

NARAYAN YADAV (D) THR. LRS.

A

v.

THE STATE OF BIHAR & ORS.

(Civil Appeal No. 9173 of 2010)

FEBRUARY 25, 2020

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[L. NAGESWARA RAO AND R. SUBHASH REDDY, JJ.]

Bihar & Orissa Public Demands Recovery Act, 1914:

s. 28 – Auction sale of land in question – For recovery of loan – Application u/s. 28 for cancelling the auction sale claiming to be bona fide purchaser even before auction – Amount as required to be deposited was not deposited within 30 days – Certificate Officer extended time to deposit the amount – Pursuant to objector depositing the amount, auction sale cancelled – Whether auction sale liable to be cancelled on failure to make deposit within 30 days – Held: Time limit was mandatory – Certificate Officer had no jurisdiction to extend that time – Hence, could not have cancelled auction sale.

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Allowing the appeal, the Court

HELD 1. From a reading of Section 28 of the Bihar and Orissa Public Demand Recovery Act, 1914, it is clear that the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, can make an application to the Certificate Officer to set aside the sale by depositing the amount specified in the proclamation of sale, along with interest @ six and a quarter per centum per annum, and with penalty, a sum equal to ten percent of the purchase money. If the application filed under Section 28 of the Act is to be treated as valid it must be along with the deposit, as contemplated under Section 28(1) of the Act. [Para 8][1004-D-F]

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2. In the present case, the deposit of purchase money along with penalty was not deposited within a period of thirty days from the date of sale. [Para 8][1004-F]

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3. If any person applies for setting aside the sale, one has to make an application to set-aside the sale, and such application

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A is to necessarily be supported by deposit of money. For making an application, when there is a stipulated time of thirty days from the date of sale, it means that it is to be done at sometime during the course of stated time immediately preceding the expiry of thirty days. Further, the word “deposit” used in the Section, is to be understood and mean that deposit is to be made either, before making an application, or simultaneously with the application within the prescribed time of thirty days. When there is a prescribed time of thirty days from the date of sale. [Para 8][1004-H; 1005-A-B]

C 4. In absence of any power on the certifying officer to extend the time, he has no jurisdiction at all to extend the time of deposit, beyond the period of thirty days from date of sale. In absence of any power conferred on the authority under Section 28 of the Act, and considering the consequence of not depositing the money within the time of thirty days, the period of thirty days as mentioned in the Section 28 is to be considered as mandatory. [Para 8][1005-B-C]

E 5. The provision under Section 28 is intended to safeguard the interests of persons who are affected by the sale, to approach the competent authority within the prescribed time by depositing the purchase amount along with ten percent thereof as penalty which is payable to auction purchaser for retaining the land. If deposits are allowed to be made even after thirty days, same will run contrary to Section 28 itself and frustrate the object of the provision. [Para 8][1005-D-E]

F 6. The respondent-writ petitioners, except stating that the writ-petitioners are the bona fide purchasers by registered sale deeds from the original owners even before the auction, and they have also deposited the purchase money along with 10% towards penalty, could not make any acceptable submission for entertaining application which is not supported by deposit as required under Section 28 of the Act. [Para 9][1005-G-H; 1006-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9173 of 2010.

H From the Judgment and Order dated 12.03.2008 of the High Court of Judicature at Patna in Letters Patent Appeal No. 79 of 1994.

Amit Kumar, Somesh Chandra Jha, Praveen Chandra, Ms. Pyoli, A
Advs. for the Appellants.

Jagjit Singh Chhabra, Saksham Maheshwari, D.K. Thakur,
Devendra Jha, Abhishek Kumar, Shivraju HB, Rituparn Uniyal,
H. L. Chumber, Dr. V. P.Appan, Gopal Singh, Jaideep Khanna,
Srikaanth S., Advs. for the Respondents. B

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. This civil appeal is filed by the appellants, aggrieved by the
judgment and order dated 12th March, 2008 passed in Letters Patent C
Appeal No.79 of 1994 by the High Court of Patna.

