(2019) 10 SHI CK 0122

In the High Court Of Himachal Pradesh

Case No : Letter Patent Appeal No. 4077 Of 2013

Lekh Ram And Another — APPELLANT

Vs

Krishan And Others — RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Himachal Pradesh Land Revenue Act, 1953 — Section 23, 82(2)(c), 85, 86, 87, 88, 89, 94, 97, 99
Code Of Civil Procedure, 1908 — Order 21 Rule 64

Citation : (2019) 10 SHI CK 0122

Hon'ble Judges : Tarlok Singh Chauhan, J;Anoop Chitkara, J

Bench : Division Bench

Advocate : Karan Singh Kanwar, Surinder Prakash Sharma, Bhupinder Thakur, Svaneel Jaswal, Narender Singh Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the dismissal of their writ petition by the learned Writ Court, the petitioners/appellants have filed the instant Letters Patent Appeal.

2. Brief facts of the case are that respondent No.1 had raised a loan under low housing Scheme for construction of house in the year 1988 from the State of Himachal Pradesh. He could not re-pay the loan, therefore, the Government of Himachal Pradesh ordered the outstanding loan amount of Rs.11,885/- due from him to be recovered as arrears of land revenue.

3. Thereafter, a proclamation of sale of land, measuring 18.8 bighas being 1/3rd share of the land comprised in Khata/Khatauni No.9/20, Khasra Nos. 80(32 bighas), 83 (6-18 bighas), 85 (0-1 bigha), 86 (1-3 bigha), 88 (0-15 bigha), 92 (0-16 bigha) and 94 (15-2 bighas), situated in Village Jhamrari, Hadbast No. 385, Tehsil Nalagarh, District Solan, was issued on 22.07.1991. The auction took place on 09.08.1991. The sale was confirmed by the Collector on 19.02.1992 and

according to the petitioners, the same was approved by the Divisional Commissioner.

4. Respondent No.1 filed a Civil Suit No. 87/1 of 1992 which was dismissed by the trial Court on 31.01.1996. Respondent No.1 preferred an appeal before the learned District Judge, Solan, District Solan, H.P. bearing Civil Appeal No. 17-NL/13 of 1996, which too was dismissed on 02.07.1998. Thereafter, respondent No.1 assailed the judgment and decree passed by the learned District Judge by filing RSA No. 127 of 1999 which was decided on 23.12.2008. This Court upheld the judgments and decrees passed by both the Courts below and permitted respondent No.1 to file an appeal before the Commissioner within a period of four weeks and the Commissioner, in turn, was directed to decide the appeal within a period of three months from the date of filing the appeal after hearing the parties. In the meantime, the parties were directed to maintain status quo.

5. In sequel to the judgment dated 23.12.2008 an appeal was preferred by respondent No.1 which was allowed by the Divisional Commissioner, Shimla Division, Shimla, on 18.09.2009. Petitioners and proforma respondent No.4 Shri Nika Ram filed a revision petition against the order dated 18.09.2009 before the Financial Commissioner(Appeals), who dismissed the same on 09.08.2011.

6. It was in these circumstances that the appellants approached the learned Writ Court, who after considering the pleadings and material placed on record and the law on the subject dismissed the petition, constraining the appellants to file the instant appeal primarily on the ground that the writ petition could not have been dismissed on the grounds that were not urged in the writ petition.

7. We have heard the learned counsel for the parties and gone through the records of the case.

8. It is not in dispute that the loan raised by respondent No.1 was not repaid and that entailed passing of an order for recovery of an outstanding amount of Rs.11,885/- as arrears of land revenue for which proclamation was issued on 22.07.1991. However, the same was postponed to 09.08.1991 on which date the appellants and proforma respondent No.4 purchased the same. The sale was confirmed by the Collector and approved by the Divisional Commissioner.

9. But, the moot question is whether the sale was in conformity with law or not. The learned Writ Court has referred to the detailed procedure for sale prescribed under the Himachal Pradesh Land Revenue Act, 1953 (for short 'the Act') and we may cursorily highlight some of these provisions.

10. Under Section 85 of the Act, on the receipt of the sanction of the Commissioner to the sale of any immovable property, the Collector shall issue a proclamation of the intended sale, specifying:-

(a) the date, time and place of the sale;

(b) the property to be sold, and, if it is an estate or holding, the land revenue assessed thereon or payable in respect thereof;

(c) if the property is to be sold for the recovery of an arrear due in respect thereof, the encumbrances, grants, contracts, and rights of occupancy, if any specially saved by order of the Financial Commissioner under Section 82, sub-section (2), Clause (c);

(d) if the property is to be sold otherwise than for the recovery of an arrear due in respect thereof any encumbrance, grant or contract to which the property is known to be liable; and

(e) the amount for the recovery of which the sale is ordered.

