**(1981) 07 RAJ CK 0016**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 930 of 1974

Sagar Mal — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

**Date of Decision :** 27-07-1981

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (1982) RLW 507 : (1984) 55 STC 132

**Hon'ble Judges :** Dwarka Prasad, J

**Bench :** Single Bench

**Advocate :** M.L. Shrimali, for the Appellant; S.C. Bhandari, for the Respondent

**Final Decision :** Allowed

## Judgement

Dwarka Prasad, J.—In this writ petition the proceedings regarding sale of tenancy rights in agricultural land have been challenged.

2. The petitioner carried on business in the name and style of M/s. Harak Chand Sagarmal, Hanumangarh. Demand in respect of the payment of sales tax relating to the aforesaid business were not satisfied by the petitioner and a sum of Rs. 16,555.12 remained outstanding against the petitioner as arrears of sales tax. As the aforesaid amount of arrears was not paid or realised from the petitioner, the Commercial Taxes Officer decided to realise the aforesaid amount of arrears of sales tax as arrears of land revenue, and attached agricultural land measuring 6 bighas 15 biswas situated in khata No. 11/21 in murabba No. 119/266 in chak 3 KNJ in Hanumangarh Tehsil of District Ganganagar on 28th November, 1972.

3. The petitioner raised objections to the attachment and proposed sale of the tenancy rights in the aforesaid agricultural land by his petition dated 27th December, 1973. The Commercial Taxes Officer fixed 7th January, 1974, for hearing the objection petition filed by the petitioner. The petitioner alleged that the objections were not heard and no decision was communicated to him. But on reference to the relevant record, which was produced before me by the learned

counsel appearing for the State, it appears that the petitioner was heard in respect of his objections and the objections were rejected by the order dated 7th January, 1974, and the order was also pronounced in the presence of the petitioner. The tenancy rights in the aforesaid land were put to sale by public auction on 25th February, 1974, and the final bid was knocked down in favour of the non-petitioner No. 6 for a sum of Rs. 4,050 per bigha. The petitioner has alleged that although 1/4 of the auction money was deposited by the auction purchaser, yet the remaining amount was not deposited by him within a period of 15 days, as provided in Section 243 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as "the Act").

4. The petitioner has challenged the aforesaid auction sale and it has been urged by the learned counsel for the petitioner that Section 37 of the Rajasthan Tenancy Act, 1955, prohibits attachment and sale of tenancy rights and that the attachment and sale effected by the Commercial Taxes Officer, Hanumangarh, on account of the arrears of sales tax were in derogation of the provisions of Section 37 of the Tenancy Act. It may be pointed out in this connection that Section 37 of the Rajasthan Tenancy Act only bars the attachment and sale of the right of a tenant in a holding by process of a civil court. Thus, the tenacy rights of a tenant cannot be attached or sold by a civil court. But in the present case the attachment and sale was not effected by any process of a civil court. Section 11(3) of the Rajasthan Sales Tax Act provides that arrears of sales tax can be realised as arrears of land revenue and in the present case the Commercial Taxes Officer proceeded to attach and sell the tenancy rights in agricultural land, as if he was recovering arrears of land revenue. Section 37 of the Rajasthan Tenancy Act had no application to such proceedings which were conducted for recovery of arrears of sales tax as arrears of land revenue, by virtue of the provisions of Section 11(3) of the Rajasthan Sales Tax Act.

5. It was then argued by the learned counsel for the petitioner, that in the Land Revenue Act only the Collector could proceed to release the arrears of land revenue and the Commercial Taxes Officer had no authority to do so. The provisions of Section 237 of the Act were relied upon by the learned counsel which authorise the Collector to proceed against the estate or share of a defaulter for the realisation of the arrears. In this context, Section 260(1)(b) of the Act have to be taken notice of, which provides that the State Government may direct that any duties imposed and powers conferred by the Act or the Rules made thereunder on any officer or authority appointed or constituted under the Act shall be performed and exercised by any other lawfully appointed or constituted officer or authority specified in the notification, even when such officer or authority is appointed under any other law for the time being in force or the Rules made under such law. By a notification issued by the State Government u/s 260(1)(b) of the Act, the powers of the Collector have been delegated to all the Commercial Taxes Officers. Thus, the Commercial Taxes Officer was fully authorised to exercise the powers and perform the duties conferred by the Act upon the Collector in respect of sale of rights in agricultural

