(1994) 07 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2693 of 1983

Kushal Singh APPELLANT

Vs

Gram Panchayat Choutan and Others RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84
Rajasthan Panchayat Samiti (General) Rules, 1961 — Rule 263(3)

Citation : (1995) 1 WLC 331 : (1994) 2 WLN 542

Hon'ble Judges : Gokal Chand Mital, C.J;N.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gokal Chand Mital, C.J.—The Gram Panchayat put the land to auction on 2nd & 3rd March, 1981 and the petitioner was the highest bidder for Rs. 9995/-. According to Rule 263 of the Rajasthan Panchayat Samiti (General) Rules, 1961, 10% of the amount has to be deposited by the highest bidder immediately on the spot and the balance within two months from the date of auction. As against 10% the petitioner deposited 20% on the spot but the balance of 80% was deposited by him on 23rd September, 1982 that is one and half year after the auction and 16 months after the last date of deposits. The Revenue Appellate Authority set aside the auction sale on the ground that since deposit was not made within two months, the auction was void. It relied on Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, Wherein under an identical position Under Order 21 Rule 84 read with Rule 85 of the CPC it was held that if the balance 75% is not deposited within fortnight, the auction sale becomes void. Against the setting aside the auction sale, the auction purchaser has filed this writ petition.

2. Counsel for the petitioner concedes that three auctions had taken place simultaneously on that date and all the three auctions were set aside on the ground that the amount was not deposited within two months. One such case

came up for decision before the learned Single Judge who dismissed the writ petition and then on auction purchaser''s appeal in D.B. Civil Spl. Appeal No. 64/87 Khetmal v. Collector, Banner, a Division Bench of this Court vide order dated 11th August, 1987 dismissed the appeal against the order of the learned Single Judge and held that Rule 263 of the Rules was mandatory and following the decision of Manila Mohanlal Shah''s case, it was held that the sale was rightly set aside and up held the order of the learned Single Judge. In view of the aforesaid decision, we find no merit in the writ petition.

3. It is then argued by the learned Counsel for the petitioner that Rule 263 is ultra vires on two grounds; (i) that period of two months is short and (ii) in any case until the sale is confirmed, no right accrues to the auction purchaser and Rule 265(4) provides that in case auction bid is not confirmed, the amount of 10% deposited by the highest bidder shall be returned to him without interest and there is no provision as to what will happen to the refund of 90% and the payment of interest on that 90%. As regards first point, in CPC 15 days are provided whereas in Rule 263 two months. So time factor is more reasonable in this than in C.P.C. Hence; this argument has no force.

4. As regards the other argument, that too has no merit.

5. When Rule 265(4) says that on 10% no interest will be payable at the time of refund, it does not mean that balance of 90% will not be refundable or interest on that amount is not payable. As and when question of refund of 90% will arise, claim for interest can be made.

6. Accordingly, we find that challenge to the vires of Rules 263 (3) is without basis. In view of above, the writ petition is dismissed. No order as to costs The stay order dated 20.10.82 is vacated.