
(2019) 01 RAJ CK 0229
In the Rajasthan High Court
Case No : Special Appeal Writ No. 545 Of 2016

Manoj Kumar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 82
Rajasthan Tenancy Act, 1955 — Section 42, 42(b), 14(4)
Rajasthan Agricultural Credit Operations (Removal Of Difficulties) Act 1974 — Section 14, 14(1), 14(2)
Cooperative Societies Act, 1912 — Section 117, 146
Rajasthan Agricultural Credit Operation (Removal Of Difficulties) Act, 1974 — Section 14
Banking Regulation Act, 1949 — Section 56

Citation : (2019) 01 RAJ CK 0229

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : MS Singhvi, Anupam Gopal Vyas, RJ Punia, OP Boob

Final Decision : Dismissed

Judgement

1. The case in hand has a chequered history. It will, therefore be apt to lay the factual canvas in a chronological order, which runs as infra :

2. The respondent no.4 Uka, a member of Scheduled Tribe was recorded Khatedar of contentious land bearing Khasra No.339/378 ad-measuring 1.28 hectare. He took a loan from the Land Development Bank, Raniwada, respondent no.3 herein, for which his land was mortgaged. On failure to pay the loan, the bank initiated recovery proceedings and a proclamation of sale for the land in question came to be issued on 10.1.1994. The contentious land was ultimately offered for sale in an open auction, which was purchased by the present appellant for a sum of Rs.44,501/-, who was not a person belonging to Scheduled Tribe. Consequent to the purchase in auction, the land came to be recorded in appellant's name vide mutation entry no.63 dated 11.08.1995.

3. On 21.07.1998 the State Government moved an application under Section 82 of the Rajasthan Land Revenue Act before the District Collector, Jalore on 21.7.1998 for making reference to the Board of Revenue, inter alia, contending that the transfer of land of Uka, a Scheduled Tribe to the appellant not being a member of Scheduled Tribe was in violation of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act of 1955).

4. The District Collector, Jalore acceded to the request of reference made by the State and referred the matter to the Board of Revenue for setting aside the mutation entry no.63 and the auction sale in favour of the present appellant.

5. The reference made by the Collector was registered as Reference No.363/00/Jalore and came to be rejected by a learned Member of the Board of Revenue, vide its order dated 24.1.2002. While rejecting the reference, the learned Member of the Board observed that the auction purchaser (appellant herein) had not purchased the land in question out-rightly and the same was purchased in open auction conducted by the Land Development Bank. It was also observed that out of the total land of 3.54 hectare held by Uka, only part of the land admeasuring 1.28 hectares was sold in open auction and thus it cannot be said that the sale was collusive.

6. The learned Member proceeded to hold that such transfer does not attract the provisions of Section 42 of the Tenancy Act, as it was not a case of sale, gift or bequeath by a member of Scheduled Tribe in favour of person other than the member of Scheduled Tribe. The learned Member of the Board refused to set aside the auction sale holding it to be beyond the purview of Section 82 of the Rajasthan Land Revenue Act and thus second prayer in the reference was turned down.

7. Feeling aggrieved with the aforesaid order dated 24.1.2002 passed by the Board of Revenue, the respondent State preferred writ petition being SB Civil Writ Petition No.1499/2002, which was dismissed by a learned Single Judge of this Court in limine on 14.5.2002, holding the sale to be valid as the land was not sold by the Khatedar-tenant himself, but was sold by the bank in an open auction in furtherance of recovery proceedings; on Khatedar-tenant's failure to pay the loan. Learned Single Judge also held that the object of Section 42 of the Tenancy Act was to create an embargo on sale by a Khatedar-tenant of Scheduled Caste/Tribe in favour of other persons and no such embargo applies to sale in an open auction.

8. Being dissatisfied with the view taken by the learned Single Judge, the State preferred intra-court appeal, which was registered as DBSAW No.158/2004. During the pendency of the said appeal, Division Bench referred the matter to the Larger Bench doubting the correctness of the judgment of this Court rendered in the case of Asuram Vs. Tehsildar, Sanchore reported in AIR 2000 (Raj.) 345.

