

CASE NO.:
Appeal (civil) 6164 of 1999

PETITIONER:
Kishori Lal

RESPONDENT:
Sales Officer, District Land Development Bank & Ors.

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

WITH
Civil Appeal No.6165 of 1999

S.B. Sinha, J.

The District Land Development Bank (hereinafter referred to as 'the Bank') situated at Tikamgarh in the State of Madhya Pradesh is a Co-operative Society registered under the Madhya Pradesh Co-operative Societies Act, 1960 ('the 1960 Act', for short). Its functions are regulated by M.P. Sahkari Bhoomi Vikas Bank Adhiniyam, 1966 ('the 1966 Act', for short). The appellant herein was an agriculturist. He obtained a sum of Rs.6,473.69p. by way of loan from the said Co-operative Society on three different occasions. The break-up of the amount of loan taken by him for three different purposes is as under :

- (i) A sum of Rs.1,300/- was taken on 5.5.71; and
- (ii) Rs.1,200/- was taken on 5.5.71 for the purpose of purchase of a pumping set; and
- (iii) A sum of Rs.3,973.69p. was taken on 25.8.71 for the purpose of construction of well.

By way of security of loan so taken, he had mortgaged with the Bank his agricultural holdings comprising in Khasra Nos. 430, 431, 432, 435, 437, 439, 441, 442, 443, 444, 446 and 447 measuring 10.59 acres. Allegedly, he failed to repay the said amount of loan. Recovery proceedings were, therefore, initiated against him by the Bank. On the date when the loan was taken, the appellant was a minor. The lands mortgaged to the Bank were sold. A sale certificate was issued in the name of auction purchaser Smt. Chandrakanta Devi. An appeal preferred by him thereagainst before the Joint Registrar, Co-operative Societies, Bhopal, was dismissed by an order dated 30.5.1986. A second appeal before the Board of Revenue, however, succeeded. The Sales Officer, District Land Development Bank filed a writ petition before the High Court aggrieved by and dissatisfied therewith which, by reason of the impugned judgment, has been allowed.

The contentions of the appellant, which found favour with the Board of Revenue, are as under :-

- a) No notice of auction was served upon the him;
- b) The statutory requirements of Section 18(2)(b) of the Land Development Bank Act and Rule 15(d) of the Rules framed thereunder, known as M.P. Sahakari Bhoomi Vikas Bank Rules, 1967 ('the Rules', for short) were not complied with.

c) The service of the proclamation report was not certified by the person who effected the service.

d) He was a miser.

By reason of the impugned judgment, the High Court, however, reversed the said findings holding :-

i) The irregularities in the auction cannot be a ground for impeaching the title of the purchaser in terms of Section 27 of the 1966 Act;

ii) Non-service of notice was a procedural irregularity.

A Letters Patent Appeal filed by the appellant before the Division Bench was dismissed holding that the same was not maintainable on the premise that the learned Single Judge has exercised jurisdiction under Article 227 of the Constitution of India.

Ms. Sandhya Goswami, learned counsel appearing on behalf of the appellant would submit that the appellant having been found to be a minor, the contract was void and in that view of the matter, the impugned judgments cannot be sustained.

Mr. Balraj Dewan, learned counsel appearing on behalf of the respondents, on the other hand, urged that the Board of Revenue committed a serious error in holding that the appellant was a minor as it, in support thereof, relied upon two inadmissible pieces of documents, namely, medical certificate dated 22.7.1985 and the mark-sheet of Higher Secondary Education issued by the M.P. Higher Secondary Board, Bhopal. In any event, the said documents being not public documents were not admissible in evidence and in that view of the matter, the High Court rightly set aside the order of the Board of Revenue. It was furthermore urged that as the said documents were filed for the first time before the Joint Registrar, Co-operative Societies, the appellant could not be cross-examined and thus, they were inadmissible in evidence.

The appellant herein does not deny or dispute that he had taken loan from the Co-operative Bank. It is also not denied or disputed that he had mortgaged his agricultural lands by way of security for the loan taken. It is also not in dispute that a proceeding was initiated against him for recovery of the amount as he had not been able to pay the due instalments. The factum of holding auction is also not disputed.

