

(2015) 03 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 2738 of 2010

Sukumar Kumar Patil

APPELLANT

Vs

Prakash Appaso Patil and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 210

Citation : (2015) 5 ALLMR 599 : (2015) 3 MhLj 335

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Vijay Killedar, for the Appellant; Leena Patil instructed by M.S. Karnik, Advocates for the Respondent

Judgement

M.S. Sonak, J.—In terms of the order made on 25th July, 2014 this matter was heard finally.

2. This petition is directed against the order dated 12th March, 2010 made by the Minister (Revenue) allowing the revision petition instituted by respondent no. 1 against the order dated 29th October, 2009 made by the Additional Commissioner, Pune rejecting the application made by respondent no. 1 to set aside the sale of property at the auction held on 3rd December, 2008.

3. Respondent no. 1 had issued certain cheques which were dishonoured. The proceedings were taken out against respondent no. 1 which ultimately resulted in attachment of petitioner's property (suit property) and proclamation was issued for the sale thereof. The auction was held on 3rd December, 2008 in which the petitioner was adjudged as the highest bidder having bid in the amount of Rs. 16,35,000/-. The Petitioner on 3rd December, 2008 itself deposited 25% of the bid price and within the next seven days i.e. on 10th December, 2008 deposited the balance purchase price.

4. Respondent no. 1 made an application dated 18th December, 2008 to the Collector invoking provisions of section 210 of the Maharashtra Land Revenue

Code, 1966 (said Code). Although the said application was made within the period of thirty days as prescribed under section 210 of the Code, the same was neither accompanied by or made upon depositing the amounts as contemplated by section 210 of the Code; i.e.

(a) for payment to the purchaser sum equal to five per cent of the purchase price;

(b) for payment on account of the arrears, 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 count; and

(c) cost of the sale.

5. The Respondent no.1 however, on 29th December, 2008 tendered cheque in the amount of Rs. 6,65,000/- to the Tahsildar in purported compliance with the requirements of section 210 of the Code. The Collector, Kolhapur made an order on 21st January, 2009 exercising powers under section 210 of the Code setting aside the sale in favour of the petitioner. The said order, makes reference to Tahsildar's report dated 22nd January, 2009 to the effect that the amount of Rs. 6,65,000/- was recovered from respondent and has been forwarded to the Collector.

6. Petitioner appealed against the order dated 21st January, 2009 to the Additional Commissioner, Pune. By judgment and order dated 21st October, 2009, the Additional Commissioner set aside the Collector's order dated 21st January, 2009 and directed confirmation of sale in favour of the petitioner. Respondent no.1 there upon instituted revision petition before the Minister (Revenue), who has by the impugned order dated 12th October, 2010 allowed the same. Hence, the present petition.

7. Mr. Killedar, learned counsel for the petitioner, basically made the following submissions in support of the petition:

(a) That in the present case, the application made by respondent no.1 on 18th December, 2008 ought not to have been entertained by the Collector, since the same was not upon the respondent no. 1 making deposit of the amounts referred to under section 210 of the Code;

(b) That the tender of the cheque by respondent no. 1 in the amount of Rs. 6,65,000/- on 29th December 2008 to the Tahsildar cannot be regarded as in compliance with the requirements prescribed under section 210 of the Code. This is because the Tahsildar is not the authority prescribed to receive such amount and further section 210 of the Code does not contemplate deposit of amount by mere tender of a cheque.

(c) There is material on record which establishes that the cheque in question was not honoured and respondent no. 1 some time between 20th January, 2010 and 22nd January, 2010 paid the amount in cash before the Tahsildar. The said

payment being well beyond the period of thirty days prescribed by section 210 could never have been taken into account by the Collector or the Minister (Revenue) for the purposes of setting aside the sale;

(d) The Collector's order dated 21st January, 2010 makes reference to the Tahsildar's report dated 22nd January, 2009. This, learned counsel submits is indicative of some manipulation.

