APPELLATE CIVIL.

Before Mr. Justice Rangnekar.

1936
August 25

THE DHARWAR URBAN BANK LTD., DHARWAR, BY ITS MANAGER MR. V. N. JOG (ORIGINAL OPPONENT NO. 1), APPELLANT *v.* KRISHNARAO ANANTRAO KONNUR AND OTHERS (ORIGINAL OBSTRUCTOR, RECEIVER, OPPONENT NO. 2 AND INSOLVENT-DEBTOR), RESPONDENTS.*

Bombay Land Revenue Code (Bom. Act V of 1879), sections 31, 56, 153—Forfeiture of occupancy lands—Private sale by Collector—Benami purchase for Revenue Officer—Sale invalid—Marginal notes, use of—Aids to interpretation of statute—Analogy of sale—Bombay District Police Act (Bom. Act IV of 1890), section 33.

There is nothing in section 153 of the Land Revenue Code, 1879, or in the rules, to suggest that a sale following a forfeiture of occupancy lands must necessarily be a public sale. The Land Revenue Code and the rules make it clear that in such cases it is open to the Collector to sell the lands privately.

Section 31 (*2*) of the Land Revenue Code, 1879, prohibits Revenue Officers from being directly or indirectly concerned in any of the transactions or acts set out in the section. There is nothing in the language of the section which would limit the purchase prohibited to a public sale. The section applies as much to a public sale as to a private one.

It seems to be plain on principle that there is no reason why, when a Court is unable to collect the precise intention of Legislature in regard to any particular part of a statute or a section of a statute, it cannot call in aid marginal notes or headings or the scheme of the Act or the place in which the section occurs. Where, however, the language is clear and the meaning plain, these aids cannot be used to control the plain meaning of the language in the section, but where that is not the case, they can be availed of as extraneous aids to the construction of a statute.

Bushell v. *Hammond*,[1] referred to.

Section 33 of the Bombay District Police Act, 1890, implies exactly the same prohibition which is implied by the terms of section 31 of the Land Revenue Code, 1879.

Sundrabai v. *Manohar*,[2] referred to.

SECOND APPEALS from the decision of A. Majid, District Judge, Dharwar, confirming an order made by V. V. Phadke, First Class Subordinate Judge, Dharwar.

Validity of sale.

* Second Appeal No. 362 of 1934 (with Second Appeal No. 485 of 1934).

(1) (1904) 73 L. J. K. B. 1006. (2) (1932) 35 Bom. L. R. 404.

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One Raghavendra Rangrao Peerjabade was, on a petition made by him, adjudicated an insolvent and a Receiver was appointed who, on February 14, 1933, took possession of three lands, Nos. 95, 146 and 148 of Hallikeri as belonging to the insolvent.

The lands in question originally belonged to the insolvent. In 1928, he committed default in the payment of land revenue and they were, therefore, forfeited to Government. Thereafter Government conveyed those lands to Godubai, the wife of the insolvent, on taking from her twice the amount of the assessment. Godubai having died, the lands would pass to her husband as her heir, but Krishanarao Konnur (respondent No. 1) alleged that he, then a Mamlatdar at Kalghatgi, really purchased the lands from Government in the name of Godubai, who was his brother's daughter living with him.

On February 17, 1933, he applied under section 68 of the Provincial Insolvency Act alleging that the lands in question belonged to him and not to the insolvent.

The First Class Subordinate Judge, Dharwar, raised two issues, viz., (1) whether the alleged *benami* purchase was proved and (2) whether it was legal. The learned Judge held in favour of the applicant, allowed his application and the lands were declared to be his property.

From that decision two creditors of the insolvent filed appeals in the District Court, Dharwar. The learned District Judge held that section 31, sub-section (*2*) of the Bombay Land Revenue Code applied only to a public sale and that the sale in question being a private one was, therefore, protected from the operation of that section. He accordingly dismissed both the appeals.

