(2006) 01 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Ludhiana Improvement Trust APPELLANT

Vs

Nasib Singh and Others RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : (2007) 3 CivCC 22 : (2007) 146 PLR 350 : (2007) 2 RCR(Civil) 199

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—By way of present revision petition the petitioner has challenged the orders passed by the learned Senior Sub Judge, Ludhiana dismissing the objections filed by the petitioner as also the order passed by the learned Additional District Judge, Ludhiana dismissing the appeal filed by the petitioner against the said order.

2. Land of Nasib Singh was acquired by the Improvement Trust in the year 1972 and as compensation paid was not adequate an application was filed by said Nasib Singh for the enhancement of the compensation. The Tribunal vide award dated 23.4.1986 enhanced the compensation u/s 18 of the Land Acquisition Act, 1894 (for short the Act). The petitioner Improvement Trust failed to pay the enhanced compensation awarded by the Tribunal resulting in filing of execution application for claiming an amount of Rs. 58,06,444/-. Order passed by the learned Tribunal was not challenged, thus, the said award had attained finality, though Nasib Singh moved this Court for enhancement.

3. In the execution application number of adjournments were given for deposit of the amount. However, as the petitioner herein failed to pay the decretal amount, property of the Improvement Trust was attached on 15.6.1992 and the sale warrants were issued. As the petitioner failed to file any objection in the execution application, public auction was held on 14.9.1992 in which number of

persons participated. In the said auction, the property was purchased by the respondent herein for an amount of Rs. 36 lacs. The sale was subsequently confirmed. Thereafter the petitioner herein filed objections against the sale under Order 21 Rule 90 of the CPC (for short the Code). The objections under Order 21 Rule 89 of the Code were not considered as the petitioner had failed to deposit the money before filing the said objections.

4. It may be noticed here that the Land Acquisition Tribunal, Ludhiana besides enhancing the compensation also allowed interest at the rate of 15 per cent per annum from the date of delivery of possession till realisation. As already observed earlier in response to the notice issued under Order 21 Rule 66 of the Code in spite of service of notice the petitioner Judgment Debtor did not file reply. In the objection filed under Order 21 Rule 90 it was pleaded by the petitioner that auction/sale has been ordered without deciding the application under Order 21 Rule 66 of the Code and also on the ground that there has been a fraud and irregularity in publishing and conducting the sale of property. It was further claimed that there was willful undervaluation and misdescription of property resulting in sale at a very low price through the close relative and friends.

5. Respondents herein contested the objections on the ground that whole of the purchase amount stood deposited and the objections were frivolous, vague and not specific. However, on the date fixed for consideration of objections, nobody appeared on behalf of the objector and accordingly, the same were dismissed in default on 3.5.1993. The petitioner thereafter moved an application on 11.5.1993 for setting aside the order dated 3.5.1993 and claimed the decision on objections on merit.

6. In the application, it was claimed that official of the Improvement Trust was present in the court when the case was called and he went to call his counsel who was busy in another court. It was further claimed that when the Counsel came to the court he came to know that objections had been dismissed in default. The said application was also contested primarily on the ground that the name of representative or title of the case was not mentioned in the application in which the counsel for the petitioner was said to be busy.

7. The learned Executing Court noticed that the property in dispute was auctioned on 14.9.1992 which was purchased by the auction purchaser for sale consideration of Rs. 36 lacs which stood deposited in the court. The learned Executing Court also considered the objection on merit and came to the conclusion that no specific fraud or misrepresentation in auction proceedings were mentioned in the objections nor any substantial irregularity was pointed out. It was also not pleaded as to how the petitioners suffered substantial injury. The learned Executing Court took note of the fact that the petitioner had failed to deposit the decretal amount or amount equal to 5 per cent of the purchase amount for payment to the auction purchaser in terms of Order 21 Rule 89 of the Code and therefore, the objections could not be entertained under the said

provisions of law. It was also held that under Order 21 Rule 90 of the Code, the sale could be set aside only if the petitioner had sustained substantial injury. However, no such substantial injury was pleaded or proved by the Judgment Debtor and thus, the objections were rightly dismissed.

