A SMT. DEVTIDEVI DAULAT RAM

v.

MOTI AND ANR.

AUGUST 13, 1996

B [M.M. PUNCCHI AND K. VENKATASWAMI, JJ.]

Maharashtra Land Revenue Code, 1966 : Sections 202 and 203.

C *Auction sale—Bid amount—25% of bid amount deposited on the spot—Balance amount not deposited within two months as required under the Code—Amount deposited beyond the prescribed limit of two months from the date of auction—Auction sale set aside—Held, order setting aside auction sale was valid.*

D **The appellant, owner of a saw-mill, committed default in the payment of employer's share of provident fund. For recovery of the said provident fund his properties were put to auction sale on 27.6.1977. The respondent, a successful bidder in the auction sale, deposited 25% of the bid amount on the spot. The balance 3/4th amount was deposited on 26.8.1977 i.e. beyond two months from the date of auction sale. The**

E **appellant's objection for setting aside the sale on the ground that the amount was not deposited within two months from the date of auction as required by section 202 of the Maharashtra Land Revenue Code, 1966 was rejected by Sub-Divisional Officer. The Additional Commissioner accepted the appellant's objection. He rejected the plea of respondent that an**

F **application was filed before the Auctioning Authority for deposit of the balance amount on 16.8.1977 i.e. within two months from the date of auction. He gave a finding that respondent's plea was not substantiated on record. Consequently the Additional Commissioner set aside the sale. On revision the Revenue Minister upset the finding given by Additional Commissioner without giving reasons and accordingly upheld the auction**

G **sale. A writ petition filed by the appellant before Bombay High Court was dismissed in limine. The appellant preferred an appeal before this Court and pursuant to an interim order passed by this Court deposited a sum of Rs. 50,000 in this Court.**

H **Allowing the appeal, this Court**

HELD : 1.1. A reading of sections 202 and 203 of Maharashtra Land Revenue Code, 1966 clearly shows that the purchaser is expected to deposit the balance of auction money within two months from the date of sale or within 15 days from the date of confirmation of sale whichever is earlier. Admittedly, the first respondent has not deposited the amount as required under section 202 of the Maharashtra Land Revenue Code. [599-H; 600-A] A B

1.2. The Additional Commissioner gave a clear finding that the respondent has failed to pay 3/4th balance amount before the expiry of two months which period being earlier and consequently, the sale was set aside. The Revisional Order passed by the Revenue Minister never attempted to upset the finding by giving reasons. On the other hand, it proceeded on certain assumptions to upset the well-considered findings given by the Additional Commissioner. The findings of the Additional Commissioner are accepted. The case put forward by the 1st respondent blaming the revenue authorities for delayed deposit of 3/4th of the auction amount was an after thought and was not established with the help of the records. [601-D; G-H] C D

1.3. To meet the ends of justice, it is directed that the deposits made by the appellant pursuant to the orders of this Court with interest accrued thereon shall be paid to the first respondent. [602-C]

Ambati Raghavalu **v.** *Mova Venkamma and Ors.*, **AIR (1962) A.P. 334, held inapplicable.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1583 of 1985.

From the Judgment and Order dated 24.1.84 of the Bombay High Court in W.P. No. 3141 of 1979. F

Dr. N.M. Ghatate and S.V. Deshpande for the Appellant.

R. Venkataramani and D.M. Nargalkar, for the Respondents.

G

The Judgment of the Court was delivered by

VENKATASWAMI, J. One Daulat Ram since dead whose wife is the appellant before us was the owner of M/s Durga Prasad Saw Mills. He had defaulted in the Payment of employer's share of Provident Fund to a tune of Rs. 24,530. After following the procedure, the properties belonging to H

