(2012) 08 MP CK 0234

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1499 of 2001

Bala APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) ILR (MP) 38 : (2012) 4 MPLJ 667

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Divya Kirti Bohre, Panel Lawyer for Respondent Nos. 1 to 4/State, Rajneesh Gupta and Vikas Mishra, Pranay Verma, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the legality and validity of the impugned order dated 6-5-1978 (annexure P/21) passed by the Competent Authority under the Ceiling on Agriculture Holdings Act, 1960 (in short, the Ceiling Act) whereby the land in question has been declared surplus and this order has been affirmed up to the Board of Revenue. The facts necessary for the disposal of this case lie in a narrow compass. Suffice it to say that the holder of the land was one Girja Bai. In the year 1972 said Girja Bai obtained loan from 5th respondent M.P. State Co-operative Land Development Bank (hereinafter referred to as the Bank) and mortgaged the land in question to the Bank. On account of non-payment of loan of Rs. 20,000/- which she took, the Bank took a decision to auction the land in question. Eventually, on 9-6-1985 sale notice (annexure P/8) was issued by the Bank; on 11-6-1985 (annexure P/9) the auction took place; on 24-9-1985 (annexure P/12) the sale was confirmed by Assistant Registrar, Co-operative Societies; and on 4-6-1988 (annexure P/13) the sale deed was executed in favour of the petitioner/auction purchaser.

2. On bare perusal of the averments made in the petition as well as the impugned order of the Competent Authority dated 6-5-1978 (annexure P/21) it is gathered that the draft statement was published and thereafter the return (annexure P/20) was submitted by the said holder Girji Bai stating therein in the requisite column that the land in question has been mortgaged by her with the Bank (respondent No. 5). But, no notice u/s 11(3) of the Ceiling Act was issued to the Bank.

3. The Competent Authority on the basis of the material placed on record declared the land in question to be surplus and the said order has been affirmed up to the Board of Revenue. Thereafter, the surplus land has been allotted to the interveners also who are said to be landless persons.

4. In this manner the present petition has been filed by the auction purchaser/ petitioner before this Court.

5. It has been put forth by Shri Sanjay K. Agrawal, learned counsel for the petitioner that once the holder of the land has fairly disclosed that the land in question has been mortgaged with the Bank since she had obtained loan of Rs. 20.000/-, it was incumbent upon the Competent Authority to have issued notice to the Bank and having not done so, the proceedings stands vitiated and thus the right of auction purchaser/petitioner who bought the land in question in auction sale cannot be jeopardized. In support of his contention, learned counsel has placed heavy reliance on the Single Bench decision of this Court Saadat Mohammad Khan and Others Vs. State of M.P. and Others, .

6. On the other hand Smt. Divya Kirti Bohre, learned Panel Lawyer argued in support of the impugned order and submitted that this petition has no merit and the same be dismissed.

7. Shri Pranay Verma, learned counsel appearing for the interveners submitted that the proceedings of auction took place in terms of M.P. Sahkari Bhoomi Vikas Bank Adhiniyam, 1966 and the rules framed thereunder but section 49 of the Ceiling Act is having overriding effect upon all other enactments and, therefore, it has been submitted that if the land has been declared surplus under the Ceiling Act, the action of the competent authority cannot be said to be illegal and the petitioner is having no right. It has also been put forth by him that the property in question has already vested in the State Government in the year 1978 since final statement was already published in terms of section 11(6) of the Ceiling Act and the auction took place thereafter in the year 1985. By inviting my attention to Chapter V of the Ceiling Act it has been put forth by learned counsel that the Bank was having only limited right as emphasized in different sections of this Chapter and the only right which the Bank owns is to realize the amount which was given to the holder of the land on loan and nothing more and thus according to the learned counsel the petitioner who is the auction purchaser is having no right in the land in question.

8. Having heard: learned counsel for the parties I am of the view that this

petition deserves to be allowed.

9. It would be condign to refer certain undisputed facts which reads thus:-

(i) Girji Bai was the holder of the land;

(ii) In the year 1972 she obtained loan from the Bank/respondent No. 5;

(iii) since she could not repay the loan amount, sale notice was issued on 9-6-1985 by the Bank (annexure P/8);

(iv) on 11-6-1985 (annexure P/9) the auction of the land in question took place;

(v) on 24-9-1985 (annexure P/12) the sale was confirmed in favour of the petitioner since she was the highest bidder; and

(vi) on 4-6-1988 sale deed (annexure P/13) was executed in favour of the petitioner.

