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Court : Madhya Pradesh

Decided On : Feb-06-1989

Reported in : AIR1990MP243; 1989MPLJ150

Judge : T.N. Singh and ;K.K. Verma, JJ.

Acts : Madhya Pradesh Co-operative Societies Rules, 1962 - Rule 66(2); Stamp Act, 1899 - Sections 9A

Appeal No. : M.P. No. 788 of 1986

Appellant : Johan Lal

Respondent : Chobe Lal and ors.

Advocate for Def. : M.M. Kaushik, Adv.

Advocate for Pet/Ap. : R.D. Jain, Adv.

Disposition : Petition dismissed

Judgement :

T.N. Singh, J.

1. The moot point for decision on merits in this matter, we have no doubt, is concluded by a Bench decision of this Court in the case of Kanhaiyalal v.Board of Revenue, 1977 RN 126 : (AIR 1974 Madh Pra 94). However, it is necessary for us

to deal shortly with the three contentions which petitoner's counsel Shri R, D. Jain has forcefully pressed for our consideration.

2. Facts of the case lie within a short compass and may be immediately stated. Chobe Lal, first respondent, is a son of Ramdhan. The case of the petitioner is that Ramdhan took a loan from Gramin Sahkari Samiti, Tumgaon, Tahsil Mahasamund. District Raipur, and that for his default in repayment of the loan, a 'decree' was passed against him albeit, in accordance with the provisions of the Madhya Pradesh Co-operative Societies Act, for short, the 'Act'. In execution of that 'decree', lands measuring 17.98 acres owned by said Ramdhan were put to auction sale and on 8-1-1979, petitioner's bid for Rs.21,600/- in regard to that was accepted. By the impugned order, passed by the Board of Revenue on 1-8-1986, that sale has been declared nullity on the basis of the Division Bench decision of this Court render-ed in Kanhaiyalal's case, (AIR 1977 Madh Pra 94) (supra). This Court has held that the provision of Rule 66(2) of the Madhya Pra-desh Co-operative Societies Rules, 1962, for short, the 'Rules', was mandatory and that when an auction-purchaser fails to deposit the amount required for general stamps for sale certificate within the time prescribed in Clause (i) of Rule 66(2), the sale becomes a nullity. To make things more clear, we propose to extract below the relevant statutory provision, to dispose one aspect of Shri Jain's contention on merits :

'(h) The remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be paid within fifteen days from the date of sale;

Provided that the time for payment of the cost of the stamp may for good and sufficient reasons, be extended at the discretion of the Recovery Officer up to thirty days from the date of sale.....'

3. On facts, the finding of the Board of Revenue which is not disputed is that 'The order sheet dated 3-2-81 shows that thepurchaser has deposited Rs. 492/ - as bondage fee on 3-2-81 which is nearly two years after the date of sale'. Shri Jain has firstly contended, relying on the proviso afore-quoted, that the date by which the cost of a stamp duty had to be paid could be validly extended. His further contention is that there was no scope for him to make payment against cost of the

stamp-duty as records were not available with the Recovery Officer until 3-2-1981. We do not think if either contention has any merit. About facts, we would say later something, but about law, we may not only observe that Kanhaiyalal, (AIR 1977 Madh Pra 94) (supra) is binding authority, but add that the mandatory anture of the provision aforequoted is indicated by the fact that Recovery Officer is given the discretion to extend the time for payment of cost of the stamp-duty only up to thirty days from, the date of the sale. Indeed, in any case, for any reason payment is not possible the auction-purchaser is required to apply within fifteen days from extension of time of payment to enable the Recovery Officer to exercisers, discretion to the extent allowed under the Proviso. In the instant case, nothing has come on record and it is not the petitioner's case that he had made any such application.

4. We may at this stage, refer to res-pondent Chobe Lal's case, stated in his return and in particular, to his averments which have remained uncontroverted. He has stated that on 24-11-1978 only, he had received a notice from the Sale Officer, Co-operative Society, intimating to him that the lands mentioned in the notice were mortgaged with the Society and that he should show cause why the amount due against Ramdhan should not be recovered from him. He filed objection and his objection being rejected, he preferred a revision before the Joint Registrar, Co-operative Societies and only on 29-1-1979, records were requisitioned. It is rightly contended, therefore, that records were available before the Recovery Officer and within fifteen days, payment of cost for general stamps could be made or, in any case, an application at least could be made in terms of the proviso afore-quoted, for extension of time. But, nothing was done. We may also mention in thisconnection that in para 2 of his return, the Said respondent has averred that he had no knowledge of his father Ramdhan having taken any loan or of any 'decree' being passed against him. He stated that he had applied for a copy of the 'decree', but the same not having been supplied, he moved and as per Annexure R/5, obtained an order in appeal under Section 77(2) of the Act from the Board of Revenue for supply of said copy.

