(1981) 10 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 952 of 1972

Kailash Nath Mehte APPELLANT

Vs

The State of Punjab and others RESPONDENT

Date of Decision : 29-10-1981

Acts Referred:
Punjab Land Revenue Act, 1887 — Section 88

Citation : (1981) 10 P&H CK 0032

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

Bench : Single Bench

Advocate : Amar Dutt, for the Appellant; R.L. Sharma for the respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—In pursuance of certain recovery proceedings against the petitioner, his land measuring about 45 kanals 4 marlas was put to auction on 29th of June, 1971. He impugned the sale and auction proceedings before the Commissioner on the grounds amongst others, that --

i) Auction purchaser Harbhajan Singh respondent No. 6 failed to deposit 1/4th of the sale price with the Naib Tehsildar conducting the sale on the date of auction.

ii) The balance amount of 75% was not paid within a period of 15 days from the date of sale as envisaged by Section 88 of the Punjab Land Revenue Act.

2. On consideration of these grounds, the Commission vide his impugned order dated 8th of February, 1972, Annexure A ''7'' turned these down on the ground that as a matter of fact, 25% of the auction price was paid by the auction purchaser to the Naib Tehsildar conducting the sale on the very day of the auction though this Naib Tehsildar deposited the said amount in the treasury on 8th of July, 1971 and the delay which the auction purchaser caused in paying 75% of the balance amount was on account of certain mis direction given by the Naib Tehsildar whereby auction purchaser had been directed to pay that amount

after confirmation of sale in his favour. Besides this, the Commissioner also found that the objections filed by the petitioner in terms of section 91 of the Punjab Land Revenue Act (hereinafter referred to as the Act) for setting aside the sale were barred by time The auction in this case had taken place on 29th of June, 1971 and according to the Commissioner, the objections having been filed on 29th of July, 1971, were not filed within 30 days from the date of the sale.

3. While impugning the above-noted order of the Commissioner Annexure A. 7, Mr. Amar Dutt, Learned Counsel for the petitioner, submits that there being non-compliance of the requirements of section 88 of the Act, which lays down that full amount of the purchase money should be paid by the purchaser before the close of the 1 5th day from that on which the purchaser was declared, the sale in favour of respondent No. 6 was non est and void. According to the Learned Counsel, there was thus neither any necessity of challenging the sale before the Commissioner of stipulated in section of the Act nor can there be any question of the objection field by the petitioner to be treated as time barred. Otherwise also, the counsel maintains, the objections file on 29th of July, 1971 were within 30 days from the date of auction itself i.e. 29th of June, 1971 has to be excluded while counting these 30 days.

4. After giving my thoughtful consideration to the entire matter I find merit in the abovenoted contention of the Learned Counsel. He in fact is supported by a decision of the Supreme Court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, where their Lordship after considering the provisions of Rules 84, 85 of Order 21 of the CPC out of which Rule 85 is almost in similar terms as section 88 of the Act, have held as under:--

The provisions of Order 21 Rules 84 85 and 86 requiring deposit of percent of the purchase-money immediately, on the person being declared as a purchaser such person not being a decree-holder, and the payment of the, balance within 15 days of the sale, are mandatory and upon non-compliance with these provisions there is no sale at all. The rule do not contemplate that there can he any sale in favour of a stranger purchaser without depositing percent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contention of these rules, there can be no question of the material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to re-sell the property (Rule 86) in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law.

5. In the light of the authoritative pronouncement. I find that the order of the Commissioner either holding that the objection filed by the petitioner before him were time barred or that the non-compliance of section 88 for whatever reason is not material to the result of the sale, is wholly unsustainable and I quash the same, In fact, a similar view has already been taken by this Court in Ganga Singh v. The State of Punjab 1968 P.L.J. 96.

6. At one stage, the Learned Counsel for the respondent-auction purchaser sought to plead that his client never defaulted in the payment of the three-fourth of the purchase money within the stipulated time but it was only on account of mis-direction given by the Tehsildar that the money could not actually be deposited within time. Firstly there is no Actual foundation laid for this submission in as much as no material has been brought to my notice that he ever offered to make the payment within the described period 15 days nor has any finding been recorded to that effect by the Commissioner Secondly, I feel that even this excuse for not making payment within time does not alter the legal position as stated by the Supreme Court in the above noted case.

7. Thus, this petition succeed to the extent indicated above and the sale made in favour of respondent No. 6 on 29th of June, 1971, is set aside.