

SUPREME COURT OF INDIA

Samir K. Shah

Vs.

Union of India

S.L.P(C) No. 8799-8800 of 2004

(Ruma Pal and C. K. Thakker JJ.)

01.09.2004

JUDGMENT

1. Leave granted.

2. The appellant is a judgment debtor. In terms of a consent decree of 26.12.2002, the appellant was to make payment of Rs. 445 lakhs to the respondent - Bank within three months in satisfaction of the bank's claim. In default of such payment, the appellant would be liable to make payment of the entire amount of Rs. 4, 06, 00, 549.92 together with interest at 16.75% per annum.

3. The appellant did not pay in terms of the settlement. A recovery certificate was issued on 27th August, 2003 at the instance of the respondent against the appellants for attachment and sale of two plots of land being CTS No. 256 and 257 belonging to the appellant. Both the plots were valued by the Government approved valuer at Rs. 13, 82, 61, 132.50. The two plots were depicted in a sketch map annexed to the report. CTS No. 256 consists of a bungalow and was valued at Rs. 1, 68, 66, 347.50. CTS No. 257 which is adjacent to and lies to the south of CTS No. 256 and consists of a factory building was valued at Rs. 12, 13, 94, 800/-. According to this report, the access to both the plots was from Suren Road which lies to the north of CTS No. 256. A proclamation of sale was published and the date of sale of the two plots was fixed on 29th March, 2004.

4. The appellants then filed a writ petition challenging Regulation 60 of the Debt Recovery of Tribunals, Maharashtra & Goa, Regulations of Practice, 2003 (referred to as 'the Regulations') on the ground that it was contrary to Section 29 of the *Recovery of Debts Due to Banks and Financial Institutions Act, 1993* (referred to as 'the Act') read with Rules 52 and 53 of the Second Schedule to the Income Tax Act, 1961. The proclamation of sale was also challenged on the ground that the valuation had been fixed without hearing the appellants, without reference to the valuation report submitted by the appellants (according to which the value of the two plots was Rs. 18 crores) and without making the report available to the appellant. The third ground of challenge was that only that portion of the plot should be sold as was necessary for recovery of the dues of respondent-Bank against the appellants. A copy

of the valuation report on which the respondent-Bank had acted was made available to the appellants in the course of the proceedings before the High Court.

5. The High Court negated the challenge to Regulation 60 but allowed the writ petition to the extent of setting the proclamation of sale. By the order passed on 19 March, 2004, the respondent-Bank was directed to issue a fresh proclamation only in respect of CTS No. 257 incorporating a reserve price of Rs. 12 crores. Certain other consequential directions were given which are not relevant for the purpose of these appeals.

6. At the time of issuing notice on the special leave petitions, this Court had directed the status quo to be maintained. That interim order is continuing.

7. The appellants' assertion is that Regulation 60 is contrary to Section 29 of the Act read with Rules 52 and 53 of Schedule 2 of the Income Tax, 1961 (referred to as 'the Rules'). Section 29 of the Act provides that the provisions of the *Second and Third Schedules to the Income-tax Act, 1961* and the *Income-tax (Certificate Proceedings) Rules, 1962*, as in force from time to time shall, as far as possible, apply with necessary modifications to proceedings for recovery of a debt under the Act.

Rules 52 and 53 of the Second Schedule to the Income Tax Act, 1961 which have been relied on by the appellant read as follows:

"Sale and proclamation of sale.52.

(1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of Proclamation.53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible:-

(a) the property to be sold;

(b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for the recovery of which the sale is ordered, (cc) the reserve price, if any, below which the property may not be sold, and

(d) any other thing which the Tax Recovery Officer considers its material for a purchaser to know, in order to judge the nature and value of the property."

8. No provision of Regulation 60 conflicts with these Rules and in our opinion, the High Court was right in rejecting the appellants' challenge, Regulation 60 provides:

"60. Sale of Property:-

(1) The Recovery Officer, on making out a proper case, may take actual/physical possession of the attached property.

