(1988) 09 AHC CK 0045

In the Allahabad High Court

Case No : Writ Petition No. 2910 of 1984

Daya Ram Agarwal APPELLANT

Vs

Board of Revenue, U.P., Lucknow & Others RESPONDENT

Date of Decision : 02-09-1988

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 164, 173
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285A

Citation : (1988) 09 AHC CK 0045

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Dismissed

Judgement

U.C. Srivastava, J

1. The petitioner who claims himself to be the auction purchaser in the auction sale which took place for recovery of certain industrial loan as arrears of land revenue and highest bidder, has preferred this writ petition challenging the order passed by the Commissioner, Allahabad Division, Allahabad, and the Board of Revenue dismissing his revision application and upholding the order passed by the Assistant Collector and the Divisional Commissioner.

2. Opposite party no.4 was defaulter in respect of certain industrial loan which he had taken from U.P. Small Industries Corporation and recovery proceedings started against him. Recovery certificate was issued by the Corporation and on the basis of the recovery certificate the Collector started recovery proceedings against the petitioner and appointed a Magistrate as the Sale Officer who conducted the sale of the immovable property which was situated at 63/4, King Market, Mall Road, Kanpur, owned by opposite party no. 4, in accordance with the provisions of the U.P. Land Revenue Act which was applicable. As provided in section 162 of the U.P. Land Revenue Act the proceedings for attachment and auction of immoveable property of Opposite party no. 4 situate at 63/4, King Market, Mall Road, Kanpur started and the auction was advertised by distribution of handbills, beat of drum and publication in News papers and it took place on

27th January, 1982 at the place fixed for it. The sale was conducted by the Magistrate i.e., the1 Sale Officer. The petitioner''s bid being highest of Rs. 52,500 was accepted by the Sale Officer, that is, the Assistant Collector who was appointed by the Collector to conduct the sale. The petitioner deposited 1/4th of the auction money and deposited 3/4th money within 15 days from the date of auction. It appears that the Collector did not consider the bid to be adequate and ordered that the property may be put to auction again and the amount deposited by the petitioner may be refunded back to him. It appears that part of the amount was refunded to the petitioner through Bankdraft.

3. Sections 172 and 173 of the U. P. Land Revenue Act provide for setting aside sale by the concerned person. Section 172 provides for setting aside of sale at the instance of a person where land or other immovable property has been sold within 30 days on depositing a sura of 5% of purchase money to be paid to the purchaser and the amount for which recovery was ordered and the costs of the sale. Section 173 provides for m ivmg of an application within 30 days of the sale by a person who has Mistimed substantial injury by reason of some material irregularity and mistakes in the publishing and conducting of sale. If such application has been made and rejected, the Commissioner shall pass an order confirming the sale and in case it is allowed, the Commissioner shall pass an order setting aside the sale, and direct for reauction of the property.

4. The petitioner filed an objection under Rule 2851 of the U. P. Zamindari Abolition and Land Reforms Rules against the second auction which was conducted on 25th January, 1983, alleging that he was the highest bidder and the auction was complete with the legal requirement and he deposited 3/4th amount within time and subsequently the authorities unauthorisedly and illegally set aside the sale. The property being in the city of Kanpur, the provisions of U. P. Zamindari Abolition and Land Reforms Act were not applicable, but those of U. P. Land Revenue Act were applicable. Rule 2851 of U. P. Zamindari Abolition and Land Reforms Rules is analogous to Section 173 of U. P. Land Revenue Act. Even if the petitioner''s objection is read to be an objection under Section 173 of U. P. Land Revenue Act before the appropriate authority, that is the Commissioner of the Division, the question of its maintainability will still remain. Both under Section 173 of U. P. Land Revenue Act and Rule 2851 of U. P. Zamindari Abolition and Land Reforms Rules only a person who has sustained substantial injury by reason of material irregularity or mistake in the publishing and conducting of sale can hie objection. The Section and the Rule postulate filing of such an objection by the person whose property has been put to sale. A bidder at the previous auction which has been rightly or wrongly set aside prior to its confirmation is not entitled to file an objection under Section 173 of U. P. Land Revenue Act. That a person whose grievance is that as a result of previous auction he becomes purchaser and thereby owner of the property and the sale cannot be set aside and property could not be reauctioned, has no right to file objection of the nature postulated in Section 173 of the U. P. Land Revenue Act. In this view no proceedings on the objection filed by the petitioner before the Commissioner

could have taken place.

5. The Collector was the authority to hold and conduct the auction and either he or any one appointed by him could have conducted the auction. If the auction would have been held by him, his acceptance would be final. But if it is held by an officer appointed by him, acceptance by him could not be final and only authority which could be delegated is to conduct the sale. The limited delegation could not make him Collector or confer all the powers of Collector in the matter. The Collector''s powers to accept or not to accept the bid are intact and so long the bid was not accepted by him, no concluded contract could come into existence. Merely because bid of a person being the highest is accepted by Sale Officer no concluded contract came into existence. The Collector had jurisdiction to reject a particular bid on the ground that it was inadequate notwithstanding it was accepted by his delegate for the purposes of only conducting the sale. The bid not having been accepted,the property could have been put to reauction. In these circumstances there was no delegation to confirm the first sale merely because the petitioner''s bid was accepted by the Sale Officer.

6. In view of what has been said above, the writ petition deserves to be dismissed and no interference in the orders passed by the Commissioner, Allahabad Division, Allahabad, or the Board of Revenue is called for.

7. The writ petition is dismissed, but there will be no order as to costs.