The Dharwar Urban Bank and another (creditors) preferred second appeals to the High Court.

APPEAL NO. 362 OF 1934.

H. B. Gumaste, for the appellant.

S. B. Jathar, for respondent No. 1.

R. A. Jahagirdar and *R. S. A. K. Katti* (not present in the Court), for respondent No. 2.

APPEAL NO. 485 OF 1934.

G. P. Murdeshwar, for the appellant.

S. B. Jathar, for respondent No. 1.

R. A. Jahagirdar and *R. S. A. K. Katti* (not present in the Court), for respondent No. 2.

RANGNEKAR J. These are two appeals, which arise in certain insolvency proceedings; and the facts, so far as they are material, may be briefly stated as follows.

One Raghavendra Peerjabade was adjudicated an insolvent in 1932 on his own petition under the provisions of the Provincial Insolvency Act (V of 1920). A receiver was appointed, and the receiver in the discharge of his duty to realize the property of the insolvent took possession of three survey lands Nos. 95, 146 and 148 on February 14, 1933. These lands were in the village Hallikeri, taluka Dharwar. Three days after this, respondent No. 1 put in an application objecting to the receiver's possession and contending that he was the owner of the lands in question. He is described in the proceedings as an obstructor. This application was made under section 68 of the Provincial Insolvency Act. The facts on which he relied were, that the insolvent, who was originally a registered occupant of these lands, had made a default in paying the land revenue in respect of them, and the lands were, therefore, forfeited to Government. He alleged that Government conveyed these lands to Godubai, wife of the insolvent, for an occupancy price of twice the amount of assessment, but that the consideration came from him, and Godubai, who

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was his brother's daughter, was merely his *benamidar*, and that he was managing the lands on behalf of Godubai. It is not in dispute that the respondent at this time was Mamlatdar of Kalghatgi, a neighbouring village in the same district.

The receiver's claim was based upon the allegation that Godubai was a registered occupant of the lands, that she died after Raghavendra Peerjabade was adjudicated insolvent, and he succeeded to her property as her heir, and these lands, therefore, vested in the receiver under the provisions of the Act. The receiver denied that Godubai was a *benamidar* for the applicant, and contended that if she was, the transaction was illegal, and no interest passed to the applicant as at the time of the transaction he was a Mamlatdar of a neighbouring village in the same district and had purchased the property without the express permission of the Government or of the Collector to whom he was subordinate, under the provisions of section 31 of the Bombay Land Revenue Code (Bom. V of 1879).

On these contentions the learned First Class Subordinate Judge at Dharwar raised two issues : (1) whether the alleged *benami* purchase was proved ; and (2) whether it was legal. On the first question, the learned Judge found the issue in the affirmative. On the second question, he held that the transaction was legal. In his opinion, the transaction did not fall within the prohibition laid down in section 31 of the Bombay Land Revenue Code ; and, dealing with sub-section (2) of that section, which was the only material clause, he was of opinion that it applied to purchases made by revenue officers at a public sale, and that in this case there was no public sale because what happened was that on the forfeiture of the lands Godubai after some time applied to the revenue authorities for the same being sold to her, and the Collector sold them to her privately. He supported his opinion by a reference to the marginal note of that sub-section, which is in these words: "Not to purchase at

public sale." In the result, he allowed the application and declared that the lands were the property of the applicant.

There were two appeals from this decision made by two creditors to the District Court of Dharwar. The learned District Judge agreed with the First Class Subordinate Judge on both the questions and dismissed the appeals.

From that order of dismissal these two appeals are brought to this Court. It may be stated that the receiver was also a party to this application, and in the appeals he supports these creditors.

