

(2011) 01 KAR CK 0043
In the Karnataka High Court
Case No : W.A. No's. 2076 and 2078 of 2010

K.V. Seetharam

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64
Karnataka Land Revenue Act, 1964 — Section 17 (1), 171

Citation : (2011) 4 KarLJ 1 : (2011) 2 KCCR 1443

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : M.S. Rajendra Prasad for Party in Person, for the Appellant; K. Krishna, AGA, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the Petitioner in W.P. No. 12628/2008 being aggrieved by the order dated 11-9-2009 wherein the learned Single Judge of this Court has declined to interfere with the order passed by the Special Deputy Commissioner. Bangalore District, Bangalore and has also given certain directions as per the order.

2. The Appellant herein filed W.P. No. 12628/2008 being aggrieved by the order dated 30-6-2008 passed by the Special Deputy Commissioner, Bangalore District, Bangalore. It is the case of the Petitioner that the land which belonged to predecessors of the Petitioner measuring 530 acres 24 guntas situated at Pattandur Agrahara village, K.R. Puram Hobli, Bangalore East Taluk and they had absolute title over the property. They had failed to pay the land revenue and arrears of Rs. 248/- was due to be paid and the land was put. to auction inviting bid from the public. Since no public participated, the Tahsildar purchased the property on behalf of the Government and sale deed dated 6-6-1958 came to be confirmed on 29-1-1959. After lapse of nearly 40 years, the Petitioner herein claiming to be one of the legal representatives of the original owner, approached

the Deputy Commissioner to set aside the sale and to restore the land in question. The Petitioner had approached this Court on several occasions and after remand from this Court in W.P. No. 9170/2007 by order dated 6-9-2007, the second Respondent rejected the claim of the Petitioner. Therefore, the writ petition was filed contending that the entire property could not have been sold and the value for which the Government has purchased the property has not been done in accordance with Section 171(1) of the Karnataka Land Revenue Act, 1964 (hereinafter called the Act").

3. The petition was resisted by the Respondents. The learned Single Judge after considering the contentions of learned Counsel appearing for the parties and the material on record, held that admittedly, there was arrears of land revenue in respect of the land owned by predecessors of the Petitioner amounting to Rs. 248/- and the property was put to sale inviting bid from the public. Since there was no public bid, the Tahsildar himself purchased the property for Rs. 400/- and odd and sale deed dated 6-6-1958 was confirmed on 29-1-1959. The effort is now being made after the lapse of 40 years by the Petitioner claiming to be legal representative of the original owner and at this stage when the property is not in possession of the Government and the land has been allotted to various persons and third party rights have crept in and several transactions have been taken place and interested persons who are proper and necessary parties, who are in possession of the land which belonged to the predecessors of the Petitioner have not been made parties, the question of setting aside the auction at this stage would not arise. However, the learned Single Judge felt that the provisions of Section 171 of the Act had not been complied with and passed the following order:

(i) Writ petition is partly allowed:

(ii) The impugned order passed by the Special Deputy Commissioner, Bangalore District, Bangalore dated 30-6-2008 in case No. LND (A) 1/98-99 is hereby confirmed.

(iii) The Respondents shall determine the value of 530 acres 24 guntas of land in the prescribed manner as on 6-6-1958 and to arrive at the price.

(iv) After determining this value, the Respondents are entitled to adjust the amount of Rs. 248/- towards arrears of land revenue and shall pay the balance of sale price to the legal representatives of original owners on an application to be filed by them with interest at the rate of 6% p.a. from the date of default till the date of payment.

(v) Liberty is reserved to the Petitioner and also the other legal representatives of original owner to approach the Respondents with an application for refund of the balance sale price as stated above. Ordered accordingly.

Being aggrieved by the above said order passed by the learned Single Judge, the writ Petitioner has preferred this appeal.

4. The learned Sr. Counsel appearing for the Appellant who is present in person, submitted that having regard to the arrears of land revenue which was due to be paid at Rs. 248/-, entire extent of 530 acres 24 guntas could not have been sold and only a portion of the property could be sold towards arrears of land revenue and the brother of the Petitioner had made an application for grant of alternative land in the year 1964 itself and no decision was taken by the Respondents on the said application. In support of his contention, he has relied upon a decision of the Hon''ble Supreme Court in Ambati Narasayya Vs. M. Subba Rao and another, wherein it has been held that under Order 21 Rule 64 of Code of Civil Procedure. the Court while auctioning the property, should sell only such property or a portion thereof as necessary to satisfy the decree and this is obligatory on the Court and not just discretion.

5. The learned Government Advocate submitted that the land was auctioned in the year 1958 wherein sale deed was executed and sale has been confirmed and thereafter the property had been allotted in favor of several persons and after a lapse of 48 years, Appellant has approached the Court and therefore, no ground whatever is made out for setting aside the order passed by the learned Single Judge who has safeguarded the interest of the Appellant.

6. We have given our careful consideration to the contentions of learned Counsel appearing for the parties and scrutinized the material on record in the light of the principles laid down by the Hon''ble Supreme Court in Ambati Narasayya's case cited supra.

7. The principles laid down by the Hon''ble Supreme Court in Ambati Narasayya's case is not helpful to the Appellant as the said order was passed in respect of the auction held by the Court under Order 21 Rule 64 of Code of Civil Procedure. In the present case, scrutiny of the material on record would show that the fact that predecessors of the Petitioner had owned land at Pattandur Agrahara village, K.R. Puram Hobli and were in arrears of land revenue of Rs. 248/- is not disputed. It is also not in dispute that no public participated in the auction and the Tahsildar purchased the said property in favor of the Government and a sale deed dated 6-6-1958 came to be confirmed on 29-1-1959 and thereafter, the land has been allotted to several persons and rights of third parties have crept in and the said parties have not been made as a party to the writ petition. Even otherwise, having regard to the fact that more than 50 years have elapsed after auction and therefore, the question of setting aside the auction does not arise. Since there was no compliance with Section 171 of the Act wherein the amount should be determined in the prescribed manner and thereafter sale price should be fixed and balance amount, after deducting arrears, should be refunded to the erstwhile owner, necessary directions have been issued by the learned Single Judge and accordingly, we hold that the order passed by the learned Single Judge does not suffer from any error or illegality so as to call for interference in this appeal.

If the application is filed by the brother of the Appellant and it is pending, the Special Deputy Commissioner (Inams) shall consider the same strictly in

accordance with law. The writ appeal is dismissed.