(2000) 03 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 4346, 4347 of 1997 and 690 and 691 of 1998

Asuram APPELLANT

Vs

Tehsildar, Sanchore RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Rajasthan Agriculture Credit Operations (Removal of Difficulties) Act, 1974 — Section 13, 14, 14(4)

Citation : AIR 2000 Raj 345

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : S.N. Sharma, for the Appellant; S.S. Purohit and Dinesh Maheshwari, for the Respondent

Judgement

S.K. Garg, J.—Since all these four writ petitions raise common question of law and facts and, therefore, they were heard together and are being disposed of by a common order.

2. In these writ petitions, a prayer has been made to declare Sub-section (4) of Section 14 of the Rajasthan Agricultural Credit Operations (Removal of Difficulties) Act. 1974 (for short ''the Act'') ultra vires of Sub-section (1) of Section 14 of the Act, which restricts the sphere of transfer of land acquired by the Creditor Bank from the Debtors who are members of SC/ST. to the members of SC/ST only. The question regarding jurisdiction of review Court to interfere with the interim order passed by the Prescribed Authority u/s 13 of the Act has also been raised. The controversy as arisen in the context is that the Bank in question has after obtaining an order u/s 13 of the Act either auctioned the land in question or transferred the same after acquisition u/s 14 of the Act to a buyer who is not a member of SC/ST. The petitioners in these writ petitions are such buyers of the land from the Bank and in all these cases, the Tehsildar who has earlier made the order as Prescribed Authority has proposed that such a transfer is not permissible in view of the provisions of Section 14(4) of the Act read with

the provisions of the Rajasthan Tenancy Act, 1955 in this regard and to initiate proceedings for setting aside the sales made in favour of the petitioners.

3. We do not find any force in the contention as to the validity of the provisions of Sub-section (4) of Section 14 of the Act. It has been urged by the learned counsel for the petitioners that there is a mark distinction between the sales carried out u/s 13 and u/s 14 of the Act, which comes within the ambit of hostile discrimination in the matter of disposal of same land on the basis of the methodology adopted by the Bank. While there is no provision like Sub-section (4) of Section 14 in Section 13 of the Act. there is no prohibition in the sphere of transfer of property u/s 13 of the Act. Here, it would be useful to quote the relevant provisions of Sections 13 and 14 of the Act in extenso :

"Section 13. Recovery of dues of a bank through a prescribed authority:-- (1) Notwithstanding anything contained in any law for the time being in force, an official of the State Government notified by the State Government as the prescribed authority for the purpose of this section may, on the application of a bank, make an order on or any agriculturist or his heirs or legal representative or his guarantor, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or interest therein or any other immovable property, uppn which the payment of such money is charged or mortgaged or any other property in his possession :

Provided that no order shall be made by the prescribed authority under this subsection for the sale of any land or any interest therein or any other immovable property upon which the payment of money is charged or mortgaged or any other property in his possession, as the case may be, unless the agriculturist or the heir or legal representative or his guarantor of the agriculturist, as the case may be, has been given an opportunity of being heard and has been served with a notice by the prescribed authority calling upon him to pay the amount due and default has been made in payment thereof for three months after the determination of liabilities by such authority.

(2) Every order passed by the prescribed authority in term of Sub-section (1) shall be deemed to be a decree of a Civil Court and shall be executed by him in the same manner as a decree of such Court.

Explanation.-- For the purpose of exercising powers conferred by this sub-section, the prescribed authority shall be deemed to be a Civil Court.

(3) Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner under any other law for the time being in force.

"Section 14. Right of a bank to acquire and dispose of immovable property.-- (1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to Itself acquire agricultural land or interest therein or any other immovable property which has been charged or mortgaged to It by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interest therein or any other immovable property has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the money due to it.

(2) A bank which acquires land or interest therein or any other'' immovable property in exercise of the powers vested in it under Subsection (1) shall dispose it of by sale, within a period to be specified by the State Government in this behalf.

(3) If the bank has to lease out any land acquired by it under Sub-section (1) pending sale thereof as indicated in Sub-section (2), the period of lease shall not exceed one year at a time and the lessee shall not acquire any interest in that property notwithstanding any provisions to the contrary in any other law for the time being in force.

(4) A sale by a bank of land or interest therein in terms of Sub-section (2) shall be in favour of persons as may be prescribed by the State Government u/s 30 of this Act and shall be subject to any provisions of any law in force which may place restrictions on purchase of land by non-agriculturists or ceiling for acquisition of land or by a person not belonging to a scheduled caste or scheduled tribe or fragmentation of land.

4. The scrutiny of two provisions makes it clear that in a sale conducted u/s 13 of the Act, no proprietary interest is acquired by the creditor-Bank in the land in question and the sale conducted u/s 13 of the Act is like a sale conducted by the Court in execution of a decree in which interest of the judgment-debtor involved is transferred through the agency of the Court but such transfers are governed by the rights and obligations attached to the land of thejudg-ment-debtor which are attached under the general law. Therefore, if the interest of the judgment-debtor is transferred u/s 13 of the Act by the agency of the Bank upon obtainingan order from theTehsildar, which is executed like a decree of Civil Court, what is really transferred through auction is the interest of the Judgment-deb tor though there is involvement of the Bank or the auctionee (auctioneer) and in that event, the provisions of the Rajasthan Tenancy Act, 1955 effecting restrictions on the persons on whom interest of judgment-debtors can be transferred are automatically attracted. In contrast, a sale u/s 14 of the Act takes place where the Bank being of the opinion that proper market price is not being achieved/obtained in the sale executed u/s 13 of the Act, it can acquire the land itself and, thereafter, it can dispose of the land of the debtor-mortgagee. Such sale by the Bank as a matter of law is transfer of Bank''s own property which has been acquired by it under Sections 14 of the Act. However, keeping in view the basic scheme and the constitutional mandate which protracts the interests of weaker sections of the society particularly members of SC/ST an.d the provisions of the Rajasthan Tenancy Act, 1955 which puts restrictions on the alienation of the interest of the members of the SC/ST, to the members of the SC/ST alone so that the sources of such weaker sections remains within such community and it does not go out of them, therefore, by dint of Sub-section

(4)of Section 14 of the Act, the legislative policy is maintained that interest of members of SC/ ST should continue to remain with that community and it does not go out of them. In this view of the matter, we do not find anything which goes contrary to the constitur tional mandate in making the provision like Section 14(4) of the Act.

5. Realising this legal position, the learned counsel appearing for the petitioners gave a fair proposal that in such event without going into the merits of the case, justice at least demands that in the event the sale in favour of the petitioners are not sustained, they be refunded consideration received from them for the land in question before extinguishing their title. This proposal cannot be countered inasmuch as if the sale in favour of the petitioner cannot be sustained, any sum received under that invalid transaction is bound to be returned to the persons from whom such considerations were received. In these circumstances, we direct that the State Government shall refund the amounts recovered from the petitioners as consideration of the land in question to the petitioners within a period of two months, It is stated by the learned counsel for the petitioners that in each cases, possession of the land has not been received by the petitioners (buyers). Therefore, we further direct that if the aforesaid payment is not refunded to the petitioners within a period of two months from the date of service of this order, the petitioners shall be entitled to interest @ 12% p.a, from the date of recovery of amount from them until date of refund.

6. With these observations, these writ petitions stand disposed of. There shall be no order as to costs.