From the facts to which I have referred, it is clear that the result of these appeals must depend upon the construction of section 31 read with some other relevant sections of the Bombay Land Revenue Code. But before I turn to the provisions of the Code, I shall briefly dispose of one of the points taken on behalf of the respondent-applicant. It is argued by Mr. Jathar on his behalf that there being concurrent findings on the question as to Godubai being a *benamidar* for the applicant, the question as to the legality of the transaction, by which the applicant claimed to be the owner of the lands, is not relevant and does not arise. He says that the receiver's title depends upon the title of Godubai. That, no doubt, is true. But he further says that Godubai having now been found to have no title, the receiver cannot put forward any claim to these lands, particularly as against his client who has been declared to be the owner and who has been in possession of these properties. In my opinion, that is not the proper view to take of the matter. In the first place, there is no finding that at the date of the application the applicant was in possession of the lands. On the other hand, the finding is that he was managing the lands on behalf of Godubai. Then, the receiver admittedly had taken possession of the lands before the application, and it was with a view to object

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to that possession and to establish his own claim that the applicant came to the Court under section 68 of the Provincial Insolvency Act. The question, then, must arise, whether the applicant succeeded in establishing his case, his case being that he was the owner of the lands, as he had purchased them, that the lands did not belong to Godubai and that, therefore, the possession taken by the receiver was wrongful and should be restored to him. I think, therefore, both the Courts below were right in proceeding upon this footing to consider not only as to whether the transaction was a *benami* transaction, but whether it was such a valid *benami* transaction as could be established in a Court of law by the applicant.

Section 31 of the Bombay Land Revenue Code is in Chapter IV, the heading of which is "Of certain Acts prohibited to Revenue Officers, and of their Punishment for Misconduct". It enumerates the acts prohibited in several sub-sections. The principal part of the section is in these terms:

"31. No revenue officer shall, except with the express permission of Government, or of the Collector, or Superintendent of Survey to whom he is subordinate . . ."

Sub-section (*1*) prohibits revenue officers directly or indirectly from trading.

Sub-section (*2*) is in the terms following:

"(*2*) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may under the provisions of this Act or of any other law for the time being in force be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed."

Sub-section (*3*) prohibits revenue officers from being concerned directly or indirectly on their private account in the collection of revenue. Sub-section (*4*) prohibits revenue officers from making private use of any public money or property; and sub-section (*5*) prohibits them from demanding or receiving any undue exactions or even presents. It is common ground that the only sub-section which would be

applicable if at all is sub-section (*2*). The question is, whether, as has been held by the lower Courts, this sub-section prohibits only purchases made by a revenue officer in contravention of section 31 at a public sale, or whether it is wide enough to embrace purchases of Government lands at a private sale. The other relevant sections may now be referred to. One is section 56, which declares that land revenue shall be a paramount charge on the holding, and upon failure in payment of it the holding is liable to forfeiture. It then provides that when forfeiture is incurred, the Collector may levy all sums in arrears by "sale of the occupancy . . . or may otherwise dispose of such occupancy . . . " under rules made under section 214, and thereupon the transferee would get the lands freed from all rights and equities existing in favour of any person other than Government. Section 57 authorizes the Collector on forfeiture of the holding to resume possession and to place the purchaser or transferee in possession of the holding. The other section is section 153, which is in these words :

"153. The Collector may declare the occupancy or alienated holding in respect of which an arrear of land revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts :

"Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

(*a*) unless previously thereto he shall have issued a proclamation and written notice of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(*b*) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166."

It is clear from these sections that, where there has been a failure to pay land revenue due in respect of any occupancy lands, there is a forfeiture of the occupancy tenure to Government, and it is open to the Collector on such forfeiture to sell the lands to another person or to restore them to the defaulter or to transfer them to another person. There is nothing in the section or in the rules to suggest that in such cases the sale

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must necessarily be a public sale. On the other hand it is fairly conceded,—and that is clear from the Code as well as the rules,—that in such cases it is open to the Collector to sell the lands privately.

