(1986) 10 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2800 of 1983

Khet Mal APPELLANT

Vs

Gram Panchayat and Others RESPONDENT

Date of Decision : 31-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) WLN 26

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Byas, J.—In this writ petition filed under Article 226 of the Constitution, the petitioner challenges the validity of order Ex. 9 passed on July 30, 1983 by the Revenue Appellate Authority, Jodhpur and prays for quashing the same.

2. Material facts leading to this writ petition may briefly be recounted as under: Gram Panchayat, Chohtan (district Barmer) issued a notice for sale of the plot of land in dispute by public auction. The auction took place on March 2 and 3, 1981. The petitioner made the last and the highest bid for a sum of Rs. 9991/-. His bid was accepted and he deposited 20% of the sale price immediately on the spot. As the bid of the land auctioned exceeded Rs. 5000/- in amount, the Panchayat applied for approval of the Collector, Banner as required under Rule 265(3)(ii) of the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 (here in after to be referred to as ''the Rules''). The Collector, Banner, by his order Ex. 6 gave his approval. The petitioner there after deposited the remaining balance of Rs. 7991/-in the Panchayat on September, 23, 1982. Bhagwan Das, who is respondent No. 2 in this writ petition, filed a revision before the Revenue Appellate Authority, Jodhpur against the aforesaid order of the Collector. The Revenue Appellate Authority heard the parties and by his impugned judgment Ex.9 dated July 30, 1983, allowed the revision, quashed the order of the Collector and set-aside the sale made in favour of the petitioner by the Gram

Panchayat. The Revenue Appellate Authority held that since the balance of the price was not paid within two months, as required under the Rules, the approval should not have been accorded by the Collector. He further held that in view of the restrictions imposed by the State Governments the action of the Panchayat in respect of the sale of the land in dispute was bad and unauthorised. He further held that certain forgeries and fabrications were also made in the documents by the Panchayat in respect of the sale of the land in dispute. It was alleged by the petitioner that the view taken by the Revenue Appellate Authority is erroneous and unsustainable. The Collector gave the approval on August 5, 1982 and the balance of the sale price was thereafter deposited on September 23, 1982. It was thus, deposited within two months of the order of the Collector. There was no material before the Revenue Appellate Authority to arrive at a conclusion that restrictions were imposed on the sale of land by the Panchayat or that forgeries were committed by the Panchayat in respect of the documents pertaining to the sale of the land in dispute. In the return filed by the Panchayat, the defence taken is that a bidder, in whose favour the auction is knocked down, is bound to pay the balance of the sale price within two months from the date of auction. The auction was made on March 2 and 3, 1981. The petitioner was, therefore, required to deposit the balance within two months from March 3, 1981. The deposit of the balance was, admittedly, made on September 23, 1982. Since the balance was not paid within two months from the date of the auction, the Collector should not have accorded, the approval. The action of the Collector in giving approval by his order Ex. 6, thus, contravenes the mandatory provisions of Rule 263 of the Rules. When the matter went for approval before the Collector, the period of two months had already expired. It appears that this fact was not brought to the notice of the Collector and approval was sought by suppressing this material fact.

3. I have heard the learned counsel for the parties at length.

4. The pertinent question arising in this writ petition is whether the impugned order Ex. 9 of the Revenue Appellate Authority suffers from any legal infirmity and should, therefore, be quashed.