8. The learned Executing Court also dismissed the application for recall of the order. In the appeal objection was taken with regard to the maintainability of the appeal in the absence of authorisation by the Improvement Trust and the learned Appellate Court by placing reliance on the judgment of this Court in Punjab Wakf Board, Ambala Cantt. v. Durb Singh (1988) 93 P.L.R. 525 came to the conclusion that in the absence of the authority in favour of the Chairman the appeal was not competent. The learned Appellate Court also rejected the contention regarding lack of jurisdiction of the Executing Court by placing reliance on the provisions of Section 65(3) of the Punjab Town Improvement Act, 1992. The learned lower appellate Court came to the positive conclusion that the learned Senior Sub Judge, Ludhiana was also the court of small causes and therefore, this contention was also misconceived. The learned lower appellate court also took notice of the fact that the jurisdiction of the learned senior Sub Judge was not questioned by the petitioner in the execution application and therefore, this plea was not available. Even on merit the learned Appellate Court came to the conclusion that there was no irregularity in the approach of the learned Executing Court in deciding the application moved by the petitioner under Order 21 Rule 90 of the Code. The learned lower appellate Court also took note of the conduct of the petitioner in not depositing the amount in respect of the award having been announced on 23.4.1986. It was observed that out of the total amount of Rs. 61,94,161/- an amount to Rs. 3,87,717.18 was only deposited. The learned lower appellate Court rejected the plea of inadequacy of price by relying upon the judgment of Madras High Court in the case of E.K.M.K. Nawabian v. Kishan Chettar AIR 1978 N.O.C. 185 and also judgment of Allahabad High Court in Smt. Laikunnissah Vs. Hari Prasad and Others, .

9. Mr. H.S.Mattewal, learned senior counsel appearing on behalf of the petitioner vehemently contended that the auction purchaser is the relative of Nasib Singh and therefore, it has to be held that sale was the outcome of fraud and irregularity, as the property has been purchased at a very low price. It was contended by the learned Counsel for the petitioner that the property was valued at Rs. 10 crores and this factum was merely denied in the reply to the objections filed by the respondents herein. In support of this contention Mr. H.S.Mattewal, learned senior counsel appearing on behalf of the petitioner sought to place reliance on the judgment in Nedungadi Bank Ltd. v. Ezhimala Agrl. Products 2004 (3) R.C.R. 49 (Kerala).

10. It was contended that in the said judgment reliance was placed on the judgment of Hon''ble Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Bappu v. Mohammed 1993(2) K.L.T. 969. It has been held that under gross violation coupled with other

circumstances such as is one of the purchasers being close relative of the Judgment Debtors was sufficient to indicate fraud.

11. I have gone through the said judgment and find that the Hon''ble Kerala High Court in the said judgment was pleased to hold that under valuation by itself was not sufficient to inter fraud. However, gross undervaluation coupled with other circumstances such as one of the purchasers being close relative of the Judgment Debtors and the enthusiasm exhibited by the Judgment Debtor in having the sale of their own property confirmed are circumstances indicating fraud.

12. It would seen that no such situation arises in the present application. No material has been placed on record to show as to how the property was undervalued. No basis to claim that the property was worth more than 10 crores was alleged or proved. Rather the petitioner in the present case chose to sleep over the matter and did not deposit the decretal amount in spite of number of opportunities having been given and choose not to reply to the notice issued under Order 21 Rule 66 of the Code and thus the judgments relied upon by the petitioner cannot be said to be even remotely applicable to the facts of the present case.

13. Mr. Ashok Aggarwal, learned senior counsel appearing on behalf of the respondent, on the other hand relied upon the judgment of Hon''ble Supreme Court in Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, to contend that mere inadequacy of the price cannot be a ground to set aside every court sale.

14. Even otherwise it is the settled law that fraud has to be proved by placing on record the relevant facts which have to be proved beyond reasonable doubt and mere allegations that a fraud has been played cannot be the basis to form such opinion as in the present case the petitioner merely stated that the sale was the outcome of the fraud.

15. Mr. Ashok Aggarwal learned senior counsel appearing on behalf of the respondent further placed reliance on the judgment of this court in the case of Jaswant Singh Mangat v. Babu Ram Sita Ram and Anr. 1973 RLR 782 to contend that the objections which are not being raised before the Executing Court cannot be allowed to be taken before the appellate Court.

