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(1982) 08 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4408 of 1975

Gurmit Kaur APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 23-08-1982

Acts Referred:

Citation : (1983) ILR (P&H) 420 : (1983) PLJ 323 : (1984) RRR 430

Hon'ble Judges : I.S.Tiwana, J

Advocate : P.N. Aggarwal, Advocate., Advocates for appearing Parties

Judgement

I.S. Tiwana, J.

1. In view of the identity of contentions raised in these two petitions (C.W.Ps. Nos. 4408 and 4407 of 1975) the same are being disposed of through this common order. For purposes of this judgment, a reference to the facts as stated in the first petition only is made wherever necessary.

2. Respondents No. 3, Puran Singh, obtained a loan of Rs. 3,500/ for the purchase of some evacuee land at reserve price in terms of the policy rules framed by the State Government in the year 1964 for the purchase of evacuee land in the Bet and nonBet areas. In terms of these rules, respondent No. 3 admittedly executed a mortgage deed in favour of the Punjab Government in the prescribed form copy of which is Annexure P.1. Some of the relevant terms of this deed are :

(i) The loan shall be repayable in 20 six monthly equated instalments of principal and interest;

(ii) The borrower shall hypothecate the land so purchased with the aid of this loan in favour of the Punjab Government;

(iii) For securing the repayment of the amount of the said loan with interest the borrower hereby agrees that the Government shall have first charge on the land purchased by the borrower with the assistance of the said loan advanced by the

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Government to him;

(iv) The borrower and the surety hereby further agree that if the borrower shall make default in the payment of any of the instalments of the loan hereby granted within one month of the due date or if the borrower shall commit the breach of any other term or condition of this deed, the whole of the amount of loan and interest then due shall become immediately repayable and the Government shall be at liberty without prejudice to its other rights and remedies under law to recover the same jointly and severally from the borrower and the surety personally and from the property charged in its favour under clause (3) thereof. For the purpose of affecting the aforesaid recovery, the Government shall have the power to sell or otherwise transfer or alienate the aforesaid property without the intervention of the Court and to adjust the amount so realised and to sue for the remaining amount.

(v) All disputes and difference arising out of or in any way touching or concerning this deed whatsoever shall be referred to the sole arbitrariness of the Secretary to Government, Punjab, Revenue Department acting as such at the time of the reference.

3. Since, the respondent No. 3 failed to repay the loan in terms of the above noted mortgage executed by him, the Deputy CommissionercumCollector, Kapurthala, issued notice to him on July 13, 1970, but the said notice could not be served on respondent No. 3 for the reason that by that time he had already left the village without leaving any permanent address. Subsequent thereto the Deputy Commissioner not only issued a proclamation on August 11, 1970 for publicly auctioning the land in question and got the proclamation of sale announced in the village by beat of drum and its copies affixed at public places, but also served a notice on respondent No. 3 in village Tayabpur alias Tajpur to which village the petitioner by then had shifted. The factum of service of this notice on respondent No. 3 by the Deputy Commissioner is not specifically denied in the return filed on his behalf. As a consequence of the above noted proclamation the land in question was put in auction on September 22, 1970 and the petitioner being the highest bidder for that at Rs. 3600/, the same was transferred in her favour on November 11, 1970. Physical possession of the land was also delivered to her.

4. On January 7, 1971, respondent No. 3 filed certain objection before the Commissioner against the auction held on September 22, 1970 and as a sequal to that, the Commissioner respondent No. 2 vide his impugned order dated July 14, 1975 (Annexure P.4) while holding that no appeal against the order of the Deputy commissioner putting the land to auction was competent before him under any provision of law, choose to express the opinion that he would deal with the case on the executive side in exercise of his administrative powers over the acts and actions of the subordinate revenue officers including the Collector. Since, the objection raised by the learned counsel for the petitioner before the Commissioner that he cannot deal with the civil rights of the petitioner on the

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executive side and deprive her of the property which she had purchased in auction failed, she choose to file the present petition. Vide order dated July 29, 1975, the Commissioner was restrained from proceeding in the matter any further, till the final disposal of this petition.