5. Rule 255(2) to Rule 273 occurring in Chapter XIII of the Rules provide an elaborate procedure for sale of Abadi lands by the Panchayats. After completing the formalities and the requirements mentioned in Rules 257 to 262 of the Rules, if the Panchayat resolves to sell the land, a notice of such auction containing the particulars mentioned in Sub-rule (2) of Rule 262 is to be proclaimed in the manner provided in Sub-rule (2) of Rule 133. Rule 263, with which we are concerned in this writ petition, reads as under:

263. Payment and resale upon failure - (1) The person who made the last and highest bid shall deposit ten per cent of the amount of the bid immediately on the spot and the balance within two months from the date of the auction;

(2) Failing payment as provided in Sub-rule (1) the land shall forthwith be resold:

Provided that the resale on failure to pay the balance of the amount of the bid shall be held after a fresh notice has been issued as provided in Sub-rule (2) of Rule 262 and the ten per cent thereof deposited at the time of the original sale shall not be refunded;

Provided further that any deficiency in the price fetched at such resale shall be payable by the person who failed to make the payment as aforesaid and shall be recoverable from him as Panchayat dues.

6. Rule 265 speaks about the confirmation of auction held. Sub-rules (1) and (3) of the aforesaid rule, which have a direct relevancy, reads as under:

265. Confirmation of auction held - (1) The acceptance of the bid shall be subject to confirmation by the Panchayat and authorities prescribed under Sub-rule (3);

(3) Where the bid of the land auctioned exceeds one thousand rupees in amount, the Panchayat shall address, for the approval, of the proposed sale at the price equal to the amount at the highest bid;

(i) the Panchayat Samiti having jurisdiction, if such amount does not exceed Rs. 5,000/-:

(ii) the Collector, if such amount exceeds Rs. 5000/-, but does not exceed Rs. 10,000/-; and

(iii) the State Government, if such amount exceeds Rs. 10,000/-

7. A bare reading of Rule 263 makes it amply clear that (1) the last and the highest bidder must deposit 10% of the amount of bid immediately on the spot; and (2) the balance within two months from the date of the auction. The use of the word "shall" in Rule 263 makes the provision of deposit mandatory and no exception can be taken to it. Both the provisions (1) of depositing of 10% of the bid; and (2) deposit of the balance within two months from the date of auction, are explicit and imperative.

8. The provisions of Rule 263 of the Rules are analogous and in pari materia with the provisions of Rule 37-A of the Rajasthan Panchayat (General) Rules, 1954. The provisions of Rule 37-A were held mandatory by this Court in Sardarmal V State of Rajasthan 1965 RLW 231. It was observed:

The provisions of Sub-rule (9) should be held to be mandatory. Although the Panchayat is selling land which vests in it, it never the less sells public property. It is made clear by Sub-rule (21) that no transfer of ownership in Abadi land belonging to the Panchayat shall be valid unless it is in accordance with Rule 37-A. Sub-rule (9) lays down that the highest bidder shall deposit 10 per cent of the amount of the bid immediately failing which the land shall be resold forthwith. The balance is to be deposited within two months from the date of the auction failing which it is again provided that the land shall be resold after fixing a fresh date....

9. I find myself in complete agreement with the above view. If the person, who makes the last and highest bid, fails to pay the balance of the price within two months from the date of the auction, he can have no escape and the auction knocked down in his favour cannot be approved under Rule 265 of the Rules. In other words, on the failure of the deposit of the balance by the bidder within two months from the date of the auction, the auction stands completely wiped out.

10. Rule 265 of the Rules does not rescue the bidder who has failed to deposit the balance within two months from the mandatory provisions of Rule 263. Rule 265 does not lay down that the balance of the price can be deposited within two months from the date of the approval of the Authority or the Officer. I find no substance in the contention of Mr. Lodha learned counsel for the petitioner that since the petitioner had deposited the remaining balance within two months of the approval of the Collector, the rigors of Rule 263 stand relaexd. Mr. Lodha sought help from the order Ex. 6 of the Collector in which he observed :

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11. It was argued that the Collector had permitted him to pay the remaining balance and thereafter he deposited it. I am unable to accept the contention for two reasons, viz. (1) the Collector had no powers to extend the period of limitation while granting approval under Rule 265 (3) of the Rules and (2) the aforesaid observation does not authorise the petitioner to deposit the amount after two months of the date of the auction. He passed the order for registration of the document on the assumption that the balance was already deposited by the petitioner Ex. 6 does not show that it was in the knowledge of the Collector that the petitioner had not deposited the remaining balance within two months of the auction. Had this fact been brought to his knowledge, he would have not given the approval under Sub-rule (3) of Rule 265 of the Rules.

