
(1990) 11 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 2367 of 1987

Sanjay Land Development Corporation

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 207(2), 208

Citation : (1991) 2 BomCR 351 : (1991) 93 BOMLR 814 : (1991) MhLj 29

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Milind Sathe, instructed by G.B. Kedia, for the Appellant; N.T. Saraf, Assistant Government Pleader for the respondent No. 1, for the Respondent

Judgement

D.R. Dhanuka, J.—This petition is directed against an order passed by the Additional Collector, Bombay Suburban District (respondent No. 2 herein), in exercise of the powers conferred on him u/s 207(2) of the Maharashtra Land Revenue Code, 1966, cancelling an auction sale which was held on 30th June, 1987. The petitioners were declared as an auction purchaser at the said auction. The petitioners' bid was in the sum of Rs. 8,15,000/-. The petitioners paid a sum of Rs. 2,03,750/- on account of 25% of the amount of the bid as and by way of deposit. By the letter Ex."B" to the petition, the petitioners were informed by the respondent No. 5-Talathi that due to some reasons the respondent No.2-Additional Collector had cancelled the said auction sale. Mr. Saraf, learned Assistant Government Pleader, appearing for the respondent No. 1-State, has filed a compilation of documents. It appears that the Additional Collector had passed a speaking order on 7th July, 1987 cancelling the said auction sale.

2. It is common ground that the petitioners were not heard before passing of the said order. The said order was passed on a complaint made by one Chandramasingh Baijnathsing Thakur who was one of the bidders at the said auction. The respondent No. 2-Additional Collector recorded a finding that the said sale was vitiated by reason of a material irregularity in the conduct of the

said auction.

3. Since the petitioners were not heard by the respondent No. 2-Additional Collector before the impugned order was passed, the impugned order suffers from violation of principles of natural justice. I need not say anything more at this stage on merits of the case, as the matter will have to be remanded.

4. The petitioners have contended in paragraph 7(d) of the petition that the said order of cancellation of auction sale was passed without giving an opportunity to the petitioners of being heard. In the affidavit in reply filed by Shri Arvind Keshav Savant, Tahsildar, it has been contended in paragraph 10 that the question of giving an opportunity of being heard to the petitioners need not arise, as the said sale was set aside on the ground of material irregularity. On whatever ground the sale is sought to be set aside, principles of natural justice have got to be followed. Whether the respondent No. 2-Additional Collector sets aside an auction sale on receipt of an application u/s 207(2) of the Maharashtra Land Revenue Code, 1966, or suo motu in exercise of powers conferred on him under the proviso to section 208 of the said Code, he must observe the principles of natural justice and give a fair opportunity of being heard to all parties who are likely to be adversely affected. Principles of natural justice must be observed whenever an order is likely to affect a party adversely.

5. On this limited ground, the impugned order is liable to be quashed and the matter is remanded. The respondent No. 2-Additional Collector will reconsider the application in question for cancellation of auction sale after hearing the complainant, the petitioners herein, the judgement-debtor and such other party or parties who are likely to be affected by his decision one way or the other. Parties will be informed of the grounds of challenge and furnished with copies of relevant documents. As far as possible, the Additional Collector will dispose of such application within a period of three months from to-day. Rule is made absolute in terms aforesaid.

6. By an order dated 9th February, 1990, the Court Receiver, High Court, Bombay, was appointed as the Receiver of the said property. The receiver shall continue to be in charge of the said property until further orders. The petitioners shall have to bear the costs of the receiver as already directed by Kurdukar, J., in his order dated 9th February, 1990. Liberty is given to the parties to apply for discharge of the receiver, if an occasion so arises, after the disposal of the above-referred application.

7. Having regard to the facts and circumstances of the case, there shall be no order as to the costs of this writ petition.