16. In the present case, it would be noticed that the objection sought to be raised now in this Court was not raised by the petitioner before the Executing Court or even the lower appellate Court. It may be further noticed that in the case of Jaswant Singh Mangat v. Babu Ram Sita Ram and Ors. (supra) this Court had been pleased to hold that the petitioner could have put forward the objections before the auction took place and it is not open to the party to raise those objections for the first time after the auction of the property. As noticed earlier the petitioner did not choose to file reply to the notice issued under Order 21 Rule 66 of the Code nor filed objections against the sale till the auction was

held.

17. Mr. Ashok Aggarwal learned senior counsel appearing on behalf of the respondent further placed reliance on the judgment of this Court in the case of Om Parkash Vs. Land Acquisition Collector, Urban Estates, to contend that the property put to sale by way of public auction as a result of court order ordinarily does not get the market price prevalent at that time hence inadequate price by way of public auction is not a reason for setting aside the sale.

18. Mr. H.S. Mattewal, learned senior counsel appearing on behalf of the petitioner faced with this situation contended that the petitioner did not have any opportunity to prove that the property was (worth) more than Rs. 10 crores as the objections were dismissed in default and therefore, the notice of the sale made in the area by the Improvement Trust should be taken to be an index of the prices. Learned senior counsel further contended that the objections sought to be raised by the petitioner were not such which could be raised before the sale was conducted. This contention on the face of it is misconceived and not sustainable in view of the law laid down by this Court in the case of Jaswant Singh Mangal v. Babu Ram Sita Ram and Ors. (supra).

19. Mr. H.S. Mattewal, learned Counsel appearing on behalf of the petitioner further contended that non-deposit of 5 per cent of the sale price for payment to the auction purchaser could not be the basis to reject the objections, as the objections filed were under Order 21 Rule 90 of the Code and not under Order 21 Rule 89 of the Code. In support of his contention Mr. H.S. Mattewal, learned senior counsel appearing on behalf of the petitioner sought to place reliance on the judgment of Hon''ble Assam High Court in Kalinath Deva Goswami v. Upendra Nath Deva Goswami AIR 1958 Ass 19.

20. This contention is misconceived as the objections filed by the petitioner have not been dismissed only for want of deposit of the sale price to the auction purchaser or on account of non-deposit of the sale consideration but on merits by holding that the petitioner has failed to prove any material irregularity or the substantial injury which is said to have been suffered by them. The court only observed that the objections filed by the petitioner cannot be treated to be one under Order 21 Rule 89 of the Code for want of deposit and thus there is no force in this contention also.

21. Mr. H.S. Mattewal, learned senior counsel appearing on behalf of the petitioner thereafter contended that the dismissal of the application for restoration of objections dismissed in default was not sustainable in view of the law laid down by this Court in Kanshi Ram Vs. Haryana State and Others, . This contention of Mr. H.S. Mattewal, learned senior counsel appearing on behalf of the petitioner deserves to be rejected as in the present case the learned Executing Court as well as the learned lower appellate court have considered the objections raised by the petitioner even on merit and therefore, the petitioner was given full opportunity to argue the matter on merit and hence, the judgment

relied upon by the petitioner cannot be said to be applicable to the facts of the present case.

22. Mr. H.S. Mattewal, learned senior counsel appearing on behalf of the petitioner thereafter argued that the objections filed by the petitioner should have been accepted under Order 21 Rule 90 of the Code as they were against gross under valuation of the property and further that the property had been purchased by the close relatives. It was claimed that when the property is purchased by the decree-holder or close relatives permission of the Court under Order 21 Rule 72 of the code was required. This contention of the learned Counsel for the petitioner is also misconceived for the reason that it has been held in this Court in the case of Mrs. Margaret A. Skinner v. Empire Store, Connaught Place, New Delhi-I and Ors. (1976) 78 P.L.R. 64 that there is a presumption that the price fetched in court-sale is adequate, and mere inadequacy of price cannot be termed as injury, much less substantial injury so as to challenge the sale under Order 21 Rule 90 of the Code.

23. For the sake of repetition it may be noticed this court held that the objections which are not raised at the time of sale cannot be allowed to be raised thereafter.

24. As regards the Order 21 Rule 72 of the Code is concerned suffice to say that no material was placed to prove the relationship. Otherwise also, this objection is not open to the petitioner to be raised for the first time before this Court.

In view of what has been stated above, I find no merit in the present revision petition which is accordingly dismissed.