9. The Larger Bench comprising of three Hon'ble Judges of this Court answered

the reference on 10.05.2010 and reinforced the Division Bench judgment in Asuram's case holding that the same lays down correct proposition of law.

10. It is pertinent to note that the said reference was made and answered in appellant's own case; whereafter the matter was placed before a Division Bench for deciding the appeal in accordance with law. When the matter came up before the Division Bench, it noticed that as the writ petition filed by the State had been dismissed in limine, the respondent Khatedar-tenant as well as the auction purchaser did not have an opportunity to putforth their submissions. Hence, it remitted the matter to the Single Bench to decide the case in accordance with law, after hearing all concerned.

11. When the matter came up for consideration afresh before the learned Single Judge, the present appellant argued that auction proceedings in question are governed by the provisions of Section 14(1) of the Rajasthan Agricultural Credit Operations (Removal of Difficulties) Act 1974 (hereinafter referred to as RODA Act); whereas the Larger Bench judgment was confined to the provisions of Section 14(2) of the Act, for which the law laid down therein cannot be made applicable. It was also contended by the respondents that the reference in question under Section 82 of the Act of 1956 to the Board of Revenue was incompetent, having been initiated belatedly.

12. Learned Single Judge, after considering the rival contentions found the case to be fully covered by the decision of the Larger Bench and law enunciated by the Division Bench of this Court in case of Asuram's case reported in AIR2000(Raj.)345 and thus allowed the writ petition filed by the State. The learned Single Judge repelled the arguments advanced on behalf of the present appellant that the Larger Bench judgment concerns Section 14(2) of the Act whereas the auction proceedings in question were held under Section 14(1) of the Act. While rejecting such argument he held that whether the bank acquires the agricultural land or interest when despite public auction no person comes forward or an auction purchaser purchases the land, the position of law remains the same. The essence of conclusion drawn by the learned Single Judge has been that in the light of principles enunciated by the Larger Bench, the transfer of Khatedari rights under Section 14 of the Act to the Bank or to an auction purchaser are hit by Section 42(b) of the Act of 1955, if the rights have been transferred in favour of person other than Scheduled caste/Tribe.

13. The learned Single Judge also rejected the appellant's second contention that the reference was belated. While highlighting the facts that the land in furtherance of auction in favour of appellant (respondent no.2 in the writ petition) was mutated on 11.8.1995 and the reference proceedings were initiated on 21.7.1998, well within a period of three years, he held that the reference cannot be held to be incompetent or suffering from laches.

14. Questioning the legality and propriety of the aforesaid judgment dated 12.2.2016, passed by the learned Single Judge, the appellant is before us in an

intra-court appeal.

15. Mr. MS Singhvi, learned Senior Counsel appearing on behalf of the appellant advanced elaborate arguments, most of them were about the correctness of Larger Bench decision dated 10.5.2010. Apart from other arguments, he vehemently argued that the provisions of Section 42(b) of the Tenancy Act does not and cannot have any overriding effect over the provisions of Cooperative Societies Act, which permits sale of a mortgaged property without any fetter, based on caste or tribe. The argument of Mr. Singhvi has been that Section 117 and 146 of the Cooperative Societies Act, so also, Section 14 of the RODA Act, 1974 start with non-obstante clause, "notwithstanding"; hence, the provisions of these Act shall prevail over all other Acts, including the provisions of Tenancy Act, 1955.

16. In support of his argument, Mr. Singhvi relied upon a recent judgment of Hon'ble Supreme Court, rendered in the case of UCO Bank & Anr. Vs. Deepak Debbarma & Ors. (2017)2SCC585. Taking cue from said judgment he submitted that in case of conflict between the Central Act and the State Act, the provisions of Central Act would prevail. According to him Section 56 of the Banking Regulation Act (a Central Act), being fountain head or source of powers of the Cooperative Societies, qua their banking business, confers a power upon the banks to recover their dues by way of auction sale. As the Banking Regulations Act does not contain a restriction on sale of secured assets of a reserved class person to a person other than a member of Scheduled Caste/Tribe, the provisions of Tenancy Act, particularly Section 42(b) of the Act of 1955 has to concede to the provisions of the Banking Regulation Act, 1955.