10. Apart from the aforesaid admitted facts it is also no more in dispute that the return was submitted by the holder Girji Bai (annexure P/20) and in the specific column specifically it has been mentioned by her that the land in question has been mortgaged in the Bank since she obtained loan of Rs. 20,000/-.

11. It is curious to note that despite it was disclosed by the holder Girja Bai that the land has been mortgaged in the Bank, the Competent Authority, for the reason best known to him, did not issue any notice u/s 11(3) of the Ceiling Act to the Bank. Thus, the action of the competent authority runs de hors to the mandatory provisions of section 11(3) of the Ceiling Act.

12. On close scrutiny of sub-section (3) of section 11, it would reveal that the words "creditors and all other persons interested in the land" have been used by the Legislature while enacting the said section and thus according to me, those words are having some meaning and they cannot be ignored. The very purpose of introducing these words in the aforesaid provision is that before declaring the land to be surplus, the interested persons should be heard and all the disputes must be redressed. Since no notice was served upon the Bank which was mandatory in terms of section 11(3) of the Ceiling Act, according to me, the proceedings under the said Act are vitiated. In this context, the decision of Single Bench of Saadat Mohammad Khan (supra) has rightly been placed by learned counsel for the petitioner. The Single Bench decision of this Court Jagat Singh Barelal Vs. State of M. P., has held that if no notice u/s 11(3) of the Ceiling Act was sent to the persons who are in possession of the property in question and they were interested persons, the action of the Competent Authority was found to be bad in law. Similar is the position here also. Since admittedly no notice was served upon the Bank despite the Competent Authority was fully aware that the land in question has been mortgaged with the Bank, therefore, the order passed by the Competent Authority is illegal and is bad in law.

13. u/s 11(3) of the Ceiling Act, no distinction is made to the person or Authority

with whom the land which is to be declared surplus is mortgaged and there is a charge over the said land. Had been the said intention of the legislature, it would have been enacted in section 11(3) itself that no notice is required to be served upon such a category of persons or Authority (like Bank).

14. I do not find any merit in the contention of learned counsel for the interveners that because section 49 of the Ceiling Act is having overriding effect upon M.P. Sahkari Bhoomi Vikas Bank Adhiniyam, 1966, therefore, rights which have been accrued to the petitioner under the said Adhiniyam cannot be said to be jeopardized because the Ceiling Act is having overriding effect. Similarly. I do not find any merit in the next contention of learned counsel that u/s 11(6) of the Ceiling Act the final statement was published therefore, the petitioner or the Bank is having no right and further the Bank is having only right to realize the amount as envisaged under Chapter V of the Ceiling Act. The answer of all these arguments is simple that firstly the notice ought to have been issued u/s 11(3) to the Bank since it already came into knowledge of the Competent Authority that the land has been mortgaged and thereafter all those objections should have been adjudicated and thereafter the order must have been passed by settling the dispute of the Bank and by discharging the charge over the land which was declared to be surplus. At this juncture, it would be apt to quote section 11(3) of the Ceiling Act which reads thus:-

11(3). The draft statement shall be published at such, place and in such manner as may be prescribed and a copy thereof shall, be served on the holder or holder:; concerned, the creditors and all other persons interested in the land to which it relates. Any objection to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit.

According to me, the words which are embodied in the aforesaid clause "the creditors and all other persons interested in the land" are having greater significance and it would mean that it was mandatory on the part of the Competent Authority to have issued notice to them. If the contention of learned counsel for the interveners is accepted then section 11(3) of the Ceiling Act would become otiose hence such contention cannot be accepted.

For the reasons stated hereinabove, I find that there is merit in the petition and accordingly the same is hereby allowed. The impugned order dated 6-5-1978 (annexure P/21) passed by the competent authority is hereby set aside and in consequence thereof all other orders are quashed. However, this order shall be confined only up to the land which was mortgaged to the Bank i.e. 15 acres of Khasra No. 21/1 of Village Kajalkhedi, Tahsil Babai, District Hoshangabad.

14A. The petition is accordingly allowed to the extent indicated above. No costs.