In my opinion, therefore, to start with, there is no justification for the assumption made by the learned District Judge that the section prohibits purchase at sales by auction only. The Code as well as the rules made under it clearly provide for a private sale as well as a public sale ; and where a public sale is to be held, then the procedure laid down in section 165 and the sections following has to be followed. Section 165 provides that a proclamation has to be issued ; then the proclamation has to be made by beat of drum ; then a written notice of the intended sale has to be affixed in certain public places. In other words, all steps to make the sale as widely known to the public as possible have to be taken by the Collector. I have referred to sub-section (*2*) of section 31. It is conceded,—and it is also clear upon the language of the clause,—that there is nothing in the language itself which would limit the purchase prohibited to a public sale, except the words which refer to "bid . . . for any property," and except the marginal note. The section itself does not particularly refer to a purchase at a public sale or a private sale and makes no distinction of that character. It undoubtedly refers to and prohibits bidding either directly or indirectly by a revenue officer at a sale in regard to property ordered to be sold by a revenue authority. Merely prohibiting a bidding of this nature does not restrict the prohibition to a purchase at a public sale only. A bidding does not result in a sale until the bidding is accepted and the bidder is declared to be the highest bidder. In my view, these words really tend to show that the legislature wanted to impose a very strict rule of prohibition in regard to such transactions on all revenue officers in the district in which such transactions would take place ; and so the clause prohibits not only a purchase but even an act much short of

a purchase, such as bidding, which, as I have said, will not amount to a purchase until something more happens; and the intention of the legislature to impose such a strict rule of conduct, which no authority is needed to support, in the interests of the public and for the purposes of good government, is clear from the other clauses of the section, to some of which I have already referred. If the view taken by the lower Courts and supported here is correct, the position would be absurd, as a revenue officer can purchase lands forfeited at a private sale held by the Collector but not at a public sale.

It seems to me, therefore, having regard to the spirit and the letter of the section read as a whole, that it was never intended to put such a narrow construction on sub-section (*2*) as seems to have found favour with the learned Judges in the Courts below. In my opinion, the section prohibits revenue officers from being directly or indirectly concerned in any of the transactions or acts set out in the section and that is the substance of the matter, and the facts in this case clearly bring the transaction within the prohibition under the section. This is clear from exhibit 54, which shows that lands were forfeited, and then an application was made by the wife of the insolvent. It was, therefore, held that under the rules the lands could not be restored, the applicant being other than the defaulter. It was considered that a public sale would not be advantageous, and, therefore, the Collector stated as follows:

"Considering that all arrears have now been paid I order that, as a special case the lands be sold to the defaulter's wife at the *pancha* estimate, i.e., for an occupancy price equal to twice the assessment."

The property, therefore, was sold by order of the Collector, who was a revenue officer in the district in which the present applicant was admittedly employed at the time, and it is difficult to see why this transaction does not come within the prohibition laid down by sub-section (*2*).

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The learned First Class Subordinate Judge was impressed—and, I may say, not unduly—by the marginal note which I have set out above ; and the question arises as to whether such marginal notes can be referred to in considering the sections of a statute, and, if so, to what extent.

This question was considered by me in a full bench decision in *Emperor* v. *Sayad Esmail.*[1] I was not prepared to express a definite opinion on the point, but I felt that a marginal note could be looked at for the purpose of construing a statute. I relied upon *Ram Saran Das* v. *Bhagwat Prasad.*[2] I also relied upon a passage in Maxwell on Interpretation of Statutes, 7th edn., at p. 37, which is in these terms :

"But, as regards marginal notes, the rule regarding their rejection for the purposes of interpretation is now of imperfect obligation."

There are decisions of this Court where it has been (if I may say so, respectfully) somewhat loosely held that marginal notes can be relied upon for the purpose of construing a statute or the sections of a statute. Mr. Gumaste refers to *Thakurain Balraj Kunwar* v. *Rae Jagatpal Singh.*[3] Their Lordships in that case observed as follows (pp. 142, 143):—

"It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament."

