**(2013) 05 CHH CK 0012**

**In the Chhattisgarh High Court**

**Case No :** Writ Petition No. 4211 of 2004

Vivek Chand Ray — APPELLANT

Vs

The District Cooperative Agriculture and Rural Development Bank and Others — RESPONDENT

**Date of Decision :** 08-05-2013

**Acts Referred:**
Chhattisgarh Sahkari Krishi Aur Gramin Vikas Bank Act, 1999 — Section 26, 26(3)

**Citation :** (2013) 2 BLJ 385 : (2013) 2 CG.L.R.W. 293 : (2013) 4 MPHT 7

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** M.K. Bhaduri, for the Appellant; Rajeev Shrivastava and Shri Malay Shrivastava, Advocate for the Respondent Nos. 1 to 3, Shri Pankaj Shrivastava, Panel Lawyer for the State/Respondent No. 4, Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocate for the Respondent No. 5, for the Respondent

**Final Decision :** Dismissed

## Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 06.08.2004 (Annexure P/1), passed by the Deputy Registrar, Cooperative Societies, Raipur, by which the land which was sold in auction and purchased by the respondent No. 5, was confirmed. The facts, in brief, as projected by the petitioner are that the father of the petitioner namely Vishal Ray was member of District Cooperative Agriculture and Rural Development Bank Limited, Raipur. He borrowed a productive loan from the said Bank on 05.04.1987 after entering into an agreement with the Bank and mortgaged his land with the bank. The borrower i.e. Vishal Ray expired in the year 1999, leaving behind five sons namely Saptrishi, Jhalchand, Sherchand, Manohar and Vivek Chand i.e. the petitioner. As per the respondent Bank, since the loan amount could not be fully paid, thus, the mortgaged land i.e. Khasra No. 187 area 1.91 hectare, situated at village Bhatia, Tahsil Arang, District Raipur, was sold in an auction proceedings. Before auction of the land, notices were issued to Saptrishi, Jhalchand, Sherchand and Manohar, being the legal heirs of the borrower, but since they could not satisfy the debt, the land was sold in auction. The respondent No. 5, being the highest bidder, purchased the land. Since the legal heirs of the deceased borrower did not come forward to repay the loan amount, the Sale Office applied before the respondent No. 4 for confirmation of the sale, which was confirmed by the impugned order dated 24.05.2004 (Annexure P/1). Thus, this petition.

2. Shri Bhaduri, learned counsel appearing for the petitioner submits that the petitioner was also one of the legal heir of the deceased borrower, but before putting the property in dispute on auction, he was neither informed nor noticed by the respondent/Bank. The petitioner and his brother namely Manohar filed an objection/application to the Sale Officer regarding the auction of mortgage land on 30.06.2004 and thereafter also, made repeated representations on 20.07.2004, 18.10.2004 but the respondent authorities, without considering them, proceeded for confirmation of the auction sale.

3. Shri Rajeev Shrivastava, learned counsel appearing with Shri Malay Shrivastava, learned Advocate would submit that since the borrower or his legal representatives failed to pay the loan amount, the property mortgaged with the bank was auctioned as per the provisions of the Chhattisgarh Sahkari Krishi Aur Gramin Vikas Bank Act, 1999 (for short ''the Act, 1999''). He would further submit that inspite of the fact of having knowledge of the property being mortgaged with the Bank, the petitioner did not come forward to repay the loan or to claim himself as legal representative of the deceased borrower. Thus, at this stage, the petitioner has no locus to challenge the confirmation of sale by filing this petition.

4. Shri Shrivastava, learned Panel Lawyer appearing for the State/respondent No. 4 would submit that on bare perusal of the impugned order dated 06.08.2004, it would be evident that the same was passed strictly in accordance with law after considering all the aspects of the matter and after providing due opportunity of hearing to the parties and would further submit that no interference may be required.

5. Shri Kishore Bhaduri, learned counsel with Shri Pawan Kesharwani, learned Advocate appearing for the respondent No. 5/auction purchaser would submit that the auction was held on 24.05.2004 and the same was confirmed on 06.08.2004. The legal representatives of the deceased borrower could not satisfy the outstanding loan nor moved application showing their intention to pay the loan by installments or otherwise, as per the provisions of section 15(1) of the Act, 1999 read with section 19 and 20 of the Act, 1999, the property was auctioned in exercise of powers u/s 26 of the Act, 1999. After the auction held u/s 26 and 27, no objection was raised by the legal representatives of the borrower within the period of 30 days for setting aside the same, and thus, by operation of law, the petitioner is now precluded to challenge the same. The ownership and title of the property in dispute has already been transferred to the respondent No. 5 after confirmation of the sale. As per section 34 of the Act, 1999, the title

of purchaser is not impeachable.

