
(1995) 09 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 4473 of 1976

Cawnpore Rolling Mills (P.) Ltd. and Another	APPELLANT
Vs	
Sub-Divisional Officer and Others	RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 58(3)
Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 280,
281, 282, 282(1)

Citation : (1996) RD 161

Hon'ble Judges : N.B. Asthana, J;D.S. Sinha, J

Bench : Division Bench

Advocate : R.B. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

D.S. Sinha, J.—Heard Sri Surendra Kumar Posti, learned Counsel appearing for the Petitioners. Sri Sudhir Chandra, learned Senior Advocate appearing for the Respondent No. 2 and Shri Tej Ram, learned standing counsel representing the Respondent No. 1.

2. M/s. K. Charan Private Limited, Kanpur, the Respondent No. 4 owes to Kanpur Electricity Supply Administration, Kanpur, the Respondent No. 2, a sum of Rs. 63,139.16 Paise in connection with electricity charges. At the behest of Respondent No. 2, proceeding for recovery of the said amount from Respondent No. 4 has been initiated and in that connection, the movable properties specified in the auction notice, a copy whereof is Annexure 2 to the writ petition, have been attached and notified for auction-sale.

3. Asserting that the properties attached and proposed to be sold belonged to them, and not to the Respondent No. 4. and as such are not liable for attachment and sale, the Petitioners have filed this writ petition for quashing the

auction notice and restraining the authorities from auctioning the aforesaid properties in question.

4. From the perusal of the documents annexed to the counter-affidavit filed on behalf of the Respondent No. 2, It transpires that recovery Is being effected under the provisions of the Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958, Section 5 whereof declares the electricity dues payable to the Kanpur Electricity Supply Administration to be recoverable as arrears of land revenue.

5. It is not disputed by the learned Counsel for the parties that for the purpose of recovery as arrears of land revenue, the provisions contained in Sections 279, 280, 281 and 282 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act) are applicable. Section 282(1) of the Act provides that the Collector may. whether the defaulter has been arrested or not, attach and sell his movable property. Sub-section (2) of Section 282 of the Act stipulates that sale u/s 282 shall be made according to the law in force for the time being for attachment and sale of movable property in execution of a decree of a civil court.

6. Thus, in the instant case the, provisions of the Code of Civil Procedure, 1908 (hereinafter called the "Code") are attracted. Rule 58 of Order XXI of the Code provides for adjudication of claims to, or objection to attachment of property. Under this provision, any claim to or objection to the attachment of the property is to be adjudicated upon, and if the claim or objection is upheld, the property has to be released from attachment under Sub-rule (3).

7. According to the Petitioners, an objection dated 29th October, 1976, a copy whereof is Annexure "4" to the Petitioner, preferring claim to and objection against the attachment of the properties in question was filed before the Sub-Divisional Officer, Kanpur, the Respondent No. 1, and the same has not yet been decided hitherto. In the counter-affidavit filed on behalf of the Respondent No. 2, the factum of filing of the objection by the Petitioners is not denied. However, in paragraph 16 of the counter-affidavit, it is stated that the objection of the Petitioners was decided before the proposed auction by the Tahsildar, Kanpur.

8. It is to be noticed that the objection of the Petitioners was filed before Respondent No. 1, under whose order the properties in question were attached and were being put to auction-sale. There is nothing on record to show that the Respondent No. 1 even decided the objection of the Petitioners. The assertion is on behalf of Respondent No. 2 that (sic.) the objection of the Petitioners was decided by the Tahsildar, Kanpur, denied by the Petitioners in their rejoinder-affidavit, is of no avail. In the opinion of the Court, it was the Respondent No. 1, who was competent to decide the objection of the Petitioners inasmuch as the attachment and auction-sale was directed by Respondent No. 1, and the Petitioners had filed their objection before him. Indeed, the Respondent No. 1 is legally obliged to decide the objection of the Petitioners before proceeding with

the auction of the property in dispute. For so long as the objection of the Petitioners Is not decided, the proceedings for sale of the property in dispute cannot go on.

9. For the foregoing reasons, the petition succeeds and is allowed, the Respondent No. 1 is directed to decide the objection of the Petitioners dated 29th October, 1976 (Annexure "4" to the petition) within two months, to be computed from the date of production of a certified copy of this judgment before him by the Petitioners. The Petitioners are directed to produce a certified copy of this judgment before Respondent No. 1 within one month, to be computed from the date of the receipt thereof. For so long as the objection of the Petitioners is not decided, the auction-sale of the property in dispute shall not be carried out. There will be no order as to costs.