

Smt. Shanti Devi vs State Of U.P. & Ors on 27 May, 1997

Author: M.Jagannadha Rao

Bench: K.S. Paripoornan, K. Venkataswami, B.N. Kirpal, M.Jagannadha Rao

PETITIONER:
SMT. SHANTI DEVI

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 27/05/1997

BENCH:
K.S. PARIPOORNAN, K. VENKATASWAMI, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

THE 9TH DAY OF SEPTEMBER, 1997 Present:

Hon'ble mr. Justice S.C.Sen Hon'ble Mr. Justice M. Jagannadha Rao R.K. Kapoor, P. Verma, S.K. Srivastava, B.R. Kapur and Anis Ahmed Khan, Adv. for the appellant Tripurari Ray, Adv. for Mukul Mudgal, Adv., for the Respondent.

J U D G M E N T The following Judgement of the Court was delivered:

M.JAGANNADHA RAO, J.

Learned granted.

The appellant filed objections before the Divisional commissioner, Lucknow is regard to the sale of her agricultural land in an extent of 8.50 acres held on 25.2/1982 and conformed on 2.8.1982 under the provisions of Section 279 of the Uttar Pradesh Zamindari Abolition and land Reforms Act, 1950, (hereinafter called the Act). The

Commissioner, by order dated 26.9.1983 dismissed the objections. The writ petition of the appellant questioning the same was dismissed by the High Court on 7.5.1997. This appeal arises out of the said order.

The sale was conducted for recovery of arrears of Bank Loan in a sum of Rs. 11,619.73 (together with interest) due to the Central bank of India, Branch Sitapur pursuant to a certificate for recovery issued under Section 11A of the U.P. Agricultural Credit Act, 1973. The revenue sale was for a loan of Rs.13,000/-. The Land was under mortgage to the bank for a loan of Rs.7,000/- obtained for purchase of a pump-set. The auction sale dated 25.2.1982 was confirmed by the Assistant Collector on 2.8.1982 after obtaining an affidavit from the purchaser that even after this purchase, the purchaser's holding remained below acres 12.50. During the pendency of this SLP, the appellant was directed to deposit a sum of Rs. One lakh by order dated 16.6.1997 and the same has been deposited in this Court. By another order dated 15.7.1997, the said amount has been directed to be invested in a short terms deposit.

The commissioner set out the appellant's objections and to the purchaser's plea but did not give findings on the various points except the one relating to service of notices of sale. He held that notices were issued to the appellant regarding attachment and sale, the sale was adjourned and in regard to the notice for sale on 25.2.1984 the same was refused by the appellant. He said that in the absence of objection to the sale within 30 days of sale, the sale had to be confirmed by the Assistant Collector and this was done on 2.8.1982. Through a contention, among others, was raised that if acres 8.50 are added to the existing holding of acres 5.00 held by the action purchaser, his holding would exceed acres 12.50, as prescribed under section 154(1) of the Act, no finding was given by the Commissioner on this question. He also said that before him, the objector was given a fresh opportunity on sympathetic grounds to pay debt but the same was not paid.

In the writ petition, the appellant raised all the objections that were raised before the Commissioner. The learned Judge held that notice of sale proceedings was given to the appellant, the same was not availed of, that in fact, the sale notice for 25.2.1982 was refused by the appellant and none was present on appellant's behalf at the auction. The High Court also noticed that the commissioner gave a fresh opportunity to the appellant to pay the loan amount but the same was not availed of. So far as Section 154(1) of the Act is concerned, the High Court felt that in view of the decision of this court in Kripa Shankar Vs. Consolidation 1979 (4) SCC 199, even if the purchaser's holding would go in excess of acres 12.50, after the purchase, it would be for the Gaon Sabha to claim the excess from the purchaser and this was because of sections 163 of the Act permitting taking over of the excess by the Gaon Sabha. Such a provision showed that the sale in favour of a person whose holding would exceed acres 12.50 after the purchase was not void but was voidable at the instance of the Gaon Sabha who could take over possession under section

163. In other words, the High Court assumed that section 163 was in the statute book as on 25.2.1982. This, as we shall show, is not correct. Reliance was also placed on Gaon Sabha Vs. Dy. Director of Consolidation, U.P. Lucknow 1968 R.D. 168 by the High Court to say that restriction under section 154 did not apply to involuntary sales and that the right of the State to acquire land in excess of acres 12.50 from the purchaser always remained. Learned Judge also held that Section 154

dealt with transfers inter vivos and did not deal with the situation which might arise out of involuntary sales . The writ petition was dismissed. It is against this judgement that this appeal has been preferred.

