitrary in nature. The petitioner has submitted that the inquiry report seems to have been prepared in the office of respondent No. 5. Actually no inquiry had taken place and the impugned order in the writ petition does not refer to any inquiry. Even no reference to that effect has been mentioned in the impugned order. The order only recites that on the information of respondent No. 6 it is presumed that the seal put by the petitioner upon the factory premises is not justified. In the absence of any reference regarding the inquiry, in the impugned order no cognizance can be taken of any such inquiry, which has been filed as Annexures- 2 and 3 to the counter affidavit of respondent No. 5.

12. It is also worth mentioning that in the so-called inquiry the stand of the petitioner has not been taken into consideration and even it has not been referred to. The petitioner has for warded the entire document on demand made by the respondent in the reply-dated 3.2.2006. The material supplied by the petitioner has been completely ignored and absolutely no mention has been made regarding the aforesaid material. Thus it clearly appears that there was no inquiry in the eye of law. Moreover, the hypothecation agreement itself permits the petitioner to take possession of the goods by entering into premises here the goods are housed and also permits the bank to sell goods by private sale, auction or public auction without intervention by the Court. The petitioner has placed reliance upon the hypothecation agreement, which the petitioner has filed as Annexure-3 to the writ petition and has placed reliance upon Clause-6(d), Clause-6(e) and 15 and (b) which are quoted below:

> 6 (d): Bank is entitled to take possession of the said goods by entering into the premises here the said goods or part thereof is kept/housed and seize, appoint Receiver and/ or sell the same ither by private sale or public auction without the intervention of the court and to apply the net proceeds to wards the liquidation of dues to the Bank and further agrees that the Banks account of sales or realization shall not be questioned by the Borrower and also agrees to pay the balances due to

the bank with interest and other charges after adjustment of the sale proceeds, not withstanding that all or any of the said goods may not have been realized.

6 (e): ... The borrower shall punctually pay all rents, rates, taxes, cesses duties and other outgoing of factory premises and godown wherein the "SAID GOODS" shall be kept and keep the "SAID GOODS" free from distress. In default, the Bank may without affecting its rights hereunder or at law and without being bound to do so pay such rents, rates, taxes, cesses, duties and other outgoings and any such amount paid by the bank shall be repaid by the borrower on demand and in default of such payment the said amount shall be debited to such account/s of the borrower was the Bank shall think fit and shall carry interest at the rate hereinafter mentioned and be a charge on the "SAID GOODS".

15. without prejudice to the general terms and conditions in this Agreement, the Borrower hereby consents interalia for the specific terms with regard to the Cash Credit (hypothecation) of goods was under:

(b) That the "SAID GOODS" shall be sold or disposed of by calling for tenders to wards reduction of the borrower's liability

13. Further it has been submitted on behalf of the petitioner that it is settled law that the reasons cannot be added or supplied through affidavits and the impugned order cannot be supplemented by supplying reasons through affidavit. Therefore, there exists no inquiry on record, which can form the basis of the impugned order.

14. As regards the imposition of the stamp duty, the petitioner submits that the conclusion drawn by the respondent is not correct and it is a total non-application of mind and merely to grab the assets from the petitioner who are the rightful owner of the said goods and for the benefit of a defaulter, such an order has been passed. The imposition of the stamp duty by respondent No. 5 clearly show s that he assumes that the land transaction is based upon an unregistered lease agreement between M/S Lokesh Garments Private Limited and M/S S.S.A. Laminator Private Limited. In support of the aforesaid contention the petitioner submits that there can be no loan agreement on the basis of a lease agreement. The t o transactions are independent transactions and cannot be co-related even in wildest of imagination. The petitioner is neither a party to the lease agreement nor the said lease agreement has formed the basis of the loan, which was given by the petitioner to respondent No. 7. The basis of loan given by the petitioner is hypothecation agreement dated 10.2.2003 upon which proper duty has been paid and the same stands registered with the Registrar of Companies. The respondent ignoring the aforesaid documents, which were already available with respondent No. 5, the respondent No. 5 has lodged a false case deliberately so that the petitioner may not lift machineries and valuable assets upon which the petitioner has a law full claim. The action under the Stamp Act by the respondent is totally without jurisdiction and without any basis. In case any proceeding can be launched, that can only be against M/S Lokesh Garments Private Limited or S.S.A. Laminators Private Limited between whom the alleged lease agreement was executed. The petitioner has nothing to do with the said agreement and the petitioner cannot be directed to pay