(2) The Recovery Officer shall get the attached property valued through a Government approved valuer or a valuer from the panel of Income Tax Department. The valuer shall submit valuation report confidentially to the Recovery Officer.

(3) On the basis of the valuation report, the Recovery Officer shall fix the reserve price. The reserve price may not be ordinarily declared in the first instance.

(4) The certified copy of valuation report shall not be supplied to the parties till the Reserve price is declared.

(5) Where the property is situated outside the local jurisdiction of the Tribunal, the Recovery Officer may ordinarily forward the copy of Recovery Certificate for execution to the Tribunal having local jurisdiction over the said property. The said Recovery Certificate shall be forwarded vide letter in Form No.49.

(6) Attached property shall be dealt with as provided in Schedule III of Income Tax Rules.

(7) The terms and conditions of the sale provided in Form No.50 shall mutatis mutandis apply to such sale.

(8) The sale certificate shall be issued in Form No.51.

(9) Kabja Pavti (Possession Receipt) shall be issued in Form No.52."

9. The Rules do not require the grant of any opportunity to the debtor of being heard before the valuation is made and the reserve price fixed. The debtor is entitled to notice only for the drawing up of the proclamation sale. Presumably, the intention is to keep the debtor informed of the steps taken by the creditor to realize a fair value of the debtor's property. There is no requirement for the creditor to consider any alternative valuation filed at the instance of the debtor. The reference to the decision of this Court in *Desh Bandhu Gupta V. N.L. Anand & Rajinder Singh* reported in 6 by the appellant, is inapt. The decision relates to a sale in execution of a decree under Order 21, Rule 66 of the Code of Civil Procedure which expressly requires that the sale proclamation shall include the estimate of the value of the property if any given by either or both of the parties. It was in that context that this Court had said:

"It is very salutary that a person's property cannot be sold without his being told that it is being so sold and given an opportunity to offer his estimate as he is the person who intimately knew the value of his property and prevailing in the locality though exaggeration may at time be possible."

10. There is no corresponding provision in Rules 52 or 53 of the Schedule to the Income Tax Act, 1961 or in any other provision which have been incorporated into the Act by Section 29. It cannot, therefore, be said that Regulation 60 is violative of Section 29 of the Act.

11. It was the contention of the appellant before the High Court that CTS No.257 should be separately sold from CTS No.256 as the value of CTS No.257 was sufficient to meet the claim of the respondent-bank. The High Court correctly acceded to this prayer particularly in view of Rule 52(1). Before us, the appellant's contention is that it was not necessary to sell CTS No.257 in its entirety but only such portion as would be sufficient to satisfy the respondent bank's claim. It is pointed out that the value of CTS No.257 had been fixed by the respondent bank at over Rs.12 crores whereas its claim was much less.

12. As far as this aspect is concerned, the matter is adjourned for four weeks to allow the Bank to ascertain from its valuer whether it is feasible to sell a portion of CTS No.257, so that such portion could be sold to meet the respondent bank's claim against the appellant. The third submission of the appellants relates to an order which was passed by the High Court on the application of the respondent-bank for a clarification of the order dated 19 March 2004. An order was made on 2nd April 2004 clarifying that CTS No.257 in respect of which fresh sale proclamation had been directed to be issued would include the approach road of 5.90 mt wide x 56.90 mt long "as per the valuation report". According to the appellants, this approach road forms part of CTS No.256 and that by cutting out such a wide access the value of CTS No.256 would be reduced. It was also submitted that there was no need to provide access to CTS No.257 from the Suren Road as CTS No.257 was bordered by two main roads namely Bajaj Road and Govindwadi Road from which direct access could be obtained. The High Court had also found that CTS No.257 was "independently connected to roads near Govindwadi Road and Bajaj Road".

13. This aspect of the matter does not also appear to have been considered by the Valuation Officer. If indeed the approach road as delineated in the valuation report cuts through CTS No.256 it might reduce the value of the CTS No.256 unnecessarily especially when there may be independent access to CTS (257) which has been directed to be sold. This aspect of the matter will also be looked into by the Valuation Officer within the aforesaid time.