I have referred to Maxwell on Interpretation of Statutes, which clearly lays down a contrary proposition. Apart from authority, it seems to me to be plain on principle that there is no reason why, when a Court is unable to collect the precise intention of legislature in regard to any particular part of a statute or a section of a statute, it cannot call in aid marginal notes or headings or the scheme of the Act or the place in

[1] (1933) 57 Bom. 537 at p. 549, F. B. [2] (1928) 51 All. 411, F. B.
[3] (1904) L. R. 31 I. A. 132, s. c. 26 All. 393.

which the section occurs. Where, however, the language is clear and the meaning plain, these aids cannot be used to control the plain meaning of the language in the section; but where that is not the case they can be availed of—and often have been by eminent authorities from ancient times—as extraneous aids to the construction of a statute. I think the true rule is one which was laid down by Collins M. R. in *Bushell* v. *Hammond*,[1] in which the Master of Rolls observed as follows (p. 1007):—

"The side-note, also, although it forms no part of the section, is of some assistance, inasmuch as it shews the drift of the section."

In this country we are bound by the decisions of the Privy Council. No other decisions of their Lordships of the Privy Council have been referred to on the point; and I am, therefore, unable to hold that marginal notes can be referred to or used for the purpose of construing the sections of a statute.

A somewhat similar question arose before my brother Baker and myself in *Sundrabai* v. *Manohar*.[2] There the question was with reference to the construction of the old section 33 of the Bombay District Police Act, 1890. Both the lower Courts have distinguished that case, and the principle laid down there, from the present case upon the ground that there is a fundamental difference between the terms of the old section 33 of the Bombay District Police Act and section 31 of the Bombay Land Revenue Code. Some distinction is undoubtedly apparent; but it seems to me that the principle aimed at by both the sections is the principle which after all one finds very clearly summed up in section 23 of the Indian Contract Act. The old section 33 of the Bombay District Police Act is in these terms:

"No police officer shall engage in trade or be in any way concerned, either as principal or agent, in the purchase or sale of land within the district wherein he is employed or in any commercial transaction whatever, without the permission of the Magistrate of the District or of Government."

(1) (1904) 73 L. J. K. B. 1006. (2) (1932) 35 Bom. L. R. 404.

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That section implies exactly the same prohibition, which is implied by the terms of section 31 of the Bombay Land Revenue Code in these terms:

"(2) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property . . ."

In my opinion, the purchase by the respondent was in contravention of section 31(2). His title, therefore, failed.

In the result, therefore, the appeals must be allowed, the orders made by the lower Courts set aside, and the application of the respondent rejected, with costs throughout. There will be separate sets of costs—one set of costs for the receiver, and one set of costs for the appellant in each appeal.

Appeals allowed.

Y. V. D.

APPELLATE CRIMINAL.

Before Mr. Justice Barlee and Mr. Justice Tyabji

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EMPEROR *v.* VISHNUSHANKAR VASANTRAM (ORIGINAL ACCUSED NO. 1), APPLICANT.*

Bombay District Municipal Act (Bom. Act III of 1901), sections 46, 48, 49—District Municipality—Toll to be levied by Municipality—A matter to be regulated by a rule and not by a bye-law—Bye-law 152† *made by Godhra Municipality against evading payment of toll tax*—Ultra vires *bye-law.*

Under the Bombay District Municipal Act, 1901, matters relating to the payment of toll on conveyances ought to be dealt with by rules under section 46 of the Act and not by bye-laws under section 48 and therefore bye-law 152 (1) and (2) framed by the Godhra Municipality under section 48 (*1*) (*u*) of the Act imposing a penalty against evading payment of toll tax is *ultra vires.*

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* Criminal Revision Application No. 245 of 1936.

†Bye-law 152 runs as follows:—

"152. (1) No person shall, with the intention of evading payment of the toll-tax, take or attempt to take any conveyance liable to pay such tax into the limits of the Municipality, without paying the tax at the toll naka.

(2) A breach of this bye-law shall, on conviction, be punishable with fine which may extend to five rupees for each offence."