2. Necessary facts in brief are as under:-

3. One Sadhusharan Yadav, Respondent No.14 herein, took a loan
from the Land Development Bank, Uda Kishunganj (Madhipura) during
the year 1971, by mortgaging his agricultural land. Sadhusharan Yadav D
defaulted in payment of loan and, thus, a certificate case No.338 of
1981-82 was initiated for realization of said loan amount. It appears that
even before initiation of certificate proceedings, the mortgaged land was
sold by the Respondent No.14 to the objectors-writ petitioners by
executing registered sale deeds. In realization of the loan amount, the E
mortgaged land, i.e.the land in question, was sold by way of auction.
The appellants herein are the purchasers in the auction sale held on
15.06.1983. The respondents-writ petitioners having come to know about
the auction sale, filed an application before the Certificate Officer on
15.07.1983 under Section 28 of Bihar & Orissa Public Demands
Recovery Act, 1914 (hereinafter "the Act"). Though, there is some F
controversy, as to whether application was filed under Section 28 or 29
of the Act, as much as all authorities have proceeded on the premise
that the application was filed under Section 28 of the Act, we need not
go into such controversy. Though, the said application was filed for setting
aside the sale, no deposit of any amount was made as required under G
Section 28 of the Act. The Certificate Officer by an order dated
05.09.1983 permitted the objectors-writ petitioners to deposit the amount
of Rs.12000/- along with 10% penalty on the said purchase money and
interest thereon @ 6¼% per annum at the Uda Kisunganj branch of the
Land Development Bank, and submit proof of the deposit on or before
22.09.1983. The respondent-writ petitioners claimed to have deposited H

A the amount on 17.09.1983. However, it is stated that *pacca* receipt in respect of the said deposit, was made available by bank authorities later on 28.09.1983.

4. The Certificate Officer who is the 5th respondent herein vide order dated 18.11.1983 allowed the objections of the respondent-writ petitioners and set-aside the sale dated 15.06.1983. The auction purchaser had filed an application before the Collector, Madhipura, who is the 4th respondent herein. The Collector, vide his order dated 29.01.1985, set-aside the order of Certificate Officer on the ground that the money, as required under Section 28 of the Act, was not deposited within the stipulated time. The respondent-objector-writ petitioners filed an application before the Commissioner, Koshi Division, by way of Revision Case No.96/84-85, who in his order dated 31.03.1986 confirmed the order of Collector by dismissing the revision application. Aggrieved by such order, the respondent-writ petitioners moved to the learned Member, Board of Revenue, Bihar, in Certificate Revision Case No. 323 of 1986. D Vide his order dated 27.04.1987, he dismissed the case mainly on the ground that the deposit as required under Section 28 of the Act, was not made within the prescribed time. Assailing such orders, the respondent-writ petitioners filed a Writ Petition, W.P.No.3295 of 1987, before the High Court of Patna. The High Court allowed the Writ Petition, and restored the order of the Certificate Officer, where he had set-aside the sale. E The said order of the learned Single Judge is confirmed in the Letters Patent Appeal filed by the appellants herein, and their appeal was dismissed by the Division Bench of the High Court by the impugned order.

5. We have heard Sri Amit Kumar, learned counsel appearing for the appellants, Sri Gopal Singh, learned counsel appearing for the State of Bihar and Sri Jagjit Singh Chhabra, learned counsel appearing for the respondent-writ petitioners. F

6. Mainly, it is contended by the learned counsel appearing for the appellants, that the respondent-writ petitioners did not make any deposit along with their application filed on 15.07.1983 as required under Section 28 of the Act. It is submitted that, when there is a mandatory requirement of deposit for making an application to set-aside the sale, no application could have been entertained for setting aside the sale in absence of such deposit within the time stipulated under law. Further, it is submitted, that in absence of any power conferred on the Certificate G H

Officer, the Certificate Officer had no authority to either extend the time for deposit, or to entertain the application for setting aside the sale, which was not supported by deposit. It is contended that as the Certificate Officer had committed an error in allowing the application of the writ-petitioners for setting aside the sale, the same was rightly interfered with by the Collector in revision petition, and the same was confirmed by the Board of Revenue. It is submitted that the learned Single Judge has allowed the writ petition by misinterpreting Section 28 of the Act. It is submitted that even the Division Bench had erroneously confirmed the order of the learned Single Judge. On the other hand, learned counsel for the State has supported the case of the appellants. Learned counsel Sri Jagjit Singh Chhabra, appearing for the respondent-writ petitioners, has submitted that even before the mortgage, land was sold by the original owners, by registered sale deeds for a valuable consideration. It is submitted that, inspite of the same, they have deposited the auction amount along with the penalty amount, a sum equal to 10% of purchase money, and 6 ¼% interest. It is submitted that when the application is filed within time under Section 28 of the Act, it is always open for the Certificate Officer to extend the time for deposit, and the same is within his power. It is submitted that as the learned Single Judge of the High Court has considered the matter in detail, and the order is also confirmed by the Division Bench, there are no grounds to interfere with the same.

