

# RAJASTHAN HIGH COURT

Davendra Singh

Vs.

State of Rajasthan

S.B.C. Writ Petition No. 1490 of 2000

(N.P. Gupta, J.)

05.09.2001

## JUDGMENT

**N.P. Gupta, J.**

1. This writ petition has been filed by the three petitioners seeking to assail the order Annexure 6 passed by the respondent No. 9 negating the objection of the petitioners against the sale of agricultural land situated at village Padrala Tehsil and District Pali.

2. Brief facts of the case are that respondent No. 8 Mahendra Singh and some other persons had taken some loan from a cooperative society. However, the said loan was not repaid, and for recovery of the said loan along with interest, land of respondent No. 8 was put to auction. In that auction the respondent No. 5 had given the highest bid. At this stage, the petitioners raised objection against the sale on various grounds. However, the auction was confirmed. At this stage four writ petitions were filed before this Court, one being S.B.C. Writ Petition No. 1624 of 1984 by the present respondent No. 8, while other three writ petitions being No. 2218, 2219 and 2220 of 1984 were filed by the three present petitioners separately. The Writ Petition No. 1624 was dismissed by the Division Bench on 18.9.1992 while the other three writ petitions came to be heard and disposed of by the learned Single Judge of this Court (Hon'ble Mr. Justice P.K. Palli) vide order dated 27.9.1994 whereby it was directed to the Dy. Registrar, Cooperative Societies, Pali to examine the matter in the light of the averment made by the petitioners in the writ petitions. However, it was clarified that the petitioners will be at liberty to place any other document, evidence for the purposes of examination by the Dy. Registrar, and he was to "find out the validity of the transfer in favour of the petitioners" as well as of the legality of attachment etc.

3. Thereafter the matter was decided by the learned Dy. Registrar and after appeal and revision, the matter was ultimately decided by the State Government vide Anx.6 and various findings have also been given in Annexure 6.

4. The main contention of the learned counsel for the petitioners is that they had purchased the land way back in the year 1970 and that sale had been recognised by the competent authority in ceiling proceedings vide Annexure 1 and necessary mutations had also been effected in the revenue record, in such situation it cannot be said that the land belonged to the respondent No. 8 capable of being sold for effecting recovery of the outstanding against him.

5. Learned counsel for the non-petitioner No. 5, on the other hand, controverted the submission and contended that the alleged document of sale has never seen the light of the day and that being an unregistered document, since it effect the immovable property of the value of more than Rs. 100/-, it cannot have the effect of conferring any title on the petitioners. Learned counsel has referred to Annexure I and pointed out that even in this order, which is claimed to be the order recognising the document, it has expressly been held that in view of the judgment of the Board of Revenue referred to therein, the claimed transfer can be recognised notwithstanding the document being unstamped or unregistered or even in absence of their being any written document, and on that basis it is contended that merely because of Annexure I the provisions of Section 54 cannot be ignored, so as to effect the rights of the respondent No. 5. It is further contended that in view of the judgment of this Court dated 27.9.1994 passed in the writ petition wherein it has clearly been contemplated that the validity of the transfer made in favour of the petitioners is to be gone into, and therefore, unless the petitioners are able to show their valid title in the land or to have validly acquired title in the land, the auction sale in favour of the answering respondent No. 5 cannot be allowed to be set at naught merely on the basis of Annexure 1.

6. Next submission made on behalf of the learned counsel for the petitioner is that Annexure 5 was the order passed by the Revisional Authority exercising powers under Section 128 of the Cooperative Societies Act, hereinafter referred to as the Act, the respondent No. 9 could not exercise any further power of revision as a second Revisional Authority, and in view of the decision of this Court in *Bhura Ram v. State*<sup>1</sup> the order Annexure 6 is wholly without jurisdiction.