any stamp duty or penalty upon such agreement. The rider imposed by respondent No. 5 that the petitioner can lift machineries only hen they pay stamp duty is without jurisdiction, arbitrary and mala fide. The show cause notice, which has been issued against the petitioner, is also not even in accordance with the provisions contained under the Stamp Act inasmuch as the deficiency proposed has not been mentioned.

15. The action of the respondents is totally against in vie of the provisions of the Act. Once the possession has been taken from the petitioner, respondent No. 7 through proxy has set up respondent No. 6 and influenced respondent No. 5 in order to grab the machineries upon which possession was taken by the petitioner on 31.1.2006. The stand of respondent No. 6 that the factory belongs to it and respondent No. 7 has got no concern with the said factory and the same stand has been taken by respondent No. 1 in the capacity was respondent No. 3 was false on the face of it inasmuch as the respondent No. 7 in his petition before the Debt Recovery Tribunal has disclosed the address of the same place here respondent No. 6 is alleged to run the factory. A detail to that effect has been figured and stated in the affidavit filed in support thereof. The aforesaid petition before the Debt Recovery Tribunal, New Delhi has been filed by respondent No. 7 on 17.2.2006, which is a date after the passing of the aforesaid order. The so called lease agreement upon which respondent No. 6 claims itself to be lessee of the premises was itself revoked and the tenancy of respondent No. 6 stood determined w.e.f. 31.1.2006. Thus there was no lease agreement on the basis of which respondent No. 5 could have arrived at a conclusion that the premises belong to respondent No. 6. Moreover, it was categorically stated by the petitioner that the inventory report prepared in the presence of Panchas disclosed that there are no other machineries installed at the premises except the machineries of respondent No. 7, which were financed by the petitioner.

16. Thus respondent No. 5 has abused his power and on the basis of the order passed to the effect that the factory premises belongs to respondent No. 6 is an order without jurisdiction. Even respondent No. 5 has given the custody of entire machineries to respondent No. 6 so that they may use the factory illegally. In order to put a complete bar upon the petitioner respondent No. 5 passed an order on 15.2.2006 restraining the petitioner to take possession of the machineries by initiating proceedings against the petitioner under the Stamp Act. This clearly goes to show that respondent No. 5 is siding respondent Nos. 6 and 7 without any authority of law. The consequence of such undue favour is dispossession of the petitioner from the property belonging to the petitioner which was in the exercise of statutory powers and due to the aforesaid order it clearly depicts the right belonging to the petitioner. It clearly goes to show the collusion and abusing the official powers of respondent No. 5 with the respondents No. 6 and 7. The result of the aforesaid order is that the petitioner is not in a position to recover the amount of 3 Crores which is actually a public money due to the orders passed by the respondent.

17. It has also been submitted by the petitioner that respondent No. 6 who is a habitual defaulter has taken a loan of 25 Crores belonging to the Punjab National Bank and has failed to pay the said amount. On the basis of the complaint the matter has been handed over to the CBI and the matter is being investigated. The aforesaid allegation made in the writ petition by the petitioner has not been denied in the counter affidavit and even it has been admitted. The amount which is to be recovered from respondent No. 7 was on 4.3.2006 is Rs. 2,93,43,121/-. As respondent No. 5 has colluded with

respondents No. 6 and 7 and the powers have been misutilized but the respondent No. 5 has not explained his conduct and powers under which circumstance he has passed the aforesaid orders and which provisions of the Act give the power to respondent No. 5 to pass such orders.