A the said Daulat Ram bearing Survey Nos. 183/4 and 228 situated in two different villages and measuring to an extent of 3.78 acres were brought to revenue sale for recovery of the said Provident Fund amount. The first respondent was the successful bidder in the revenue auction for a sum of Rs. 34,500 held on 27.6.1977. As per the Maharashtra Land Revenue Code, 1966 he deposited a sum of Rs. 8625 representing 25 per cent of the bid
B amount on the spot. As per section 202 of the Maharashtra Land Revenue Code, the balance of the bid amount has to be deposited within two months from the date of the auction or 15 days from the confirmation of sale, whichever is earlier. Factually the sale was confirmed on 21.11.1977. The first respondent deposited the 3/4th amount on 23.11.1977 which is admit-
C tedly beyond 2 months from the date of auction. The appellant, widow of the said Daulat Ram preferred an objection to the Revenue sale. Apart from the appellant, one Banta Singh claiming to be the legatee of Daulat Ram under will also filed an objection. The objection of Banta Singh was ultimately thrown out and he is not before us and, therefore, we need not consider that further. The objection preferred by the appellant though not
D accepted by the Sub Divisional Officer, Ramtek was accepted by Additional Commissioner. Nagpur Division by order dated 26.6.1979. Against that, the first respondent herein preferred a further revision to the Revenue Minister, Government of Maharashtra and that Revision was accepted by an order dated 10.10.79. Consequently the objection raised by the appellant was rejected and the auction sale was upheld. Aggrieved by that the
E appellant preferred a civil Writ Petition before the Bombay High Court which was dismissed by a one line order. Hence, the present appeal by special leave.

Dr. N.M. Ghatate, learned senior counsel appearing for the appellant
F took us through all the orders of the authorities below and also the relevant provisions of the Maharashtra Land Revenue Code, in particular, sections 202 and 203 of the Code and contended that the order of the Additional Commissioner was firmly based on sections 202 and 203 and the Revisional Order of the Government does not contain any valid reason to upset the order of the Additional Commissioner. He also invited our attention to the
G interim orders passed by this Court at the time of admission of the special leave directing the appellant to deposit a sum of Rs. 50,000 which was later invested in fixed deposit from time to time.

Mr. R. Venkataramani, learned counsel appearing for the first
H respondent submitted that the order passed by the Revenue Minister does

not call for any interference and the first respondent should not suffers for any laches on the part of the revenue authorities in delaying the receipt of the balance amount which the first respondent was willing to deposit within time. According to Mr. Venkataramani, the *bona fide* of the first respondent to deposit the balance amount within time can be verified from the application made by him to the Auctioning Authority, namely, Naib Tehsildar on 16.8.1977 which is well within two months from the date of auction. He submitted that the time fixed for deposit of the balance amount cannot be rigidly viewed and in the facts of this case that should be treated as procedural irregularity not affecting the auction sale itself. In support of that he placed reliance on a judgment of the Division Bench of the Andhra Pradesh High Court in *Ambati Raghavalu* v. *Mova Venkamma and Others*, AIR 1962 A.P. 334.

We have considered the rival submissions. Sections 202 and 203 of the Maharashtra Land Revenue Code read as follows :

> "202. - The full amount of purchase money shall be paid by the purchaser before the expiration of 2 months from the date on which the sale of the immoveable property took place or before the expiration of 15 days from the date on which the intimation of confirmation of sale is received by the purchaser whichever is earlier.
>
> Provided that if the last date on which the purchase money is to be paid happens to be the Sunday or other authorised holiday, then the payment shall be made before the sunset of the first day of office after such date."
>
> "203 - In default of payment within the prescribed period of the full amount of purchase money of the moveable or immovable property the deposit after defraying therefrom the expenses of the sale shall be forfeited to the State Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the same for which it may be subsequently sold".

