(2002) 01 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 8017 of 1990

Gujarat State Co-op. Land Development Bank Ltd. and Another — APPELLANT

Vs

Dy. Secretary (Appeals), Revenue Department and Others — RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:
Bombay Land Revenue Code, 1879 — Section 178, 179

Citation : (2002) 3 GLR 596

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Lilu K. Bhaya, for the Appellant; Harsha Devani, Asstt. G.P. for Respondent No. 1 and A.J. Patel, for the Respondent

Judgement

P.B. Majmudar, J.—Petitioner No. 1 is a Co-operative Land Development Bank. Respondents 2 to 4 were given a loan, totalling to Rs. 78,800/- and the said respondents had executed a registered mortgage deed, dated 17-10-1975. Respondents 2 to 4 are jointly and severally liable to pay the amount back to the Bank with interest. Respondents 2 to 4 thereafter failed to pay up the aforesaid amount. The Bank, therefore, initiated proceedings to recover the said amount as land revenue and petitioner No. 1 also received a certificate from the District Registrar, Co-operative Societies u/s 139 of the Act. The said certificate was forwarded to petitioner No. 2 for the purpose of effecting recovery. It is not in dispute that respondents 2 to 4 were served with various notices, as required by the provisions of the Bombay Land Revenue Code and the Rules. Thereafter, petitioner No. 2, who is the Special Recovery Officer, held a public auction on 4-5-1985. Under the said auction, agricultural lands of Respondents 2 to 4, which were mortgaged with the petitioner No. 1-Bank, were put to auction. The upset price was fixed at Rs. 3,700/- per acre. At the said auction, no private bidder came forward for the purpose of bidding. The Circle Inspector, Dehgam, who was authorized to bid for and on behalf of the State Government, purchased the said land at the upset price. Subsequently, the aforesaid auction was confirmed by the petitioner No. 2 by order dated 15-1-1986. It is not in dispute that on behalf of respondents 2 to 4, objections were not lodged within the stipulated period and after waiting for the stipulated period of 30 days, auction proceedings were confirmed by the petitioner No. 2. Subsequently, on behalf of respondents 2 to 4, revision application was preferred before the State Government. The aforesaid revision application was allowed by the Deputy Secretary, Revenue Department, Gujarat State. The Deputy Secretary came to the conclusion that auction was not held in consonance with the provisions of Section 179 of the Bombay Land Revenue Code. It is found by the Deputy Secretary that the auction was confirmed after a period of 8 months and 11 days, and that therefore, there is an unreasonable delay, and that therefore, there is breach of Section 179 of the Bombay Land Revenue Code and on that ground, the sale was set aside arid the revision was allowed. The said order is impugned at the instance of the petitioners in this Special Civil Application.

2. It is required to be noted mat before confirming the sale, respondents 2 to 4 failed to lodge any objection within the stipulated time. Section 178 of the Bombay Land Revenue Code provides as under :-

"178. Application to set aside sale : At any time within thirty days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but, except as is otherwise provided in the next following Section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one."

Section 179 provides as under :-

"179. Order confirming or setting aside sale : On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding Section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale; Provided that if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing set aside the sale."

It is not in dispute that within 30 days from the date of sale of the property, no application was filed on behalf of respondents 2 to 4 for setting aside the order and after waiting for the aforesaid period, subsequently, the Recovery Officer confirmed the said sale. Since there was no application or objections filed by respondents 2 to 4, there was no question of setting aside the said sale or of directing issuance of a fresh sale proclamation. As per the provisions of Section 179, the sale is required to be confirmed after waiting for 30 days from the date of the sale. In the instant case, after waiting for the aforesaid period of 30 days, subsequently, at a later point of time, the sale was confirmed. What is required by law is that no such sale can be confirmed within a period of 30 days, but there is no provision that after a period of 30 days, sale cannot be confirmed. In fact, it has to be confirmed only after waiting for 30 days and not before that. In the instant case, after waiting for the stipulated period of 30 days, sale was confirmed by the petitioner No. 2. It cannot be said that there was any unreasonable delay for the purpose of confirming the aforesaid sale. It cannot be said that any prejudice is caused to respondents 2 to 4 in any manner in view of the delay in confirmation of the sale. In any case, if the sale was confirmed within 30 days, naturally, that order was required to be set aside. In the instant case, after waiting for a period of 30 days, at a later stage, the sale was confirmed. It was submitted by Ms. Bhaya, learned Advocate for the petitioners, that at the relevant time, since grant was not available, some time was consumed for the purpose of payment of money. In his submission, it cannot be said that there was any unreasonable delay for the purpose of confirmation of the sale. No doubt, such arguments were not advanced before the Secretary, but, in any case, it cannot be said that the sale is required to be confirmed immediately on the next day after completion of 30 days. There is no such provision in law. It cannot be said that the confirmation of sale was contrary to the provisions of Section 178 or Section 179 of the Bombay Land Revenue Code. The Secretary, therefore, committed an apparent error on the face of the record in passing the impugned order, allowing the revision application.

3. However, in order to find out a solution, I had suggested to Mr. A.J. Patel that if his clients are willing to pay up the amount, the land can be released in their favour. After taking some time to ascertain the wish of his clients, Mr. Patel has today submitted that his clients, in spite of various reminders, are not responding and in that view of the matter, this matter is now required to be disposed of on merits.

4. In my view, the order of the Secretary is absolutely unsustainable and considering the fact that at no point of time any objections were filed by respondents 2 to 4, simply because the sale was confirmed after about five months or so, it can never be said to be a ground for setting aside the aforesaid auction. The auction was held in consonance with the provisions of Section 178 and Section 179 of the Bombay Land Revenue Code and the same was confirmed as per the provisions of law, As stated earlier, there is no such provision that it must be confirmed on the next day, on completion of 30 days. It cannot be said that there was any irregularity in the procedure of auction. No irregularity can be said, to have been committed by the Officer confirming the sale and the sale, therefore, cannot be set aside. The order of the Secretary is, therefore, required to be quashed and set aside and it is accordingly set aside. Petition is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.