(2006) 07 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1027 of 1986

Kanhaiya Lal and Another — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Rajasthan Agricultural Credit Operation (Removal of Difficulties) Rules, 1976 — Rule 5(14)

Citation : (2006) 4 RLW 3141 : (2006) WLC 346

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Sudhir Gupta, for the Appellant; N.K. Maloo and D.K. Soral, for the Respondent

Final Decision : Allowed

Judgement

Ashok Parihar, J.—Petitioner No. 1 Kanhaiyalal took a loan of Rs. 43332/- from the respondent No. 5 - State Bank of Bikaner and Jaipur for purchase of a tractor and a cultivator. The loan was secured by hypothecation of the tractor and the cultivator. As a co-lateral security, the agricultural land of the petitioner measuring about 103 bighas was also mortgaged with the bank. The loan was repayable in 14 half yearly instalments of Rs. 3000/- each along with the interest. The first instalment was to commence from December, 1982. The entire loan was to be repaid over a period of 7 years i.e. upto December, 1989. Petitioner, having failed to pay the first instalment in full and in time, proceedings under the Rajasthan Agricultural Credit Operation (Removal of Difficulties) Act, 1974 (for short ''the Act of 1974 (for short ''the Act of 1971) were initiated on 8.11.1983 though the petitioner had deposited a sum of Rs. 2000/- as part of first instalment on 13.6.1983. During the proceedings, referred to above, the tractor and the cultivator as also the agricultural land of the petitioners came to be attached vide order dated 28.2.1984. The land of the petitioner came to be put on auction on 27.6.1984 and, finally, on 5.7.1984 and, ultimately, the sale in the name of respondent No. 6 was confirmed on 13.7.1984 for a sum of Rs.

65000/-. The petitioners also deposited the entire outstanding loan amount on 17.6.1984. Petitioners have challenged the entire recovery proceedings and the confirmation of sale of the land in question in the present writ petition.

2. The facts, as stated above, have not been disputed so far. It has also come on record that the tractor and the cultivator, after been attached were given in Superdaginama to a third person by the Tehsildar concerned, however, without getting the tractor and the cultivator back from the person to whom the same were handed over on Superdaginama, the auction of the immovable property itself had been made. It has also come on record that at the time of auction the value of the land was assessed at Rs. 100000/-, whereas, the sale had been finalised only for Rs. 65000/-. On a complaint been made in regard to entire auction proceedings by the Tehsildar concerned, an enquiry has also been made by the Sub Divisional Officer, Jaipur. It has been reported that there have been clear violation of the relevant rules in putting the land in question on auction. Apart from proper notice not been issued, even the auction proceedings have been held in a very casual and cursory manner. The Sub Divisional Officer after inspecting the original file has observed that even the note-sheets of the auction proceedings were not drawn by the Tehsildar concerned on the spot. As per report of the Patwari received as per directions of the Sub Divisional Officer the land in question was assessed for more than Rs. 10 lacs. Even from the statement made by the respondent No. 6 inference can be drawn of clear violation of the relevant provisions of the rules in holding the entire auction proceedings. That apart, even as per Rule 5(14) of the Rajasthan Agricultural credit Operation (Removal of Difficulties) Rules, 1976, the buyer could only be an agriculturist as defined in the Act, however, in the present case, as per the statement made by the respondent No. 6 himself, he cannot be termed as a ''agriculturist'' because he was running a floor mill and doing the same business.

3. There is also no explanation or jurisdiction, whatsoever, as to why the tractor and the cultivator for which the loan was taken by the petitioners, were not recovered and put to auction first for realising the amount due. It is rather surprising that before recovering the entire amount of loan through auction of the immovable property, the tractor and the cultivator, which were given on Superdaginama to a third person, were not recovered back. The notice for surrendering the tractor and cultivator were issued to the possessor much after.

4. The Hon''ble Supreme Court, in such matters, has observed that after movable property been attached and removed from the custody of the borrower, he is deemed to be absolved from his liability to pay the amount due. In matters of agricultural loan, the same should have been recovered first from the sale of movable properties so hypotheticated to the bank and it is only when the total amount is not recovered from such sale, the remaining amount can be recovered from sale of immovable properties. As already referred above, the authorities have not proceeded in the present case as per relevant rules and, on the face of it appears to have finalised the sale in hot haste in favour of the respondent No.

6. A bare reading of material available on record prima facie shows collusion of the Tehsildar Bank Manager and the respondent No. 6. Under the circumstances the entire proceedings cannot be held to be legal and valid what to say of justified. Further more in view of the fact that the petitioner had already deposited the entire loan amount on 17.7.1984.

5. Accordingly, the writ petition is allowed. The order dated 13.7.1985 in regard to confirmation of sale is quashed and set aside. The amount already deposited by the petitioner be adjusted against his loan account and, after recovering the tractor and the cultivator from the person to whom the same has been given on Superdaginama, be handed over back to the petitioners within 60 days from the date of receipt of certified copy of this order. If any amount still remains to be paid by the petitioner against the interest or otherwise, a fresh notice of the same may be issued by the back to the petitioner and then recover the same in accordance with law. The respondent No. 6, however, is at liberty to get the refund of the amount so deposited by him in pursuance to the auction proceedings if the same has already not been received back.