The Board of Revenue under the M.P. Land Revenue Code is the final court of fact. Indisputably, holding of auction is governed by the provisions of the 1966 Act. Some notices appear to have been served upon the appellant, but, thereafter, service of notice on the appellant is said to have been effected by affixing a notice on his house when he was not available. A purported notice was also published in a newspaper. The Board of Revenue, in regard to service of notice, has clearly come to the conclusion that the statutory requirements envisaged under Section 18(2) of the 1966 Act and Rule 15 of the Rules have not been complied with, by reason whereof the appellant had not been served with the notice. He had not been given an opportunity of hearing. The Board of Revenue opined that the authorities concerned did not consider these aspects of the matter. In regard to the question of minority, as indicated hereinbefore, the appellant had filed two documents before the Joint Registrar. The respondents may be right in their submissions that they had the right to cross-examine the appellant, but it does not appear from the records that any objection as regards the admissibility thereof had been taken either before the court of first appeal or before the Board of Revenue. The said plea, at this stage, therefore, is not available to them. The Board of Revenue, having regard to the documents brought on records, opined that the appellant was aged about 15 years in the

year 1971. The High Court did not address itself on the question of minority of the appellant on the date of entering into the contract of loan. As regards the question of service of notice, the High Court opined :

"The respondent Kishorilal promised to deposit a sum of Rs.700/- on 25.4.75 and on account of this, the auction sale was postponed and Kishorilal deposited a sum of Rs.700/- on 22.4.74 as promised. This fact establishes that the proceedings for auction were in vogue since earlier i.e. before 25.4.75 and the auction sale was stayed on account of the deposit of a sum of Rs.700/- by Kishorilal and accordingly, the Board of Revenue found that the notices which were served on Kishorilal were before 22.4.75 and completed their effect on 22.4.75. Thereafter on 30.3.76 in Form 8, a notice was issued and Kishorilal was at Gwalior and as such, the notice was served on the member of his family and the auction took place on 6.5.78 on which date no body made any bid and thereafter, according to the order sheet dated 21.5.1981, Kishorilal was contacted. This order sheet does not contain anything regarding service of the notice for auction. The process server has reported "Kishorilal is not found at his house and the members of the family refused to take notice." The notice was pasted in front of the witnesses on the house, which obtained the thumb impression of Laxmidevi. But who is this Laxmidevi is nowhere mentioned. This is the basis for decision by the Board of Revenue that on the note sheet dated 2.6.82 it has been mentioned that Kishorilal was not living in the village and the notice issued earlier in the year 1975 and the purpose of that notice was completed on 22.4.75. Accordingly, the respondents have failed to comply with the provisions of Section 18(2) of the Act."

From what has been noticed hereinbefore, it is evident that there has been no proper service of notice upon the appellant. The High Court did not arrive at a finding that there was a valid service of notice.

The High Court, however, proceeded on the basis that Section 27 of the 1966 Act validated such auction. It reads as under :

"27. Title of purchaser not impeachable for irregularities. When a sale has been made in professed exercise of a power of sale under Section 19 and has been confirmed under Section 21, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised of the power shall have his remedy in damages against the Development Bank."

Section 27 of the Act does not state that no notice is necessary to be served. It speaks of due notice. Where a service has been effected but not in accordance with the known procedure, the matter may be different. The appellant, in view of the finding of fact arrived at, was not living in the village at all. He was living in Gwalior. Admittedly, no notice was served as one person refused to accept the same. Whether she was a family member at all or not has not been proved. We may notice, the auction purchaser did not question the findings of fact arrived at by the Board of Revenue.

Before the High Court a writ petition was filed only by the Sales Officer. The auction purchasers, therefore, cannot question the findings of

fact arrived at by the Board of Revenue for the first time before this Court. Section 27 of the 1966 Act does not protect an auction sale when the initial contract of loan was void ab initio.

The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High Court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Article 226 and 227 of the Constitution of India as was held by this Court in *Sushilabai Laxminarayan Mudliyar & Ors. vs. Nihalchand Waghajibhai Shaha & Ors.* [(1993) Supp.1 SCC 11].

However, with a view to do complete justice between the parties, in our considered opinion, the appellant should be directed to deposit the entire auction money with interest thereupon @6% per annum. This order is being passed by us under Article 142 of the Constitution of India. Such amount should be deposited within eight weeks from this date before respondent No.1, Sales Officer. On such deposit being made, the auction shall stand set aside and the possession of the property shall be restored to the appellant herein. However, in the event the appellant fails and/or neglects to deposit the said amount within the aforementioned period, these appeals shall stand dismissed.

The appeals are allowed with the aforementioned directions. No costs.