(1964) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Rev. Appeal No. 89 /IV /64

Ramsaran Ganesh Prasad APPELLANT

Vs

Mewalal Jorawal and another RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Citation : (1965) MPLJ 290

Hon'ble Judges : Raghavendra Prasad, Member

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghvendra Prasad, Member

The brief facts of the case are that the lands belonging to the Respondent Mewalal were auctioned for realising the arrears of excise dues on 18-12-61 by Tahsildar, Mandla. The Respondent-defaulter did not make any application under Rules 40, 41 and 42 of Schedule I to the M.P. Land Revenue Code, 1959 (hereinafter called the Code) to the revenue officer who had conducted the sale but made an application on 16-1-62 to the Collector under Rule 44 of Schedule I requesting that the sale be set aside on grounds of certain irregularities alleged to have been committed by the revenue officer conducting the sale. On 12-2-62 he made another application to the Collector stating that he had deposited all the arrears due on him and that he was prepared to pay to the auction-purchaser the sum equal to 5 per cent of the purchase money. The Collector by his order dated 31-1-68 rejected the prayer of the Respondent. The grounds on which the Collector rejected the application were mainly as follows:

(i) The Respondent had not made application under Rule 41 within 30 days from the date of sale, (ii) The irregularities were not such as might have caused him substantial injuries,

(iii) The auction-purchaser will be put to unnecessary loss and trouble and it was with considerable difficulty that satisfactory auction bid could be procured. On an appeal by the Respondent before the Additional Commissioner, Jabalpur the learned Additional Commissioner quashed the order of the Collector, Mandla confirming the sale on the ground that there were serious irregularities and that even though application under Rules 40 and 41 was not made within the prescribed time before the revenue officer the Collector was competent to set aside the sale under Rule 41 of Schedule I. The aution-purchaser Shri Ramsaran has preferred a second appeal before the Board against the orders of the Additional Commissioner dated 14th November 1963. This appeal was taken up for motion hearing before admission.

Shri Romsaran, auction-purchaser, who is himself a pleader appeared on 24-0-64 and argued this case. In his appeal memo he has submitted detailed grounds for allowing his appeal against the orders of the learned Additional Commissioner. For the decision of the points involved in this case it is not necessary to discuss all the points of objections raised by the Appellant. The only point for determination in this case is whether a Collector could set aside the sale if an application is made to him under Rule 44 of Schedule I to the Code even though no application was made to the revenue officer conducting the sale under Rules 40 and 41 if so, what should be the reasons to impel the Collector to set aside the sale. It would facilitate answer to the above question if Rules 40, 41 and 44 are reproduced. They run as follows:

40.(1) Where immovable property has been sold under this Code, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale may, at any time within thirty days from the date of sale, apply, to the Revenue Officer to have the sale set aside on his depositing

(a) for payment to the purchaser, a sum equal to five per cent of the purchase money.

(b) for payment on account of the arrear, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may have been paid since the date of the sale on that account, and

(c) the coat of the sale.

(2) If such deposit is made within thirty days from the date of the sale the Revenue Officer shall pass an order setting aside the sale:

Provided that if a person applies under Rule 41 to have such sale set aside, he shall not be entitled to make an application under this rule.

At any time within thirty days from the date of sale, any person whose interests are affected by such sale may apply to the Revenue Officer to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it, and the Revenue Officer may, after giving notice to the persons affected thereby, pass an order setting aside the sale and may order resale, but no sale shall be set aside on such grounds unless the applicant proves to the satisfaction of the Revenue Officer that he has sustained substantial injury by such irregularity or mistake.

On the expiry of thirty days from the date of sale, if no application has been made under Rules 40, 41 or 42 if such application has been made and rejected, the Revenue Officer shall pass an order confirming the sale:

Provided that, if the Collector has reason to think that the sale ought to be set aside- (i) notwithstanding that no such application has been made, or

(ii) on grounds other than those alleged in any application which has been made and rejected, or

(iii) notwithstanding that a period of thirty days from the date of sale has expired, he may, after recording his reason in writing, set aside the sale at any time before making an order confirming the sale.