8. Ms. Patil, learned counsel for the respondent no. 1 defended the impugned order by pointing out that in the present case, deposit of the amounts as contemplated by section 210 of the Code were made within the period prescribed under said section i.e. within the period of thirty days. Ms. Patil pointed out that the payment of the amounts by way of cheque was valid payment, more particularly since the same was accepted by both Tahsildar and the Collector. In the alternative, Ms. Patil submits that the requirement of deposit of the amount within thirty days is not at all mandatory requirement. As long as the sale was not complete, respondent no. 1 had every right to make deposit and on the said basis urged that the sale be set aside. Ms. Patil placed reliance upon the decision of this court in the case of Shraavan Vithoba Dekate and Others Vs. Additional Commissioner, Nagpur Division and Others, in support of the proposition advanced by her.

9. Rival contentions now fall for my determination.

10. The provisions of section 210 of the Code read thus :

"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."

11. In the facts and circumstances of the present case, there is no dispute that the application for setting aside the sale as contemplated by section 210 of the

Code was made by respondent no. 1 on 18th December, 2008. However, the same was not accompanied by or made upon depositing of the amounts referred to in section 210 of the Code. As such the application dated 18th December, 2008 was not the complete application. Nevertheless, within the prescribed period of thirty days, respondent no.1 tendered, surprisingly to the Tahsildar, cheque in the amount of Rs. 6,65,000/- corresponding to the amounts referred to under section 210 of the Code. Construing the provisions contained in section 210 of the Code in favour of respondent no. 1, it can be considered that the application was made by respondent no. 1 on 29th December, 2008 alongwith the cheque in the amount of Rs. 6,65,000/-.

12. The question which really arises is whether the tender of the cheque alongwith an application under section 210 of the Code constitutes sufficient compliance with the provisions contained in section 210 of the Code.

13. Although, the provisions contained in the order 21 rule 84, 85 and 89 are not *pari materia* with the provisions contained in section 210 of the Code, the principles applicable to such provisions overlap. In the context of the provisions contained in Code of Civil Procedure, the Hon'ble Apex Court in the case of *Ram Karan Gupta Vs. J.S. Exim Ltd. and Others*, has held that the said provisions are in the nature of concession shown to the Judgment Debtor, so he has to strictly comply with the requirements thereof and the sale will not be set aside unless the entire amount specified is deposited within the prescribed period. In the said case, the Judgment Debtor did not pay the amount in the stipulated time and only made an application without depositing the payment and the Hon'ble Apex Court held that the court would not entertain such application and was in fact bound to confirm the sale. The Apex Court further observed that the deposit of the requisite amount in the court is condition precedent and was *sine qua non* for setting aside the execution of the sale and such amount must be paid within the period specified and if deposit is made after the time limit, the application must be dismissed. However, deposit so made should be unconditional and unqualified and the decree holder or the auction purchaser should be able to get the amount at once.

14. The provisions contained in section 210 of the Code are also in the nature of concession shown to the Judgment Debtor and therefore, the Judgment Debtor has to strictly comply with the requirements thereof. In the context of section 210 also, it shall have to be held that the deposit of the requisite amount is a condition precedent or *sine qua non* to setting aside of the sale and further such amount must be paid within the time specified under section 210 of the Code. In fact expression used under section 210 of the Code is "...apply to the Collector to have sale set aside on his depositing...". This means that the application can be entertained by the Collector upon being satisfied that the amounts referred to in the provisions have been deposited within the period of thirty days from the date of sale.

15. In the case of *Shravan (supra)*, upon which reliance was placed by Ms. Patil,

there is no deviation from the aforesaid proposition. In fact even the said decision records that section 210 of the code enables any person either owning such property or having interest therein can apply to the Collector to have the sale set aside within thirty days from the date of the said sale. Besides in the case of Shravan (supra), this court was really concerned with two classes of persons entitled to apply for setting aside the sale. The issue involved in the present petition was not one which was either involved or considered by this court in the case of Shravan (supra).

16. In the scheme of section 210 of the said Code, there is no question of tender of the cheque along with application for setting aside the sale in order to establish that the condition precedent for entertainment of such application has been complied with. In this regard reference can usefully be made to the decision of the Hon''ble Apex Court in Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others, where the Hon''ble Apex Court was considering the provisions of rule 385(d) of the UP Jamindari Abolition and Land Reforms Rules, 1952. The said rule required deposit of 25% of the bid amount immediately by the purchaser and in case of default, the land was to be forthwith resold. The contention raised by the petitioner was that deposit by means of cheque was sufficient compliance with the provisions contained in rule 285(d). The said contention was not accepted by the Hon''ble Apex Court and the discussion on this aspect is contained in paragraph 12 which reads thus :

