(1981) 07 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule 516 of 1975

Md. Sher Ali — APPELLANT

Vs

Assam Board of Revenue and Others — RESPONDENT

Date of Decision : 08-07-1981

Acts Referred:

- Assam Land and Revenue Regulation, 1886 — Section 61, 72(4), 75, 79, 80
- Audi Alteram Partem Rule — Rule 135, 136A
- Constitution of India, 1950 — Article 226
- Limitation Act, 1963 — Section 5

Citation : (1981) 1 GLR 283

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : P.N. Goswami and K.P. Pathak, for the Appellant; S.R. Khound, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, J.—This application under Article 226 of the Constitution of India is directed against the order of the learned Board of Revenue. On an application u/s 81 of the Assam Land and Revenue Regulation. 1886 made by the Gauhati Development Authority, Respondent No. 3, "the Board" annulled the revenue sale of a parcel of land measuring 3B. 4K. 1 lecha, by its order dated 22.4.75. The land is located at Dispur Capital Project and is a very valuable property. The Board of Revenue held, inter alia, that the revenue sale of the valuable land worth over Rs. 80,000/- for a paltry sum of Rs. 165/- undoubtedly caused "hardship" to Respondent No, 3, the owner "The Board" has held that there was no due service of the sale proclamation as required under the law. Accordingly it annulled the sale, on the ground of hardship.

2. The Board has had jurisdiction to annul a sale on an application made to it at any time within one year of the sale becoming final u/s 80 of ''The Regulation'', on the ground of "hardship" or "injustice". The learned Board held that there was no proper service of the sale proclamation and further held that the sale of the

valuable land for Rs. 165/- caused ''hardship'', and, accordingly, the revenue sale was annulled on "usual terms conditions. The Board condoned the delay in presenting the application.

3. A brief resume of the case is setforth. Respondent No. 3 is a statutory authority constituted under the Assam Town and Country Planning Act, 1959. It is a body 10 plan and reshape the urban as well as rural areas of the State. It purchased the land from Smt. Kamala Bala Devi at Rs. 45,530/-, for common good as an organ of the society, as far back as in 1969. It claims that the market price of similar land could not have been less than Rs. 10,000/- "per katha" at the time of "the sale". It is indubitable that there were arrears of land revenue to the tune of Rs. 68. 82 p. and to recover the arrears, the land was put to sale on 7.1.72 and the Petitioner in the Civil Rule purchased the came at Rs, 165/- in Revenue Sale Case No. 411. of 1971-72. the sale was made final on 5.1.73 Respondent No. 3 derived knowledge of the sale only on 10.10.73 when its agent went to deposit the land revenue. On 15.2.74 it filed an application u/s 61 of the Regulation to set aside the sale along with another application u/s 5 of the Limitation Act, to condone the delay in presenting the application. The learned Board condoned the delay and allowed the petition, hence this writ application.

4. Counsel for the Petitioner contends that, (1) "the Board" watt wrong in no Ming that there was no services of sale proclamation to the owner of the land or upon the Estate at default, (2) "the Board" had no jurisdiction vested in it by law to entertain the application u/s 81 of "the Regulation" beyond one year of ''the sale becoming final, and (3) that the finding of the hardship is not sustainable. No other contention has been raised.

5. Let us take up the first and second contentions. The period of limitation for presentation of an application u/s 81 of "the Regulation" is "One year of a sale becoming final u/s 80". The gale was made final on 5.1.73 and the application u/s 81 was made on 15.2.74. The argument, at first blush, appears to be very attractive as it appears that the application was presented beyond the period of one year prescribed in Section 81. However, it is not so. If the defaulter and/or" the estate is not served with any notice of sale required to bo served under the Regulation the time for presenting an application u/s 81 runs from the date of knowledge of the order making the sale final. It was so held in Kiranmayee Das v. Assam Board of Revenue AIR 1950 Gau. 25. It was stated:

Having regard to the scheme of "the Regulation" we hold that when notice is duly served on a defaulter the rigour of Section 81 shall undoubtedly apply and he must present an application within a year from the date of the sale becoming final. However, when he does not receive any notice, which be is legally entitled to have, the period of limitation u/s 81 of "the Regulation" must commence from the date of knowledge actual or constructive, of the sale becoming final. We heavily rely on Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, Madan Lal Vs. State of U.P. and Others, and Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh,

6. The rationale of Harish Chandra (Supra) is that when the right of a person is affected by an order and limitation is prescribed for the enforcement of the remedy by the person aggreived against the order by reference to the making of the order, it must mean either actual or constructive communication of the order to (he person affected; the communication by actual or constructive notice is essential requirement of fair play and natural justice. In Madan Lal (supra) and Ass it. Transport Commissioner (supra) the supreme Court approved the rule enunciated in Madan Lai and has held that it is the fundamental principle of justice that a party whose rights have been affected by an order must have noticed of it.

7. Therefore, we hold that when there is a duty to serve prior notice to exercise the right to put a property to auction sale, failure to comply with the duty renders the sale a nullity. We hold that when no notice is served to a defaulter, the period of limitation u/s 81 of the Regulation runs from the date of knowledge, actual or constructive, of the sale becoming final u/s 80.

