
(1988) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 553 and 598 of 1987

Magan Lal Nagar and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 2 RLW 321 : (1988) 2 WLN 650

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—The above numbered two writ petitions are identical writ petitions, one by the purchaser of auction sale and the other by the Kota Central Co-operative Bank Ltd. for whose loan dues the agricultural land was put to auction. In each of the writ petitions the challenge is to the order dated December 17, 1986 of the State Minister for Co-operation, Government of Rajasthan, made on a revision petition filed before him under the provisions of Section 128 of the Rajasthan Co-operative Societies Act, 1965 (for short, the Act). The aforesaid challenge is inter alia on the ground that the provisions of Sections 105 and 106 of the Act to which the reference has been made by the Minister in his order are not applicable in this case no appeal under Sections 117 and 118 of the Act has been filed and the auction sale has become final; the objections against the auction sale having not been filed within 30 days from the date of sale the principles of res judicata will be attracted and the order of the Minister is without jurisdiction.

2. The facts of the case are these. Smt. Ghisi Bai daughter of Ahmed Ali was the khatedar of Khasra No. 199 measuring 48 Bighas, 19 Biswas situated in village Amlavada, Tehsil Kishanganj District Kota. Kurban Ali was her brother. Smt. Ghisi Bai had taken fertilizer on loan of value of Rs. 1900/- on September 23, 1975 and cash loan Rs. 1900/- on June 22, 1975 in her name from Kishanganj

(Camp). Besides Kurban Ali, she had one more brother Amzad Ali. It appears that in addition to the loans as aforesaid taken by her, her two brothers had also taken loans from Kishanganj Vrahadkrishi Bahu-udeshiya Sahkari Samiti (from short, Society). A sum of Rs. 5338.50p. upto December 31, 1985 was due against Kurban Ali, the brother of Smt. Ghisi Bai, who has died thereafter. A sum of Rs. 7106/- was due against the another brother of Smt. Ghisi Bai, namely Amzad Ali, as on December 31, 1985. Thus, a total sum of Rs. 20,986.98 was due against Smt. Ghisi Bai and her two brothers as on December 31, 1985. Some movable property of Smt. Ghisi Bai was attached and she wrote to the Executive Officer of the Central Co-operative Bank Ltd. Kota (for short, the Bank). Under her letter dated January 11, 1979 that she is willing to clear her dues as well as dues of her two brothers out of whom Kurban Ali had died, and half-share in Khasra No. 369 measuring 24 Bighas and 5 Biswas may be attached and may be auctioned to recover the amount. It appears that instead of Khasra No. 369 half share of Khasra No. 199 measuring 48 Bighas 19 Biswas was attached in auction and the highest bid of Maganlal Nagar, the petitioner in Writ Petition No. 533 of 1987 was accepted. The aforesaid auction had taken place on February 4, 1986, and the Executive Officer confirmed the sale under his order dated April 4, 1986 in favour of Maganlal Nagar. Aggrieved against the auction, a revision petition was filed by Smt. Ghisi Bai before the Government of Rajasthan and the Minister for Cooperation under his order dated December 17, 1986 allowed the revision petition and set aside auction as well as confirmation of sale.

3. There is sufficient material on record that Smt. Ghisi Bai and her two brother Kurban Ali and Amzad Ali had taken fertilizer on loan or cash on loan from the Society. The said Society is affiliated with the Central Cooperative Bank Kota. Smt. Ghisi Bai took a loan styled as "A" component (cash loan) of Rs. 1900/- on June 24, 1975. Further on September 23, 1975. Smt. Ghisi Bai again took a loan worth Rs. 1900/- styled as "B" component (in kind). She deposited Rs. 2200/- from time to time during the period from January 13, 1979 to May 30, 1985. After taking into account these deposits of Rs. 2200/- a total amount of Rs. 7749.48 was remaining outstanding against Smt. Ghisi Bai as on July 1, 1985, out of which Rs. 3800/- was outstanding as principal amount, Rs. 3170.48 on account of interest" and Rs. 770/- was outstanding as penal interest. It appears that Khasra No. 199 situated in village Amlavada had been placed as security for payment of the aforesaid loan by Smt. Ghisi Bai Kurban Ali, brother of Smt. Ghisi Bai had also taken a loan of Rs. 1000/ on June 9, 1975, Rs. 300/- on June 24, 1975 and Rs. 1300/- on September 23, 1975 as "A" component loan. He deposited from time to time Rs. 1070/- from May 22, 1975 to April 18, 1977 and as on December 31, 1985, a total amount of Rs. 5338.50 was outstanding against him. Amzad Ali, the other brother of Smt. Ghisi Bai had taken a loan of Rs. 1300/- as "A" component on July 11, 1975 and he also took a loan of Rs. 1300/- "B" component on September 23, 1975. He did not deposit any amount and on December 31, 1975 a total sum of Rs. 7106/- was outstanding against him as principal and interest. For the recovery of the aforesaid amount

