

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1982 of 2013

Wellfare Buildings and Estates Pvt. Ltd., a company registered under the Companies Act having its registered office at 126/1 Ravindrapalli, P.O. & P.S. Khardah, District-North 24 Pargana, Kolkata through its Chief Executive Officer, D.V.R. Prabhakar, Son of D.V.J. Rao, Resident of No. 7-23-5, Kirlampudi Layout, Opp. Municipal Guest House, P.O. Kirlampudi Layout, P.S. III Town, Dist. Visakapatnam, A.P.

.... ... **Petitioner**

Versus

- 1.The State of Jharkhand through its Chief Secretary, Jharkhand Mantralaya, Project Building, HEC, P.O & P.S. Dhurwa, District-Ranchi.
- 2.The Secretary, Department of Institutional Finance and Programme Implementation, Government of Jharkhand, Jharkhand Mantralaya, Project Building, HEC, P.O & P.S. Dhurwa, District-Ranchi.
- 3.The Joint Secretary, Department of Institutional Finance and Programme Implementation, Government of Jharkhand, Jharkhand Mantralaya, Project Building, HEC, P.O & P.S. Dhurwa, District-Ranchi.
- 4.The Deputy Commissioner, Koderma, P.O., P.S. & District-Koderma.
- 5.The Reserve Bank of India through its Chairman at Mumbai.
- 6.The Assistant Manager, Departemnt of Non Banking Supervision, Reserve Bank of India, South Gandhi Maidan, P.O. & P.S. Gandhi Maidan, District-Patna.
- 7.The Ministry of Corporate Affairs, Union of India, Delhi.
- 8.The Regional Manager, S.E.B.I., Kolkatta (W.B.)

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner	: Mr. L.C.N. Sahdeo, Advocate Mr. Yash Raj Gupta, Advocate
For the Respondents	: Mr. Kishore Kumar Singh, SC V Mr. Vishnu Prabhakar, AC to SC V
For the Resp.-S.E.B.I.	: Mr. Abhishek Sinha, Adv.
For the Resp.-R.B.I.	: Mr. Rohit Ranjan Sinha, Adv

Order No. 7/Dated 1st September, 2022

The instant writ petition has been filed under Article 226 of the Constitution of India for quashing notice dated 11.02.2013 issued in Miscellaneous Case No. 13 of 2013 by which it has been informed that one of the branches of the petitioner-company situated at Koderma has been sealed as the petitioner-company has failed to show any paper for doing business as Non-Banking Financial Company; and further to direct the respondents-authorities to unlock the premises of the petitioner-company at Koderma and release the bank account of the petitioner.

2. The brief facts of the case, as per the pleadings made in the writ petition, read as under:

The petitioner is a registered company under the Companies Act, 1956 and is engaged in business of Real Estate, mainly sale and purchase of plots and flats, since 1999. The company also promotes its own properties and offers its services for marketing of the products and services of similar business establishment through its marketing team.

The company has advertised and disseminated all the information regarding functioning of the company and customers, after being satisfied with the policy of the company, have booked property and have paid advance to the company, which is being properly

maintained in the books of account of the company. Further, as a part of the business transaction the company is receiving the plot amounts in installments and the same is reflected as property advance in the financial statements of the petitioner-company, which forms part of the audit accounts. The company also allots part of its land to its customers as collateral security for the amount of property advance. Furthermore, the advance receipt towards property booking, till the entire value of property is received, is classified as liabilities in the book of accounts and only when entire value of property is received, the same is treated as sale and moved to sale of property.

It is the case of the petitioner that some confusion had arisen regarding working of the company and the matter was enquired from the Department of Non-Banking Supervision of Reserve Bank of India, which did not notice any illegalities with the working of the petitioner and held that since the company is engaged in the business of Real Estate, it does not come under the purview of Non-Banking Financial Company (NBFC) or National Housing Bank, however, requested the Patna Office of Reserve Bank of India to give advice in the matter, as would be evident from communicated of Reserve Bank of India dated 03.09.2011. Thereafter,

the Department of Regulation and Supervision of Reserve Bank of India, Patna Branch had conducted enquiry regarding working of the petitioner-company, which has held that the petitioner-company does not fall under the category of NBFC and is engaged in the business of Real Estate business and there is no regulatory measure for the same.

It has further been stated that similar complains, with respect to working of the company, was made before the authority of the respondent-State, whereupon enquiry was conducted but no irregularities was found, as would be evident from Memo No. 648 dated 13.08.2012.

It is stated that the aforesaid letter was duly communicated to all the Deputy Commissioners in the State requesting them that no action is required to take under NBFC Regulation for Real Estate Business but the Deputy Commissioner, Koderma, even after receipt of such letter sealed the office premise of petitioner-company at Koderma and issued notice dated 11.02.2013 in Miscellaneous Case no. 13 of 2013 by which it has been informed one of the branches of the petitioner-company at Koderma has been sealed as the petitioner-company has failed to show any paper for doing business as Non-Banking Financial Company.