8. An application for annulment of the sales on ground of hardship or injustice can be presented "within one year of a sale becoming final u/s 80 of the Regulation". It is beyond a shadow of doubt that when the statutory notice is duly served the period of limitation must run from the date of sale becoming, final, as the knowledge of sale and its confirmation invariably follow from the knowledge of sale apprised in the notice. On getting notice of sale the defaulter can take various steps to stay the sale or set aside the sale apart from annulment of the sale. A defaulter being notified of the proposed sale may pay up the arrears of revenue and have the sale stayed u/s 75 of "the Regulation". The defaulter may apply u/s 79 to set aside the sale on the ground of material irregularity or mistake in publishing or conducting the sale within 60 days from the date of sale. Therefore, under the provisions of "the Regulation" a defaulter gets two chances to stop the tale before it takes place or to set, it aside apart from relief u/s 81. Therefore, "due service of notice" has great significance and weightiness as it affords three opportunities to a defaulter, (i) to stay the sale, (ii) to. set aside the sale, and (iii) to annul the sales u/s 75, 79 and 81 of "the Regulation" respectively. These are statutory rights or remedies provided in the Regulation. A person can avail the remedies under Sections 75 and 79 only if he gets a proper notice. These rights cannot be made nugatory by (sic) service of the notice to the defaulter. It is the statutory right in to get a notice. In other words, power and jurisdiction of the revenue authority, to put a property to sale, is conditioned upon due service of notice, a sale would be void and without jurisdiction if no valid notice had been served as required under "the Regulation". Can a person be deprived of his rights u/s 75, 79 as well as u/s 81 of the Regulation by withholding a due notice? There is no provision in the Regulation as to what would happen If a sale it conducted without serving proper notice to a defaulter and upon the Estate. In such a contingency if the aggrieved person comes to know about the sale after the expiry of one year prescribed for presenting an application u/s 81, he could not be denied remedy u/s 81 for no

fault of him. Should he be permitted to suffer for gross illegalities or injustice caused by the officials ? This was answered in Kiranmoyee (supra). It was held that it would amount to frustrating the right of appeal by breach of mandatory procedural duty, a potent dangerous modus operandi or device, to bear with. It has been held in Kiranmoyee (supra) that there is a duty to serve notice on the party to exercise the right to put the property to sale, failure to comply with the duty renders the sale a nullity. Deniel of the right to prior notice and opportunity to be heard was held to be violation of "Audi Alteram Partem Rule vitiating the sale ab initio. It has been held that when no notice is served to a defaulter, the period of limitation run from the date of knowledge, either actual or constructive, of the making of the order of sale or the sale becoming final. We entirely agree with the view expressed in Kiranmoyee (supra), Respondent No. 3 claimed that no notice had been served on the defaulter or the Estate. As such, in the instant case, the date of knowledge of sale becoming final was the date on and from which the period of limitation commenced. We have perused the service report and the sale proclamation. We find, that there was no effort to serve notice on the pattadar namely, Respondent No. 4 Smti. Kamala Bala Devi. Counsel for the Petitioner submits that though no notice had been served on the pattadar, there was a valid service on the Estate. We have perused the service report. The process server reports that as he had not been furnished with the address of the pattadar, he could not serve notice on her. So far service on the estate was concerned, we found nothing from the records to show that the sale proclamation was posted on a conspicuous part of the Estate. Rule 136 A of the Rules (sic) relating to Arrears and the Mode of Recovering them. It is a mandatory provision and reads as under:

136A. The sale statement mentioned in Rule 135 shall be served under Sub-section (4) of Section 72 of the Regulation on the defaulter or, if he cannot be found, it shall be posted on a conspicuous part of the estate.

(Emphasis supplied)

9. Admittedly it was not posted on any conspicuous part of the estate. It is evident on the face of the service report. We hold that there was no notice served on the defaulter nor was any service on the estate. So, the period of limitation commenced to run on and from the date of knowledge of the confirmation of the sale, that is, from 10.10.73. And as the application was filed on 15.2.74, it was filed within one year of the date of knowledge, Therefore, the application was filed well within the period of limitation. We hold there was no service of the 6ale proclamation ; the application u/s 81 was filed within the period of limitation and the learned Board bad jurisdiction to try the case. We turn down the 1st and 2nd contentions of the Petitioner.

10. Let us now turn to the last submission as to absence of hardship or injustice. The learned Board dealt with the matter thus:

It is clear that the land is highly valuable as it falls within the Dispur Capital project area. Sale of such valuable land for Rs. 165/- only is bound to cause hardship to the Petitioner. On ground of hardship, therefore, the impugned sale is set aside on usual terms and conditions:

We have no hesititation in accepting the conclusion reached by the learned Board of Revenue. We should add that it was not only a case of hardship but also a clear case of injustice as well. No authority could permit such a valuable properly to be sold at such atrociously low price. The arrear was only Rs. 63.82. Even a truck load of earth could fetch more than the said amount. We entirely agree with the view expressed by the learned Board that there was hardship and the learned Board was fully justified in setting aside the sale. Further, the decision was within the jurisdiction of the Board; it has exercised its jurisdiction based on material on record. We have no jurisdiction to interfere with such finding reached by the learned Board of Revenue, in an application under Article 226 of the Constitution.

11. For the foregoing reasons we hold that the order of the Board of Revenue needs no interference at this end. In the result, the application standi dismissed. However, then will be no order at to costs.

