(2004) 07 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 2310 of 1989

Shravan Vithoba Dekate and Others APPELLANT

Vs

Additional Commissioner, Nagpur Division and Others RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 195, 201, 202, 210, 210(1)

Citation : (2005) 1 ALLMR 27 : (2005) 1 BomCR 823 : (2004) 4 MhLj 625

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : R.K. Deshpande and S. Bhandarkar, for the Appellant; T.R. Kankale, A.G.P. for respondent No. 1 and S.P. Palshikar, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—By way of present petition, the petitioners challenge the order dated 30-5-1989 passed by the Additional Commissioner, Nagpur Division, Nagpur in Revision Case No. MRC-81/Khapa-1/85-86 vide which the Additional Commissioner has set aside the order dated 17-4-1985 passed by the Collector and directed confirmation of auction sale dated 27-12-1975.

2. The factual background in short giving rise to the present petition is as under :--

The Industries Officer, Nagpur addressed a letter to the Collector, Nagpur for recovering an amount of Rs. 5000/- from the petitioner No. 3 (original respondent No. 2) as arrears of land revenue as he had not paid the loan of same amount to the Government. The petitioner No. 3 had mortgaged the agricultural land admeasuring 10.46 acres as security. The Tahsildar, Saoner registered a case being Case No. 31/B-109/65-66. Vide order dated 10-10-1975 the Tahsildar, Saoner issued a proclamation for attachment of the property. On 27-12-1975 Naib Tahsildar conducted auction and the highest bid of Rs. 25,000/- was accepted. The respondent No. 3 herein had deposited 1/4th amount, i.e. Rs.

6250/-on the said date. On 23-1-1976 the petitioner No. 3 sold the property to the petitioner Nos. 1 and 2 for consideration of Rs. 28,000/- with a view to make outstanding payment. On 24-1-1976 the Tahsildar accepted Rs. 13272/- from petitioner No. 3 and passed a valid receipt. On 27-1-1976 the respondent No. 3 filed an application before the Tahsildar for confirmation of sale on the basis of auction held on 27-12-1975. The Tahsildar, Saoner by an order dated 4-2-1976 held that objection of respondent No. 3 was not tenable as he was only auction purchaser and held that the purpose of attachment was served. The respondent No. 3 herein went in appeal before the S. D. O. who by his order dated 12-8-1976 maintained the order of the Tahsildar. Being further aggrieved, the respondent No. 3 went in appeal before the Resident Deputy Collector who by an order dated 13-1-1978 dismissed the appeal with a direction to the S.D.O. to pass specific order of setting aside the sale. The respondent No. 3 went in revision before the Additional Commissioner and the Additional Commissioner vide order dated 12-1-1980 remanded the case for decision by S. D. O. in accordance with the provisions of Section 208 of the Maharashtra Land Revenue Code. Vide order dated 17-5-1982 the S. D. O. passed an order setting aside the order of the sale on the ground that there was no issuance of fresh proclamation u/s 195 after postponing the sale of 24-11-1975 to 27-12-1975 and that the requirement of Section 202 was not complied with as entire amount of purchase money was not deposited. The order passed by the S. D. O. was challenged before the Collector, who vide his order dated 17-4-1985 confirmed the order of S. D. O. Being aggrieved thereby the respondent No. 3 preferred a revision before the Additional Commissioner, who by the impugned order dated 30-5-1989 has allowed the revision of respondent No. 3 and quashed and set aside the order of the S. D. O. The petitioners being aggrieved thereby, approached this Court by way of present petition.

3. Initially, the original land-owner Narayan Nagorao Shende was impleaded as respondent No. 2. However, vide order dated 22-8-1991 he was transposed as petitioner No. 3.

4. Heard Shri R.K. Deshpande, with Shri Bhandarkar, learned Counsel for the petitioners, Shri Kankale, learned A. G. P. on behalf of respondent No. 1 and Shri S.P. Palshikar, learned Counsel for respondent No. 3.

5. Shri Deshpande submits that the learned Additional Commissioner has grossly erred in setting aside the well-reasoned order passed by the S. D. O. which was confirmed by the Collector, Nagpur. He further submits that the learned Additional Commissioner has grossly erred in reversing the order of setting aside the auction sale. He submits that in view of Section 195 of the Maharashtra Land Revenue Code (hereinafter referred to as "the MLR Code") if the sale was to be postponed for a period longer than 30 days, a fresh proclamation and notice was required to be issued unless the defaulter consents to waive it. Admittedly, the defaulter had not consented for postponing the sale for a period longer than 30 days and as such, the sale which was effected in contravention of Section 195

was rightly set aside by the learned S. D. O. He further submits that the respondent No. 3 had failed to pay the full amount within a period of two months from the date of sale and as such, had lost his right.