Being aggrieved with the impugned notice, the petitioner has approached this Court invoking the power conferred to this Court under Article 226 of the Constitution of India for redressal of grievance.

3. After being noticed, the respondents-State, SEBI and RBI have put their appearance through their counsel.

4. Affidavit has been filed on behalf of RBI wherein stand has been taken that the petitioner-company is not registered with Reserve Bank of India, as such scrutiny of the books of account could not be conducted under Section 45-N of the RBI Act, 1934.

5. The respondents-SEBI has also filed counter affidavit, wherein it has been stated that the matter was examined by the respondent-SEBI and during course of enquiry, it has been observed that the company has collected money in the form of deposits, which is camouflaged as a plot booking scheme/property advance, wherein assured and pre-decided amounts have been offered as maturity benefit at the end of the term on the money deposited by the investors. However, as per details furnished by the company, they have handed over possession of properties to depositors in very few cases. Accordingly, it is apparent that the company has collected money with the promise of

assured and pre-determined return without any actual intention of delivering property/plot of land.

It has further been submitted that the petitioner-company is not coming under the fold of SEBI as required in view of provision of Section 11AA of the SEBI Act, 1992

6. Mr. K.K. Singh, learned S.C. V, appearing for the respondents-State has submitted that even though petitioner-company is not coming under the fold of NBFC but as would appear from impugned notice, wherein the petitioner-company is shown to be dealing with public money by accepting money from the public investor and thereby defrauding them. The Deputy Commissioner, after taking into consideration the nature of work, has issued notice asking the writ petitioner to furnish its reply, to which, petitioner replied but without waiting for the adjudication which is to be done by the notice issuing authority i.e., the Deputy Commissioner, Koderma, the instant writ petition has been filed invoking the writ jurisdiction of this Court conferred under Article 226 of the Constitution of India.

It has been contended on behalf of the State legality and propriety of the notice can only be looked into by this Court in exercise of power conferred under

Article 226 of the Constitution of India, if the notice suffers from jurisdictional error. Since there is no jurisdictional issue, therefore, it would be apt and proper to relegate the petitioner to approach before the Deputy Commissioner, Koderma for consideration of his grievance.

7. Mr. L.C.N. Sahdeo, learned counsel for the petitioner has submitted that although the reply has been filed but the writ petition was filed for reason that the office of the petitioner-company at Koderma was sealed without affording opportunity of being heard and without considering the reply, so furnished by the petitioner.

8. This Court has heard learned counsel for the parties and perused the material available on record.

9. The fact, which is not in dispute, is that the jurisdiction of this Court has been invoked in exercise of power conferred under Article 226 of the Constitution of India wherein sustainability of the impugned notice dated 11.02.2013, having been issued by the Deputy Commissioner, Koderma, has been questioned.

10. The respondent-RBI and respondent-SEBI have submitted that the petitioner-company since is not dealing with financial transaction to come under the fold of R.B.I. Regulation to be considered as Non-

Banking Financial Company, therefore, it also not come under the fold of SEBI, as per stand *inter alia* taken by the SEBI, as would appear from the affidavit filed on behalf of the SEBI but the State has serious objection about the maintainability of the writ petition at this juncture since notice on fact has been challenged before this Court in exercise of power conferred under Article 226 of the Constitution of India.

11. The position of law is well settled that notice can be assailed at the threshold if the notice suffers from jurisdictional error, as has been held by Hon'ble Apex Court in the judgment rendered in Union of India & Anr. Vs. Vicco Laboratories [(2007) 13 SCC 270], wherein at paragraph 31 it has been laid down as under:

“31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that

notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”

12. This Court, on the basis of settled position of law, has examined the factual aspect on the fact of the given case, wherefrom it is evident that it does not suffer from jurisdictional error.

Therefore, this Court is of the view that interference by this Court in exercise of power conferred under Article 226 of the Constitution of India will not be proper otherwise the writ Court will be said to have exercised the power as adjudicatory body.

This Court, therefore, is of the view that the instant writ petition is premature at this stage.

13. Accordingly, the writ petition stands dismissed.

14. However, it is left open upon the writ petitioner to pursue his grievance before the Deputy Commissioner, Koderma.

15. The Deputy Commissioner, Koderma, in turn, is directed to consider the reply, so furnished by the petitioner, and pass order in accordance with law preferably within a period of six weeks from the date of receipt/production of copy of this order.

It is made clear that unsealing of the premises of the office of the petitioner will depend upon the decision

to be taken by the Deputy Commissioner, Koderma, after considering the reply so furnished by the petitioner on the notice dated 11.02.2013, as directed.

16. In consequence thereof, Interlocutory Application being I.A. No. 697 of 2014 stands disposed of.

(Sujit Narayan Prasad, J.)

Alankar/-