(1981) 06 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 9887 of 1977

Neelkantappa APPELLANT

Vs

The P.L.D. Bank, Gulbarga RESPONDENT

Date of Decision : 01-06-1981

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 101
Karnataka Cooperative Societies Rules, 1960 — Rule 38A (13), 38A (5)

Citation : AIR 1982 Kar 89 : (1981) ILR (Kar) 1477

Hon'ble Judges : K. Bhimiah, J

Bench : Single Bench

Advocate : K. appa Rao, for the Appellant; M.H. Motgi, Govt. Pleader, for the Respondent

Judgement

1. The petitioner in this writ petition has challenged the confirmation of the sale of his land comprised in Survey No. 107 of Kannur Village in Gulbarga taluk in favour of P. L. D. Bank, Gulbarga respondent-2, for the realisation of the decretal amount of Rs. 7,625-50 due to the Bank.

2. The facts, which are necessary for the disposal of the writ petition, are as under:

The petitioner borrowed a sum of Rupees 5,000/- in the year 1966 from the 1st respondent Bank. He paid certain amounts. Since the amount was not fully recovered the 1st respondent initiated proceedings for the recovery of the aforesaid amount in the year 1973-74, before the arbitrator. The arbitrator passed an award for Rs. 7,625/on 18-3-1974. The petitioner took other legal actions available under the law. The award of the arbitrator passed in Dispute No. 132/73-74 came up for execution. The 3rd respondent, who was the Sales Officer, conducted the auction. As there were no

bidders the 1st respondent bid in the auction and purchased the land. The 3rd respondent submitted the papers for confirmation before the 2nd'' respondent.

Exhibit-A is the order passed by the 2nd respondent confirming the sale held on 9-11-1976.

3. Mr. Apparao, learned counsel for the petitioner attacked the sale proceedings and the confirmation on the ground that the authorities have failed to comply with the provisions laid down in R. 38-A of the Karnataka Co-operative Societies Rules, 1960 (to be hereinafter called the ''Rules''). He further urged that having regard to the provisions of the aforesaid Rule the 1st respondent Bank had no authority of law to bid in public auction and purchase the property.

4. The learned Government Pleader is not in a position to counter this contention.

5. It is not disputed that this execution was initiated according to the provisions of Section 101 of the Karnataka. Co-operative Societies Act, 1959 (to be called the ''Act''). The provisions of S. 101 provided for execution of the orders. When the execution is sought for under S. 101 of the Act, the procedure laid down under R. 38-A of the Rules is to be followed. It deals with Transfer of property which cannot be sold. Sub-rule(l) of R. 38-A lays down that the Officer conducting the execution shall as soon as practicable report the fact to the Court or the Deputy Commissioner or the Registrar, as the case may be, and the society is required to apply for the execution of the said order, when the property cannot be sold for want of bidders.

6. Sub-rule (2) of R. 38-A of the Rules says that, on receipt of the report the society may submit an application in writing to the Court or to the Registrar, stating whether or not it agrees to take over such property.

7. Sub-rule (3) of R. 38-A of the Rules deals with notice to be served upon the defaulter about the intended transfer.

8. Sub-rule (4) of R. 38-A of the Rules says that, on receipt of such notice the defaulter or any person owning such property, or holding an interest therein by virtue of a title acquired before the date of the issue of a certificate under S. 101, may within one month from the date of such notice deposit with the Court or the Deputy Commissioner, or the Registrar, for payment to the society a sum equal to the amount due under the order sought to be executed together with interest thereon and such additional sum for payment of costs and other incidental expenses as may be determined in this behalf by the Court or the Deputy Commissioner or the Registrar, as the case may be.

9. It is clear from this Rule that one more chance is given to the defaulter to make payment of the amount due from him to the society before the intended transfer is effected.

10. Sub-rule (5) of R. 38-A of the Rules says that, on failure of the defaulter or any person interested, or any person holding any interest in the property, to deposit the amount under sub-rule (4), the Court or the Deputy Commissioner or the Registrar, as the case may be shall direct the property to be transferred to the society on the conditions stated in the certificate in Form VIII.

11. It is clear from this rule that on failure on the part of the defaulter to make payment the Registrar shall direct the property to be transferred to the society.

12. Sub-rules (6), (7), (8), (9), (10), (11) and (12) are not relevant for our purpose. The next relevant rule is sub-rule (13) of Rule 38-A of the Rules. It says :

"The society to which the property is transferred under sub-rule (5), shall use its best endeavor to sell the property as soon as practicable to the best advantage of the society as well as that of the defaulter, the first option being always given to the defaulter who originally owned the property. The sale shall be subject to the confirmation by the Registrar. The proceeds of the sale shall be applied to defraying the expenses of the sale and other expenses incurred by the society and referred to in sub-rules (9) and (12) and to the payment of the arrears due by the defaulter under the order in execution, and the surplus (if any), shall then be paid to the defaulter."

It is clear from sub-rule (13) that after the property is transferred in the name of the society the property is required to be sold as soon as practicable and the first option is to be given to the defaulter. Thereafter the property is to be sold and the proceeds of the sale shall be applied to defraying the expenses of the sale and other expenses incurred by the society and to the payment of arrears due by the defaulter. Thereafter if any amount is remaining the defaulter is entitled to be paid.

13. Sub-rule (15) of Rule 38-A of the Rules lays down that when the society to which property is transferred under sub rule (5) has realised all its dues, under the order in execution of which the property was transferred from the proceeds of management of the property, the property, if unsold shall be restored to the defaulter.

14. Sub-rule (15) of the Rule applied to the properties which remain unsold even after its transfer to the society. If during the management the entire amount due to the society is discharged the defaulter is entitled for the restoration of the property.

15. The learned Government Pleader, contended that there is no express prohibition for the society to bid in auction in cases where property is not sold for want of bidders. But sub-rule (1) of R. 38-A of the Rules makes it clear that when the property cannot be sold for want of bidders in execution of order under S. 101 of the Act, the procedure laid down in R. 38-A of the Rules must be followed. It therefore implies that the society cannot bid in auction and purchase the property. The intendment of R. 38-A of the Rules is to safeguard not only the interest of the society, but the interest of the defaulter also. The defaulter is given first option to purchase and further if more amount is realised from the property the defaulter is entitled to the return of that amount after defraying the expenses and the amount due and if during the management of the property by the society the entire amount due to the society and also the expenses are

defrayed the property is required to be restored to the defaulter. The rule is very liberal in protecting both the interest of the society and the individual. It is not the case of the 2nd, 3rd and 4th respondents that this procedural

has been followed in this case. There is thus non-compliance with the provisions of R. 38A of the Rules and, therefore, the impugned confirmation order cannot be sustained in law. It is liable to be quashed. Accordingly it is quashed. I

16. Respondents 2 to 4 are at liberty to initiate fresh proceedings for the sale of the property for realisation of the amounts due to the society.

17. In the result writ petition is allowed, Rule made absolute. No costs.

18. Petition allowed.