(1990) 07 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 82 of 1982

Varinder Kumar APPELLANT

Vs

State Bank of India and Another RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 103, 81, 82, 83

Citation : (1990) 2 ILR HP 828

Hon'ble Judges : V.K. Mehrotra, J;D.P. Sood, J

Bench : Division Bench

Advocate : Anand Sharma and Chabbil Das, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—One Ram Lok had raised an industrial loan of Rs. 4500/- from the State of Himachal Pradesh in the year 1966. On November 1, 1968, he executed a mortgage deed in respect of his property to secure another loan which he had taken from the State Bank of India. A supplementary mortgage deed was also executed by him on June 30, 1970. The total amount of loan was Rs. 50,000/- which was secured through these mortgage deeds along with interest due thereon.

2. Ram Lok failed to repay the loan taken from the State Bank of India. On April 28, 1974, a suit was filed by the bank for recovery of the amount due to it with a prayer that the property mortgaged as security for loan is put to sale. A preliminary decree was passed in favour of the bank on June 15, 1976. A final decree followed on April 12, 1977.

3. Ram Lok had failed to repay the loan which he had raised from the State of Himachal Pradesh. That amount was recovered as land revenue from him. His property was put to sale. Virender Kumar offered the highest bid and purchased the property at an auction sale in the course of those proceedings. The sale was

confirmed in his favour by the Divisional Commissioner and a sale certificate was issued in his favour on July 8, 1977. The sale certificate showed that the land measuring 9 bighas, 4 biswas forming part of Khasra No. 132/1 was sold in his favour. The auction sale, which eventually resulted in the issuance of the sale certificate in favour of Virender Kumar, was held on August 18, 1975.

4. After the final decree in its favour, the State Bank of India sought its execution by sale of the mortgaged property. The property sought to be put to sale included the land of Khasra No. 132/1 measuring 9 bighas 4 biswas, sale certificate in respect whereof was issued by the Collector, Sirmaur district in favour of Virender Kumar.

5. An objection under Order 21 Rule 58 CPC was filed by Virender Kumar. That objection was rejected. The order rejecting the objection was passed by a learned single Judge of this Court on May 24, 1982. The present appeal has been filed by Virender Kumar against that order.

6. The case of objector Virender Kumar before the learned single Judge, as also in this Court, has been that after issuance of the sale certificate in his favour, he became owner of the property which came to him free from all encumbrances as a consequence of the provision of Section 82 of the H.P. Land Revenue Act. The State Bank of India could not, therefore, get the property sold in execution of the decree obtained by it against Ram Lok irrespective of the fact that the property had been mortgaged in its favour by a registered mortgage deed as security for the loan which Ram Lok had taken from the State Bank of India.

7. The H.P. Land Revenue Act contains provisions in regard to recovery of arrears of land revenue. One of the modes for recovering arrears of land revenue is by sale of the property of the defaulter in case other methods envisaged by the said Act for the recovery thereof, fail to yield the desired result. Section 81 of the H.P. Land Revenue Act says that when any arrears of land revenue accrues and the Collector finds that the processes preceding Section 81 are not sufficient for the recovery thereof, he may, with the previous sanction of the Commissioner, sell the estate or holding in respect whereof the arrear is due.

8. The following Section 82 then provides that in case land is sold under the provisions of preceding provision, it shall be sold ''free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale''.

9. A combined reading of Section 81 and 82 shows that the property will become free from all encumbrances only if it is sold under the provisions of Section 81 for recovery of arrears of land revenue.

10. Chapter VII of H.P. Land Revenue Act provides for recovery of demands other than relating to land revenue by Revenue Officers. Section 103 details the sums which may be recovered as arrears of land revenue. Clause (F) of this Section enables ''sums payable to the State Government by a person, who is surety for

the payment of any of the foregoing sums, or of any other sum recoverable as an arrear of land revenue.''

11. It is not in dispute that the amount of industrial loan which Ram Lok had taken from the State of Himachal Pradesh in the year 1966 was recoverable as arrears of land revenue from him. The amount of industrial loan was thus covered by Clause (F) of Section 103 of the H.P. Land Revenue Act. It admittedly, was not an amount of arrears of land revenue as such, but was only recoverable as arrears of land revenue. In terms, therefore, recovery of this amount could not be affected u/s 81 of the H.P. Land Revenue Act.

12. What then was the provision which enabled the sale of the property of Ram Lok for recovering the amount of the industrial loan taken by him as arrears of loan? The answer is not far to seek. It is furnished by Section 83 of the Act. That Section reads thus:

83. Proceeding against other immovable property of defaulter.-(1) if the arrear cannot be recovered by any of the processes hereinbefore provided, or if the Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding or any other immovable property proceed under provisions of this Act against that property as if it were the land in respect of which the arrear is due:

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no encumbrances created, grants made (or contracts) entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against Immovable property other than the land in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3)The Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interests of the defaulter in the property have been sold for the recovery of the arrear.

(4)Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage, or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land revenue is due.

13. A close look at Section 83 shows that where the Collector proceeds to recover the amount ''as arrears of land revenue'', he shall issue a proclamation prohibiting the transfer or charging of the property, which he seeks to protect for

sale. Further, any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage, or otherwise, made after the issue of the proclamation and before its withdrawal shall be void. In other words, till such time that a proclamation is made by the Collector to that effect, alienation of the property or any interest of the defaulter therein, interalia, by mortgage of the property, does not become void by itself.

14. Since, as in the present case, the sale in favour of objector Virender Kumar of the property on August 18, 1975 was for recovery not of any amount of arrears of land revenue, but of the amount of industrial loan, which was being recovered as arrears of land revenue, Section 82 did not come into play. It was a sale covered by the provisions of Section 83. The purchaser of the property, namely, Virender Kumar, could thus not claim that the property was free from all encumbrances including the mortgage in favour of the State Bank of India, upon the issuance of the sale certificate in his favour. The property passed to him subject to the mortgage in favour of the State Bank of India.

15. The learned single Judge was right in the view taken by him that the objection of Virender Kumar deserved to fail. We endorse that view.

16. The property is thus liable to be put to sale for recovery of the amount of loan which Ram Lok took from the State Bank of India, together with interest thereon. But while putting it to sale, the executing court will have to keep in mind the provisions of Order 21 Rule 64 Code of Civil Procedure, which provides that the court may order such portion of the property, as may be necessary to satisfy the decree, to be sold. While drawing up a proclamation for the sale of the property under Order 21 Rule 66 Code of Civil Procedure, it will, after notice to the State Bank of India and to Objector Virender Kumar, specify such part of the property which would be sufficient to satisfy the decree in favour of the Bank. The legal position in this regard is no more in doubt in view of the pronouncement of the Supreme Court in Ambati Narasayya Vs. M. Subba Rao and another, wherein the Supreme Court observed in regard to Order 21 Rule 64 Code of CPC (in paragraph 7) that:

It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree-holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just discretion, but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.

And later (in paragraph 9) that:

...... There is a duty cast upon the Court to sell only such Property or a portion thereof as necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored.....

17. The appeal fails and is dismissed. But, we leave the parties to bear their own costs in this Court.