7. Controverting this submission it was contended by the learned counsel for the respondent No. 5 that the order Annexure 6 is within jurisdiction, the judgment in Bhura Ram's case has no application in the present case, and the alternative submission made is that even without going into this controversy assuming the respondent No. 9 to be not having jurisdiction, in view of the Full Bench Judgment of this Court in *Jagan Singh v. State Transport Appellate Tribunal*,<sup>2</sup> and the subsequent consistent judgments of Hon'ble the Supreme Court in the *Secretary, Jaipur Development Authority v. Daulat Mal Jain*,<sup>3</sup> *Union of India v. Kirloskar Pneumatic Company Ltd.*, *JT*<sup>4</sup> *Chandigarh Administration v. Jagjit Singh*,<sup>5</sup> and *Madras Fertilizers Ltd. v. Assistant Collector of Central Excise Madras*,<sup>6</sup> etc. if the order Annexure 6 is set aside, it would have the effect of restoring Annexure 5 which in turn is a wholly illegal order as it proceeds mainly on the basis of Annexure I and recognises the transfer in favour of the petitioners even on the basis of an unregistered document, in such circumstances no interference is required to be made in the writ jurisdiction.

8. I have given my anxious consideration to the rival contentions, and have gone through the pleadings of the parties, and the documents produced by them. Admittedly even at the time of sale of each portion of the property in question as purchased by each of the petitioner its value was more than Rs. 100/-, and in view of the clear language of Section 54 of the Transfer of Property Act any transfer of such property could be made only by a registered document. It is significant to note that Section 54 comprehends the value of the property, as distinguished from the purported consideration of alienation, and therefore, even if the property worth more than Rs. 100/- is transferred for the consideration of less than Rs. 100/- it cannot be so done without a registered document. In this view of the matter, since the document in favour of the petitioners is admittedly unregistered, it cannot have the effect of conferring any title on them. In that view of the matter, the petitioners are not entitled to challenge the sale of the land, sold as land belonging to respondent No. 8. At this stage I may observe that the respondent No. 8 earlier filed a writ petition being No. 1624/84 seeking to challenge the order of confirmation of sale, so also the sale certificate, and that writ petition has already been dismissed by a Division Bench of this Court vide order dated 18.9.1992 (Annexure R-5/1). Admittedly the respondent No. 8 has not taken any further proceedings thereafter. At this very place I may also point out that two sets of writ petitions were filed by the same learned counsel. Writ

Petition No. 1624/1984 was admitted on 28.6.1984 wherein the interim stay granted was only staying the recovery of the amount, while the other three writ petitions were admitted on 23.8.1984, and on that day they were ordered to be connected with Writ Petition No. 1624/84. Thereafter all the four writ petitions did come to be listed on 29.9.1986, on which date the stay in Writ Petition No. 1624/84 was confirmed, while it was not pressed in the other three writ petitions. It is in this background that Writ Petition No. 1624/84 was dismissed by the Division Bench, and at that time the other three writ petitions were not got heard, or were not connected, in what circumstances, is not known. Be that as it may the fact remains that in these circumstances in view of the dismissal of the Writ Petition No. 1624/84, and that the dismissal having not been brought to the notice of the Court, while arguing the other writ petitions, though they were also argued by the same learned counsel, petitioners cannot be allowed to challenge the validity of the auction proceedings on the anvil of procedural illegalities or irregularities.

9. In view of this conclusion, I need not go into another question about maintainability of the alleged second revision before the respondent No. 9, inasmuch as even if that question were to be decided in favour of the petitioners, in view of the aforesaid judgments of the Full Bench of this Court and Hon'ble the Supreme Court, I do not feel inclined to interfere with the order Annexure 6 so as to revive order Annexure 5 or to uphold the petitioners title over the land which is claimed by them under unregistered document.

10. The net result is that the writ petition has no force and the same is hereby dismissed summarily.

Petition dismissed.

Cases Referred.

1. S.B. Civil Writ Petition No. 5017/98 dated 4.8.1999
2. AIR 1980 Raj 1
3. 1997(1) RCR(Civil) 379 (SC) : JT (1996)8 (SC) 387
4. 1996(5) (SC) 26
5. 1995(1) RRR 291 (SC) : JT (1995)1 (SC) 445
6. (1994) 1 JT (SC) 150

