PETITIONER:
CANARA BANK

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ANR. C

DATE OF JUDGMENT: 08/03/2000

BENCH:
S.N.Phukan, S.R.Babu

JUDGMENT:

RAJENDRA BABU, J. :

The appellant filed a writ petition in the High Court seeking for a writ or direction or order to the first respondent to pay a sum of Rs. 1,24,87,487.47 together with interest amount of Rs. 2,24,80,070.88 upto July 29, 1987 with further interest at the rate of 19.5% until date of discharge. The appellant in the course of its banking business had granted different kinds of loans on security like mortgage or pledge or hypothecation of floating charge of all assets of Madura Sugars Limited, Randiarajapuram, Madurai District, [for short 'the company'], a company registered under the Companies Act. The Government of Tamil Nadu took over the undertaking by the Madura Sugars Limited (Acquisition & Transfer of Undertaking) Act, 1984 [hereinafter referred to as 'the Act']. The undertaking of the company is engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power stood transferred to and vested in the Government. Section 5 of the Act provides for extinguishment of all encumbrances such as mortgage, charge, lien or other interests and it is further provided therein that the payment of mortgage money or other dues who holds such charge, lien or other interest shall be paid in whole or in part out of the amounts specified in Section 9, but no such mortgage, charge, lien or other interest shall be enforceable against any property which is vested in the Government. Section 8 provides that the liability of the company prior to the appointed day shall be enforceable against it and not against the Government or the undertaking. Section 9 provides for payment of certain amount in cash in the manner specified therein. Section 15 makes provision for appointment of Commissioner for payments and entire Chapter VI deals with the manner in which claims have to be made to the Commissioner, Priority of Claims, Examination or admission or rejection of the same. Section 26 provides that in respect of certain category of amounts due to be paid mentioned in the Second Schedule if not discharged by the Commissioner out of amount paid to him under the Act, he shall intimate to the Government the extent of liability remaining undischarged and which shall be assumed as liability of the Government. The learned single Judge considered the various aspects of the case and noticed that there was no material to show that the Managing

Director or the Special Officer of the company had been served with a notice in respect of the claim made by the appellant and, on actual examination of the records this position was conceded to by the learned counsel for the appellant. A contention was raised that the company had knowledge of the award and, therefore, non-service of the notice would not be fatal to the award made for payment by the Commissioner. The learned single Judge held that where law requires notice to be served and if the notice has not been served and a claim is foisted upon a party without such service of notice, there is clear violation of the principles of natural justice and an order passed in such a proceeding would be void. On that basis he took the view that the relief sought for by the appellant could not be granted and dismissed the writ petition. On appeal filed by the appellant, the Division Bench of the High Court considered the matter and, while agreeing with the learned single Judge, observed as under :-

"As the undertaking of the company had vested in the Government, notice ought to have been directed to both the respondents therein in the claim proceeding and the Commissioner ought to have heard both of them before passing any order. The view expressed by the learned Judge that the order passed by the Commissioner is null and void inasmuch as notice was not served on the respondents is correct and no exception can be taken thereto.

The Division Bench again stated as follows :- "It is contended that the communication discloses that the respondents had full knowledge of the entire proceedings before the Commissioner and they are not entitled to challenge the order of the Commissioner made in those proceedings in this Court. We are unable to accept this contention. The learned Judge has found from the records that there was no service of notice on either of the respondents and consequently, the entire proceedings of the Commissioner are vitiated."

The Division Bench on examination of the scheme of the Act particularly with reference to Sections 5(4), 8, 9, 16, 17, 20 and 26 of the Act, had no doubt that the liability of the Government under the provisions of the Act is to the extent only upto the total amount determined under Section 9 which the Government is bound to pay to the Commissioner for payments to the company. The Division Bench also noticed that the liability of the company continues to exist and it is not enforceable against the Government or the Government company. On that basis, the Division Bench dismissed the appeal. Shri V.R. Reddy, the learned senior Advocate appearing for the appellant, contended that the view taken by the Division Bench of the High Court on the scheme of the enactment is plainly erroneous. He submitted that Section 5(4) of the Act while extinguishing rights against the Government or the undertaking arising out of the security made it clear that a secured creditor is nevertheless entitled to claim in accordance with his rights and interests, payment of the mortgage or other dues, in whole or in part out of the amounts specified in Section 9 and did not limit it only to the amounts specified in Section 9. He further pointed out that other provisions to which the learned Judges adverted to were only provisions which were made not to override the other provisions of the Act which was made clear in the expression "save as otherwise expressly provided in the Act". He further submitted that

Section 26 is an independent provision and is not controlled by any other provisions of the Act. The interpretation placed by the Division Bench on Section 26 would render it otiose. The learned counsel appearing for the respondent, however, supported the view taken by the learned single Judge and the Division Bench of the High Court in the writ petition and writ appeal respectively. It is no doubt true that Section 5(4) refers to rights of a secured creditor to make a claim in regard to the dues out of the amounts specified in Section 9, but the purpose of Section 5(4) if borne in mind it becomes clear that while extinguishing the rights of the secured creditor as against any property vested in the Government, a claim can be made for payment out of the amounts specified in Section 9. Section 26 in particular provides that if the dues arising out of secured loans obtained by the company from nationalised banks and public financial institutions during any period before the appointed day is not discharged fully by the Commissioner out of the amount paid to him under the Act, intimation will have to be given to the Government the extent of the liability which remains undischarged and that liability shall be assumed by the Government. We cannot without closer examination say that argument of the learned counsel for the appellant is without merit. However, we do not propose to consider or answer this aspect as we propose to rest our decision on another ground. We have set out in the earlier part of this order that the learned single Judge on full investigation of the records found that notice to the company had not been given, which was admitted by the learned counsel for the appellant before the learned single Judge. Under the scheme of the Act it is clear that the company is also liable to make good the amounts which remain outstanding and, therefore, principles of natural justice also require that a notice should have been given to it. The view taken by the learned single Judge and accepted by the Division Bench to which we have adverted to is placed on sound footing. Therefore, we are of the view that the adjudication made by the Commissioner is void for want of notice to the company and, therefore, unenforceable and so the High Court was justified in refusing to grant the relief to the appellant.

In this view of the matter, we affirm the view taken by the High Court and dismiss the appeal. However, there will be no order as to costs.