(2003) 07 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 11375 of 2002

Natwarlal Ishwarlal Suthar APPELLANT

Vs

Special Secreatry RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 179
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 07 GUJ CK 0050

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Suman Khare, for the Appellant; Siraj Gori, AGP for Respondent No. 1, Girish K. Patel, for Respondent Nos. 2-3 and P.J. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.

1 Rule. Mr. Siraj Gori, learned Assistant Government Pleader appears and waives service of rule on behalf of respondent No. 1, Mr. Girish Patel, learned Advocate appears and waives service of rule on behalf of respondent nos. 2 and 3 and Mr. P.J. Vyas, learned Advocate appears and waive service of rule on behalf of respondent No. 4. By consent of the learned Advocates appearing on behalf of the respective parties the matter is taken up for final hearing.

2 This is a petition, though styled as petition filed under Article 226 of the Constitution of India, in effect is a petition under Article 227 of the Constitution.

3 The petitioner is a member of one Cooperative Society named General Co-operative Society (hereinafter referred to as ''the society''). It is an admitted position that the society is in liquidation and respondent No. 3 viz. The Mehsana District Central Cooperative Bank Limited is functioning as liquidator of the said society. The society had obtained loan from respondent No. 3 - Bank for and on behalf of its members for the purpose of construction of residential units of its

members. As the society failed to clear outstanding dues of the respondent bank, Lavad Suit No. 628 of 1999 came to be filed by the respondent-bank before the Board of Nominees. The said lavad suit came to be decreed vide order dated 10.11.1997 holding the society to be liable to pay Rs.7,90,772.75 ps.

4 As the petitioner, in the capacity of being a member of the society, was liable to pay a part of the outstanding dues to the respondent bank as relatable to the residential unit of the petitioner, the respondent bank issued show cause notice on 21.11.1995 demanding payment of Rs.69,637/- towards the outstanding loan. In light of the fact that the Board of Nominees had passed the aforesaid order the respondent bank initiated execution proceedings against the society as well as its members. The petitioner therefore approached the Gujarat State Cooperative Tribunal (for short ''the Tribunal'') by filing appeal bearing Misc. Appeal No. 19 of 2001. The said appeal came to be dismissed for default and admittedly till date no steps for restoration have been taken by the petitioner.

5 The Registrar, Co-operative Societies, thereafter issued a certificate u/s 103 of the Gujarat Co-operative Societies Act,1961 for recovery of the dues according to the provisions of Bombay Land Revenue Code. Accordingly, on 6/9/2001 the liquidator auctioned the residential unit of the petitioner and respondent No. 4 Shri Sitaram Motiram Patel is the auction purchaser, being the highest bidder at the auction. The petitioner approached the Secretary, Revenue Department (Appeals) Government of Gujarat by way of revision against the aforesaid proceedings bearing Revision Application No. 10 of 2002. As the said Revision Application came to be rejected vide order dated 24.10.2002 (Annexure "A") the petitioner has preferred this application.

6 Mrs. Khare, learned Advocate appearing on behalf of the petitioner submitted that the entire auction proceedings and the consequential sale are vitiated because firstly; the value of the property auctioned is about Rs. 12 lacs and yet the same has been disposed of at the auction for a paltry sum of Rs. 3 lacs; secondly; only the relatives of respondent No. 4 took part in the auction and lastly because so far as respondent bank is concerned, the payment had already been made to the respondent bank there are no outstanding dues which would require confirmation of the sale. One more contention advanced on behalf of the petitioner is to the effect that the auction sale was confirmed by the Collector u/s 179 of the Bombay Land Revenue Code on the very next day and hence the auction and consequential sale were bad in law.

7 Taking up the contention regarding the dues of the bank having been paid of first, it is an admitted position that the said payment has been made only on 10.7.2002 when the revision petition was pending before respondent No. 1. In fact the payment was made as one of the conditions for obtaining the stay during the pendency of the revision application. Therefore, considering the date of payment it is apparent that the said deposit cannot operate retrospectively so as to vitiate issuance of recovery certificate u/s 103 of the Gujarat Co-operative Societies Act and/or the subsequent auction proceedings resulting in sale. Till

point of time the recovery certificate was issued and in consequence thereof the auction sale took place, admittedly the petitioner was the debtor of the respondent bank and in satisfaction of the said debt the said recovery certificate had been issued and the consequential auction proceedings had been carried out. Therefore, this contention cannot carry the case of the petitioner any further. Recovery certificate which was issued u/s 103 of the Co. operative Societies Act was issued at a point of time when the dues of the respondent bank, payable by the petitioner, were outstanding. The payment made at a subsequent date after the auction could not invalidate the issuance of either recovery certificate or the consequential auction proceedings.

8 The contention regarding relatives participating in auction proceedings cannot be a factor which would invalidate the auction proceedings or consequential sale in any manner unless and until it could be shown that the auction proceedings and the consequential sale were tainted by fraud. That is not even the case of the petitioner. In so far as the submission regarding property having fetched lower price is concerned, there is nothing on record to suggest, except for the bald averment of the petitioner, that the value of the property was Rs.12 lacs. Even otherwise, merely because the property was disposed of at a particular price that by itself cannot be suggestive of the fact that the auction proceedings are bad in law.