6. Indisputably, the land in question was put in auction on 24.05.2004 and after waiting for a period of 30 days, as required u/s 26 of the Act, 1999, when no objection was raised within a period of 30 days for setting aside the auction sale, the sale was confirmed on 06.08.2004, by the respondent No. 4.

7. The question which falls for consideration in the instant case is whether the petitioner, who was not named as legal heir in the records before the respondent/ Bank while obtaining loan, is entitled to notice under the proviso to sub section (3) of section 26 of the Act, 1999. It is indisputable that the original borrower has informed to the respondent/Bank about his legal heirs namely Saptrishi, Jhalchand, Sherchand and Manohar and accordingly, notices were issued to them. The name of the petitioner was not shown as legal heir in the records of the respondent/Bank and also the petitioner had not informed the respondent/ Bank before auction or before confirmation of the auction sale. Thus, his claim after confirmation of the auction sale does not exist. For ready reference, section 26(3) of the Act, 1999 is quoted below, which reads as under:

26. Power to sell property charged without intervention of Court.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) No such power shall be exercised by the State Development Bank or a District Development Bank unless and until-

(a) notice requiring payment of sums due to the District Development Bank or any part thereof-

(i) the loanee;

(ii) any person who has any interest or charge upon the property to which the security relates or other right to redeem the same;

(iii) any surety for the payment of the sums due to the District Development Bank;

(iv) any creditor of the loanee, who has, in a suit for the administration of his estate, obtaining a decree for sale of the property to which the security relates; and

(b) there has been default in payment of such sums due to the District Development Bank for a period of two months after service of the notice referred to in clause (a);

Provided that the obligation to give such notice to the persons mentioned in sub-clauses (ii) and (iv) of clause (a) shall be confined to cases where the State Development Bank or the District Development Bank has notice of such claims.

 

(4) xxx xxx xxx

8. Proviso to section 26(3) of the Act, 1999 makes it clear that any person who has any interest or charge upon the property to which security relates or any other right to redeem the same and any creditor of the loanee who has, in the suit of the administration of his estate, obtaining a decree for sale of the property to which the security relates, are entitled to notice only when the State Development Bank or the District Development Bank has notice of such claims. Thus, the District Development Bank has in the instant case, indisputably has no notice of the claim of the petitioner and the petitioner has not taken any steps to inform the respondent/Bank before confirmation of the auction sale. In such situation, ibid, on this ground that the petitioner was not noticed before putting the land in question on auction, cannot be flawed.

9. Section 34 of the Act, 1999 provides that the title of the purchaser not to be impeachable. It would be beneficial to quote section 34 of the Act, 1999 for ready reference:

34. Title of purchaser not to be impeachable. -When sale has been made and confirmed under this Chapter, the title of the purchaser shall not impeachable on the ground that no cause had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the State Development Bank or the District Development Bank, as the case may be.

10. On bare perusal of the aforesaid provision, it is clear that the title of the purchaser after confirmation shall not be impeachable on the ground that no cause had arisen to authorize the sale or due notice was not given or that the power was improperly or irregularly exercised. In the case on hand, the legal heirs notified by the original borrower were duly noticed by the respondent/Bank. The auction sale, after confirmation of sale, shall not be impeachable on the ground that, in the instant case, due notice was not given to the petitioner. It is not the case of the petitioner that no cause of action has arisen to authorize the sale or the power was improperly or irregularly exercised.

11. In the case on hand, the legal heir who were notified by the original borrower, were duly served notices. On the basis of claim of the petitioner as legal heir, the title of the purchaser after confirmation is not impeachable. The petitioner has remedy in damages against the respondent/Bank and not in writ Court.

12. In Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, the Supreme Court held that any objection to the sale could have been filed prior to the date of confirmation. Entertaining objections after confirmation of the sale should not ordinarily be allowed except on a very limited grounds like fraud, otherwise, no auction sale will ever be complete.

13. It is not a case of the petitioner that there was a fraud or auction was not done on wide publicity.

14. For the reasons stated herein above, this petition, being devoid of merit, is dismissed. No order as to costs.