In this appeal, the same contentions which were raised before the High Court were raised. We have heard the counsel on both sides.

The main points for consideration are whether the appellant who did not file objections under Rule 285 H or I within 30 days of sale could file an objection after confirmation that the Assistant Collector has not given effect to section 154(1) of the Act and whether there was non-application of mind by the Assistant Collector, at the Stage of confirmation to this question? If so, what relief is to be given?.

So far as the filling of an application for setting aside the sale is concerned, the same has to be filed within 30 days of sale under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter called the 'Rules') (which is akin to Order 21 Rule 89 CPC) or under Rule 285 I (which is akin to Order 21 Rule 90 CPC). Rule 285 I refers to material irregularity or mistake in publishing or conducting the sale and proof of substantial injury by reason of the irregularity or mistake. If no application is filed under Rule 285 H or I within 30 days of sale, the sale shall become final and sale certificate will be issued under Rule 285 J. If no application is filed under Rule 285- I within the time allowed, all claims on the ground of irregularity or mistake in publishing and conducting the sale shall be barred subject of course to establishing fraud in a civil court by way of a regular suit. We shall go into these provision in greater detail, a little later.

In view of the finding of the Commissioner as well as the High Court that the appellant had notice of the sale proceedings and that she had refused the sale notice for the appellant to urge the question of absence of notice of the sale on 25.2.1982. If therefore the appellant is to be treated as having notice of sale, then the non-filing of the application under Rule 285 I within 30 days of sale, will preclude any objection being raised on the ground of "material irregularity or mistake in publishing or conducting the sale", even if we assume that the value of the property of acres 8.50 as on 25.2.1982 was assessed to be Rs.43,664/- on 14.12.1982 by the revenue authorities and even if that can be treated as proof of substantial prejudice. So this question is foreclosed.

So far as the plea that the pump-set and buffaloes should have been first proceeded against before proceeding with the sale of immovable property under section 279 of the U.P. Act, 1951, even assuming the point could be raised after sale, the respondents have raised a plea that in view of Section 282(3) of the Act, clauses (a) to (o) of section 60(1) CPC are attracted and these were not attachable even. Question arises whether the pump-set is an 'implement of husbandry' belonging to an agriculturist and except from attachment and sale under sub-clause (b) of section 60(1). We notice that there is some conflict between various propose to go into that question. We find that the case can be disposed of an another ground.

We may here also state that the order dated 20.8.1982 dealing with confirmation of sale of the collector merely says that an affidavit has been filed by the auction purchaser that after sale, his

holding would not exceed acres 12.50 and that the affidavit is attached to the confirmation order. The Assistant Collector merely states as follows:-

"The affidavit of 12 1/2 acres has been given by the purchaser and the same is attached".

Now in the application filed by the appellant before the Commissioner, it had been stated by the appellant in para 10 and 11 that the purchaser was already holding acres 5.05 in her name in Village Jamauli. This was disputed by the auction purchaser. It is to be pointed out that in the SLP grounds (ground No.14) it is stated that a photo copy of the Khatauni of the village Jamauli pertaining to Khata No. 325 was brought on record to show that the auction purchaser was already owning acres 5.06. In the counter filed by the purchaser before us, it is stated (para 68) that the appellant's allegation in this behalf is not correct and that the purchaser does not possess more than Ac. 12.50 and that an affidavit to that effect was filed before the Assistant Collector. The allegation that in Khata 325 of this village it is shown that the purchaser owned 5.06 acre, is denied. We have already stated that the Commissioner has not given a finding on this issue though he has referred to the rival contentions in this behalf. The High Court, as already stated, said section 154 (1) deals with restriction on sales or gifts inter vivos and does not apply to execution sales and that in any event, it was the Gaon Sabha to recover the excess land, if any, from the purchaser.

Before we go into main aspect we shall first clear some procedural arising out of Rule 285-k. The question is whether the appellant could have raised this question arising out of rule 285-J read with Section 154 (1) after the confirmation of sale and without filing any objection within filing any objection within 30 days of the sale? We shall first refer to Rule 285-K:

"Rule 285-K: If no application under Rule 215-I is made within the time allowed therefore, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred:

Provided that nothing contained in this rule shall bar the institution of a suit in the civil court for the purpose of setting aside the sale on the ground of fraud".