18. In support o the aforesaid contention the petitioner has placed reliance upon a judgment reported in A.I.R. 1986 S.C. Page 872 Express Newspapers Pvt. Ltd. and Ors. v. Union of India and Ors. and paragraphs 114, 116, 118, 119, 125, 126 and 135 have been referred to which are quoted below:

> 114. The petitioners have pleaded the facts with sufficient degree of particularity tending to show that the impugned notices were holly mala fide and politically motivated; mala fide, because the impugned notice of re-entry upon forfeiture of lease dt. March 10,1980 issued by the Engineer Officer, Land & Development Office under Clause 5 of the indenture of lease dt. March 17,1958 for alleged breach of Clause 2(14) and 2(5) - which in fact were never committee- and the notice dt. March 1,1980 by the zonal Engineer (Building), City Zone, Municipal Corporation for demolition of new Express Building here the printing press is installed under Sections 343 and 344 of the Delhi Municipal Corporation Act were really intended and meant to bring about the intended and meant to bring about the stoppage of the publication of the Indian Express which has throughout been critical of the Government in power whenever it went wrong on a matter of policy or in principle. Also, mala fide because they constitute misuse of powers in bad faith. Use of power for purpose other than the one for which the power is conferred is mala fide use of power. Same is the position hen an order is made for a purpose other than that which minds place in the order.
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> 116. Professor de Smith in his monumental work the Judicial Review of Administrative Action, 4" edition at Pp. 335-36 says in his on terse language:
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> The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred,.... A power is exercised maliciously if its repository is motivated by personal animosity to wards those who are directly affected by its exercise.
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> 118- Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises hen an authority miscues its power in breach of law, say by taking into account bona fide and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises hen the power is exercised for n improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister was in S. Pratap Singh v. State of Punjab . A power

is exercised maliciously if its repository is motivated by personal animosity to wards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the per is conferred is mala fide use of that power. Same is the position hen an order is made for a purpose other than that which finds place in the order. The ulterior alien purpose clearly speaks of the misuse of the power and it was observed was early as in 1904 AC515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers hall be used boa fide for the purpose for which they are conferred'. It was said by Warrington, C.J. in Short v. Poole Corporation (1926) 1 Ch.66 that:

No public body can be regarded was having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.

In Lazarus Estates Ltd. v. Beasley (1956) 2 QB 702 at Pp. 712-13 Lord Denning LJ. Said:

No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. " See also, in Lazarus case at p. 722 per Lord Parker, C.J.:

Fraud' vitiates all transactions know to the law of however high a degree of solemnity.

All these three English decisions have been cited with approval by this Court in Pratap Singh's case.

119. In Dr. Ram Manohar Lohia v. State of Bihar it was laid do n that the Courts had al ways acted to restrain a misuse of statutory power and more readily hen improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike do n the action. In State of Punjab v. Ramjilal it was held that it was not necessary that any named officer was responsible for the act here the validity of action taken by a government was challenged was mala fide was it may not be known to a private person was to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, was held in Barium Chemicals Ltd. v. Company Law Board the abuse of authority must appear to be reasonably probable.

125-The expression 'Government' in the context is the functionary of the Central Government i.e. The Minister for works & Housing who is vested with executive power in the relevant field. The executive power of the Union vested in the President under Article 53(1) connotes the residual or

governmental functions that remain after the legislative and judicial functions re taken a ay. The executive power with respect to the great departments of the Government are exercisable by the Minister of the concerned departments by virtue of Rules of Business issued by the President under Article 77(3). For purposes of the present controversy, the functionary who took action and presumably on hose instructions the impugned notices were issued was no one than the Lt. Governor of Delhi who according to learned Counsel for respondent 1 could not usurp the powers and functions of the Union of India in relation to the property of the Union and therefore had no functions in relation to the lease in question. It seeks that the Minister for works & Housing was taking his orders from respondent 2. The dominant purpose which actuated respondent No. 2 to initiating governmental action was not s much for implementation of the provisions of the Master Plan or the Zonal Development Plans framed under the Delhi Development Act or the observance of the relevant Municipal Bye-la s under the Delhi Municipal Corporation Act but to use these provisos for an 'alien' purpose and in bad faith i.e. for demolition of the Express Buildings with a mark of retribution or political vendetta for the role of the Indian Express during the period of Emergency and thereafter and thereby to bring about closure of the Indian Express. If the Act was in excess of the power granted to the Lt. Governor or was in abuse or misuse of power, the matter is capable of interference by the Court.