6. Taking me through the various provisions of the MLR Code, Shri Deshpande submits that the dominant purpose of the said chapter of the MLR Code is recovery of the amount payable to the State. He submits that the scheme of the Act would show that the enactment itself provides various opportunities to the defaulter to make the payment of arrears and get the attachment set aside. He further submits that the auction purchaser has no right till the auction sale is complete and that he has right only for consideration for confirmation. Shri Deshpande further submits that the learned Additional Commissioner has grossly erred in holding that the petitioner Nos. 1 and 2 had no right to pay the amount u/s 210. He submits that the perusal of Section 210 would show that any person either owning such property or holding an interest therein by virtue of title acquired before such sale was entitled to apply to the Collector to have the sale set aside, at any time within 30 days from the date of the sale. He submits that the provisions of Section 210 recognise two classes of persons who can apply : (i) a person owning such property and (ii) holding an interest therein by virtue of a title acquired before such sale. He submits that the amount was paid by the petitioner Nos. 1 and 2 on behalf of petitioner No. 3. He submits, assuming without admitting that even if it is construed that the amount was paid by petitioner Nos. 1 and 2, petitioners would fall within the meaning of a person owning such property and would entitle them to make an application.

7. Shri Deshpande relies on the judgments of the Apex Court in the case of Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh, , Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, , State of Punjab and Others Vs. Ram Singh Ex. Constable, , Pooran Singh and Another Vs. State of Madhya Pradesh, and Swadesh Ranjan Sinha Vs. Haradeb Banerjee, .

8. Shri Palshikar, on the contrary, submits that the order passed by the learned Additional Commissioner is just and right. He submits that since the petitioner Nos. 1 and 2 have not acquired the title before the date of sale, they were not entitled to apply u/s 210. He further submits that the provisions of Section 210 would come into play only after the period of 60 days from the date of auction sale. He submits that the Tahsildar had erred in accepting the amount from petitioner Nos. 1 and 2 who had no locus.

9. Shri Kankale, learned A.G.P. also supports the order passed by the learned Additional Commissioner.

10. For appreciating the rival contentions of the parties, it will be necessary to note few dates. The proclamation of sale of the land was issued on 10-10-1975 and auction was fixed on 24-11-1975. However, the auction was postponed and ultimately held on 27-12-1975. Since the respondent No. 3 was the highest bidder, the auction was knocked down for Rs. 25,000/- and the respondent No. 3

deposited an amount of Rs. 6250/-. Subsequently, the husband of the petitioner No. 2 deposited an amount of Rs. 12,960/- by a bank draft on behalf of 2-7-1996 the respondent No. 3. On 26-1-1996 the present respondent No. 3 applied to the Tahsildar stating therein that the petitioner No. 3 had sold the land to petitioner Nos. 1 and 2 and he requested for confirmation of the sale. Subsequently, on 4-2-1976 the respondent No. 3 herein withdrew the amount of Rs. 6250/- deposited by him. Thereafter the proceedings have progressed as stated hereinabove.

11. It will also be necessary to refer to certain provisions of the MLR Code :--

"Section 195. Postponement of sale, -- The sale may from time to time be postponed for any sufficient reason :

Provided that, when the sale is postponed for a period longer than thirty days, a fresh proclamation and notice shall be issued unless the defaulter consents to waive it."

"Section 197. When sale may be stayed. -- If the defaulter or any person on his behalf, pays arrear in respect of which the property is to be sold and all other charges legally due by him at any time before property is knocked down, to the person prescribed u/s 170 to receive payment of the land revenue due, or to the officer appointed to conduct the sale or if he furnished security u/s 191, the sale shall be stayed."

"Section 201. Deposit by purchaser in case of sale of immovable property. --In all cases of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum of the amount of his bid, and in default of such deposit, the property shall forthwith be again put up and sold."

"Section 202. Purchase-money when to be paid. -- The full amount of purchase-money shall be paid by the purchaser before the expiration of two months from the date on which the sale of the immovable property took place or before the expiration of fifteen days from the date on which the intimation of confirmation of the sale is received by the purchaser, whichever is earlier:

Provided that, if the last date on which the purchase-money is to be paid happens to be a Sunday or other authorised holiday, then the payment shall be made before the sunset of the first office day after such date."

"Section 210. Application to set aside sale by person owning or holding interest in property. -- (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 Collector 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 amounts 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 sale on that account; and

(c) the cost of the sale; Provided that, such application may be made by any such person belonging to Scheduled Tribe within one hundred and eighty days from the date of sale;

(2) If such deposit is made within thirty days or as the case may be one hundred and eighty days from the date of sale, the Collector shall pass an order setting aside the sale."

12. It can thus be seen from perusal of Section 195 that if the sale is to be postponed for a period longer than 30 days, a fresh proclamation and notice is required to be issued unless the defaulter consents to waive it. Admittedly, the sale which was originally to be held on 24-11-1975 was postponed to 27-12-1975. Thus, admittedly, it was postponed for a period beyond one month. It was thus mandatory to issue a fresh proclamation and notice since the defaulter had not consented to waive fresh proclamation and notice. The wording of the Section is mandatory in nature. It is thus clear that the sale which was held on 27-12-1975 was held in contravention of provisions of Section 195 and as such, the learned S. D. O. as well as the learned Collector have rightly come to the conclusion that it was liable to be set aside. The reasoning given by the Additional Commissioner that issuance of fresh proclamation is not an iron law is contrary to the provisions of Section 195.