12. The procedure and provisions of Other 21, Rules 84 and 85 of the CPC relating to the sale of immovable property are similar to those contained in Rule 263 of the Rules. Rule 84 of Order 21, CPC lays down that the person declared to be the purchaser shall pay immediately a deposit of 25% of the amount of his purchase money. Rule 85 of Order 21 lays down that full amount of the purchase money, that is, the remaining balance, shall be paid by the purchaser into the Court on 15th day from the sale of the property. The use of the word "shall" in Rules 84 and 85 of Order 21. CPC makes the provisions mandatory. In Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, , their Lordships of the Supreme Court have held that the provisions of Rules 84 and 85 of Order 21, CPC are mandatory and upon non-compliance with these provisions, there is no sale at all. Thus, a sale of immovable property without complying with the provisions of Rules 84 and 85 is a nullity. When the sale is nullity, there is nothing to be confirmed,

13. The position under Rule 263 of the Rules, therefore, boils down as under:

(1) the person who made the last and highest bid must deposit 10 per cent of the bid immediately on the spot;

(2) the balance of the bid money must be paid by him within two months from the date of the auction;

(3) if the bidder makes a default in the payment of either of these amounts, there is no sale in the eye of law. The sale in such a case is nullity;

(4) such a sale, where the compliance of the provisions relating to payment of the purchase money has not been made within the prescribed period, cannot be confirmed or approved under Rule 265(3) of the Rules; and

(5) the period prescribed by Rule 263 of the Rules cannot be extended by any Authority.

14. Here in the instant case, the auction was made on March 2 and 3, 1981. Twenty per cent of the bid money was immediately paid on the spot by the petitioner, but the remaining balance of Rs. 7991/- was not paid within the prescribed period of two months. It was deposited long afterwards on 23rd September, 1982. The auction and sale are, thus, nullity. Unfortunately, this aspect was not brought to the notice of the Collector when his approval was sought under Rule 265(3) of the Rules. Since the auction and sale were a nullity, the approval of the Collector is invalid and was rightly not maintained in revision by the Revenue Appellate Authority. The impugned order Ex. 9 of the Revenue Appellate Authority setting aside the auction and sale is correct. It suffers from no legal infirmity. The first contention of Mr. Lodha has, therefore, no substance.

15. The next contention of Mr. Lodha is that the Revenue Appellate Authority, by his impugned order, issued directions to the Panchayat to take legal action against those who had committed forgeries in conducting this auction. These directions were uncalled for. In my opinion, when the Revenue Appellate Authority took the view that forgeries were committed in conducting the auction, it was justified in issuing directions for taking legal action against those who committed the forgeries. Such a direction should not be set aside in this writ proceeding.

16. The last contention made by Mr. Lodha is that the amount of Rs. 9991/- should be returned to the petitioner after deducting 10% from it because the sale has been set-aside by the Revenue Appellate Authority. The prayer is proper and reasonable. The amount of Rs. 9991/-, after deducting 10% from it, should be returned to the petitioner. It may be mentioned that till now no resale of the plot in dispute has been made by the Panchayat. As such, the question of deficiency in the price fetched in the subsequent sale does not arise. The petitioner is, therefore, not required to pay any deficiency as provided in the second proviso to Sub-rule (2) of Rule 263 of the Rules. Refund of the amount of Rs. 9991/- after a deduction of 10% from it should, therefore, be made to the petitioner.

17. In the result, the petition is dismissed. The respondent Panchayat is,

however, directed to refund the amount of Rs. 9991/- to the petitioner after deducting 10% of the amount of the bid from it within two months. No order as to costs.