126. The Court in Pratap Singh's case AIR 1964 SC 733 observed that the Constitution enshrines and guarantees the rule of law and the power of the High Courts under Article 226(which is equally true of Article 32) is designed to ensure that each and every authority in the State, including the Government, acts bona fide and within the limits of its powers and that hen a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the court to afford justice to the individual. The Court further observed that in such an event the fact that the authority concerned denied the charge of mala fide, or asserts the absence of oblique motives, or of its having taken into consideration improper or irrelevant matter does not preclude the Court from inquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.

135. In the facts and circumstances, I am constrained to hold that the impugned notices at. Mar. 1,1980 and Mar.10,1980, were not issued bona fide in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and thus were holly mala fide and politically motivated.

Whether construction of the new Express Building with an increased FAR of 360 constitutes a breach of the Master Plan or the Zonal Development Plan or Clauses 2(5) and 2(14) of the lease deed.

1.The Deli Development act, 1957: Master Plan for Delhi; Zonal Development Plan for D-II area viz. the Press enclave in the Mthura Road Commercial Complex.

19. The petitioner has further placed reliance on the case of Sri Nath Educational Society, Sirsa and Ors. v. State of U.P. and Ors. and has referred to paragraphs 4 and 5 which are reproduced below:

> 4. From perusal of the affidavits of the parties it is clear that the land in question belong to the petitioners and it has not been acquired by the State and no proceedings for acquisition or requisition of the said plots have taken place. Respondents without the consent of the petitioners had started digging earth from their plots for construction of the road and did not stop it till this Court granted an interim order on 13.8.1985. The act of the respondents has the effect of depriving the petitioners of their property without authority of law. The government and its officers can neither deprive others of their property without authority of law nor can they interfere with their rights unless they can point out any rule of law authorizing their action. In this connection reference may be made to Bishan Das v. State of Punjab herein it was laid down was under (Para 14):
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> The action of the Government in taking law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirement of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a constitution which guarantees to its citizens against arbitrary invasion by the Executive of peaceful possession of property. As pointed out by this Court in Wazir Chand v. State of Himachal Pradesh the State or its Executive Officers cannot interfere with the right of others unless they can point to some specific rule of law which authorizes their actions.
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> xx xx xx we have here the highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority.
>
> 5. In the instant case respondents had neither the power to take possession of the land of the petitioners nor can they interfere with their possession for making construction of the road without acquiring the land. However, laudable object the state may intend to achieve it can neither deprive a person of his property nor can it interfere with his right save by authority by law. Apart from violation of Article 300A of the Constitution such an action of the state is also violative of Article 14 of the Constitution. By threatening to take possession of the petitioner's property for purpose of constructions of the road without acquiring the land, the respondents have acted in most high handed manner and they continued to do so till this Court granted interim order.

20. Further reliance has been placed upon paragraph 14 of the case Bishan Das and Ors. v. State of Punjab and Ors. which is reproduced below:

> 14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the state and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by

> virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in Wazir Chand v. State of Himachal Pradesh the state or its executive officers cannot interfere with the rights of others unless they can pint to some specific rule of law which authorizes their acts. In Ram Prasad Narayan Sahi v. State of Bihar this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see who the Municipal Committee, Barnala, can step in was trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi's case (supra), remarkable for their disturbing implications.

21. The petitioner has also placed reliance on the case of Durga Prasad and Ors. v. State of U.P. and Ors. reported in 1999 (37) ALR 764 and has referred to paragraphs 13,14,15,16 and 17 which are reproduced below:

