
(2007) 02 AHC CK 0225
In the Allahabad High Court

Srichand Jain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Stamp Act, 1899 — Section 33, 47A

Citation : (2007) 3 ADJ 227 : (2007) 2 AWC 1507

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan and Dilip Gupta, JJ.—This petition has been filed for quashing the order dated 19th September, 2001 passed by the Sub-Divisional Magistrate attaching the land in question, order dated 10th November, 2001 passed by the Principal Secretary (Revenue), Government of U.P. and for setting aside the auction proceedings. The petitioner has also sought a direction from this Court for deciding the objections filed by the petitioner under Order XXI, Rule 58 of the CPC (hereinafter called the "C.P.C.").

2. The dispute in present petition relates to Khasra Plot No. 233 measuring 4-13-0 bighas in village Pathanpura in Saharanpur. Two sale deeds were executed on 24.4.1992 and 1.4.1992. The Additional Collector (Finance and Revenue), Saharanpur initiated proceedings u/s 33/47A of the Indian Stamp Act in respect of both the sale deeds and an order was passed for payment of the deficient stamp duty and penalty amounting to Rs. 1,64,140 in respect of sale deed dated 24.4.1992 and an amount of Rs. 2,75,485 in respect of sale deed dated 1.4.1992. The said amount was not deposited as a result of which a recovery certificate was sent to the Collector. The Sub-Divisional Magistrate passed an order for attachment of the property. The petitioner filed objection on 3rd March, 1999 under Order XXI, Rule 58, C.P.C. and also moved an application for release of the property in both the cases. The two cases were consolidated and heard. An order dated 19th March, 1999 was passed by the Sub-Divisional

Magistrate, Saharanpur, allowing the objections filed by the petitioner under Order XXI, Rule 58, C.P.C. and releasing the property attached but ordered that other properties of the vendors be sold. Surprisingly, the property which had been ordered to be released by the Sub-Divisional Magistrate vide order dated 19th March, 1999 was again attached vide order dated 19th September, 2001. The said property was directed to be sold by auction. When the petitioner came to know about this order, he again filed objections under Order XXI, Rule 58, C.P.C. before the Sub-Divisional Magistrate, Saharanpur and alongwith the said objection, he also filed an application for stay of further proceedings. The Sub-Divisional Magistrate passed any order on 5th November, 2001 on the stay application that as Khasra No. 233 had already been released by his predecessor, further proceedings of auction sale fixed for 12th November, 2001 would remain stayed. It is after passing the said order, that one Shri Mahesh Bhargav, advocate and Press Reporter of the Swatantra Bharat newspaper, a total stranger, produced his own letter before Principal Secretary (Revenue), Government of U.P. on 10th November, 2001 at his residence on a holiday (Second Saturday) and the Principal Secretary on the said application itself passed an order directing the District Collector, Saharanpur, to auction the property for realisation of the stamp dues. This order dated 10th November, 2001 passed by the Principal Secretary (Revenue) was brought to the notice of the District Collector on Sunday, the 11th November, 2001. The District Collector, pursuant to the directions issued by the Principal Secretary (Revenue) directed the Sub-Divisional Magistrate to comply with the directions. The Sub-Divisional Magistrate, in turn, passed an order directing the Naib Tehsildar to take immediate action. The result was that the property in dispute was sold by the Naib Tehsildar on 12th November, 2001 to one Shri Kamal Nain Sharma for a sum of Rs. 6,10,000. The petitioner had no knowledge of these facts and when he went to the court of Sub-Divisional Magistrate on 13th November, 2001 and inspected the file, he came to know about the aforesaid developments. He has, therefore, filed this writ petition for the reliefs, referred to above.

3. We have heard Shri R.N. Singh, learned senior counsel appearing for the petitioner; learned standing counsel for respondents No. 1, 2, 3, 4, 5 and 6; Shri M.K. Gupta for respondent Nos. 7, 8, 9 and 10 and Shri D.P. Singh for respondent No. 11. No one has put in appearance on behalf of Mr. Mahesh Bhargav, advocate, respondent No. 12 inspite of service of notice upon him.

