

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 167 of 2002**

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SAVITABEN LAXMIKANT VEKARIA
Versus
TALUKA PANCHAYAT & 2 other(s)

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Appearance:

MR HENIL M SHAH(10677) for the Appellant(s) No. 1

MR HS MUNSHAW(495) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 09/01/2024

ORAL ORDER

1. This Second Appeal under Section 100 of the Code of Civil Procedure has been filed against the judgment and decree dated 18.09.2002 passed by the First Appellate Court in Regular Civil Appeal No.58 of 2000 arising out of judgment and decree dated 23.03.2000 passed by the learned 3rd Additional Civil Judge, Bhuj in Regular Civil Suit No.78 of 1997.
2. The appellant is the original plaintiff. The Civil Suit for declaration and injunction was decreed in favour of the appellant. In First Appeal filed by the Taluka Panchayat, Bhuj, against the judgment and decree, the Appellate Court has modified the judgment and decree and by partly allowing the appeal, directed the Panchayat Authority to decide the objections against the public auction for the sale of disputed plot and either confirmed or set aside the auction

proceedings in accordance with law.

3. Being aggrieved with the said judgment and decree, the appellant plaintiff has preferred this second appeal.
4. The necessary facts leading to file this second appeal are that appellant Savitaben Laxmikant Vekariya, resident of Village Mirzapur, Tal.: Bhuj, Dist.: Kutch, had participated in an auction of plots situated at Village: Mirzapur. The auction was undertaken by office of Gram Panchayat, Mirzapur. The said public auction held on 13.09.1996. The appellant being highest bidder of Plot No.2B, was directed to pay the amount of Rs.18,095/-. In the process of the said public auction, the Revenue Officers were present and in their presence, the appellant was allotted the said plot. The amount of the plot was paid in a stipulated time and receipt thereof also was issued in favour of the appellant. On 25.10.1996, Mirzapur Gram Panchayat forwarded the entire case papers to Taluka Panchayat Office for confirmation of the public auction. According to the case of the appellant, no one has submitted objection against the said auction sale, within statutory period of 30 days, as contemplated under Section 178 of the Bombay Land Revenue Code, 1879 and therefore, the respondent authority has no option, but it is mandatory on their part to confirm

the sale auction. According to the case of the appellant, after statutory period of 30 days, objections were submitted by the third party against the auction sale. The possession of Plot No.2B which was allotted to the appellant was handed over by Mirzapur Gram Panchayat in the month of January-1997. Despite of these facts, the order of confirmation or setting aside the sale was not passed by the respondent authority, as contemplated under Section 179 of the Bombay Land Revenue Code. The appellant had started construction upon the said Plot No.2B, without any permission. The Gram Panchayat served a notice upon the appellant in relation to the said construction and directed to stop the construction.

5. In the aforesaid facts and circumstances, the appellant filed a Civil Suit for permanent injunction and declaration challenging the action on the part of the gram panchayat and by way of mandatory injunction, asked to issue a sanad and relevant title papers in relation to the purchased Plot No.2B.
6. The Civil Suit was contested by the respondents authority by filing a written statement. In the written statement, they denied that the appellant having legal possession of the plot as it was never handed over to the appellant. That in view of the pendency of the auction sale proceedings, the appellant has no right to erect any

construction upon the said plot without permission of the Panchayat. The issue of jurisdiction was also raised in the written statement as there is an alternative remedy available under the provisions of Bombay Land Revenue Code to redress the grievance.

7. On the basis of rival pleadings, the learned Trial Judge framed the issue at Exh.31.
8. Before the Trial Court, the evidence of the appellant was recorded at Exh.34 and her witness Bhimjibhai Vekharia examined at Exh.42. The appellant had relied on the report of the Gram Panchayat at Exh.35, payment receipt at Exh.36, the proceedings of the auction sale at Exh.38. The Officer of the Taluka Panchayat was examined at Exh.47 and the copy of the objections were produced at Exhs.47 and 49.
9. After hearing the parties and upon appreciation of evidence on record, the learned Trial Court was pleased to allow the suit. The learned Trial Court held that the appellant after paying the consideration had purchased the said plot in a public auction and she was put in possession by the authority concerned. The learned Trial Court after considering the provisions of the Bombay Land Revenue Code held that it is incumbent on the part of the authority

to confirm the auction sale and directed the respondent authority to confirm the auction sale and to issue sanad and other papers in favour of the appellant and declared the notice proceedings illegal and against the principle of natural justice. The learned Trial Court also directed the appellant to get the necessary permission for further construction.

10. The respondent Panchayat Authority, by filing Regular Appeal, has challenged the legality of the aforesaid judgment and decree. The First Appellate Court, after hearing the parties, directed the Taluka Development Officer, Bhuj to decide the objections, within 30 days and pass necessary order under Section 179 of the Bombay Land Revenue Code, which authorized the authority concerned to confirm the auction sale of immovable property or setting aside the auction sale.
11. This appeal has been admitted on the following substantial questions of law:

“1. What is true construction of Section 179 of the Bombay Land Revenue Code and whether after lapse of 30 days after auction sale, objections to the auction sale can be allowed to be raised and can be ordered to be decided, as ordered by the Lower Court.