> 13. To deprive citizens of their prop4rties, was in the present cases, without due process of the law, is State high-handedness. The Court cannot take up individual cases which have been discovered by the CBI, here 2650 persons have not been given compensation despite the fact that their land had been walked into and possessed illegally by th4state for a public project sanctioned by the Planning Commission of Iida to be executed by the state of Uttar Pradesh. The question is here have these large amounts of money gone? If moneys are still retained by the state Government, then, why had the consequential payment not been made to the affected people. The CBI has reported on the prima facie state of affairs. The court is concerned that moneys which have been earmarked for these public projects have been retained and the citizens who are entitled to receive these moneys was compensation against the deprivation of their properties without land acquisition proceedings, have not been paid. This is a matter which needs a probe by the authority hose job it is to probe fiscal and financial matters relating to mishandling and misdealing public finances.
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> 14. One of the basic guarantees which the Constitution of India has given to its citizen is that no person shall be deprived of his property except in accordance with the due process of the law. Life is livelihood and in a democracy it is protected, and to be deprived only according to the procedure established by law. This is the spirit of

freedom and the right to enjoy it was guaranteed under Articles 19 and 21. The fact that Article 31, the provision relating to compulsory acquisition of property stood omitted, made no effect on the confidence to hold property. The property may be acquired under the law of land but in accordance with the procedure. The citizen may not question the law which prescribes the procedure was the fundamental " right to property" stood omitted in 1979. But, the procedures and the action in execution of acquisition by the state would still have to stand the test of Articles 19 and 21. Besides, the RIGHT TO PROPERTY is protected under the Constitution of India, under Part XII, Chapter IV. Chapter IV was inserted by an amendment. It enjoins:

Chapter IV RIGHT TO PROPERTY 300 -A. Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law.

15. But if the circumstances of this case become the order of the day, a practice and habit of State functionaries to walk into and usurp the properties of defenceless, little people who live by and off their land, then, the experience of the last t o decades show s that those who make the laws, may consider the reality to remedy the arbitrariness of State functionaries to usurp the properties of citizens in violation of constitutional protection and guarantee. In Uttar Pradesh it is becoming an official habit. The founding fathers had been reckoned with this. India is, and ill and for a long time be, an economy with an agrigarian base. The only manner in which a property may be acquired for a public purpose, is an exercise spelled out by law.

16. The CBI has reported that in some cases there has been no land acquisition proceedings and the only method by which the properties of the agriculturists could have been acquired for the public project, sanctioned by the Central after Commission was under the Land Acquisition Act, 1894. The project, that is, the Gyanpur Pump Canal System had received approval of the Planning Commission of India, but 2650 agriculturists have lost their properties and not received compensation because no proceedings for acquisition have begun, land acquisition cases have not been processed and the records of the land acquisition cases were returned by the Special Land Acquisition Officers was funds were not made available. This reflects a bad situation. The CBI reports arbitrariness. In the present context of the case it is no a matter of record that the rule of law was violated. Walking into citizens' properties is the sort of phenomenon which happens in dictatorships. In theory, this aspect of citizens being deprived of their properties without due process of law is an impossible situation in the face of the Constitution of India.

17. The amicus curiae, Mr. Navin Sinha, Advocate, submits that an ex-post-facto land acquisition proceedings, a solution offered by State functionaries ridicules the Constitution of India. It is an official acknowledgement that land-owners and agriculturists were deprived of their property in violation of the law and by abdication of the law. It could indeed be a ridiculous situation if ex-post-facto

proceedings were to be formalized with the State Government no announcing its intention to acquire and for a public project, possessed illegally two decades ago. The law is that hen the Government is satisfied that a particular land is "needed for is likely to be needed", a public announcement shall be carried out, and only then, may a citizen's right to property may be qualified to permit the Government to enter that land for survey, dig, bore, to find out whether the land is "adapted for such purpose" of acquisition. There is no such thing known was ex-post-facto sanction of land acquisition proceedings. Only the modalities for making a calculation for payment of compensation to the agriculturists hose land has been possessed by the State can be bowed to make the best out of a bad situation. And the privacy of land owners preventing State visitation into residences, Court-yards and gardens is respected by law by giving property owners a prior notice. But, in these matters, the law was thrown to the wind.

