(1968) 11 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3581 of 1966

Baldeo Prasad APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 28-11-1968

Acts Referred:

Citation : (1969) 73 ITR 520

Hon'ble Judges : V.G. Oak, C.J;T.P. Mukherjee, J

Bench : Division Bench

Advocate : V.K.S. Chaudhary, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—This petition under Article 226 of the Constitution is directed against proceedings for the recovery of Income Tax dues. One Baijnath Prasad was assessed to Income Tax. The Income Tax dues were not paid. The authorities, therefore, proceeded to recover the arrears of Income Tax. A certain house was attached on the footing that it belonged to Baijnath Prasad, defaulter. Baijnath Prasad''s grand-father, Baldeo Prasad, filed an objection to the effect that the property did not belong to the defaulter, but belonged to the objector. On receiving this objection, the Additional District Magistrate, Banda, passed an order postponing the sale. This order was passed on September 6, 1966. That order was however, recalled by the Collector of Banda in the evening of September 8, 1966. He directed the Tahsildar to proceed with the sale of the property attached. In accordance with that direction, the Tahsildar put the property to auction. The house was auctioned for a sum of Rs. 4,400 in favour of one Prakash Narain, respondent No. 5. Baldeo Prasad has filed this writ petition challenging the sale proceedings.

2. It has been contended for the petitioner that recovery proceedings could not be initiated under the Zamindari Abolition Rules. The sale proclamation makes reference to certain sections of the Zamindari Abolition Act. It has been conceded

for the respondents that the present recovery proceeding is governed by the Income Tax Act, 1961; and recovery was not permissible under the Zamindari Abolition Act and the Zamindari Abolition Rules. The proper procedure was to proceed under the Second Schedule to the Income Tax Act, 1961. It has been urged before us that the recovery proceedings might be treated as proceedings under the Second Schedule to the Income Tax Act, 1961,

3. There is some difficulty in treating the impugned proceedings as proceedings under the Second Schedule to the Income Tax Act, 1961. In many ways, the procedure laid down in the Second Schedule to the Income Tax Act, 1961, is different from the procedure laid down in the Zamindari Abolition Rules. In the present case, proclamation was issued on August 29, 1966. The property was sold on September 9, 1966--11 days after the proclamation. Rule 55 of the Second Schedule lays down that no sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least 30 days from the date of the proclamation. In the present case, sale was held much before the expiry of 30 days from the date of the proclamation. The procedure followed by the authorities contravened Rule 55 of the Second Schedule.

4. Rule 11 of the Second Schedule provides for investigation by the Tax Recovery Officer. Sub-rule (1) of Rule 11 lays down that if any objection is raised against the attachment, the Tax Recovery Officer shall proceed to investigate the objection. Sub-rule (2) of Rule 11 lays down that the Tax Recovery Officer may postpone the sale pending investigation of such an objection. Sub-rule (2) implies that in a proper case the Tax Recovery Officer may decline to postpone a sale in spite of such an objection. In the present case, the Collector decided to hold a sale in spite of the pending objection filed by the present petitioner.

5. The Additional Collector of Banda agreed to postpone the sale. This order was passed on September 6, 1966. But within a couple of days the Collector of Banda reversed the decision. It was decided in the evening of September 8, 1966, that the property must be sold. In paragraph 15 of the petition it is stated that this decision was made by the Collector at 11 p.m. In the counter-affidavit filed by Ram Kumar, Naib-Tahsildar, it is stated that the hour of the decision was 9 p.m. and not 11 p.m. Be that as it may, it appears that the Collector of Banda acted with unnecessary hurry in reversing the decision of the Additional Collector for postponing the sale. It was difficult to collect bidders at such short notice. The sale was actually held on September 9, 1966.

6. It is stated in paragraph 18 of the petition that the house was auctioned ''for Rs, 4,400 in favour of respondent No. 5. This position has not been disputed in the counter-affidavit. It appears from the affidavits filed by the parties that the highest bid was accepted by the Tahsildar himself. ''

7. Under the Income Tax Act 1961, the Tax Recovery Officer means a Collector, an Additional Collector or any officer specially empowered to exercise the powers

of a Tax Recovery Officer, In the present case, there has been no suggestion that the Tahsildar had been conferred with the powers of a Tax Recovery Officer. He could not, therefore, accept the highest bid in the auction. In view of the various irregularities pointed out by the petitioner, the auction sale held on September 9, 1966, should not be allowed to stand. Of course, it will be open to the respondents to hold fresh recovery proceedings in accordance with law. If the authorities insist on the sale of the property, it will be open to the petitioner to press his objection to the effect that the property belongs to him and not to the defaulter.

8. The petition is allowed with costs. The auction of the property in question held on September 9, 1966, is quashed. The property shall remain under attachment.