17. Learned Senior Counsel also argued that the Cooperative Societies Act and RODA Act being special enactments dealing with the loan, mortgage and its recovery will have supremacy over the general law, viz Tenancy Act.

18. Mr. OP Boob learned Government Counsel on the other end appearing for the State supported the judgment of learned Single Judge and urged that there is no error in the impugned judgment, vide which learned Single Judge has held that the Larger Bench judgment dated 10.5.2010, squarely applies to the facts of the present case.

19. We have heard learned counsel for the parties at length and given our consideration over the material available on record; including the statutory provisions.

20. We would like to observe at the outset that the arguments advanced on behalf of the appellant are not available to him as the Larger Bench decision has been rendered in case of none other than the present appellant himself. We take note of the fact that the lead case being DBSAW No.158/2004 ; State Vs. Uka, decided by the larger bench, was this very case, from which the instant appeal has emanated. In the said case, Uka the Khatedar-tenant and Manoj Kumar the auction purchaser, were respondent no.1 and respondent no.2 respectively and

the same Manoj Kumar; the auction purchaser is before us as appellant in the present case, whereas said Uka is before us as respondent no.4.

21. That being the position, since the Larger Bench has already answered the reference and held against the appellant and respondent no.4, they cannot be permitted to question the correctness of the larger bench decision.

22. Notwithstanding the persuasion and persistence shown by Mr. Singhvi, we feel bound by the judicial propriety and thus refrain from dilating upon those arguments. It is noteworthy that when the reference had been answered, the matter came up before the Division Bench for decision and then the Division Bench thought it appropriate to remit the matter to learned Single Judge, as the writ petition filed by the State being SBCWP NO.1499/2002 had been dismissed in limine. While remanding the matter on 13.12.2010, the Division Bench permitted the Khatedar-tenant and the auction purchaser to putforth their submission before learned Single Judge.

23. Grant of such indulgence, which was deemed appropriate to meet the ends of justice then, does not give them a carte blanche to find fault with the Larger Bench judgment rendered in their own case. The parties can well raise all questions, other than the ones which have been finally determined by the Larger Bench. While arguing before the learned Single judge, the present appellant had therefore, rightly confined his arguments to the issues not determined by the Larger Bench.

24. It is pertinent to note that the larger bench has affirmed the view taken by the earlier Division Bench in the case of Asuram (supra), wherein it had been held as under:

"4.The scrutiny of two provisions makes it clear that in a sale conducted under S.13 of the Act, no proprietary interest is acquired by the creditor-Bank in the land in question and the sale conducted under S.13 of the Act is like a sale conducted by the Court in execution of a decree in which interest of the judgment-debtor involved is transferred through the agency of the Court but such transfers are governed by the rights and obligations attached to the land of the judgment-debtor which are attached under the general law. Therefore, if the interest of the judgment-debtor is transferred under S.13 of the Act by the agency of the Bank upon obtaining an order from the Tehsildar, which is executed like a decree of Civil Court, what is really transferred through auction is the interest of the judgment-debtor though there is involvement of the Bank or the auctionee (auctioneer) and in that event, the provisions of the Rajasthan Tenancy Act, 1955 15 affecting restrictions on the persons on whom interest of judgment-debtors can be transferred are automatically attracted. In contrast, a sale under S.14 of the Act takes place where the Bank being of a opinion that proper market price is not being achieved/obtained in the sale executed under S.13 of the Act, it can acquire the land itself and, thereafter, it can dispose of the land of the debtor- mortgagee. Such sale by the Bank as a matter of law is