In our view, the objection that after the court sale vested Acres 12.50 in the purchaser, she will hold land in excess of Ac.12.50 is not an objection concerning any "irregularity or mistake in the publishing or conducting the sale". We may state that the procedure for proclamation of sale is contained in Rule 282 and the procedure for sale is set out in Rules 285,285-A to Rule 285-G. None of them refers to section 154 (1) of the Act which deals with the restriction of a purchaser holding land in excess of Ac.12.50 after a sale or gift. The next rule, Rule 285-H deals with filing of an application by the person whose property is sold, for setting aside sale on deposit (corresponding to Order 21 Rule 89 CPC) and after that, Rule 285-I deals with the filing of an application, on the ground of material irregularity or mistake in publishing or conducting the sale. It is only when we come to a latter stage of the proceedings, namely, after expiry of 30 days from date of sale, that is, the stage of Rule 285-I that it requires the confirmation-authority to be "satisfied" that there was no contravention of Section 154 of the Act. In our view, therefore, any objection raised by the person whose property has been sold to the effect that the collector has not, at the stage of confirmation

applied his mind to the question whether after the revenue sale, the purchaser would be holding land in excess of Ac.12.50, is not an objection relating to any irregularity or mistake in publishing or conducting the sale and hence it is not barred by Rule 285-k. The sale here was over on 25.2.1982. The confirmation order was passed on 2.8.1982. Rule 285-J read with Section 154 (1) therefore raises an issue which relates to a factor which the Confirmation. In our view, Section 285-K does not bar this objection.

This aspect becomes clearer if we read the language of Rule 285-J in respect of the duties of the Collector at the time of 'confirmation' of sale. It reads:-

"Rule 285-J: On the expiration of thirty days from the date of the sale, if no such application as is mentioned in Rule 285-H or Rule 285-J has been made or if such application has been made and rejected by the Collector or the Commissioner, the collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154. Every order passed under this rule shall be final."

It is clear that a statutory duty is cast on the collector to keep Section 154 in mind at the stage of confirmation of Sale. If it is an objection as to non application of mind to a provision statutorily relevant at the stage confirmation, the objection cannot be treated as an objection relating to the irregularity or mistake at or before the stage of sale. That is why Rule 285-K will not come in the way.

The question also arises that if no objection was filed within 30 days of sale under: Rule 285-I or J, then no other application could have been filed before the Commissioner after the Confirmation. Assuming it to be so, we are of the view that the writ petition filed by the appellant can be treated as a challenge to the order of the Assistant Collector's that he did not apply relevant factors which he was bound to take into account while confirming the order. The point raised under section 154(1) does not refer to 'fraud' and therefore remedy of suit mentioned in proviso to Rule 285K is not attracted.

Once the above hurdle is crossed, the next question is whether such an issue relevant to Section 154 can be raised in relation to execution sales. Section 154 of the Act deals with restrictions on transfer by a bhumidar. It reads as follows:-

"Section 154. Restrictions on transfer by a bhumidar: (1) Save as provides in sub section (2), no bhumidar shall have a right to transfer by sale or gift, any land other than tea gardens any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh."

No doubt, there is no definition of sale in section 3 of the Act which deals with the meaning of several words. But, it has to be noticed that Rule 285-I requires the Collector to 'satisfy' himself whether the purchase of land in question by the bidder would not be in contravention of the

provisions of Section 154. Obviously, it is intended that those who purchase in revenue sales should not have a greater advantage over those who obtain property by transfers transfer inter-vivos.

In our view, therefore, the High Court was wrong in thinking that the provisions of Section 154 were not applicable to court sales. If the ruling in Gaon Sabha vs. Dy. Director of Consolidation, Lucknow [1968 R.D.168] relied upon by the High Court expressed such a view, then it must be held to be not correct expressed such a view, then it must be held to be correct in law in view of the express reference to section 154 in Rule 285 J. Obviously, the attention of the High Court in the present case was not drawn to rule 285-J. For the same reason, it is not possible to accept the view, at any rate so far as revenue sales are concerned - that it will only be for the Gaon Sabha to claim the excess from the purchaser. It is true, while dealing with a private transfer by way of gift, such a view was expressed by this Court in Kripa Shankar Vs. Director of Consolidation [1979 (4) SCC 199] but that case related to a gift deed dated 19.12.1964 and this court referred to Section 163 of the Act which enabled the Gaon Sabha to eject the transferor from the excess land and held that the gift as such in that case was therefore not void. In fact case, this Court pointed out that in connection with some other type of transfers covered by Section 166, the legislature had, in contrast, declared such transactions to be void whereas no such words were used in Section 154 or section 163 and section 163 permitted the Gaon Sabha to acquire the excess land for the transferee who detained the excess through a sale or gift inter vivos.