4. Shri R.N. Singh, learned senior counsel for the petitioner has submitted that the order dated 19th March, 1999 passed by the Sub-Divisional Magistrate, Saharanpur, on the objections filed by the petitioner under Order XXI, Rule 58, C.P.C. in respect of the first attachment had become final and, therefore, the Sub-Divisional Magistrate was not justified in passing the second attachment order for the same property for recovery of the same deficit stamp duty as principles of res judicata would apply. He further submitted that the Principal Secretary (Revenue) had no jurisdiction to pass the order on 10.11.2001 on the letter by a total stranger Shri Mahesh Bhargav claiming himself to be the Press Reporter of

Swatantra Bharat newspaper and, therefore, all consequential proceedings for auction sale taken on the said order of Principal Secretary (Revenue) were void. Learned senior counsel further submitted that the proceedings for auction sale could not have been taken in the teeth of the stay order dated 5.11.2001 passed by the Sub-Divisional Magistrate and in any view of the matter, the auction proceedings could not have been taken without deciding the objections filed by the petitioner under Order XXI, Rule 58, C.P.C.

5. Learned Counsel appearing for the respondents, however, defended the order passed by the Principal Secretary (Revenue) and the consequential auction proceedings contending that for realizing the amount, the property of the petitioner was rightly sold and the objections filed under Order XXI, Rule 58, C.P.C. were not maintainable and the order so passed was void.

6. We have carefully considered the submissions advanced by the learned Counsel for the parties.

7. The records clearly indicate that the Sub-Divisional Magistrate, while considering the objections filed by the petitioner in respect of the first attachment, passed the order dated 19th March, 1999 releasing the property, i.e., Khasra No. 233 from attachment and directed that any other property of the vendors be sold. This order was not challenged in appeal and was allowed to become final. Whether such order was valid or void cannot be determined by the private respondents. For setting aside such an order, even if void, the party has to approach the appropriate forum. Vide State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, and Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.,

8. In M. Meenakshi and Others Vs. Metadin Agarwal (D) by LRs. and Others, , the Hon"ble Supreme Court considered the issue at length that even if the party feels that the order passed by a statutory authority is nonest/void, being person aggrieved, should question the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The court observed as under:

It is well-settled principle of law that even a void order is required to be set aside by a competent court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not nonest. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus nullities.

9. It is indeed surprising that in the teeth of this order, attachment proceedings were again taken in respect of the same property, i.e., Khasra No. 233 and when the petitioner pointed out these facts to the Sub-Divisional Magistrate by filing his objections under Order XXI, Rule 58, C.P.C, the Sub-Divisional Magistrate passed an order on 5.11.2001, staying the further proceedings in the auction sale fixed for 12th November, 2001. These proceedings remained pending but

one Shri Mahesh Bhargav, advocate, claiming himself to be the Press Reporter of Swatantra Bharat newspaper having no concern with the case produced his own letter before the Principal Secretary (Revenue) at his residence on 10th November, 2001, which was a holiday and the Principal Secretary (Revenue) from his residence passed the order on the said application directing the District Collector to auction the property for recovery of deficient amount of stamp duty. Learned Counsel for the respondents have not been able to point out any provision of law under which the Principal Secretary (Revenue) could have power to entertain his application and pass the order.

10. It is settled proposition of law that when Statute confers power on a particular Authority or person to perform certain functions, it cannot be exercised by any other person. Vide *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, ; *The state of U.P. and Others Vs. Ram Naresh Lal, Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, ; *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Chandrika Jha Vs. State of Bihar and Others*,

11. In the *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, the Hon''ble Supreme Court has observed as under:

The powers exercisable by the Cane Commissioner under Clause 6(1) is statutory power. He alone could have exercised that power, while exercising that power, he cannot obligate his responsibilities in favour of any one; not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner... the Executive Officers, entrusted with statutory discretion, may, in some cases, be obliged to take into account consideration of public policy and in some context the policy of the Minister or the Government as the whole when it is relevant factor in weighing the policy but this will not absolve them from the duty to exercise the personal judgment in individual case unless explicit statutory provisions have been made for them to be given binding instructions by a superior.