5. Now the learned counsel for the petitioner forcefully urges that not only the Commissioner himself has held that he had no jurisdiction in the matter under any provision of law to set aside either the order of the Collector putting the land to auction or the auction itself in favour of the petitioner, but this Court also in Civil Writ Petition No. 2245 of 1973, Harjinder Singh v. The Financial Commissioner, Punjab and others, decided on March 18, 1982, has held that in such a matter the Commissioner has no jurisdiction to interfere with the acts and doings of the Collector. In that judgment while holding that the Commissioner had no jurisdiction to set aside a similar order of the Deputy Commissioner, Kapurthala putting the land to auction on the failure of the loanee to repay the amount. I declined the relief to the petitioner on the ground that the order or act of the Deputy Commissioner putting the land to auction itself was not sustainable under any provision of law. While recording this conclusion the provisions of section 69 of the Transfer of Property Act were not at all brought to my notice and I have so observed in that judgment also:

"I repeatedly asked the learned counsel for the petitioner to point out any provision of law under which the Deputy Commissioner had the jurisdiction to put the land transferred or agreed to be transferred in favour of Mohinder Kaur respondent to auction, but he is unable to refer to any such statutory provision."

In the light of the above noted provision which has now been referred to by Mr. Aggarwal, learned counsel for the petitioner, the Deputy Commissioner acting on the direction of the Government patently had the jurisdiction to put the land to auction. The relevant part of this section reads as follows :

"69. Power of sale when valid. (1) A mortgage, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage money, without the intervention of the Court, in the following cases and in no others, namely : (a).................

(b) where a power of sale without the intervention of the Court is expressly conferred on the mortgage by the mortgagedeed and the mortgagee is the Government. (c)....... ....

(2) No such power shall be exercised unless and until(a).............

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrears and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was

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otherwise improperly or irregularity exercised, but any person demnified by an unauthorised or improper or irregular or irregular exercise of the power shall his remedy in damages against the person exercising the power. (4)..................................(5).....................

Though, Mr. Aggarwal, concedes that Transfer of Property Act as a whole is not applicable to this part of the country yet maintains that the general principles laid down in the various sections of this Act, however, is applicable and this is by now well recognised by the various precedents of this Court as well as the final Court. This aspect of the matter came up for direct consideration of their Lordships of the Privy Council in Kanhaya Lal v. National Bank of India Ltd. Delhi, A.I.R. 1923 Privy Council 114, wherein it has been observed that in India there is no enactment prohibiting a stipulation in a mortgage deed permitting sale of the mortgage property except through the medium of Court. As already pointed out, it is the admitted case of respondent No. 3 that the deed, the relevant terms of which have already been reproduced above, was executed by him in favour of the Government. He has nowhere challenged that the above noted stipulation in the deed that in case he failed to repay the money in accordance with the agreement, the Government was not entitled to put the hypothecated land in auction or it was in any way violative of any provision of law. Thus, I conclude that the Deputy Commissioner as an agent of the Government had the power to put the hypothecated land in question of auction. It is nobody''s case that by the time the land was ordered to be auctioned, either no default in the payment of the mortgage money had occurred or arrears of interest by themselves had not gone beyond Rs. 500/.

6. Again in view of the provisions of subsection (3) of Section 69 reproduced above, it is patent that the petitioner who is an auctionpurchaser cannot be deprived of the land in question as this subsection lays down in no uncertain terms that the title of such an auctionpurchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised.

7. For the reasons recorded above, these petitions succeed and the impugned order of the Commissioner dated July 14, 1975 (Annexure P.4) is quashed. The petitioner would also be entitled to the costs which I assess at Rs. 300/ in each case.

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