 

land by public auction for arrears of sales tax, which are realisable as arrears of land revenue. Section 237 of the Act authorises the Collector to sell any specified area or estate by public auction for realisation of the arrears of land revenue, if he is of the opinion that other processes are not sufficient for recovery of such arrears and the same powers are vested in the Commercial Taxes Officer, in so far as he may proceed to realise arrears of sales tax as arrears of land revenue.

6. It was then argued by the learned counsel for the petitioner that the Commercial Taxes Officer before proceeding to attach and sell the tenancy rights in the land in question, he should have come to the conclusion that the arrears of sales tax could not be recovered by any other process. The petitioner has not pointed out in this writ petition that any other assets of the petitioner were available from which the Commercial Taxes Officer could have realised the arrears of sales tax to the tune of Rs. 16,555.12. As the powers of the Collector have been delegated to the Commercial Taxes Officer by the notification issued u/s 260(1)(b) of the Act, the attachment and sale of tenancy rights in the agricultural land in question could not be objected to by the petitioner merely on the ground that the land in dispute was joint family property and other co-sharers have their rights in such land. If other persons had any right in the land in question then they should have objected to the sale of the tenancy rights in the said land, as the proviso to Section 237 of the Act clearly prohibits the transfer of interest of another person, except that of the defaulter, by the process of sale of tenancy rights under Chapter 10 of the Act. The Commercial Taxes Officer was, therefore, competent to attach the rights of the petitioner in the land in question, u/s 237 of the Act.

7. It was then argued by the learned counsel for the petitioner that -the sale under Chapter 10 of the Act could have been conducted by the collector in person or by the Assistant Collector or the Tehsildar, specially appointed by him in this behalf. Even if the powers of the Collector were delegated to the Commercial Taxes Officer, then the sale could have been effected by that officer in person or by the Assistant Collector or the Tehsildar, specially appointed by him in this behalf. ''

8. In the present case, the proclamation for sale was issued by the Commercial Taxes Officer on 21st January, 1974, notifying that the tenancy rights in the land in question shall be sold by public auction on 25th February, 1974 but the aforesaid proclamation of sale (exhibit 4) also specifies that the sale shall be conducted by Shri P. D. Jain, Assistant Commercial Taxes Officer. It is also on record that after the Commercial Taxes Officer had authorised the Assistant Commercial Taxes Officer to conduct the sale, he issued a notification (exhibit 3) stating that he shall conduct the sale of the land in question on 25th February, 1974. It is also not in dispute that the proceedings regarding taking of bids and acceptance of the highest bid were conducted by the Assistant Commercial Taxes Officer.

9. In view of the aforesaid facts, it cannot be held that the sale in the present

 

case, which took place on 25th February, 1974, was conducted by a competent authority, in accordance with the provisions of Section 239 of the Act. The Assistant Commercial Taxes Officer is not one of the authorities specified u/s 239 of the Act. Section 239 authorises either the Collector, an Assistant Collector or a Tehsildar, specially appointed by him as the person who could conduct the sale. As the Assistant Commercial Taxes Officer has not been specified in Section 239 of the Act as a person to whom the powers of conducting the sale could have been delegated, the sale in the present came, which was conducted by the Assistant Commercial Taxes Officer, was clearly without jurisdiction.

