(1985) 03 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 306 of 1979

Nimai Biswas APPELLANT

Vs

Kalidas Mandal and Others RESPONDENT

Date of Decision : 25-03-1985

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Rule 164, 165, 123, 124, 151
Constitution of India, 1950 — Article 226, 227

Citation : (1985) 1 GLR 354

Hon'ble Judges : K.M. Lahiri, Acting C.J.;K.N. Saikia, J

Bench : Division Bench

Advocate : B. Goswami and B.L. Yadav, for the Appellant; J. Singh, for the Respondent

Judgement

K. Lahiri, A.G.J.

1. The application under Article 226/227 the Constitution of India is directed against the judgment and order dated 20.6.1979 passed by the Assam Board of Revenue Case No. 99 RA/78 setting aside the order of the Additional deputy Commissioner, Goalpara dated 12.5.1978 in Misc. Case 18/77-78.

2. A plot of land measuring about 2 K. covered by Khatian (sic) No. 1127 of Kokrajhar Town was put for revenue sale on 30.12.1976 (sic) Tahsildar, Kokrajhar Tahsil, in Land Sale Case No. 67 (K-T)75-76 for recovery of arrears of land revenue amounting (sic) Rs. 24.32. The land was purchased by the writ Petitioner at Rs. 110,00. It was a town land. The sale price was atrociously low. The land belonged to Raimohan Mandal, father of Kalidas Mandal, Respondent No. 1. The Tahsildar, it appears, sent the records of the sale proceedings to the Sub-divisional Officer, Kokrajhar for confirming the sale Kalidas, Respondent No. 1 appeared before the Sub-divisional Officer, at Kokrajhar, on getting information about the sale, and, inter alia, stated that the land belonged to his father who was dead, he was away to Calcutta at all relevant time and there was no service of notice on the pattadar. He further pointed out the illegalities and irregularities

in conducting the sale. Upon hearing the parties and on perusal of the records, the Sub-divisional Officer refused to confirm the sale and sent back the records to the Tahsildar. The writ Petitioner preferred an appeal before the Additional Deputy Commissioner, Goalpara against the order of the Sub-divisional Officer refusing to confirm the sale. In the meantime Kallias appeared before the Tahsildar and filed an application praying for acceptance of the area''s of land revenue with interest. On receipt of the application the Tahsildar accepted the arrears of land revenue with interest and dropped the land Sale Case No. 67/75-76 on 23.21.977. The order dropping the proceeding was not appealed against nor did the writ Petitioner file any revision, and, as such, the said order became final. After the order bad been rendered by the Tahsildar, the Addl. Deputy Commissioner, Goalpara by his order dated 12.5.1978 set aside the order of the Sub-divisional Offices and held that the order was bad there was no order rendered by the sub-divisional officer in the order sheet of the case. He upheld the orders dated 30.12.1976 and 4.4.1977 passed by the Tahsildar, approved and confirmed the sale by his order dated 12.5.1978 in Misc. Appeal No. 18 of 1977-78 (Land Sale Case) Kalidas, Respondent No. 1 preferred an appeal to the Board of Revenue, questioning the validity of the order of the Additional Deputy Commissioner dated 12.5.1978. Learned Board of Revenue treated the appeal as a revision u/s 151 of the Assam Land and Revenue Regulation, 1886, for short "the Regulation" and set aside the order of the Additional Deputy Commissioner passed on 12.5.1978. The Board of Revenue sustained the order of the Tahsildar dropping the proceedings. The Board of Revenue held that on 23.7.1977, the Tahsildar dropped the proceeding and the order became final and absolute and there being no appeal or revision against the order, the Additional Deputy Commissioner''s order dated 12.5.1978 could not have any effect on the order rendered by the Tahasildar on 23.7.1977. The Board of Revenue affirmatively held that market value of similarly situated land at Kokrajhar town would have fetched over Rs. 10,000/- and the sale of land at Rs. 110/- was inadequate which caused hardship and injustice to the owner, Learned Board of Revenue further held that there were contravention of law regarding service of notices and the sale proclamations. Against the order of the Board of Revenue setting aside the order of the Additional Deputy Commissioner, the writ Petitioner has come up before this Court in this writ petition.

3. Mr. B.K. Goswami, learned counsel for the Petitioner submits that the Board of Revenue committed error of law in overlooking the fact that the Sub-divisional Officer, Kokrajhar had no jurisdiction to refuse to confirm the sale. learned Counsel further submits that the sale became final on the expiry of 60 days and the sub-divisional officer acted illegally in not confirming the sale when it had become final. Learned Counsel submits that the order of the Board of Revenue suffers from various infirmities.