A reading of the above provisions clearly shows that the purchaser is expected to deposit the balance of auction money within 2 months from

A the date of sale or within 15 days from the date of confirmation of sale whichever is earlier. Admittedly, the first respondent has not deposited the amount as required under section 202 of the Maharashtra Land Revenue Code. The excuse given by the first respondent before the authorities was that he filed an application before the Auctioning Authority, namely, Naib Tehsildar for deposit of the balance amount on 16.8.1977 which is well within two months from the date of auction and the said application was endorsed by the Naib Tehsildar to wait the further orders of the Sub Divisional Officer, Ramtek. That was the reason, according to the first respondent, for his inability to pay the balance amount within the time prescribed by section 202 of the Code. That has been cogently and elaborately dealt with by the Additional Commissioner, Land Revenue while rejecting similar contention. In fact, the Additional Commissioner has clearly doubted the existence of such application on the date on which it was alleged to have been presented before the Naib Tehsildar. The Additional Commissioner further stated as follows :

> "In fact, there was no need to make any endorsement on the application stating that the orders would be sought from sub-Divisional Officer, and communicated to the auction-purchaser. I also find that there is nothing on record to show whether this application was at all submitted to sub-Divisional Officer and whether any orders thereon were passed by the Sub-Divisional Officer. It is strange that the auction-purchaser did not approach the sub-Divisional Officer before whom the proceedings for confirmation of sale were pending..... It is not his case that the authorities refused to accept the amount when he offered the same. The plea of the appellant that he could not make the payment before the expiry of two months on the directive of the court is not, therefore, valid - firstly because there was no need to seek any such directive and secondly, if at all the appellant wanted to seek any clarification, the proper forum for him would have been to approach the sub-Divisional Officer to whom the proceedings had been submitted for confirmation of the auction."

In para 9, the Additional Commissioner has given reasons for doubting the receipt of the alleged application dated 16.8.1977. The Additional Commissioner states :

"This objection was already on record when the appellant's counsel presented written arguments before the Sub-Divisional Officer. Perusal of the written argument shows that there is no reference to the application dated 16.8.1977 in which the appellant had sought directives from the Naib-Tehsildar regarding payment of 3/4th amount. It is really strange that the appellant should have kept silent on this vital issue when he presented his case before the Sub-Divisional Officer. Had he really been prevented from paying the balance amount on account of directives issued by the Naib-Tehsildar his normal reaction would have been to point out to the sub-Divisional Officer that he could not pay the balance of the amount because there was an endorsement on his application dated 16.8.1977 that he would be intimated regarding payment of the balance on receipt of the orders from Sub-Divisional Officer regarding payment of the balance amount."

On the basis of the above clear finding, the Additional Commissioner held that the first respondent herein has failed to pay 3/4th balance amount before the expiry of 2 months which period being earlier and consequently, the sale was set aside.

This order of Additional Commissioner was upset by the Revenue Minister without really meeting the findings rendered by the Additional Commissioner, but proceeding on the assumption that the application of the first respondent dated 16.8.1977 was on record and he was misled by the Revenue Authority from depositing the balance amount within time. Therefore, the Revisional Order proceeded that the first respondent could not be treated as a defaulter.

We do not think we can accept the finding rendered in the Revisional Order in the light of clear findings based on record given by the Additional Commissioner. As pointed out earlier, the Revisional Order never attempted to upset the findings by giving reasons. On the other hand, it proceeded on certain assumptions to upset the well-considered findings given by the Additional Commissioner. The Division Bench Judgment of the Andhra Pradesh High Court relied on by the learned counsel for the first respondent will be of no help as we accept on facts, the findings of the Additional Commissioner. The case put forward by the 1st respondent blaming the revenue authorities for delayed deposit of 3/4th of the auction

A amount was an after-thought and was not established with the help of the records.

We have already noticed that the appellant has deposited a sum of Rs. 50,000 pursuant to the orders of this Court on 15.4.1985 and that amount has been invested in fixed deposit with periodical renewal and that
B amount is available for disbursement. It is also admitted that the provident fund amount due has been adjusted from the sale amount. In these circumstances to meet the ends of justice, we order that the deposits made by the appellant pursuant to the orders of this Court with interest accrued thereon shall be paid to the first respondent.

C In the result, the appeal is allowed and the first respondent is permitted to withdraw the amount deposited by the appellant with interest accrued thereon. No costs.

T.N.A. Appeal allowed.