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**(1959) 08 AHC CK 0038**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Application No. 55 of 1957

Alld. Bank Ltd.

APPELLANT

Vs

Civil Judge Barabanki and Others

RESPONDENT

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**Date of Decision :** 27-08-1959

**Acts Referred:**

Uttar Pradesh Encumbered Estates Act, 1934 — Section 6, 7(3)

**Citation :** (1960) 30 AWR 91

**Hon'ble Judges :** J.K. Tandon, J

**Bench :** Single Bench

**Advocate :** Iqbal Ahmad and Shiv Gopal, for the Appellant; Standing Counsel, H.D. Srivastava and Bishun Singh, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

J.K. Tandon, J.—The facts giving rise to this petition are these: One Rani Manraj Kuer who is dead and was the predecessor in title of Respondents Nos. 4 and 5, Lalchand Pratap Singh and Lal Bhanu Pratap Singh, respectively, applied u/s 4 of the U.P. Encumbered Estates Act, 1934, to the Collector sometime in 1936. In due course her application was forwarded to the Special Judge on 7-4-1936. The Special judge thereafter proceeded to determine the debts payable by the Applicant. Allahabad Bank Limited Lucknow, the Petitioner in the present petition was also one of the creditors of the deceased Applicant. It, therefore, proved its debt in those proceedings and a decree in respect of the debt, which was a secured debt was also made in its favour by the Special Judge. The Special Judge u/s 16 of the Encumbered Estates Act had to rank all debts for priority and this was done giving to the Petitioner the priority it was entitled to. It is unnecessary for the present purpose to state the particular class in which its debt was included. What is material is that appropriate priority was given to it u/s 16. After proceedings had concluded before the Special judge the debts were reported to the Collector for liquidation. In the meantime, but before the liquidation could take place, the U.P. ZA and LR Act was enacted and all

Zamindaris including those hypothecated in favour of the Petitioner were acquired, consequent upon the acquisition of the Zamindaris, compensation in the form of bonds as provided in the said Act has been awarded to the representatives of Srinuti Manraj Kuer who died in the meantime.

2. The other facts are that long after the passing of an order u/s 6 of the U.P. Encumbered Estates Act, 1934, transmitting the application u/s 4 of that Act to the Special Judge, Rani Sheo Prasad Kuer, daughter in law of Rani Manraj Kuer, along with Jaisee Ram, Respondent No. 2, obtained a decree for arrears of maintenance against Lal Chand, Pratap Singh and Lal Bhanu Pratap Singh, Respondents 4 and 5. This decree was admittedly in respect of a debt incurred after the making of the order u/s 6 of the Encumbered Estates Act. Jaisee Ram and Rani Sheo Prasad Kuer then executed this decree in the Court of the Civil Judge, Barabanki, in execution case No. 43 of 1954 by attachment and sale of the bonds in lieu of compensation granted under the ZA and LR Act. The Civil Judge has in the said execution case attached those bonds but, before he could proceed to sell them, the Allahabad Bank approached this Court and succeeded in obtaining an order restraining the Respondents 1 to 3 from selling or otherwise disposing of those bonds. The result has been that although the bonds have been attached they have not been sold but the execution case on the application of Respondents 2 and 3 is still pending before the first Respondent.

3. The Petitioner, feeling aggrieved by the order of the learned Civil Judge attaching the said bonds has, therefore, filed this petition praying that he (the Civil Judge) be directed to recall and cancel his order of attachment. The Petitioner has also asked Respondents Nos. 2 and 3 to be restrained from proceeding with the execution case by attachment and sale of those bonds. Here it may be stated that Respondent No. 3 had died before the institution of this petition, Her name, therefore, was omitted from the array of Respondent. Sub-section 3 of Section 7 of the U.P. Encumbered Estates Act is in these terms:

After the passing of the order u/s 6 and until the Collector has declared in accordance with Section 44 that the landlord has ceased to be subject to the disabilities of this sub-section or until the passing of the order by the Special Judge referred to in Sub-section 2 of Section 44 no decree obtained on the basis of any private debt incurred after the passing of the order u/s 6 shall be executed against any of the landlord's proprietary rights in the land mentioned in the notice published u/s 1 and the landlord shall not be competent, without the sanction of the Collector to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights, or any portion of them.

4. Section 2 of U.P. Act XIII of 1954 a new definition was inserted in Section 2 of the U.P. Encumbered Estate Act as under:

a reference to proprietary rights in land shall include a reference to compensation and rehabilitation grant payable under and in accordance with the U.P. ZA and LR Act, 1950.

5. As result of this provision Sub-section (3) of Section 7 became applicable to the bonds awarded in respect of compensation and rehabilitation grant under and in accordance with the U.P. ZA and LR Act, 1950, to the same extent as in the past it applied to proprietary rights in land. In other words the prohibition laid down in this sub-section against execution of a decree obtained on the basis of any private debt incurred after the passing of the order u/s 6 of the Encumbered Estates Act, 1934, applies to the case of bonds granted in lieu of compensation and rehabilitation grant as well. The sub-section has laid down in very clear language that no decree obtained on the basis of any private debt incurred alter the passing of the order u/s 6 shall be executed against the compensation bonds and rehabilitation grant. There is a legal bar against executing decrees passed on the basis of any private debt incurred as aforesaid against these properties. The Civil Judge who has entertained the execution application and has now attached the bonds by executing that decree has no power in view of Sub-section (3) aforesaid to do so. The decree cannot be executed against these properties and in doing so he is clearly exercising a jurisdiction not permitted to him. He cannot execute the decree for the same reason and the order of attachment made by him is illegal and in excess of his jurisdiction.

6. The net result, therefore, of the above discussion is that the order of the attachment passed by the first Respondent in execution case No. 43 of 1954 Rani Sheo Prasad Kuer v. Lal Ghand Pratap Singh and Lal Bhanu Pratap Singh attaching the compensation bonds is quashed. The first Respondent is further directed not to proceed with the said execution. Having regard to all the circumstances of the case no order is made as to costs.