7. Having heard learned counsel for the appearing parties, and on perusal of the impugned order, the order passed by the learned Single Judge, and other material on record, we are of the view that the controversy in question can be narrowed down to the interpretation of Section 28 of the Act. Section 28 of Bihar & Orissa Public Demands Recovery Act, 1914 reads as under:-

“28. Application to set aside sale of immovable property on deposit.(1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within *thirty* days from the date of the sale, apply to the Certificate Officer to set aside the sale, on his depositing-

(a) for payment to the certificate-holder; the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered with interest thereon at the rate of *six and a quarter per centum* per annum calculated from the date of the sale to the date when the deposit is made;

- A (b) for payment to the purchaser, as penalty, a sum equal to ten percent of the purchase money, but not less than one rupee;
- (c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to the Government under any law for the time
- B being in force as the Collector certifies to be payable by the certificate-debtor.

- (2) Where a person makes an application under Section 29 for setting aside the sale of his immovable property, he shall not unless he withdraws that application, be entitled to make or prosecute an application under this Section.
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Note.-In computing the 30 days prescribed in Section 28(1), the day of sale should be excluded.”

8. It is not in dispute that the mortgaged land was sold in auction, in the initiated certificate proceedings by the competent authority on 15.06.1983. From a reading of Section 28 of the Act as extracted above, it is clear that the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, can make an application to the Certificate Officer to set aside the sale by depositing the amount specified in the proclamation of sale, along with interest @ six and a quarter per centum per annum, and with
- E penalty, a sum equal to ten percent of the purchase money. It is clear from the language of the aforesaid Section, that the application is to be filed at any time within thirty days from the date of sale by depositing the amount. If the application filed under Section 28 of the Act is to be treated as valid it must be along with the deposit as contemplated under
- F Section 28(1) of the Act. In this case admittedly the deposit of purchase money along with penalty was not deposited within a period of thirty days from the date of sale. A reading of the order passed by the Certificate Officer dated 05.09.1983 itself indicates that the auction amount was not deposited and the respondent-objector-writ petitioners were permitted to deposit the same by 22.09.1983. It is the case of the respondents that
- G they have deposited the money on 17.09.1983. From the language of Section 28, it is clear that the application to set-aside the sale can be made only after deposit of purchase money. Section is in two parts. If any person applies for setting aside the sale, one has to make an application to set-aside the sale, and such application is to necessarily be
- H supported by deposit of money. For making an application, when there is

a stipulated time of thirty days from the date of sale, it means that it is to be done at sometime during the course of stated time immediately preceding the expiry of thirty days. Further, the word “deposit” used in the Section, is to be understood and mean that deposit is to be made either, before making an application, or simultaneously with the application within the prescribed time of thirty days. When there is a prescribed time of thirty days from the date of sale, in absence of any power on the certifying officer to extend the time, he has no jurisdiction at all to extend the time of deposit, beyond the period of thirty days from date of sale. In absence of any power conferred on the authority under Section 28 of the Act, and considering the consequence of not depositing the money within the time of thirty days, the period of thirty days as mentioned in the Section 28 is to be considered as mandatory. The aforesaid Section 28 is in the nature of a concession shown to a defaulter, so he has to strictly comply with the requirement thereto, and the sale would not be set-aside unless the entire amount specified in the Section, is deposited within a period of thirty days from the date of sale. If it is beyond thirty days, court cannot consider such application, as the same is not in accordance with the Section itself. The said provision under Section 28 is intended to safeguard the interests of persons who are affected by the sale, to approach the competent authority within the prescribed time by depositing the purchase amount along with ten percent thereof as penalty which is payable to auction purchaser for retaining the land. If deposits are allowed to be made even after thirty days, same will run contrary to Section 28 itself and frustrate the object of the provision.

9. The learned Single Judge of the High Court has allowed the writ petition by recording a finding that the Certificate Officer is satisfied with the claim of the objector-writ petitioners, and has allowed the application. Even in the Letters Patent Appeal filed by the appellants, the High Court has rejected the appeal by recording a finding that whether or not it was a fit case for extension of time, is basically judicial discretion, and no case is made out to show that such discretion was exercised erroneously or capriciously. When the Section mandates for filing an application by making a deposit within a particular time, we are of the view that there is no discretion left to the authority to extend the time. Learned counsel appearing for the respondent-writ petitioners, except stating that the writ-petitioners are the *bona fide* purchasers by registered sale deeds from the original owners even before the auction, and they have also deposited the purchase money along with 10% towards penalty,

A could not make any acceptable submission for entertaining application which is not supported by deposit as required under Section 28 of the Act.

10. For the aforesaid reasons we allow this civil appeal and set aside the impugned order. Consequently, the order dated 03.05.1994
B passed by the learned Single Judge in W.P.No.3295 of 1987 stands set-aside confirming the order of the Board of Revenue. In effect, the application filed by the respondent-writ petitioners under Section 28 of the Bihar & Orissa Public Demands Recovery Act, 1914 stands rejected. The respondent-writ petitioners are entitled for refund of money deposited by them before the Certificate Officer.

Kalpana K. Tripathy

Appeal allowed.