22. In view of the aforesaid fact the petitioner submits that the orders passed by respondents are liable to be quashed.

23. A counter affidavit on behalf of respondent No. 5 has been filed and it has been stated that in compliance with the order passed by the District Magistrate, respondent No. 5 in the capacity was respondent No. 3 passed an order dated 8.2.2006. The aforesaid order has been passed by respondents considering the reports submitted by the City Magistrate on the direction of the District Magistrate. Respondent No. 6 has specifically stated that 200 labourers were engaged in the factory and all of them have become jobless due to the seal of the premises of the petitioner. The prime consideration before respondent No. 3 was to maintain law and order as well as compliance of the order passed by the superior officers. Before passing the aforesaid order he has perused the hypothecation agreement herein nothing was mentioned about the premises in question. The petitioner bank only hypothecated machineries. As the petitioner bank exceeded its jurisdiction in sealing the entire premises herein the factory of respondent No. 6 was running. There was no reason or occasion for the petitioner bank to seal the entire premises in the garb of the agreement. As regards the direction of the respondent No. 3 regarding demanding of the stamp duty is concerned, a notice under Section 33 of the Indian Stamps Act was issued by respondent No. 3 which specifically provides that if any instrument is brought before him which in his opinion, is not duly stamped, may impound the same. The petitioner has been issued a notice of show cause and the said order was not a final order. In vie of the aforesaid fact it has been submitted on behalf of respondent No. 5 that the orders passed cannot be said to be without jurisdiction.

24. A counter affidavit has been filed on behalf of the respondents No. 7 and Sri H.N. Singh has appeared on behalf of respondents No. 6 and 7. In support of his contention the counsel for respondents No. 6 and 7 has submitted that respondents No. 6 and 7 are the sister concerns with separate entities. Act No. 54 of 2002 has been enacted by the Parliament to regulate the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest and for the matter enacted therein an incidental thereto in special circumstance has acceded frame work relating to commercial transaction. The aforesaid Act is a Special Act authorizing the secured creditor to take special steps for possession and to recover the amount but strictly within the ambit

and provisions of law and since the Act provides the power to secured creditor, the same may be constituted strictly and the secured creditors may not be permitted to go beyond the permissible limit of the Act. Section 13(1) of the Act provides that secured creditors may enforce the same without intervention of the Court or Tribunal not withstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act. From the perusal of Sub-section (1) of Section 13 it is clear that the Act authorizes the enforcement of any security interest created only and not other.

25. Admittedly the petitioner under the agreement has got power of the secured assets of the machines only and no immoveable property is secured assets of the bank. Hence, the provision of the Act is not applicable in respect to any other property which is not secured assets, then any action against any other property may be taken only in accordance with law was provided in ordinary law of recovery and contract. Section 13(4) provides regarding taking possession of the secured assets only. From the perusal of the notice under the aforesaid Act like possession notice, Panchnama and inventory referred, it is admitted case of the petitioner that the secured assets of the bank is machines only. Though from the record of the bank it admittedly shows seizing the machines but on the spot entire premises of the factory was sealed which was holly without jurisdiction. Admittedly, the possession was taken after getting the help of the police from the order of the City Magistrate but once the bank has exceeded its jurisdiction in sealing the premises, the District Magistrate, Addl. District Magistrate and S.D.M. have the jurisdiction under Section 14 of the Act read with Section 21 of the General Clauses Act to modify or alter the orders and was such in consequence of that the impugned order has been passed. Further it has been submitted on behalf of the respondents that the order passed by the respondent-authorities is in exercise of the powers conferred under Section 14 of the Act, as such, there cannot be any interference by this Court. There should not be any interference by this Court in view of the fact that the interest of the bank is fully protected and the bank is competent to take recourse of the recovery through Debt Recovery Tribunal. Further it has been stated that respondent No. 7 has already deposited Rs. 1,49,18,103/- and both the parties have approached the Debt Recovery Tribunal which is pending for consideration. In view of the aforesaid fact the respondent submits that the writ petition may be dismissed. we have considered the submissions made on behalf of the parties and have perused the record. From the record it is clear that the petitioner has granted loan to respondent No. 7 and an agreement to that effect has been arrived at between the parties. Admittedly hen the amount has not been paid the recourse was provided under the Act of 2002 has been initiated against the respondent No. 7 but in spite of the aforesaid fact the payment has not been made then on an application filed on behalf of the petitioner with the help of the respondent-authorities, the possession of the property has been taken. From the clauses of the agreement it is clear that the petitioner has been given a power to take possession of the goods by entering into premises here the said goods or part thereof are kept / housed or seized and to appoint arbitrator without intervention of Court. From the record it is also clear that there is an unregistered lease agreement between M/S Lokesh Garments respondent No. 7 and M/S S.S.A. Laminators Private Limited. There is no agreement with respondent No. 6; therefore, whether on the basis of the application filed on behalf of respondent No. 6, that premises belong to respondent No. 6 and the respondents No. 3 to 5 can pass an order for opening the seal of the premises? From the record it is also clear that respondents No. 6 and 7 are engaged in the same business and Sri Lokesh Chopra who is managing M/S Lokesh Garments is also looking after the affairs of M/S Kapil Fashions. It is admitted in the counter affidavit that they are sister concerns and their relationship is