5. At this stage, we may also deal with another aspect of Shri Jain's contention on the merit of the case by which he has pressed claim of the petitioner that no

stamp-duty at all was payable. In support of that contention, counsel relied on Gazette Notification, which we extract:

'Notification No. 1203-CR-10-5 GR dated 12-4-63 of the Separate Revenue Department, the State Government in exercised of the powers conferred u/Section 9A of the Indian Stamp Act, 1890 have executed (sic; exempted?) such documents from stamp-duty on such disputes in which any co-operative society is a party as well as by judgments or orders passed by the Registrar of Co-operative Societies, Madhya Pradesh or his nominees or Board of Nominees.'

However, we are not at all convicted that payment of stamp-duty by auction-purchaser, required to be made under provisions of Rule 66(2) of the Rules, has been exempted. The key expression, in our opinion, is 'dispute'. As per Section 64 of the Act, a 'dispute.' may be raised, among others, between a committee and its members, servants etc. and that 'dispute' concerns, among others, ' management or business of the society'. We do not think if there can be any doubt about the position that after the 'dispute' is finally decided and liability of the person concerned is determined therein, the subsequent proceeding for enforcement of the decision cannot be regarded as continuation of the 'dispute' especially in a case when in such proceedings, an outsider intervenes. We must construe the Notification with reference to its object and that, in our opinion, is very clear. It is only a co-operative society or a member ofsuch a society who is meant to be benefited by the exemption contemplated. The auction purchaser, who is an outsider, cannot derive any benefit and claim exemption from payment of stamp-duty in regard to: which specific provision is made under the Rules. In other words, a 'sale' pursuant to a decision in the 'dispute' is evidently not within the contemplation of the Notification.

6. Now, on the contention that the Board of Revenue acted illegally and without jurisdiction in not granting the prayer for adjourning hearing of the appeal. This contention merits a strong and short rebuff because of the view we have taken on the merits of the case of the petitioner. Indeed, even if adjournment had been granted and the contentions pressed before us were heard and decided by the Board, the petitioner would not have benefited in the least. Indeed, even if the

Board, after hearing the petitioner, had decided in his favour, that decision could be challenged with the same result as rendered by us in the instant petition. However, we do not think if the Board acted illegally in rendering its decision on the basis of this Court's decision in Kanhaiyalal, (AIR 1977 Madh Pra 94) (supra), or having refused to grant adjournment. The Board was bound to give effect to this Court's direction made in its order passed earlier on 16-4-1986 in Misc, Petn. No. 371 of 1983 on Chowalal's petition that his appeal be reheard and final decision therein be rendered within a month. Counsel who had appeared in that matter before this Court were required to appear before the Board on 5th May, 1986 and to take further orders thereat. After remand, the matter was listed before the Board on 5-5-1986, on 13-6-1986 and lastly, on 31-7-1986, when Shri S. K. Jain, Junior of Shri R. D. Jain, refused to argue the case and prayed the adjournment. Be it mentioned in this connection that Shri R. D. Jain, who has appeared before us today was also petitioner's counsel when this Court heard and disposed of Misc. Petn. No. 371 of 1983 on 16-4-1986 The Board rightly refused to protract unduly the very old dispute.

7. A feeble plea of res judicata, also Shri Jain raised, but that has to be merely mentioned to be rejected. We do not think ifthe several appeals or decisions rendered therein as per Annexures P/5, P/6 and P/7 would constitute res judicata and would be binding on this Court in this matter. The same question has all along been agitated at different stages in different appeals and legality of the decisions rendered is obviously open to our review and interference in this petition,

8. Lastly, Shri Jain contended, the petitioner being in possession, he was entitled to be compensated for the improvements made on the lands which he had purchased in the auction. To this contention, it shall suffice to say that the contention is replete with questions of fact galore which are wholly unfit for determination by us on the writ side. It shall be open to the petitioner to institute civil suit if so advised making plea for compensation and therein to plead and prove on facts his claim for compensation.

9. In the result, the petition fails and is dismissed, but without costs. Outstanding amount of security be refunded to the petitioner.