4. However, Mr. B.K. Goswami, learned Counsel for the Petitioner fairly concedes that the price at the land sold at Rs. 110.00 was inadequate and that there is a line of decisions within this Court holding that sale of land at such a low price

caused hardship and injustice to the owner of the land and on that ground alone the sale was liable to be annulled u/s 81 of ''the Regulation''. It is not disputed that the Board of Revenue on appreciation of the materials before it held that the price fetched'' cased ''hardship and injustice'' to the owner of the land. Learned Counsel submits that the Board of Revenue had jurisdiction vested in it by law to annul the sale on the ground of hardship and injustice but it could exercise such power within one year of the confirmation of the sale. Mr. Goswami submits that though the sale of town land at Rs. 110.00 caused hardship and injustice to the owner, yet, the Board of Revenue had no jurisdiction to annul the sale acting u/s 81 of the Regulation as more than a year had elapsed from the date of the confirmation of the sale. The land was sold on 30.12.1976 and the sale became final on or about 1.3.1977 on the expiry of 60 days from the date of the sale, submits learned Counsel for the Petitioner.

5. In our opinion, the crucial question for determination is whether the Tahsildar of Kokrajhar, acting under the provisions of "the Regulation" and "the Rules''' framed thereunder could put any immovable property to sale. Mr. Goswami, learned Counsel for the Petitioner submits that u/s 70 of ''the Regulation a Tahsildar is competent to put the property to auction sale. However, Section 70 of the Regulation empowers the Deputy Commissioner to sell an estate by auction. We also find that u/s 74(1) it is provided that every sale of immovable property shall be made either by the Deputy Commissioner in person or by an Officer specially empowered by the State Government "in this behalf". As such, two sets of Officers are competent to put a property to sale, (1) the officers holding power of the Deputy Commissioner or (2) any officer specially empowered by the State Government ''In this behalf''. There is no material before us that the Tahsildar in question was ever empowered by the State Government to put to sale the defaulting estate under the provisions of Section 74 of the Regulation''. In the Assam Valley Districts (Brahmaputra Valley), a Tahsildar can prepare a Baki Fazil statement, he may attach movable property on preparation of the Baki Fazil and serve a sale notice. He may order attachment of movable property and put it to sale. Under Rule 164 of ''the Rules framed under the Regulation'' for recovering of arrears, when the Tahsildar is of opinion that attachment and sale of movable property is not sufficient for the recovery of the arrears then and then only, be may apply to the Deputy Commissioner to order the sale of the estate itself subject to the provisions of Section 74 of ''the Regulation''. It is thus seen that Tahsildar cannot put a defaulting estate to sale unless he gets an order from the Deputy Commissioner to order sale of the estate, However, Rule 165 of the said Rule provides that if the defaulter pays arrear due after it is accrued, the said payment can be accepted by the Tahsildar on payment of penalty or fee at the rate specified in the Rule, Realising the situation, Mr. Goswami refers to the provisions contained in Sections 123 and 124 of the Regulation. Section 123 provides that the Commissioner of a Division, Deputy Commissioner Assistant Commissioner, an Extrn. Assistant Commissioner shall be ex-officio Revenue Officers. Section 124 empowers the state

Government to appoint to each District, in addition to the Officers mentioned in Section 123, as many other Revenue Officers as the State Government think fit. Indeed, Tahsildar have been appointed Revenue Officers vide Note u/s 124 of ''the Regulation''. However, the appointment of Tahsildar as Revenue Officer does not per se empower them to put a defaulting estate to sale as the said power can be exercised only by the Deputy Commissioner other officers to whom the said power is delegated by the State Government. There is no notification empowering the Tahsildar to put the defaulting state to sale. Although a ''Tahsildar is a Revenue Officer, yet he is not empowered to put a defaulting estate to sale. The provisions of Rule 164 of the Rules for recovering arrear clearly indicates that the Tahsildars have no power to put an estate to sale. He can only apply to the Deputy Commissioner to order for the sale of the estate. In the instant case, the estate was put to sale by the Tahsildar who has no such jurisdiction non is there any material to show that the Tahsildar was authorised or empowered to conduct the sale, as required under the law. Under these circumstances, we are constrained to hold that the present sale proceedings held and/or conducted by the Tahsildar was without jurisdiction.

6. Be that as it may, if the Tahsildar had the power to put the property to sale as claimed by the learned Counsel for the Petitioner, we find that he had full and complete, jurisdiction under Rule 165 of the Rules'' to accept payment of arrears with penalty. The Tahsildar acting under the provisions of Rule 165 of the Rules had power to accept the arrear due from Respondent No. 1 with interest and he did so on 23.7.1977. By the final order dated 23.7.1977 the Tahsildar acting under Rule 165 accepted the arrears with interest. There was no appeal or revision against the order. It has become final. As such even if we accept the position that the Tahsildar had jurisdiction to put the property to sale or to conduct the sale proceedings yet, his final act, the order dated 23.7.1977, in accepting the arrear with interest and dropping the proceedings also was valid and competent, The order dated 23.7.1977 being there, the Petitioner cannot succeed until the order dated 23.7.1977 made by the competent authority is set aside. Under these circumstances, we are constrained to held that the writ petition must fail.