The above case is clearly distinguishable because we are here not concerned with the question whether the court sale is void or voidable. We are here concerned with a statutory provision contained in Rule 285-J which mandates the Collector, to be "satisfied" about a certain factual position at the stage of confirming a sale.

We may here point out that after Kirpa Shankar's case (supra) in 1979, section 163 permitting Gaon Sabha to take over the excess land was deleted by U.P. Act 20 of 1982 w.e.f. 3.6.1981 and section 166 was introduced w.e.f. 3.6.1981 which said that ; "Every transfer made in contravention of the provisions of this Act, shall be void". Obviously, Kirpa Shankar's case cannot apply to post 3.6.1981 sales. The case before us deals with a sale dated 25.2.1982 and confirmation dated 2.8.1982. We do not however purpose to go into this aspect because it is sufficient for the appellant to replay upon the duty cast on the confirmation authority in Rule 285-J to take section 154 into account and prove that duty was not discharged.

The question then is whether the Assistant Collector was 'satisfied' on the material before him that the purchaser did not contravene Section 154(1). In our view, the statement in the confirmation order by the Collector that the affidavit of the purchaser that she will not, after purchase, exceed Ac. 12.50 is "attached" to the confirmation order, does not amount to 'satisfaction' of the officer. which was to be arrived at, on an examination of the relevant revenue records of the area or village concerned. The mere statement of fact by the purchaser by an affidavit before the Collector that the purchaser did not exceed Ac. 12.50 does not help. The word 'satisfied' means that there must be evidence of application of mind by the authority concerned. Merely attaching the affidavit of the purchaser, in our view, does not amount to application of mind but on the other hand, amounts to non-application of mind. As already stated, the Commissioner merely referred to the contention of

purchaser that her holding, after purchase, did not exceed Ac. 12.50. The Commissioner, also referred to the appellant's contention to the contrary. he did not give any finding on this behalf. The High Court's attention as already stated, was not drawn to the express language of Rule 285-J which refers to section 154. The High Court therefore proceeded on the assumption that Section 154 did not apply to involuntary sales and it also thought that it was for the Gaon Sabha to intervene. It did not enter any finding regarding the 'satisfaction' of the Assistant Collector as required by Rule 285-J. As stated earlier, even if the appellant's application before the Commissioner is to be treated as not maintainable, it is open to the appellant to challenge the order of Confirmation dated 2.8.82 on the ground of violation of the requirement of Section 154 and we can read the said order and quash it inasmuch as we are not dealing with irregularity or mistake in the proclamation or conduct of sale. We are only dealing with an illegality arising out of the confirmation order passed under section 285-J in not noticing section 154(1) and this can be corrected directly in writ jurisdiction.

In the result, we hold that the confirmation of sale order dated 2.8.1982 passed by the Assistant Collector and the order of the Commissioner dated 26.9.1983 rejecting the objections of the appellant are vitiated. The judgement of the High Court, for the reason given above, is also set aside.

Finally, we come to the question whether the matter must be remitted to the confirmation authority to go into this question. We are of the view that this is not a case where at this distance of time, we should remand the case to the Commissioner. There is no question of remitting the matter to the Assistant Collector who passed the confirmation order to go into this question. Having heard the counsel and taken notice of the fact that the appellant has now deposited Rs. 1 lakh as directed by this court and taking note of the fact that the Commissioner, irrespective of the points in issue, also inclined to give a chance to the appellant to deposit the money, we feel that this is a fit case where instead of going into the question whether the sale was void in view of section 166 which was introduced w.e.f. 3.6.81- the sale should not be confirmed and that consequently the appellant who has been in possession during the proceedings throughout and also obtained an order of status quo from this court on 16.6.97 should be allowed to retain the property.

The amount of Rs. 1 lakh has been invested in short term deposit in this Court. The same shall, on maturity, be sent to the High Court to the credit of civil writ petition No.6557 of 1983. The amount due as per the sale warrant amount with interest will be ascertained and the same shall first be disbursed to the concerned revenue authority for satisfying the certificate issued to the said authority under section 11-A of the U.P. Agricultural Credit Act, 1973. The High Court will ascertain the amount payable under the Certificate together with interest, if any, as stated in the sale proceedings as incurred by the Govt. If the amount in deposit now transferred to the High Court is not sufficient, the appellant has to make good the deficiency. The amount deposited by the purchaser shall be returned to her together with interest at 12% from the date of deposit. The interest amount payable to the purchaser shall be disbursed out of the amount now being.