

Lakshmanasami Gounder

Vs

C. I. T., Selvamani and Others

Civil Appeal No. 4380 of 1991

(S. R. Pandian, K. Ramaswamy JJ)

01.11.1991

JUDGMENT

K. RAMASWAMY, J. –

1. Special leave is granted.

2. This appeal is against the judgment dated April 4, 1991 of the Madras High Court. A sum of Rs. 12,163.50 was alleged to have been misappropriated by the appellant (now he was acquitted of the charge of misappropriation) and for the recovery thereof his 13.07 acres of coffee estate situated in Semmanthaputhur village was brought to sale under the Tamil Nadu Revenue Recovery Act, 1864 (for short 'the Act'). On March 30, 1979 the sale by auction was held by the Tahsildar. Respondent I purchased for a sum of Rs. 12,225 and deposited a sum of Rs. 2000 being 15 per cent of the sale price. Under section 36 of the Act, respondent I should have deposited the balance consideration within 30 days from the date of the auction. On October 23, 1981 the sale was confirmed and the balance amount was deposited on November 4, 1981. The appellant filed an application but by proceeding dated October 23, 1981, the Revenue Divisional Officer overruled objections and dismissed the application. On appeal the Additional District Collector, Salem set aside the sale on October 13, 1982. Respondent I filed Writ petition No. 246 of 1984 in the High Court. The learned Single Judge by judgment dated August 21, 1990 quashed order of the Additional District Collector. On writ appeal, the Division Bench dismissed it. Thus this appeal.

3. The formidable objection raised by the appellant is that it is mandatory under Section 36 that the date and place of sale shall be published in the gazette and that the publication did not mention the place of sale. Therefore, the sale is invalid in law. It is also his further plea that it is equally mandatory that the balance sale consideration of 85 per cent should be deposited within 30 days from the date of sale which was done only on November 4, 1981 long after one year and eight months of the date of sale. The sale and confirmation thereof are, therefore, illegal. The learned Single Judge and Division Bench held that Form 7-A of the forms prescribed under the Act read with relevant provisions of the Board Standing Order No. 41 does not prescribe the place of sale and that, therefore, the omission to specify the place of sale does not render the sale invalid nor an irregularity. Shri Selvamani, respondent 1-in-person (himself a practicing advocate) contended that it is Form 7 and not Form 7-A that would be applicable to the facts of the case. Form 7 contains the place of sale and that it was complied with. Therefore, the sale is not illegal. It is also contended that the deposit was made after protracted correspondence and that, Therefore, the non-deposit within 30 days from the date of sale is not illegal. At any rate, having accepted the amount, the authority acquiesced to the deposit. Therefore, the confirmation of the sale is not illegal. We find no substance in either of the contentions. The contention that Form 7 and not Form 7-A would be applicable to

the facts, is not the case set up or argued either before the authorities or the courts below. For the first time he cannot raise that plea in this Court. That apart specifically the High Court (learned Single Judge and the Division Bench) held that it is Form 7-A that is applicable and that it does not prescribe publication of place of sale and therefore, the omission thereof does not render the sale invalid. The High Court wholly misconceived of Section 36. A reading of Section 36 manifests that word 'shall' is mandatory in the context.

4. The publication is an invitation to the intending bidders to prepare and participate at the bid. Unless there is a due publication of the date and place of sale. The intending purchasers cannot be expected to run after the Sale Officer to find out the date and place of sale and to participate thereat. The Sale Officer has a statutory duty and responsibility to have date and place of Sale mentioned in the notice and given due publication in terms of the Act and the Rules. Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities or the sale officers who should act fairly, objectively and kindly. Their action should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental the legitimate interest of the debtor. The fair and objective public auction would relieve the public authorities or sale officers from above features and accountability. Any infraction in this regard would render the sale invalid.

5. It is settled law that the word 'shall' be construed in the light of the purpose that the Act or rule seeks to serve. It is not an invariable rule that even though the word 'shall' is ordinarily mandatory but in the context or if the intention is otherwise, it may be construed to be directory. The construction ultimately depends upon the provisions itself, keeping in view the intendment of the enactment or of the context in which the word 'shall' has been used and the mischief it seeks to avoid. Where the consequence of failure to comply with any requirement of a provision is provided by the statute itself, the consequence has to be determined with reference to the nature of the provision, the purpose of enactment and the effect non-compliance thereof. In its absence the consequence has to be determined with reference to the effect of non-compliance of the provision of the legislature. Mere use of the word 'shall' need not be given that connotation in each and every case that the provision would be invariably interpreted to be mandatory or directory. But given due consideration to the object, design, purpose and scope of the legislation, the word shall be construed and interpreted in that design and given due emphasis. Section 36 obligates the Sale Officer (Tahsildar) that he shall publish the date and place of sale. The object thereby is an invitation to the public at large that the notified property would be brought to sale at that specified time and place and that they are invited to participate, if they so desire. To reiterate for emphasis and continuity that the object of the sale is to secure the maximum price and to avoid arbitrariness in the procedure adopted before sale and to prevent underhand dealings in effecting sale and purchase of the debtor's property. As a responsibility as Sale Officer and a duty towards the debtor, the Sales Officer should conduct the sale strictly in conformity with the prescribed procedure under the statute and the rules as the case may be. Such due and wide publicity would relieve the debtor from the maximum liability he owes and payable to the creditor. This responsibility is not only salutary to vouchsafe bona fides in the conduct of the Sale Officer but also to ensure fairness in the procedure adopted in bringing the property of the debtor to sale. Considered from this perspective the non-compliance of Section 36 i.e., omission to mention the place of sale would visit with deprivation of the property to the debtor for an inadequate sale consideration due to absence of competing bidders. Thus, we hold that specification of the date and place sale shall be mandatory. The Forms either 7 or 7-A are only procedural and they should be in conformity with Section 36. The form cannot prevail over the statute. The omission of specification of the place of sale in the form renders the sale not merely

irregular but also invalid.

6. Equally the second objection is insurmountable. It is mandatory that "the balance of the sale amount shall be remitted within 30 days from the date of auction" and if not the earnest money deposited is liable to forfeiture. Confirmation of the sale should precede the deposit of the sale amount. Section 36 mandates remittance of the balance of 85 per cent of the sale consideration within 30 days from the date of auction. It is obligatory on the purchaser to deposit the amount within that period unless he is prevented by an order of the court or tribunal from so making deposit. The non-compliance renders the 15 per cent deposit liable to forfeiture. Therefore, the confirmation of the sale without compliance is illegal. We hold that the sale is vitiated by manifest error of law and rightly set aside by the Additional District Collector, Salem (appellate authority). The High Court, both the learned Single Judge and the Division Bench committed manifest error of law in interfering with the order of the appellate authority. The appeal is accordingly allowed. The writ petition stands dismissed and the order of the Additional District Collector, Salem resorted, but in the circumstances parties are directed to bear their own costs throughout.

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