7. We also find that the petition cannot succeed on the ground that in fact the Assam Board of Revenue has annulled the sale on the ground of hardship or injustice. There is no dispute at the bar that u/s 81 of the Regulation the learned Board of Revenue could set aside the sale. In the instant care, the learned board of Revenue has allowed the petition of Respondent No. 1 acting u/s 151 of ''the Regulation''. However, the Board had power to annul the sale u/s 81 on the ground of hardship or injustice within one year of the sale becoming final. The Board has held in categorical term that the sale of land at Rs. 110,00 caused hardship and injustice to Respondent No. 1. The Board having held that it was a case of hardship and injustice instead of taking recourse to Section 81 of the Regulation, has allowed the petition acting u/s 151 of ''the Regulation''. Under these circumstances, the Board in allowing the revision of Respondent No. 1 has,

indeed acted u/s 81 of the Regulation. In other words, what the Board should have done acting u/s 81 of the Regulation has been done acting u/s 151 of "the Regulation". A faint argument was made by Mr. Goswami that the Board could annul the sale u/s 81, ''at any time within one year of the sale becoming final'' and not beyond that period. In the instant case, faintly submits Mr. Goswami the period of one year had expired so the Board could not have exercised power u/s 81. Now, what we find is that the land was sold on 30.12.76. However, at best it was sold by a conducting Officer. He had no jurisdiction to confirm it and therefore he sent it for confirmation. When a property is sold by a Conducting Officer, and not by the Deputy Commissioner or Officers empowered to put the property to sale, a positive order of confirmation was necessary. As such, the sale did not become final on the expiry of 60 days from the date of sale. The sale was purportedly confirmed by the Additional Deputy Commissioner, Goalpara on 12.5.1978. The appeal before the Board of Revenue was filed on 15.6.1978. As such, the appeal was presented to the Board of Revenue within about a month from the date of confirmation. Under there circumstances the Board had undoubted jurisdiction to annul the sale u/s 81 of "the Regulation". Even if we hold that the sale was held by a competent person the property was sold on 30.12.1976. As such, the sale could become final on or about 1.3.1977, But the sale was not conformed by the Sub-divisional Officer, who remitted the matter to the Tahsildar by his order dated 20.7.1977 and against that order the writ Petitioner appealed to the Additional Deputy Commissioner, Goalpara after 20.7.1977. The appeal was disposed of on 12.5.1978. As such, the appeal pended before the Additional Deputy Commissioner for about 10 months. By the order of the Additional Deputy Commissioner the sale was confirmed and supposedly validated. Right to annul the sale accrued only after disposal (sic) the appeal on 12.5.1978 and admittedly the appeal to the board of Revenue was presented by Respondent No. 1 within (sic) year there from. As such, the application for annulment of (sic) was made within one year. At any rate, the period during such the appeal pended before the Addl. Deputy Commissioner that be excluded in computing the period of one year because there was no order of confirmation prior to the order of the Additional Deputy Commissioner. Secondly, the order of as Tahsildar was confirmed only on 12.5.1978, the date of disposal of the appeal by the Additional Deputy Commissioner, (sic) any view of the matter, the period of 10 months during which the appeal pended before the Additional Deputy Commissioner must be excluded for computing the period of one year. Under these circumstances, we hold that the application for (sic)ment of the sale was within one year of the sale becoming (sic) and therefore, the Board of Revenue could have annulled (sic) sale acting u/s 81 which it did acting u/s 151 of "the Regulation". We find that the land was sold for a long. It (sic)by itself injustice and hardship. The Revenue Board by the (sic)ngned order has righted the wrong. A valuable property in (sic)krajhar town was sold for a ridiculously low price of Rs. 110.00. (sic) Board of Revenue also reached the affirmative conclusion (sic) there was hardship and injustice in the instant case. As (sic) by the impugned order the Board has done justice. When (sic)it petition is filed and the Petitioner invokes the jurisdiction the High Court under Article 226 of the constitution, it is (sic)n to the High Court to consider whether in the exercise its undoubted discretionary jurisdiction it should decline to (sic)nt relief to the petitions if the grant of relief would defeat the interest of justice. This view has been taken by the Hon''ble Supreme Court in a number of cases and the latest decision on the point is Mattal v. The State of Haryana, 1985 UJ (SC) 22. Under these circumstances, we decline any relief to the Petitioner holding that the impugned order has upheld the interest of justice.

8. In the result the petition fails and is rejected. However there will be no order as to costs.

9. At this stage Mr. Goswami prays that there may be a direction for payment of purchase money to the Petitioner. In fact, the impugned order of the Board of Revenue was an order setting aside the sale. u/s 84 of the Regulation, the purchaser is entitled to get back from the Government his purchase money, with or without interest, If the amount has not been paid the Petitioner shall be entitled to get it back from the Tahsildar within one month from to-day. The interest shall be realizable from Respondent No. 1. Kalidas Mandal, who shall pay it up within one month from the receipt of notice, calling upon him to pay up the interest. However while determining the rate of interest, Respondent Kalidas should be beard in person Send down the record forthwith.