10. It was argued by Mr. Bhanderi, appearing for the State, that the petitioner could have raised an objection in this respect, when the sale was conducted by the Assistant Commercial Taxes Officer and that the proper remedy of the petitioner after the sale has been completed was to file an application u/s 247 of the Act to the Collector, for setting aside the sale on the ground of material irregularity or mistake in publishing or conducting the sale, within a period of thirty days from the date of the sale. As no such application was submitted by the petitioner within the specified period of thirty days, the sale could not now be challenged after a long time on the ground of any material irregularity or mistake in conducting the sale. The learned counsel for the State placed reliance on the decision of their Lordships of the Supreme Court in Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others, in support of the aforesaid contention. Their Lordships of the Supreme Court in the aforesaid case approved the principle laid down by Mookerjee, J, of the Calcutta High Court in Ashutosh Sikdar v. Behari Lal Kirtania ILR (1908) Cal 61 :

...no hard and fast line can be drawn between a nullity and an irregularity; but this much is clear, that an irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding, or apply to its whole operation, whereas a nullity is a proceeding that is taken without any foundation for it, or is so essentially defective as to be of no avail or effect whatever, or is void and incapable of being validated.

11. Their Lordships also approved of a "workable test" as laid down by Coleridge, J., in Holmes v. Russell (1841) 9 Dowl 487 :

It is difficult sometimes to distinguish between an irregularity and a nullity, but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity.

12. To my mind, it appears that if the sale proceedings are held by a person not competent in law and if the final bid is also accepted by an incompetent person or authority, the entire proceedings are a nullity and it cannot be held that there was merely an irregularity or mistake in publishing or conducting the sale.

13. Mr. Bhandari argued that the purpose of providing in Section 239 of the Act that the sale shall be made either by the Collector in person or by an Assistant

 

Collector or a Tehsildar specially appointed by him in this behalf is that a superior and responsible officer of the State should conduct the sale and as the Assistant Commercial Taxes Officer is a very responsible officer, the task of conducting the sale could have been delegated to him. The argument advanced by the learned counsel may have some justification, yet Section 239 does not engraft any exception and only the authorities specifically enumerated therein are authorised in law to conduct the sale, namely, the Collector in person or an Assistant Collector or a Tehsildar, specially appointed by the Collector in this behalf. There is no provision for the Assistant Commercial Taxes Officer for being authorised to conduct the sale. As such, it cannot be held that by any stretch the Assistant Commercial Taxes Officer could be considered to be an authorised person for conducting the sale under Chapter X of the Land Revenue Act. I have no doubt in my mind in holding that the sale conducted by the Assistant Commercial Taxes Officer, in the present case, was without jurisdiction and was a nullity.

14. It was then argued by the learned counsel appearing for the State that even if the sale was conducted by the Assistant Commercial Taxes Officer, in the instant case, no substantial injury was caused to the petitioner and as there was no failure of justice, this Court should not interfere in its extraordinary jurisdiction under Article 226 of the Constitution. When the sale effected by the Assistant Commercial Taxes Officer is a nullity, it is difficult to hold that no manifest injustice was caused in the present case. For ought one knows if the sale proceedings were conducted in a proper and legal manner, there could have been a higher bid and at any rate it can be safely held that the interest of the petitioner would have been better protected. It is possible that if the tenancy rights in the land are resold now in accordance with law, then the same may fetch better price.

15. It was also argued that no grievance has been made by the petitioner in the writ petition that the price for which the rights of the petitioner were sought to be sold by public auction, was less than the market price or that the petitioner''s rights in the property were sold for sufficient consideration.

16. It is true that there is no clear averment to that effect in the writ petition, yet when the sale proceedings were a nullity, the transfer of the petitioner''s rights in the agricultural land in question cannot be held to be in accordance with the due process of law. The very fact that the petitioner was sought to be deprived of his rights in the land, in derogation of the provisions of law, is sufficient to establish that the illegal sale has caused substantial or manifest injustice to him. The petitioner was undoubtedly entitled to hold the agricultural land until the same was sold in accordance with the provisions of law by a competent authority or person, as specified in Section 239 of the Act. I am, therefore, unable to agree that no substantial injury has been caused to the petitioner by the illegal sale of the tenancy rights in agricultural land, conducted by the Assistant Commercial Taxes Officer.

17. In the result, the writ petition is allowed. The proceedings for sale of the

 

petitioner''s right in agricultural land referred to above are quashed. The Commercial Taxes Officer, Hanumangarh, shall be at liberty to resell the petitioner''s rights in the agricultural land in question, in accordance with law, for the realisation of the dues outstanding against him relating to arrears of sales tax.

 