2. *Whether the decree of the Trial Court can be challenged by the defendant no.2.”*

12. This Court has heard learned counsels Mr.Henil Shah for the appellant and Mr.H.S. Munshaw, learned counsel for the respondent.
13. Mr.Henil Shah, learned counsel appearing for the appellant has submitted that the facts in relation to the public auction held by the Mirzapur Gram Panchayat and the appellant being highest bidder, had paid the entire consideration in a stipulated time and in the presence of the Revenue Officers, the possession of disputed plot was handed over to the appellant are not in dispute. In such circumstances, he submitted that the entire auction was proceeded by following the mandatory procedure, as contemplated under Sections 165 to 174 of the Bombay Land Revenue Code. That the Mirzapur Gram Panchayat forwarded the entire chapter for confirmation to the Taluka Panchayat Office and within 30 days, no any application in the form of objections made to the Collector for setting aside the auction sale. That the said proposal was forwarded on 25.10.1996 to the office of TDO. That no any application against the confirmation of sale auction was filed,

within 30 days i.e. from 26.10.1996 to 25.11.1996. That the objections were filed on 29.11.1996 i.e. after a period of 30 days. That if the application is filed after a statutory period, then it is incumbent on the part of the authority concerned to pass an order confirming the sale.

14. In view of the aforesaid admitted facts, the learned counsel Mr.Shah has submitted that, the First Appellate Court has erred in directing the respondent authority to consider the objections filed at Exhs.48 and 49 against the sale as Section 179 of the Bombay Land Revenue Code does not permit the authority concerned to entertain and/or consider the objections which has been filed after 30 days from the date of the sale of immovable property.
15. Mr.Henil Shah, learned counsel has further submitted that the First Appellate Court could not have modified the decree by issuing the necessary directions to consider the objections as contemplated under Section 179 of the Bombay Land Revenue Code, because there is no provision to entertain the objections after 30 days from the sale and therefore, the judgment and decree passed by the First Appellate Court is not sustainable in law.
16. On the other hand, learned counsel Mr.Munshaw appearing for the respondents has submitted that the First Appellate Court has rightly

directed the authority concerned to consider the objections and as such, there is no breach and/or violation of Section 179 of the Bombay Land Revenue Code.

17. Referring to the contents of the affidavit in reply, he has submitted that in view of the directions given by the First Appellate Court, the Taluka Development Officer, Bhuj has considered the objections against the sale and considering the facts and circumstances of the case has cancelled the auction proceedings held by Mirzapur Gram Panchayat and thus, therefore, the question does not arise for issuance of sanad and other papers in relation to the sale of Plot No.2B and in that view of the matter, the appeal having become infructuous.

18. It is not in dispute that the disputed plot situated at Village Mirzapur was sold to the appellant by the respondent authority. The authority concerned had followed the procedure for auction of public property, as contemplated under Sections 165 to 174 of the Bombay Land Revenue Code. The auction was held on 13.09.1996. The payment Rs.18,095/- was paid within 15 days i.e. on 22.09.1996. The Mirzapur Gram Panchayat forwarded the entire chapter for the confirmation of the sale. The objections referred by the First Appellate Court were filed after 30 days. In other words,

the objections were not filed within 30 days from the date of sale.

19. To appreciate the contentions, it is necessary to refer Sections 178 and 179 of the Bombay Land Revenue Code, which read thus:

“178. Application to set aside sale. - At any time within thirty days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

But, except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

179. Order confirming or setting aside sale. - On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale:

Provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.”

20. A bare reading of sections says that the aggrieved party may file objections within 30 days from the date of sale of immovable

property for setting aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting the auction process. On the expiry of 30 days, if no such objections as mentioned in Section 178 is filed or rejected, the authority/Collector shall bound to pass an order confirming the same.

21. In view of the aforesaid statutory provisions, this Court is of the considered opinion that the First Appellate Court could not have modified the decree passed by the Lower Court. The First Appellate Court has ignored the statutory provisions of the Bombay Land Revenue Code which does not permit or gives discretion to the Court to direct the authority concerned to decide the objections, which were filed after a period of 30 days. The Appellate Court failed to appreciate that on the expiry of 30 days from the date of the sale, if there is no any application and/or objections made to the authority to set aside the sale, the authority has no option, and they have to confirm the sale by passing the appropriate order as contemplated under Section 179 of the Bombay Land Revenue Code.

22. For the reasons aforementioned, this Court comes to a conclusion

that the Lower Court has rightly interpreted Section 179 of the Bombay Land Revenue Code and directed to confirm the sale. The First Appellate Court, by ignoring the said mandatory provision, in a mechanical manner, modified the said directions issued by the Lower Court and has committed an error of law while directing the authority to decide the objections and take appropriate decision as provided under Section 179, which is not sustainable in law. Consequently, this Court finds merits in the appeal as the First Appellate Court has committed an error of law while modifying the decree passed by the Lower Court.

23. Resultently, present appeal is **allowed**. The judgment and decree dated 18.09.2002 passed by the First Appellate Court in Regular Civil Appeal No.58 of 2000 arising out of judgment and decree dated 23.03.2000 passed by the learned 3rd Additional Civil Judge, Bhuj in Regular Civil Suit No.78 of 1997 is set aside.
24. It is clarified that during the pendency of the appeal proceedings, the respondent authority has set aside the auction sale proceedings. Admittedly, the appellant is in possession of the disputed plot till date. In such circumstances, the respondent authority shall have to

follow the consequences. The benefit of this order should not be extended to the other litigant parties, who have not challenged the judgment and decree of the First Appellate Court.

Rakesh

(ILESH J. VORA,J)