According to Rule 40 if an application is made and the deposit is made the Revenue Officer conducting the sale has no option but to set aside the sale. According to Rule 41 the Revenue Officer may pass an order setting aside the sale if the applicant proves to the satisfaction of the Revenue Officer that he has sustained substantial injury by such irregularities or mistake. According to Rule 44 if no application is made under Rule 40 or 41 within 30 days from the date of the sale the Revenue Officer shall pass an order confirming the sale. Thus the proceedings for setting aside the sale will be before the Revenue Officer conducting the sale. Proviso to Rule 44 gives a special power to the Collector to set aside the sale at any time before making an order confirming the sale. This special power can be exercised even though an application was not made by the defaulter under Rule 40 or 41 and even though the period of 30 days from the date of the sale has expired. The sale can be set aside by the Collector also on grounds other than those alleged in any application if made and rejected by the Revenue Officer. This proviso does not give any indication of the grounds or reasons on which the Collector may set aside the sale. Even though no indication has been made because the Collector has been authorised to set aside the sale notwithstanding that no application was made under Rule 40 or 41 it follows that if a Revenue Officer could set aside the sale under Rule 40 or 41, if an application was made within 30 days of the date of the sale, the Legislature intended that along with other reasons that the Collector may think fit for setting aside the sale the reasons contained in Rule 40 or 41 should also impel the Collector to set aside the sale. In the instant case because an application was not made under Rule 41 the learned Collector thought that he was prevented from exercising his discretion in favour of the Respondent according to proviso to Rule 44. The view held by the Collector is not borne out by the provisions of Rule 44. Rule 44 authorizes the Collector to pass orders which a Revenue Officer could have passed under Rules 40, 41 and 42 if an application was made within 30 days of the date of the sale. The Collector could set aside the sale on those grounds even though no application was made within 30 days of the date of the sale. I, therefore, hold that the view held by the learned Additional Commissioner is correct and the Collector was quite competent to set aside the sale if an application was made to him under Rule 44 containing grounds for which an application under Rule 40 or 41 would have been competent.

The learned Additional Commissioner contrary to the view held by the Collector has held that irregularities pointed out by the Respondent were serious enough which should have merited the setting aside of the sale. The Appellant has serious objection to the view held by the learned Additional Commissioner. Since I find that there are other grounds which should have impelled the Collector equally strongly to set aside the sale I do not propose to examine the grounds taken by the Respondent and objected to by the Appellant regarding irregularities and mistakes. In the instant case the learned Collector had not thought it proper to set aside the sale for other two reasons also. One of the reasons was that it was with considerable difficulty that satisfactory auction bid could be procured. This remark by the learned Collector smacks of a feeling of retribution in him against the Respondent. Proviso to Rule 44 vests a discretion in the Collector. A discretion has to be exercised judiciously. It would be an incorrect reading of the provisions of Rule 44 to think that Legislature intended to penalise the defaulters even when arrears were paid by them. The interest of the Revenue Department was only up to the point of realization of arrears. They cannot be supposed to be interested in teaching a lesson to a defaulter by depriving him of his property even when arrears have been paid. One of the reasons why this special power has been given to the Collector, who is Head of the revenue administration in the district is that the defaulters may not have to suffer from the rigours of the rules provided the arrears are realized or could be realized without depriving them of their property. The second ground that weighed with the learned Collector in not setting aside the sale was that the auction-purchaser would be put to unnecessary loss and trouble. Rule 40 provides that if the defaulter pays the arrears, five per cent of the purchase money for payment to the purchaser and the cost of the sale the Revenue Officer shall pass an order setting aside the sale. This clearly shows that the intention of the Legislature is not to deprive the defaulter of his property but to safeguard the Government dues and to compensate the purchaser for any loss that he may incur on setting aside the sale. In the instant case the Respondent had deposited the arrears within 15 days from the date of the sale. He had also deposited the cost of the sale and was prepared to deposit 5 per cent of the purchase money for payment to the purchaser. In the eyes of the Legislature 5 per cent of the purchase money is sufficient compensation to the purchaser. There was, therefore, no need for the learned Collector to be more sympathetic towards the auction-purchaser.

From the foregoing discussion I am of the view that the Collector could set aside the sale for the same reasons on which a revenue officer could set aside the sale under Rules 40, 41 and 42 of the Rules of Schedule I. As in the instant case such reasons existed the Collector should have used his discretion in favour of the defaulter even though an application was not made under Rule 40 or 41. There may be other reasons also for setting aside the sale but it is neither relevant nor necessary to discuss them in this case.

In view of above, I do not find much substance in this appeal and the appeal is rejected summarily. The orders of the Additional Commissioner, Jabalpur are upheld. The sale will be deemed to be set aside only when the requirements of Rule 40, Schedule I are fulfilled.