outstanding against the aforesaid three persons, recovery proceedings were started. In the meantime Kurban Ali died. Smt. Ghisi Bai through her application dated January 11, 1979, expressed her wish to the Executive Officer that the arrears against her as well as her two brothers may be recovered by sale of Khasra No. 369 in which deceased Kurban Ali had 1/2 share. The said application was filed by her for not auctioning the bullocks and cart which had been attached. There was some dispute whether Smt. Ghisi Bai had any share in Khasra No. 369 or not and therefore the Bank took a decision that Khasra No. 199 may be auctioned. As aforesaid 1/2 share of the aforesaid land was put to auction and the highest bid of Rs. 55,000/- of Maganlal Nagar was accepted and the sale was confirmed.

4. The first question which arises for determination is as to whether the Minister for State, Co-operative Department, had any jurisdiction to entertain the revision petition u/s 128 of the Act, against the auction proceedings/confirmation of sale or not? Let us read Section 128 of the Act which is as under:

128. Power of Government and Registrar to call for proceedings of subordinate officers and to pass orders thereon -The State. Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them except those referred to in Section 125, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such office. If in any case it appears to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar as the case may be, may after giving person affected thereby an opportunity of being heard, pass such order thereon as it or he thinks just;

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant;

Provided further that the Registrar shall not exercise the powers under this Section in case in which an appeal lies to him under this Act.

Explanation-For the purpose of this sub-section the Assistant Registrar, Deputy Registrar and Joint Registrar exercising all or any power of the Registrar under this Act shall be deemed to be subordinate to the Registrar.

(2) Pending the hearing under Sub-section (1) the Government or the Registrar may pass such interlocutory order as it or he thinks fit to prevent the ends of justice from being defeated.

A bare reading of the above extracted Section 128 will show that the powers of the State Government and Registrar to call for record of any inquiry or proceedings in any other matter except those referred to in Section 125 for the

purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer are concurrent. Under the aforesaid Section 128 if after examining the record of the proceeding as aforesaid it appears to the State Government or the Registrar that any decision or order should be modified annulled or reversed the State Government or Registrar as the case may be, may do so but it can be done after giving persons affected thereby an opportunity of being heard. Under the proviso to Section 128 of the Act the limitation is 90 days from the date on which the proceedings decision or order was communicated to the applicant. So far as the powers of the Registrar u/s 128 of the Act are concerned, under the second proviso the same shall not be exercised in a case in which an appeal lies to him under the Act. But there is no such bar so far as exercise of the powers of the State Government u/s 128 of the Act is concerned. It will therefore be clear that u/s 128 of the Act the State Government has powers to call for record of any inquiry, proceedings or any other matter of any officer subordinate to it except those referred to in Section 125 of the Act. There is no dispute that Section 125 of the Act is not attracted in the present case and therefore even against the auction proceedings a revision u/s 128 of the Act lay to the Government and it cannot be said that the Minister had no jurisdiction to entertain the revision. The aforesaid power of the revision u/s 128 of the Act of "the State Government can therefore be exercised notwithstanding the fact that an appeal is provided against the subordinate authority but has not been filed. No doubt the revision petition was filed u/s 128 of the Act against the auction proceedings which as already stated earlier took place on February 4, 1986 and the revision petition was filed on April 8, 1986 i.e. within 90 days and no appeal had been filed against the confirmation of sale. Once the matter was before the Minister u/s 125 of the Act and it may be stated that the Minister could suo moto, have called for record and could have examined it for the purpose of satisfying himself as to the legality, propriety or otherwise of the decision or order and as to the regularity of the proceedings of an officer subordinate to him, and therefore, if during the pendency of the revision petition which, as already stated earlier was within limitation, the auction sale was confirmed, the Minister could have gone into the question and could have made an order in respect thereof also. Thus, the Minister had jurisdiction to entertain the revision petition and we may state that the jurisdiction of the Minister has not been very seriously challenged before us.

5. A look at the order dated 17, 1986 of the State Minister for Co-operation in the revision petition will show that he has held that outstanding against Smt. Ghisi Bai was of Rs. 7321.48p. and only for the recovery of the aforesaid amount half of the Khasra No. 199 measuring 48 bighas 19 biswas could be auctioned, The Minister has referred to Rule 92(16) of the Rajasthan Co-operative Societies Rules, 1966 (for short, the Rules) and has said that only such of the portion of khasra. No. 199 should have been auctioned which would have been sufficient to realise the aforesaid amount. A look at Rule 92 (16) of the Rules will show that it