13. In the case of Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh, cited supra, the Apex Court has held that the auction purchaser gets the right in the property only on confirmation. Till confirmation, the right of auction purchaser is limited only for consideration for confirmation. In the present case, since it can be seen that the auction itself was in contravention of Section 195 of the MLR Code, on the very date of auction, the respondent No. 3 had no right. In any case, the respondent No. 3 himself has withdrawn the amount of 25% which was deposited by him when the auction was knocked down in his favour u/s 201 of the MLR Code.

14. The next question that arises for consideration is whether the Tahsildar was right in accepting an amount of Rs. 12,960/- on behalf of the petitioner No. 3.

15. The perusal of the scheme of the Chapter XI of the MLR Code would show that the dominant purpose of the said Chapter is for recovery of the amount due and payable towards land revenue. As pointed out by the learned Counsel for the petitioner, though the chapter provides for coercive measures for realisation of the amount due to the Government, the chapter itself provides for giving various opportunities to the defaulter to make the payment to the State before the property could actually be sold. Section 176 of the said Code provides for various processes of recovery of arrear. Sub-section (d) provides for recovery by

attachment and sale of defaulter''s immovable property. Section 181 provides for sale of defaulter''s immovable property, whereas Section 182 provides for power to attach defaulter''s immovable property and take it under management. Sections 192 and 193 provide for the procedure in effecting sales. It can be seen from the perusal of Section 197 that even after the proclamation is issued for conducting sale, defaulter or any person on his behalf is entitled to pay the arrears in respect of which the property is to be sold and all other charges legally due by him at any time before the property is knocked down. Thus, u/s 197 a defaulter or any person on his behalf has an opportunity to make the payment to the authority and get the sale stayed. Section 200(1) provides that a party who is declared to be a purchaser shall be required to deposit 25% of the amount of his bid and in default of such deposit, the property is required to be again put up and sold. Sub-section (2) of Section 200 requires that the full amount of purchase money is required to be paid by the purchaser within a period of two months from the date on which the sale of the immovable property took place. Section 203 provides for forfeiture of the amount in case of default on payment within the above referred period of two months. Section 207 of the MLR Code enables an application to be made to set aside the sale on the grounds stated therein. Section 210 enables any person either owning such property or holding an interest therein by virtue of a title acquired before such sale to apply to the Collector to have the sale set aside at any time within 30 days from the date of the sale.

16. The perusal of the scheme would thus show that the intention of the Legislature is to recover the amount due from the person who is liable to pay to the Government. The sale by auction is the last resort and before the sale is confirmed, various opportunities are given to the defaulter to make the payment before the sale is actually confirmed.

17. I am unable to accept the contention raised by Shri Palshikar as well as Shri Kankale that so as to be entitled to invoke the provisions of Section 210, even a person who is owing such property is required to have acquired the title before the date of sale. In my view Section 210 recognises two classes of persons : (a) either owning such property, or (b) holding an interest therein by virtue of a title acquired before such sale. It is only a person who holds an interest in the land apart from owner who is required to have acquired the title before such sale. In case of owner, it is not necessary that he should have acquired a title before the date of such sale. If the contention is accepted, then the word ''or'' which has been used in Section 210(1) will have to be read as ''and''. As held by the Apex Court in the case of State of Punjab and Ors. v. Ram Singh Ex-Constable, cited supra and Puran Singh and Anr. v. The State of Madhya Pradesh, cited supra, ''or'' cannot; be read as ''and''. The said word will have to be read as disjunctive. The words used in the Section 210 are clear and unambiguous. The words in the said Section are not capable of giving two meanings. It is clear upon reading the provision that it is only in case of a person who holds an interest in the land except the owner, who is only required to have acquired the title before such sale.

18. I am, therefore, of the considered view that words "either owing such property" will have to be given a wider meaning. Firstly, it can be seen from the record that the amount has been paid by the husband of the petitioner No. 2 on behalf of respondent No. 3 and it can also be seen that the said amount has been accepted by the Tahsildar on behalf of petitioner No. 3. Accepting for a moment that the said amount was paid by petitioner No. 2, then even in that eventuality, the application in my view would be tenable, as she would come in the category of "either owing such property".

19. In that view of the matter, the order passed by the learned Additional Commissioner dated 30-5-1989 is not sustainable in law. The petition is, therefore, allowed. The order passed by the learned Additional Commissioner is quashed and set aside. The order passed by the Sub-Divisional Officer, Saoner dated 17-5-1982 and the order passed by the Collector, Nagpur dated 17-4-1985 are restored.

20. Rule is accordingly made absolute with no order as to costs.

