

Ganesh Vs. the State of Rajasthan

Ganesh Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759694

Court : Rajasthan

Decided On : Mar-20-1975

Reported in : 1975WLN(UC)171

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 174 of 1972

Appellant : Ganesh

Respondent : The State of Rajasthan

Disposition : Application dismissed

Judgement :

C.M. Lodha, J.

1. The facts relevant for disposal of this writ petition are these.

2. Agricultural land comprising of Khasra No. 1084/1 measuring 16 Bighas 9 Biswas was auctioned on 1st Nov. 1962 by the Colony Naib Tebsildar in favour of the petitioner Ganesh and his brother Gaurishanker. The bid was accepted by the Sub Divisional Officer, Baran and the petitioner deposited one fourth price of the bid and also got the sale certificate in his favour. However, an appeal was filed by the villagers of Mangrol (District Kota) where the land is situated, against the aforesaid auction on the ground that the land in question was pasture land. The Revenue

Appellate Authority, Kota, by its judgment dated 29th April 1969 (Ex 8) set aside the sale in favour of the petitioner on the ground that the Colony Naib Tehsildar was not competent to conduct the auction and that the procedure prescribed for auction under Rule 19 of the Rajasthan Colonisation (Chambal Project Government Lands Allotment and Sale) Rules, 1957 (which will hereinafter be referred to as 'the Rules') had not been followed. The petitioner filed revision before the State Government, which, too, was dismissed on 7th October, 1971 (vide Exhibit-9). By this writ petition, the petitioner has challenged the validity of orders Exhibit-8 and Exhibit 9 and has prayed for setting them aside.

3. The learned Counsel for the respondent No. 4 has raised a preliminary objection that the writ application is not maintainable as the petitioner Ganesh has not impleaded the co-vendee Gaurishanker to the writ petition. I am not inclined to accept the preliminary objection, in as much as if the impugned orders are without jurisdiction, the petitioner alone can get them set aside and the principle of conflicting decrees cannot apply in the circumstances of the present case.

4. Coming to the merits of the writ petition the only point urged by the learned Counsel in support of his case is that no appeal lay to the Revenue Appellate Authority as the only provision for appeal under the Rules is Rule 17, which contemplates an appeal from the order of sale. On the other hand, Mr. Shieodiya, learned Addl Govt. Advocate has referred me to Section 5 of Rajasthan Colonisation Act, 1954 and urged that by virtue of applicability of the laws relating to agricultural tenancies, an appeal would lie in such a case to the Revenue Appellate Authority under Section 75 of the Land Revenue Act. He has also contended that, in any case, the Colony Naib Tehsildar had no jurisdiction to conduct the auction as he was neither an Allotting Authority nor a Gazetted officer appointed by the Allotting Authority for the purpose with the approval of the State Government, as required by Rule 20 of the Rules. 'Allotting Authority' has been defined in Rule 2 as the Collector is defined in Section 2(i) of the Rajasthan Colonisation Act, 1954. Section 2(i) defines Collector as follows:

2(i) 'Collector' means the Collector of the district and includes.

- (a) any officer appointed by the State Government to perform all or any of the functions and exercise all or any of the powers of the Collector under this Act, and
- (b) any officer appointed before or after the commencement of this Act for purposes of colonisation.

5. Learned Counsel for the petitioner failed to bring to my notice that the Colony Naib Tehsildar, who conducted the auction was ever appointed whether before or after the commencement of the Act for purposes of colonisation. In the circumstances, therefore, I am unable to hold that the Colony Naib Tehsildar was an Allotting Authority. Of course, he is not a Gazetted Officer appointed by the Allotting Authority for the purpose with the approval of the State Government nor it is the petitioner's case. Thus the auction in favour of the petitioner was without authority.

6. The Revenue Appellate Authority and the State Government have further found that the proceedings for auction are vitiated in as much as no notice as required by Rule 19 of the Rules was issued before holding auction of the land in question and the procedure prescribed under the said Rule was altogether ignored. In these circumstances there is no escape from the conclusion that the auction of the land in favour of the petitioner and his brother was illegal and void and did not confer any right upon him. In this view of the matter, this Court is not in a position to uphold the auction and grant any relief to the petitioner. Hence without deciding the competence of the Revenue Appellate Authority to entertain the appeal, I find that the auction itself being without jurisdiction cannot be maintained.

7. In the result, this, writ application is dismissed, but without any order as to costs.