12. The question now remains to be considered is whether the deposit of 25 per cent of the bid amount by the purchaser respondent No. 1 herein by cheque instead of cash would be a valid deposit within the meaning of Rule 285D of the Rules. Admittedly the respondent No. 1 was declared purchaser of the property in question on 18.10.1973. According to the learned Counsel for the appellants neither the deposit of 25 per cent of the bid amount was made in cash nor by Cheque on 18.10.1973 as the cheque was encashed on 22.10.1973. While according to the learned Counsel appearing for the auction purchaser respondent No. 1 the cheque was tendered on 18.10.1973 itself which was encashed on 22.10.1973 and the amount was deposited in the Government treasury on 22.10.1973. The question is whether such a payment by cheque could be regarded as a valid deposit within the meaning of Rule 285D. As discussed above Rule 285D is a mandatory rule according to which if 25 per cent of the bid amount is not deposited immediately the land shall forthwith be again put up and sold. In other words on the failure of the purchaser to deposit 25 per cent of the bid amount immediately the land shall be resold immediately after such failure the very same day. If for instance the 25 per cent of the bid amount is accepted by cheque and subsequently the purchaser changes his mind and advises his banker not to encash the cheque or there is no amount in the account of the purchaser in the bank and the cheque is bounced, the purpose of Rule 285D would be frustrated and thus the mandatory provision would be rendered nugatory. The result would be that neither the authorities would be in a position to forfeit any amount of the purchaser nor the authority would be in a position to

defray the expenses of the sale as contemplated by Rule 285E. The other consequence that will follow is that the resale of land will have to be delayed and a fresh proclamation for sale has to be issued as provided by Rule 285G. It, therefore, appears to us that Rule 283D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory Rule 285D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule. This was also the view taken by a Division Bench of the Allahabad High Court in the case of Him Lal (supra) and the Learned Single Judge was not right in ignoring the said view by observing that it was obiter. The High Court of Madhya Pradesh in Progressive Industrial Enterprises Vs. Bank of Baroda and Others, also expressed the view that deposit of 25 per cent of the bid amount by cheque which was not encashed on the date on which the person was declared purchaser but on a later date, there was no compliance of Order 21 Rule 84(C) CPC.

(Emphasis supplied)

17. If the tender of the cheque alongwith the application for setting aside the sale is to be construed as sufficient compliance, then the same may result in frustrating the very purpose of enacting section 210 of the said Code. As observed by the Hon''ble Apex court in the case of Rao Mohd (supra), if the person concerned, after tender of the cheque changes his mind and advises his bankers not to encash the cheque or if the cheque is dishonoured for want of sufficient funds or because of reasons of like nature, the sale at the auction would be unnecessarily postponed to the detriment of the auction purchaser and the decree or order holder. In the present case, there is dispute as to whether or not the cheque tendered by respondent no.1 on 29th December, 2008 was honoured or not. Even if we proceed on the basis that the same was honoured, the actual amount was received by the Tahsildar and thereafter the Collector only beyond the period of thirty days from the date of the sale which is the period prescribed under section 210 of the Code for making the deposit. This is certainly not even sufficient compliance with the provisions contained in Section 210 of the Code. This is not even a case where the cheque tendered by respondent no.1 was encashed before the time prescribed under Section 210 of the Code could expire. The Collector was therefore, not justified in entertaining such an application made by and on behalf of respondent no. 1. The Additional Commissioner was consequently right in interfering with the Collector's order and the Minister (Revenue) exceeded jurisdiction in upsetting the well reasoned order of the Additional Commissioner.

18. Therefore, the impugned order made by the Minister (Revenue) shall have to be set aside and order made by the Additional Commissioner, Pune on 22nd October, 2009 shall have to be restored. The same is ordered accordingly.

19. Rule is accordingly made absolute in terms of prayer clause (b). There shall

be no order as to costs.

20. At this stage, learned counsel for respondent no. 1 prays for stay of the judgment and order which is pronounced for the period of eight weeks. Considering that the orders made by the Collector and the Minister (Revenue) were in favour of the respondent no. 1, implementation of this judgment is stayed for the period of eight weeks from today. The attachment over the suit property shall however, continue.