9 It is pertinent to note that before the revisional authority none of the aforementioned contentions were raised. The revisional authority in the impugned order dated 24.10.2002 has recorded that it was only when the petitioner was called upon to surrender the possession of the property which had been auctioned then the revision application was preferred.

10 The contention regarding the auction sale being vitiated because the same had been confirmed on the very next day by the Collector and thus being violative of Section 179 of the Bombay Land Revenue Code does not deserve acceptance. First of all : this submission is made during course of hearing without laying any factual foundation. There is no averment in the petition. There is no document/order to support the submission. Hence, on this count alone this contention requires to be rejected. However, even on the assumption, that such is the case, the said contention may be tested. Section 179 of the Bombay Land Revenue Code is a provision which has to be read in conjunction with Section 178 of the Code. Section 178 of the Code states that within thirty days from the date of sale of immovable property a person may apply to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in either publishing or conducting the same. When the petition had been fully heard on 1.7.2003, the learned Advocate for the petitioner had sought time to inquire as to whether the petitioner had moved any application u/s 178 of the Bombay Land Revenue Code. Today during the course of hearing, learned Advocate for the petitioner has admitted that no application u/s 178 of the Code had been moved at any time by the petitioner.

11 The contention of the petitioner that the Collector could not have confirmed the sale till expiry of thirty days from the date of sale has to be appreciated in the context of the fact that the opening portion of Section 179 of the Code specifically says that if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale. In this situation, if on the assumption as to what has happened in the present case, the Collector has confirmed the sale on the next day, statutory right available to a party to have the same set aside by making an application on the grounds stipulated in Section 178 of the Code does not get wiped out or is not taken away. It will yet be open to a party to move an application on the grounds stated in Section 178 of the Code, albeit within prescribed statutory period of thirty days. Merely because the sale was confirmed immediately on the next day, that per se would not be a ground for holding that auction proceedings and the resultant sale were bad in law and were required to be set aside. The grounds for setting aside sale have been specified in Section 178 and in the facts and circumstances of the case the petitioner has not been able to show that there was any material irregularity or mistake or fraud in publishing or conducting the sale. At this juncture the learned Advocate for the petitioner submitted that the later portion of Section 179 which permits the Collector to suo motu set aside the sale is wide enough for the Collector to set aside the sale on grounds other than those stated in the application. This contention is in principle a correct contention, but it is a power which is to be exercised suo motu by the Collector and cannot form the basis of the petition. The satisfaction has to be recorded by the Collector and the section itself requires that the Collector should have reasons to think that the sale ought to be set aside and further requirement of section is that such reasons have to be recorded in writing. Therefore, discretion which is vested in the authority cannot be invoked in aid of the case of the petitioner when admittedly the petitioner has not been able to show that the petitioner had made any application u/s 178 of the Code, or much less, any ground exists as stipulated in Section 178 of the Code on the basis of which such application could be moved.

12 The period of thirty days laid down in the provision is the outer limit and the same cannot be considered to mean that in no case Collector can confirm a sale within that period. Even for the sake of argument, if one accepts as contended by the learned Advocate for the petitioner, that the language of Section 179 of the Code would warrant such an interpretation, failure to abide by the said time limit would at the most amount to an irregularity. It is settled position in law that every irregularity does not result in an illegality so as to vitiate the entire proceedings. Nature of irregularity has to be such so as to go to the root of the matter and in the present case confirmation of the sale on the very next day has to be appreciated in the context of the facts on record which go to show that even prior to the conducting of an auction the petitioner had not taken any steps which would enable either the Recovery Officer or Registrar to stay their hands. This is all on the premise that the sale was confirmed on the very next day.

13 Various contentions on behalf of the petitioner as regards absence of notice regarding auction sale etc. have been dealt with by the revisional authority and the finding recorded by the revisional authority on the facts as are available on record to the effect that such contentions are not backed by any evidence does not deserve any interference. No evidence has been produced before this Court for holding that the said finding of revisional authority is incorrect in any manner.

14 The law is settled that the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary as distinguished from ordinary statutory powers. This is not a case where this jurisdiction is required to be exercised in favour of the petitioner. There is no jurisdictional error in the order of the Tribunal. It is not a case where jurisdiction has been exercised by the Tribunal in absence of jurisdiction, or where it has failed to exercise jurisdiction vested in it. Nor is there any error apparent on record. The High Court does not sit as an appellate Court : interference with pure findings of fact and appreciation of evidence is not permissible. Reappreciation of evidence cannot be undertaken. Even if on same set of facts, circumstances and evidence on record a different view may be possible that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant. In short, arrived at a decision no reasonable person would arrive at. None of the aforesaid factors exist in the present so as to warrant any interference.

15 In the facts and circumstances of the case, for the reasons stated hereinbefore, this petition deserves to be rejected and is hereby rejected. Rule discharged. There shall be no order as to costs. Interim relief stands vacated.

16 At this stage Mrs. Khare prays for extention of interim relief. No case is made out for extension of interim relief. Hence the prayer is rejected.