12. Similarly, in *Tarlochan Dev Sharma Vs. State of Punjab and Others*, the Hon''ble Supreme Court, after placing reliance upon a large number of its earlier judgment, observed as under:

In the system of Indian democratic governance, as contemplated by the "constitution, senior officers occupying good position as Secretaries, are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of the politicians for carrying out command having no sanctity in law.... No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

13. More so, an order should be passed by an authority having power to pass the

order under the Act.

14. The Hon'ble Supreme Court in Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, while interpreting the provision under the Bombay Provincial Municipal Corporation Act, 1949, observed that if the order is passed de hors the statutory provision of the Act, the order so passed or action taken in pursuance thereof cannot be termed to have been done under the Act.

15. The Hon'ble Supreme Court in Municipal Corporation, Indore v. Sri Niyamatulla AIR 1971 SC 97, interpreted Section 135(2) of the Indore Municipal Act, 1909, which is similar to Section 233(1)(a) of the Act in the following terms:

The provisions contained in Section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is, therefore, not an act done under the Act.

(Emphasis added)

16. The aforesaid judgments were reconsidered and approved by the Hon'ble Supreme Court in J.N. Ganatra Vs. Morvi Municipality, Morvi, and Borosil Glass Works Ltd. Employees Union v. D.D. Bambode and Ors. JT 2000 (3) SC 278.

17. Thus, In view of the above, the order passed by the Principal Secretary (Revenue) on the letter of a total stranger was nothing but an abuse of power and is, therefore, totally without jurisdiction and all consequential actions taken by the District Collector, Sub-Divisional Magistrate, Tehsildar and the Naib Tehsildar for holding the auction of the property on 12th November, 2001 are, therefore, patently illegal and cannot be sustained.

18. It also needs to be emphasized that the auction sale was held in gross violation of the stay order dated 5.11.2001 passed by the Sub-Divisional Magistrate staying further proceedings for auction on 12.11.2001. For all such reasons the auction proceeding is void and consequential sale deeds/proceedings are also void. Vide Mulraj Vs. Murti Raghonathji Maharaj, ; Surjit and others Vs. Harbans Singh and others etc. etc., ; Govt. of Andhra Pradesh and Others Vs. Gudepu Sailco and Others, and Smt. Savitri Devi Vs. Civil Judge (SD) and Others,

19. The records indicate that the objections filed by the petitioner under Order XXI, Rule 58, C.P.C. in respect of second attachment order are still pending disposal before the Sub-Divisional Magistrate. In this view of the matter, we do not propose to examine the contentions raised by Shri R.N. Singh, learned senior counsel that the said objections were not maintainable since the principles of res judicata would apply and nor we are inclined to examine the contentions advanced by learned Counsel for the respondents that the objections under Order XXI, Rule 58, C.P.C. are not maintainable.

20. In view of the aforesaid, petition succeeds and is allowed. Order dated 10th November, 2001 passed by the Principal Secretary (Revenue), Government of

U.P. and all consequential orders passed by the District Collector, Saharanpur, Sub-Divisional Magistrate, Saharanpur, Tehsildar and Naib Tehsildar, of Saharanpur are quashed. The auction proceedings held on 12.11.2001 and the sale deeds executed in favour of Kamal Nain Sharma on the basis of the aforesaid auction proceedings are also quashed. The Sub-Divisional Magistrate shall decide the objection filed by the petitioner under Order XXI, Rule 58, C.P.C. expeditiously in accordance with law after hearing all the parties concerned.