(2) The place of sale specified under clause (a) sub-section (1) must be either the office of the Collector or some place appointed by the Collector in this behalf and situate in or near the property to be sold.

11. Section 87 provides that a copy of the proclamation shall be served on the defaulter and be posted in conspicuous part of the office of the Tehsildar of the Tehsil in which the property to be sold is situate. Once a copy of the proclamation has been served on the defaulter and posted in the office of the Tehsildar, a copy thereof shall be posted in the office of the Collector and the proclamation shall be further published in manner prescribed in Section 23 and in such other manner as the Collector thinks expedient.

12. Section 88 provides that the sale shall not take place on Sunday or other holiday, or till after the expiration of at least thirty days from the date on which copy of the proclamation was posted in the office of the Collector. The sale is to be carried out by way of public auction. It is required to be conducted either by the Collector in person or by a Revenue Officer specially appointed by him in this behalf.

13. Section 89 provides that the Collector may from time to time postpone the sale. However, Section 89 is to be read with Section 99. According to Section 99, a sale made after a postponement under Section 89 and a resale consequent on a purchaser's default under Section 94 or on the setting aside of a sale under Section 97 is to be made after the issue of a fresh proclamation in the manner herein before prescribed for the sale.

14. In the instant case, the auction was fixed for 22.07.1991, but no person came forward to buy the property and accordingly the sale was postponed for 09.08.1991. Admittedly, there is no order of postponement passed by the Collector on record, as provided under Section 89 of the Act. Once, no person participated in the auction, therefore, the proclamation for sale was required to be issued strictly in accordance with the procedure laid down in the Act, as envisaged under Sections 85 to 88 of the Act.

15. According to Section 88, sale cannot take place till the expiration of at least 30 days from the date on which the copy of the proclamation was posted in the

Office of the Collector. Whereas, in this case, despite auction having been initially fixed for 22.07.1991, fresh auction was fixed on 09.08.1991 which is less than 30 days. In the given facts, the learned Writ Court was absolutely right in observing that the procedure being mandatory was not followed by the Collector and, therefore, the sale could not have been confirmed by the Collector or for that matter even by the Divisional Commissioner. It was incumbent upon the Collector to have satisfied himself regarding the procedure having been followed at the time of auction before confirming the sale.

16. That apart, an order of postponement of sale could only have been passed by the Collector, whereas, in the instant case, the same has been passed by the Tehsildar and the same was rightly held to be beyond jurisdiction of the Tehsildar.

17. More importantly, it would be noticed that respondent No.1 had taken a loan of Rs.10,000/- and the outstanding loan at the relevant time was Rs.11,885/-. However, 1/3rd share of the land detailed in the order of the Divisional Commissioner was put to sale. The value of this land was far-higher and much more than the outstanding loan amount and it is more than settled that only that much of the property can be attached and put to sale, as would be sufficient to satisfy the claim of outstanding amount against the debtor. (Refer: Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh (1994) 1 SCC 131, S. Mariyappa (dead) by LRs. and others vs. Siddappa and another (2005) 10 SCC 235, Sai Enterprises vs. Bhimreddy Laxmaiah and another (2007) 13 SCC 576).

18. In Sai Enterprises's case (supra), it was observed as under:

"7. However, the grievance of the appellant so far as non-compliance with the requirements of Order 21 Rule 64 of the Code is concerned is on sound footing.

8. Order 21 Rule 64 reads as follows:

"64.Power to order property attached to be sold and proceeds to be paid to person entitled- Any court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

9. The provision contains some significant words. They are "necessary to satisfy the decree". Use of the said expression clearly indicates the legislative intent that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. (See Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma((1977) 3 SCC 337 : AIR 1977 SC 1789).) In all execution proceedings, court has to first decide whether it is necessary to bring the entire property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small the court must bring only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree-holder. It is immaterial whether the

property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion but an obligation imposed on the court. The sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. (See Ambati Narasayya v. M. Subba Rao (1989 Supp (2) SCC 693).) The duty cast upon the court to sell only such portion or portion thereof as is necessary to satisfy the decree is a mandate of the legislature which cannot be ignored. Similar view has been expressed in S. Mariyappa v. Siddappa (2005) 10 SCC 253). The position was also highlighted in Balakrishnan v. Malaiyandi Konar (2006) 3 SCC 49)."

19. In view of the aforesaid discussion, no exception can be taken to the judgment passed by the learned Writ Court. Accordingly, there is no merit in this appeal and the same is dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

