
(1976) 05 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 33 of 1976

Tiwari Pradyumna Kumar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-05-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) RLW 285 : (1976) WLN 164

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—By this petition under Article 226 of the Constitution of India, the petitioner has prayed that the auction of the petitioner's house situate in ward No. 12, Rampura, Kota conducted by the Commercial Tax on Officer, Circle A", Kota respondent No. 2) (who will hereinafter be referred to as the "CTO.") and knocked down in favour of respondents No. 3, 4 and 5 on 29th March, 1976 be quashed and possession of the property in question be restored to him. The petition has been opposed at admission stage by the CTO, who has filed his own affidavit in reply to the main allegations contained in the writ petition.

2. I have heard Mr. M.M. Tiwari on behalf of the petitioner and Mr. S.C., Bhandari on behalf of the CTO at some length. Mr. Bhandari has raised a preliminary objection to the entertainability of the petition on the ground that the petitioner has admittedly filed objections u/s 247 of the Rajasthan Land Revenue Act, 1956 (which will hereinafter be called "the Act") to set aside the sale on the ground of material irregularity or mistake in publishing and conducting the sale. It is submitted that the application for setting aside the sale filed on behalf of the petitioner is pending and, therefore, this writ application does not lie. He has argued that adequate remedy has been provided under the provisions of the Act itself to a party aggrieved by the sale of his property, inasmuch as after an order has been passed u/s 248 of the Act and the application has been rejected,

the aggrieved party can file appeal u/s 75 and then there is also a remedy of revision provided under the provisions of the Act.

3. It appears from the affidavit filed by the CTO that a demand of sales-tax amounting to Rs. 3,42,104.48 was created against two firms M/s. Tiwari Jhoomarlal Swarooplal, Karauli Hindaun section and M/s. Jhoomarlal Swaroop lal, Banshi Paharpura Band Baitha. The details of the demand have been mentioned in the schedule appended to the affidavit. For recovery of this amount, the house in dispute was sold by public auction. The CTO has further sworn that possession of the house in dispute has not been delivered and could not have been delivered to the auction purchasers, unless the sale is confirmed u/s 248 of the Act.

4. Learned Counsel for the petitioner has strenuously urged that the mandatory provisions of the Act have not been followed in conducting the sale of his house. It is argued, in the first instance, that no writ of demand calling upon the defaulter to pay the amount or a citation to appear on a date was served on the petitioner as required by Section 229 of the Act. To this Mr. Bhandari reply is that Section 228 prescribes a number of methods for recovery of arrears and serving a writ of demand is one of such methods, but in the present case the CTO has resorted to one of the alternative method's of recovering the arrears by sale of Immovable property of the defaulter as mentioned in Clause (e) of Section 228 of the Act. The second contention of of the petitioner is that the estimated value of the property was not mentioned in the proclamation of sale as required by Order 21 Rule 66 CPC arid this con tension is being met by Mr. Bhandari on the ground that Order 21 Rule 66 CPC does not apply as such to the proceedings for Bale under the Act What is required to be mentioned in a proclamation of sale issued under the Act is contained in Section 238 of that Act, where under It is not obligatory to mention the estimated value of the property.

5. It is next argued that the CTO did not serve a copy of the proclamation issued under Sub-section, (1) of Section 238 on the defaulter and hence the sale is void Mr. Bhandari's reply, however, is that the proclamation of sale was given widest publicity by issue of Annexure 1 and by pasting the proclamation of sale at all important places in the town. Learned Counsel for the petitioner has relied on a number of authorities in support of the various illegalities and material irregulanties in publishing and conducting the sale urged by him They are : Gajadhar Prasad and Others Vs. Babu Bhakta Ratan and Others, , Hari Prasad Vs. Om Prakash and Others, , Poonaram v. Shivilal ILR 468. Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, , Navalkha and Sons Vs. Ramanuja Das and Others, , Jagannath Vs. Perumal Naidu and Others, , Venkateswara Ettu Naicker Vs. Ayyammal and Others, , The Lakshmi Commercial Bank Ltd., New Delhi, Decree Holder Vs. American Rubber Mills Co., Delhi and Others Judgment-debtors, , Vepa Satyanarayanmurthy v. Chekka Bhanwanarayana and Ors. AIR 1957 AP 185 and Natarajan Vs. Chandmull Amarchand by Power-of-Attorney, K. Milopchand and Another, However, in view of the conclusion to which I have come and which I shall presently state, I do not think it at all necessary to

discuss these authorities.

6. It is a well established principle settled by a string of authorities that a court-sale can be set aside at the instance of a judgment-debtor on the ground of material irregularity or mistake in publishing or conducting it, unless it is proved that he has sustained substantial injury by reason of such irregularity or mistake. There is, in fact, a specific provision contained in Section 247 of the Act itself, wherein it is mentioned that "no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason of such irregularity or mistake.

7. Learned Counsel for the petitioner has urged that the price of Rs. 87,605/- for which the property in question has been knocked down is grossly inadequate and consequently the petitioner has sustained substantial injury. It is sufficient to point out that there is no material before me to the basis of which this contention can be accepted. As already stated above, the matter is pending before the Collector u/s 247 of the Act, and it is not permissible to short-circuit it by filing a petition under Article 226.

8. I do not think it proper to express my views on the various contentions raised by the learned Counsel for the petitioners and the reply given on behalf of the CTO in connection with the illegalities or material irregularities alleged to have been committed in publishing or conducting the sale, as that would prejudice either party in respect of the objections filed by the petitioner before the Collector for setting aside the sale. The objection regarding the mistakes and material irregularities in conducting the sale are mixed questions of fact and law and cannot be decided in writ jurisdiction, particularly when the matter is pending before a competent authority.

9. In the writ petition, an objection has also been taken, though, it was not pressed at the time of arguments that the property of one of the partners cannot be sold for realisation of the sales-tax due from the firm and in this connection reference has been made to Section 49 of the Indian Partnership Act. This objection is also not well founded, inasmuch as u/s 25 of the Indian Partnership Act every partner of the firm is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. Section 49 has no relevance to the present case. It provides that where there are joint debts from the firm, & also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm. This section formulates rules which are to be observed in the distribution of the assets in whatever manner the partnership may be dissolved. As I have already stated, it has no relevance in the present case.

10. In my opinion, no case has been made out for interference in the extraordinary jurisdiction of this Court. The writ application is, therefore, dismissed summarily.