also of father and son.

26. we have perused the Act of 2002. There is no power under the aforesaid Act, which gives power to respondents No. 3 to 5 for making an inquiry for the purpose of taking possession of the secured assets. The power has been conferred under the aforesaid Act that only if an application is made, the authorities ill help to take possession of the property. The respondents are not able to show before this Court that under which provisions, the orders dated 10.2.2006 and 15.2.2006 have been passed. The order-dated 10.2.2006 is a direction to the petitioner that the seal of the premises may be opened immediately. As on the basis of application submitted by M/S Kapil Fashions respondent No. 6, it appears that the premises belongs to respondent No. 6. From the record it is also clear that complete documents were submitted by the petitioner before the respondents including the agreement but the respondents have not considered the same. From the perusal of the order dated 15.2.2006, Annexure-12 to the writ petition it appears that on an application filed by respondent No. 6, it has been intimated that they have entered into an agreement with M/S S.S.A. Laminators Private Limited in 2004 and respondent No. 7 has got no concern with the same. Only certain machines of respondents No. 7 are kept, therefore, the sealing of the premises is illegal and that may be released immediately. Further a finding has been recorded that the agreement executed between the petitioner and respondent No. 7 is an unregistered document, therefore, that cannot be taken into consideration and the existence of the said lease -deed cannot be taken into consideration and that is in complete violation of the provisions of Section 33 of the Stamp Act and the seal of M/S Kapil Fashions may be released immediately.

27. From the perusal of the record it is clear that the respondents have not taken into consideration the reply and documents submitted by the petitioner, as there is no discussion in the said order. The respondents have also not brought to the knowledge of the Court regarding the powers conferred upon respondents No. 3 to 5 to enquire into the matter of the secured assets under which provision the respondents have been vested power on an application made by a third person to enquire into the nature of the secured assets. We have also perused the Act of 2002, which does not give any power to respondents No. 3 to 5 to pass such orders on an application made by the third person. Only the power has been conferred to the authorities to help on an application made by the secured creditor to take possession of the property or seal the premises of the secured assets. The authorities should have taken into consideration the fact that the application filed by respondents No. 6 whether it is a bona fide application or not? Admittedly, respondent No. 6 proprietor of respondent No. 6 and Sri Lokesh Chopra are father and son. The authorities should have taken into consideration the collusion between the respondents No. 6 and 7. Regarding the CBI inquiry it was also brought to the know ledge of the authorities. The authorities should have taken into consideration all these facts. The respondent No. 6 has also not brought to the notice of the Court any agreement between respondent No. 7, which permits respondent No. 7 to install their machines, and to do their business from the aforesaid premises itch is alleged to be of respondent No. 6. In case on an application made by respondent No. 6, if they were of opinion that respondent No. 6 was also doing the business in the said premises, all the relevant documents in support thereof should have been verified. In not doing so, the authorities have committed an illegality by opening the seal of the said premises. Further the action of the respondents cannot be appreciated that supurdagi of 13 embroidery machines and 158 seeing machines which were secured assets according to the

agreement have been given in the supurdagi of respondent No. 6. This clearly goes to show that was respondents No. 6 and 7 are the sister concerns and they are involved in the same business, the effect of the order dated 16.2.2006 is that in the garb of the order passed by the respondent, the respondents No. 6 and 7 are doing the business without payment of any amount to the petitioner. In the case of Canara Bank while interpreting the provision of the Securitization Act it has been held that the Magistrate is expected to take such steps was in his opinion, are necessary for the purpose of taking possession of such assets and documents but has got no jurisdiction to direct to make an inquiry after issuing notice and further held that it is not contemplated under Sub-section 2 of Section 14 of the Act of 2002.