provides that it shall be lawful for the Sale Officer to sell the whole or any portion of the immovable property of a defaulter in discharge of money due, but its proviso further provides that so far as may be practicable no larger section or portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest and expenses of attachment, if any, and sale. So far as what the Minister has said that the property will be sold for recovery of Rs. 7321/48 is concerned, we may state that the recovery was not only against Smt. Ghisi Bai but her two brothers also and the total amount of outstanding was more than Rs. 20,000/-. The Minister under his order while allowing the revision petition and setting aside the auction proceedings directed the concerned authorities to comply with Rule 92(16) of the Rules. Rule 92 finds place in Chapter XI which is Execution of awards, decrees orders and decisions". A bare reading of Rule 92(1) of the Rules will show that only a decree-holder or any person specially authorised by the Registrar in this behalf (applicant) requiring the provisions of Clause (c) of Section 118 to be applied shall apply to the Recovery Officer within whose jurisdiction the defaulter resides or the property of the defaulters is situated. Under Sub-rule (3) of Rule 92 on receipt of such application or when the Registrar is proceeding under Rule 96, the Recovery Officer shall verify the correctness and genuineness of the particulars set forth in the application with the records, if any, in the Office of the Registrar and prepare a demand notice in writing in duplicate in the form specified by the Registrar, setting forth the name of the defaulter and the amount due and forward it to the Sale Officer. Firstly an attempt is to be made to recover the amount due by the sale of movable property of the defaulter & only if there is no movable property or if the sale proceeds of the movable property is insufficient to meet in full the demand of the applicant, the immovable property mortgaged to the applicant or other immovable property belonging to the defaulter may be proceeded against. Sub-rule (10) of Rule 92 of the Rules provides that immovable property shall not be sold in execution of a decree unless such property has been previously attached, provided that where the decree has been obtained on the basis of a mortgage of such property it shall not be necessary to attach it. Sub-rule (11) of Rule 92 provides that the rules mentioned therein in the attachment and sale or sale without attachment of immovable property, shall be observed. It is necessary that after necessary demand notice, the Sale Officer must serve or cause to be served a copy of the demand notice on the defaulter or upon some adult male member of his family at his usual place or residence, or upon his authorised agent or if such personal service is not possible shall affix a copy thereof on some conspicuous part of the immovable property about to be attached and sold or sold without attachment, as the case may be. Only if the defaulter fails to pay the amount within the time allowed, the Sale Officer shall proceed to attach and sell without attachment as the case may be the immovable property noted in the application for execution in the manner provided in the relevant provisions of Sub-rule (11) of rule -92 of the Rules. Only in case where the Recovery Officer is satisfied that the defaulter with intent to defeat or delay the execution proceedings against him is about to dispose of the whole or any

part of his property, he will not allow any time of the defaulter for payment of the amount due by him. and the property shall be attached forthwith. Under Sub-rule (13) of Rule 92 any person either owing such property or holding an interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery Officer for payment to the purchaser a sum equal to 5% of the purchase money and for payment to the applicant the amount of arrears specified in the proclamation of sale. The limitation is 30 days and thereafter the sale is to be confirmed.

6. It will be clear from perusal of the aforesaid relevant provisions of the Rules that only after the service of demand notice on the defaulter the immovable property of the defaulter can be attached and as stated earlier under Sub-rule (16) of Rule 92 an endeavour must be made by the Sale Officer to sell only such portion of the immovable property which may be sufficient to discharge the amount due with interest and expenses of attachment if any and sale. In the instant case even the dues of three defaulters namely Smt. Ghisi Bai, Kurban Ali and Amzad Ali as per the case of the bank were to the extent of Rs. 20,986.98p. as on December 31, 1985 and, therefore, if the Minister took a view that half share of the land which, was auctioned for Rs. 55,000/- should not have been auctioned and only by half of it the total amount against the defaulters could have been recovered, therefore there has been non-compliance with the provisions of Sub-rule (16) of Rule 92 of the Rules, it cannot be said that the view taken by the Minister is erroneous. That apart, no demand notice to the defaulters other than Smt. Ghisi Bai, appears to have been given.

7. We may state that we had offered to the Bank as well as to the auction purchaser, the two petitioners that the auction purchaser can if he so likes take the amount along with reasonable interest the Bank having recovered its dues out of sale proceeds and the counsel for the defaulter Smt. Ghisi Bai was prepared to consider it but the learned Counsel for the auction purchaser first sought time, but thereafter did not come out with any concrete proposal. Only for the recovery of Rs. 20,000/- and that too against the three defaulters 1/2 share of the land for Rs. 55,000/- was auctioned and as per the case of Smt. Ghisi Bai that 1/2 share of the land was of much more value than Rs. 55,000/-. It was auctioned in contravention of the provisions of Sub-rule (16) of Rule 92 of the Rules. Under these facts and circumstances, we do not find any case for interference in these writ petitions in our extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Consequently, we find no force in both the writ petitions and the writ petitions are hereby dismissed with no order as to costs.