(2007) 02 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No. 12857 of 2005

C.C. Transport APPELLANT

Vs

Karnataka Appellate Tribunal and Devangodi Harsha RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 174, 175, 50

Citation : (2007) 02 KAR CK 0053

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : A.S. Rajendra Prasad for M.S. Rajendra Prasad Associates, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R-1 to R-3 and D.P. Prasanna, for R-4, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—According to the petitioner, he is the owner of 40 acres of land in Sy. No. 7/A of Aiyangeri village, Kodagu Dist. For non-payment of assessment amounting to Rs. 8839-60, 6 acres of land has been sold by the revenue authorities for a sum of Rs. 9256/-. Sale was held on 14.8.1990. R-4 did not deposit any amount on the date of sale and thereafter he deposited the amount on 4.9.1990. Sale was confirmed in favour of R-4. Aggrieved by the same, petitioner filed an appeal before the Deputy Commissioner, Kodagu, contending that a fraud has been played in selling the property of the petitioner even though it was a coffee plantation, it has been sold for a poultry sum of Rs. 9256/- and that R-4 did not deposit 25% of the amount on the date of the sale and the remaining 75% within 15 days as required under the law. Application of the petitioner had not been considered by the Deputy Commissioner. Ultimately, in W.A. 7321/1999 Division Bench of this Court on 7.3.2005 remanded the matter to the Deputy Commissioner, Kodagu and directed the Deputy Commissioner to re-consider the matter in accordance with law. Deputy Commissioner, on 18.3.2002 as per Annexure-D dismissed the appeal of the petitioner and thereafter petitioner filed an appeal before the KAT in Appeal No. 248/03. Appeal filed by the petitioner u/s 50 of the Karnataka Land Revenue Act has also been dismissed on 7.3.2005 as per Annexure-E. Being aggrieved by these two orders, present petition is filed.

2. Heard the counsel for the petitioner, Govt. Advocate for R-1 to 3 and the counsel for R-4.

3. Learned senior counsel Sri. Rajendra Prasad appearing for the petitioner contends that Deputy Commissioner as well as KAT have failed to consider the mandatory provisions of Section 174 & 175 of the Karnataka Land Revenue Act. According to him, without considering these two provisions of law and without application of mind, both Deputy Commissioner and the KAT have committed an error in dismissing the appeal.

4. Learned counsel for R-4 concedes that there is a delay in making the payment. Since R-4 has deposited the money at a later date Deputy Commissioner and the KAT have not committed any error in rejecting the contentions urged by the petitioner. Therefore, he requests this Court to dismiss the petition.

5. Having heard the counsel for the parties, following points would emerge for the consideration of this Court in this writ petition:

1. Whether the Deputy Commissioner has committed an error in not considering Section 175 of the Karnataka Land Revenue Act? And

2. Whether the order of confirmation of sale is in accordance with the provisions of the Karnataka Land Revenue Act?

6. Sections 174 & 175 of the Karnataka Land Revenue Act reads as hereunder:

Section 174 - Deposit by purchaser of Immovable property - in all cases of sale of Immovable property, the party declared to be the purchaser shall be required to deposit immediately 25% of the amount of his bid, and the balance within 15 days from the date of the sale.

Section 175: Failure to make deposit - (1) In default of the payment of the deposit referred to in Section 174, the property shall be put up for resale forthwith and the expenses incurred in connection with the first sale shall be borne by the defaulting bidder.

(2) In default of payment of the balance of the bid amount within the period prescribed in Section 174, the deposit, after defraying therefrom expenses of the sale, shall be forfeited to the State Government, and the property shall be resold, such resale shall be made after issue of a fresh notice in the manner prescribed under this Chapter for the original sale.

(3) Any deficiency of price which may happen on a resale by reason of the purchaser''s default and all expenses attending such resale shall be recoverable from the defaulting purchaser in the same manner as an arrears of land revenue.

It is not in dispute that 6 acres of coffee plantation has been sold for a sum of Rs. 9256/-in a public auction for recovery of arrears of land revenue (kandayam) amount to Rs. 8839-60. It is also not in dispute that sale was conducted on 14.8.1990. If any property is sold in a public auction, u/s 174 of the Karnataka Land Revenue Act, purchaser has to deposit 25% of the bid amount immediately and the balance within 15 days from the date of sale. It is not in dispute that on 14.8.1990 R-4 has not deposited 25% of the amount as required under the law. When R-4 had not deposited 25% of the sale amount, it was the duty of the revenue officer who conducted sale to cancel the sale and order for re-sale and recover the expenses incurred for the said auction from R-4 .

7. R-4 has also not paid the balance amount within 15 days from the date of sale. Entire sale consideration has been deposited by him on 4.9.1990 which is beyond the period of 15 days. When the sale consideration has not been deposited by the auction purchaser within 15 days, Section 175 of the Act would come into force. By applying provisions of Section 175 of the Act, it was for the revenue officer who conducted the sale to bring the property for resale forthwith and recover expenses from R-4. Though these two Sections are pointed out by the petitioner before the Deputy Commissioner and the KAT, without considering the provisions of Sections 174 & 175 of the Act, it is unfortunate that the authorities have held that no illegalities have been pointed out by the petitioner and no injustice is caused to the petitioner. At the outset, it is to be noted that 6 acres of coffee plantation cannot be sold in a public auction for Rs. 9256/-. Since value of the coffee plantation per acre in the year 1990 cannot be less than Rs. 50 to Rs. 60 thousand, but the Deputy Commissioner as well as KAT even without looking into Section 174 & 175 of the Act have rejected the appeal filed by the petitioner. Even if the Deputy Commissioner has failed to look into the provisions of Sections 174 & 175 of the Act, tribunal consisting of a District Judge and a revenue member should have looked into the grounds raised by the petitioner. But it is unfortunate that a District Judge who is sitting with the revenue member in the tribunal, has not even considered the grounds urged by the petitioner. The mistake committed by the Asst. Commissioner and the Deputy Commissioner in ignoring Sections 174 & 175 of the Karnataka Land Revenue Act is brought to the notice of the tribunal, when the orders of Asst. Commissioner and the Deputy Commissioner were apparent error of law on the face of the records, tribunal conveniently for the reasons best known to it without even discussing the grounds urged by the petitioner has dismissed the appeal by holding that no illegality has been committed by the Deputy Commissioner in dismissing the appeal of the petitioner. But the approach of the tribunal clearly establishes that though the mistake committed by the Asst. Commissioner and the Deputy Commissioner were apparent mistake of law on the face of record, conveniently has avoided to give its finding. Therefore, this Court has to interfere with the orders of the tribunal and the same is required to be set aside by following the letter and spirit of Sections 174 & 175 of the Act.

8. Accordingly, this petition is allowed. Annexures-E, D and C are hereby

quashed. R-1 to 3 have to pay costs of Rs. 5000/- to the petitioner.

