(1990) 11 AHC CK 0142

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8701 of 1990

B.K. Electronics Wires and Another — APPELLANT

Vs

The Additional Commissioner, Meerut Region and Others — RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Land Revenue Act, 1901 — Section 172, 173, 210
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 281, 282, 283, 284, 285

Citation : (1991) 1 AWC 73 : (1991) RD 14

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—In this writ petition, counter and rejoinder affidavits have been exchanged Counsel for the parties have agreed that the writ petition may be finally disposed of at this stage.

2. This writ petition has been filled challenging the order dated 19-3-1990 passed by Respondent No. 1, Additional Commissioner, Meerut, rejecting the appeal of the Petitioner as time-barred and also as not maintainable.

3. I have heard learned Counsel for the Petitioners and learned Counsel for the Respondents and perused the impugned order The admitted facts are that an amount of Rs. 7,42,19152 p. was due from the Petitioners on account of sales tax dues and also as the amount of loan given by the U.P. Financial Corporation, Respondent No. 6. In realisation of the aforesaid amount the property of the Petitioner was attached on 12-5-1988 and ultimately it was auctioned on 19-10-1989 for Rs. 3,50.000/- in favour of Respondent No. 5 who deposited the entire amount within the time stipulated under law. The Petitioner moved an application on 26-10-1989 before the Collector challenging the auction sale. In

this application the challenge of the Petitioners mainly was regarding the inadequacy of the amount It was in the nature of a complaint. This application is Annexure I to the writ petition. On this application a report was submitted by the Sub Divisional Officer on 20-12-1989 in which it was stated that nobody on behalf of the Petitioner has come forward to press the complaint and there is no illegality in the auction proceedings and the auction sale dated 19-10-1989 may be confirmed. The Collector vide his order dated 26-12-1989 confirmed the auction sale. The Petitioners then filed an appeal on 15-1-1990 against the order dated 26-12-1989, i.e. the order confirming the sale The appeal of the Petitioners has been dismissed by the Respondent No. 1 vide order dated 19-3-1990 after hearing both the sides.

4. The Petitioner at the appellate stage has stated that the Collector bad no jurisdiction to confirm the sale as the property was situate inside the limits of the Municipal Board, Hardwar no such objection was raised in the objection filed by the Petitioner. From the averments made in the writ petition also it appears that the proceedings for recovery of the amount were under the provisions of UP ZA and LR Rules and not under the U.P. Land Revenue Act. The Petitioner has not filed any document showing that the property could not be attached for realisation of the amount as land revenue arrears under the provisions of the UP ZA and LR Rules Under chapter VIII of the U.P. Land Revenue Act, procedure has been provided for recovery of the land revenue and the amount recoverable as land revenue. Admittedly the Petitioner has not filed any application under Sections 172 or 173 of U.P. Land Revenue Act challenging the auction sale dated 19-10-1989. The limitation provided for filing such objection is 30 days under the land revenue Act also. Chapter x of UP ZA and LR Rules from Rules 281 to 286 also contain identical provisions for realisation of the amount as land revenue by sale of the Immovable property. The Petitioner admittedly did not file any application either under Rule 285-H or Rule 285-I within a period of 30 days. Instead he filed an appeal before the Commissioner u/s 210 of the U.P. Land Revenue Act. No appeal could be filed against the order dated 26-12-1989 confirming the auction sale and the appeal tiled by the Petitioner was thus misconceived. Even if the appeal of the Petitioner is treated as objection, either under Rule 285-I of UP ZA and LR Rule or Section 173 of U.P. Land Revenue Act, the same was filed beyond a period of 30 days and was thus time barred. The statutory period of 30 days provided for filing objection before the Commissioner challenging the auction sale could not be extended or relaxed. It has already been held in Indu Engineering and Textiles Ltd. Vs. Commissioner, Agra Division and Others, that Section 5 of Limitation Act does not apply to these proceedings and the delay, if any, in filing objection could not be condoned by the Commissioner. In my opinion, the view taken by the Commissioner is correct and legal and does not suffer from any infirmity. The appeal/objection of the Petitioners was highly time barred and could not be entertained.

5. At the end, the learned Counsel for the Petitioners submitted that the learned Additional Commissioner was not justified in making observations about the

merits of the case as he was dismissing the appeal as time barred and not maintainable and no finding could be recorded. To that extent the learned Counsel is correct that in case any appeal or application is being dismissed as time barred any finding or comment regarding merit of a case could not be made Moreover, the observations of Respondent No. 1 were only in connection with these proceedings and cannot prejudice the interest of the Petitioner in any other proceeding. The finding and observations were in fact redundant in view of the fact that appeal was being dismissed as not maintainable.

6. For the reasons recorded above, the writ petition has no merit and is liable to be rejected subject to the aforesaid observations Accordingly, the writ petition is dismissed. There snail be no order as to costs.