28. It is to be further seen that whether the authorities can investigate the matter or can issue a notice to the borrower wither before under Section 14 of the Act or subsequent to that. A similar controversy has taken attention before the Karnataka High Court in Mrs. Sunanda Kumar and Anr. v. Standard Chartered Bank reported in 2007 Vol.135, Company Cases 604 (Karnataka). The Division Bench of the aforesaid High Court after taking into consideration the various provisions of the Enforcement of Security Interest Act, 2002, regarding the question whether the Magistrate is required to issue notice to the borrower before passing an order under Section 14 of the Act has held that in the absence of any provision in the Act or rules framed thereunder requiring such notice, the Magistrate is not required to issue any notice to the borrower before passing an order under Section 14 of the Act. Further it has been held that was the borrower is given notice under Sub-section (2) of Section 13 which specifically says that if the liabilities are not discharged within 60 days from the date of notice, the secured creditor shall be entitled to all or any of the rights was mentioned in Sub-section (4) of Section 13 of the Act. Immediately after the receipt of the aforesaid notice borrower is given an opportunity under Section (3A) stating by his representation or objection against the notice under Sub-section (2) is not acceptable. Therefore, the borrower has a sufficient notice regarding the steps being initiated. Further it has been held that the above safeguard, satisfy, the principles of natural justice and no further notice by the Magistrate wither before or after recording the investigation is required.

29. There is no further provision in the Act or rules which indicates that merely because the secured creditor has filed a suit for recovery of the amount, he is prevented from resorting to the provisions of the Sections 13 and 14 of the Act. As it has been submitted by the respondents that was both the parties have taken recourse of Debt Recovery Tribunal, therefore, no steps can be taken under Sections 13 and 14 of the Act of 2002. In a recent judgment decided by the Apex Court was Appeal (Civil) No. 3228 of 2006, Transcore v. Union of India and Ors. decided on 29.11.2006, the Apex Court while taking into consideration of the Debt Recovery Tribunal Act and NPA Act has taken into consideration all the factors of both the Acts and have held that there is no precondition for taking recourse of NPA Act. It is the bank who can exercise the discretion was the case may be. The bank may apply for a leave and in some cases if they do not make an application for permission, the action under Sections 13 and 14 of the Act ill not be invalid.

30. As regards the submission on behalf of the petitioner regarding demanding of the stamp duty, as it was an unregistered agreement between the M/S Lokesh Garments and S.S.A. Laminator Private Limited, there cannot be any loan agreement on the basis of a lease agreement. Admittedly these

two transactions are independent. As the petitioner is not a party to the said lease agreement and the loan has been given by the petitioner to respondent No. 7 on the basis of hypothecation agreement dated 10.2.2003 from the perusal of Section 33 of the Stamp Act, in our view, in view of the agreement between the bank and respondent No. 3, no stamp duty can be called from the petitioner. The respondents have clearly misunderstood the provisos of law. If any proceeding for the deficiency of the stamp duty in our opinion, can be lodged in vie of the agreement between M/S Lokesh Garments and M/S S.S.A. Laminators between whom the alleged lease agreement was executed, the petitioner has nothing to do with the aforesaid agreement and as such the petitioner cannot be directed to pay any stamp duty. It appears that on the behest of respondent No. 6 all these proceedings have been initiated against the petitioner.

31. In view of the aforesaid fact we are of opinion that the orders passed by respondents No. 3 to 5 are holly illegal and without jurisdiction and against the provisions of law and as such, cannot be sustained.

32. In the result, the writ petition is allowed and the orders dated 8.2.2006 passed by respondent No. 3, Annexure-1 to the writ petition, order dated 10.2.2006 passed by respondent No. 4, annesure-2 to the writ petition and the order dated 15.12.2006 passed by respondent No. 3, Annexure-12 to the writ petition are hereby quashed. No order as to costs.