(1985) 10 GUJ CK 0013

In the Gujarat High Court

Laxmichand Vardhaji APPELLANT

Vs

Collector of Banaskantha and Another RESPONDENT

Date of Decision : 21-10-1985

Acts Referred:

Constitution of India, 1950 — Article 227, 227

Citation : (1986) 1 GLR 476

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by an auction purchase at an auction sale held by the concerned Mamlatdar of Deesa on 23-5-79. The upset price was fixed at Rs. 4000/- per acre. There were nine bidders that had participated in the auction sale, but the petitioner''s bid being the highest, the Mamlatdar acting for the Assistant Collector accepted the bid and at that time 1/4th of the amount was actually deposited by the petitioner. According to the petitioner, he was orally told by the Mamlatdar that the remainder of the amount, i.e. 3/4th of the amount, was to be paid on confirmation of the sale. Then one fine morning, the Deputy Collector ex-parte took a decision at Annexure-A on 22-1-80 holding the auction proceedings as bad because of certain irregularities. The petitioner''s appeal No. 4 of 1980 to the Collector, Palanpur came to be dismissed by the Collector by his order, Annexure-b, dated 1-4-80. The petitioner carried the matter to the Special Secretary by filling a revision application u/s 211 of the Land Revenue Code. The Secretary held that there was nothing wrong in the procedure, but on a new ground he confirmed the orders of the authorities below, namely, that the petitioner had failed to deposit the remainder of the 3/4th of the amount within 15 days after the sale took place. This has given rise to the present petition under Article 227 of the Constitution of India.

2. The petitioner has brought to my notice the judgment of A.D. Desai J., as he then was, in the Special Civil Application No. 310 of 1972 decided by him on 23-3-76. The very questions regarding scope of Section 174 of the Land Revenue

Code had arisen before the learned Judge, there also, the bid of the petitioner was the highest and was provisionally accepted by the Mamlatdar, but the Assistant Collector, who was the authority to sanction the bid or confirm the sale passed an order on 23-12-69 cancelling the auction. u/s 174 of the Land Revenue Code, "the full amount of the purchase money should be paid by the purchaser before the sunset of the 15th day from that day on which the sale of immovable property took place." The learned Single Judge held in that judgment that expression used in Section 174 did not mean that full amount of the purchase price has to be paid within 15 days from the date of the bid because the relevant words were 15 days from the date on which the sale of immovable properly took place. The learned Judge, in my view, rightly held that 15 days are to be counted from the date when the bid was confirmed by the authorised officer.

3. I myself have read Section 174 of the Land Revenue Code. Section 174 of the Land Revenue Code reads as follows:

174. Purchase money when to be paid: The full amount of purchase money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immovable property took place, or, if the said fifteenth day be a Sunday or other authorised holiday, then before sunset of the first office day after fifteenth day.

4. Sale can be said to have taken place only when there is final acceptance of I the bid and not when provisional acceptance and 1/4th amount is paid.

5. In above view of the matter, the petition is required to be allowed by Jetting aside the orders at Annexures A, B & C. The matter shall now go back to the Deputy Collector concerned to deal with it in accordance with law. It goes without saying that the only thing he has to do under law is to confirm the sale proceedings. Rule is accordingly made absolute with no order as to costs.