transfer of Bank's own property which has been acquired by it under S.14 of the Act. However, keeping in view the basic scheme and the constitutional mandate which protracts the interests of weaker sections of the society particularly members of SC/ST and the provisions of the Rajasthan Tenancy Act, 1955 which puts restrictions on the alienation of the interest of the members of the SC/ST alone so that the sources of such weaker sections remains within such community and it does not go out of them, therefore, by dint of sub-section (4) of S.14 of the Act, the legislative policy is maintained that interest of members of SC/ST should continue to remain with that community and it does not go out of them. In this view of the matter, we do not find anything which goes contrary to the constitutional mandate in making the provisions like S.14(4) of the Act."

25. As far as two arguments advanced before the learned Single Judge are concerned, they have been correctly adjudicated by the learned Single Judge. We reaffirm the conclusion drawn by the learned Single Judge that the embargo contained under Section 42(b) of the Tenancy Act applies full throttle to both the situations; when the bank purchases the mortgaged property, in case no person turns up in public auction; or the auction purchaser purchases the same, during the course of public auction. The second contention of the appellant rejected by the learned Single Judge also does not call for any interference, inasmuch as the mutation entry was made in favour of the appellant on 11.8.1995 and the reference proceedings were triggered on 21.7.1998, well within a period of three years. As reference proceedings had been initiated well within the period of three years, the reference cannot be said to be incompetent, more so because no specific limitation has been provided in the Tenancy Act for making reference.

26. Notwithstanding our prima facie view that the arguments as advanced before us for the first time are not available to the appellant, we deem it expedient to deal with the same to give quito to this issue and settle the controversy in this regard also.

27. Hence, switching on to the argument advanced by Mr. Singhvi: "that the provisions of Section 42 of the Tenancy Act, are repugnant to Section 56 of the Banking Regulation Act, 1949 and thus the provisions of the Banking Regulation Act, 1949 shall prevail"; we feel that the same is based on the analogy of judgment of Hon'ble Supreme Court in case of UCO Bank of India Vs. Dipak Bebbarma & Ors (2017)2SCC585. This argument, at the first flush appears to be attractive, but turns out to be fallacious, if examined carefully.

28. A perusal of the judgment of Hon'ble Supreme Court in case of UCO Bank (supra) reveals that the proceedings in the said case were under the provisions of SARFAESI Act, 2002 (a Central enactment); whereas impugned proceedings are under RODA Act, a State legislation; hence assuming that there is a conflict, the conflict is only between two State enactments and not Central and State enactment. The contention of conflict with the provisions of Banking Regulation Act is too far fetched and thus has no force.

29. While parting with the judgment, we would like to emphasize that the State is an owner of the land and the respondent no.4-a Khatedar-tenant. Khatedari rights of the tenant has a condition clinged to it; that the same cannot be transferred to a member other than the one belonging to Scheduled Tribe. As such, even if the land or his Khatedari rights are attached and transferred in furtherance of an auction, the same will be transferred alongwith the rights, liabilities and conditions appended therewith. In other words, the embargo attached with Khatedari rights that the same cannot be transferred to a member other than a person belonging to Scheduled Tribe would continue to exist and any deviation therefrom would render the transaction void-ab-initio.

30. As far as the non-obstante clause existing in Section 117 and 146 of the Cooperative Societies Act is concerned, we have no hesitation in holding that provision of Section 42 of the Tenancy Act shall have primacy and over riding effect over the provisions of Cooperative Societies Act and RODA Act as the same deals with rights of Khatedar-tenant. Since the substantive act governing the rights of Khatedar-tenant encompasses a rider which renders the sale, gift or bequeath by Scheduled Tribe Khatedar-tenant to a person other than member of the Scheduled Tribe to be void; the provisions contained in any other enactment despite being armed or equipped with non-obstante clause shall have to give way to the provisions of Tenancy Act. The provision encarved with a view to protect right of weaker sections of the society should be given true meaning and full play.

31. As a result of the aforesaid discussion, we do not find any force in the instant appeal and hence, we dismiss the same.