
(2006) 02 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 984 of 2004

Ghanshyam Singh, Ram Dhar Dubey and Brij Bhushan
Chaubey

APPELLANT

Vs

The Divisional Commissioner, Vindhyachal Division and
Others

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Land Revenue Act, 1901 — Section 172, 173

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285H, 285I

Citation : (2006) 02 AHC CK 0051

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Sheo Mani Yadav and K.P.S. Yadav, for the Appellant; U.K. Mishra and A.K. Mishra and S.C., for the Respondent

Judgement

Janardan Sahai, J.—There were certain dues relating to stamp duty against the petitioners on account of which proceedings for recovery as arrears of land revenue were initiated and property of the petitioners was sold in an auction said to have been held on 29.4.2002. No objections were filed against the sale in favour of respondents 4 to 6, which was confirmed on 15.6.2002. The petitioners then made an application-dated 16.10.2002 headed under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules to the collector, in this application it is alleged that the auction sale was illegal and that the respective husbands of the opposite parties 4 to 6 are working as Collection Amins in the Collectorate Robertsganj and the sale was vitiated by collusion and fraud, other allegations were also made and it has been stated in the application that the petitioners are ready, to deposit the requisite amount under Rule 285-H. As the application was belated an application u/s 5 of the Limitation Act supported by an affidavit was also filed by the petitioners. An order for maintaining status quo was passed by the Collector on 16.10.2002. Against the order dated 16.10.2002 a revision was

filed by the respondents 4 to 6. The said revision has been allowed by the order dated 19.12.2003. In this writ petition the petitioners have challenged the order dated 19.12.2003 passed in the revision as well as the auction dated 29.4.2002 in which the property of the petitioner was sold. Counter and rejoinder affidavits have been exchanged.

2. I have heard Sri K.P.S. Yadav, learned Counsel for the petitioners, Sri A.K. Mishra, learned Counsel for the respondents 4, 5 and 6 and the learned standing Counsel on behalf of respondents 1, and 3.

3. The finding recorded in the revision is that the application under Rule 285-H filed by the petitioners beyond the period of 30 days provided in the rule is not maintainable, it is submitted by the learned Counsel for the petitioners that the petitioners obtained knowledge of the sale proceedings on 10.10.2002 and the delay was therefore liable to be condoned and the application allowed. The question that has arisen in this case therefore is whether the provisions of Section 5 of the Limitation Act are applicable to a proceeding under Rule 285-H of the U.P. zamindari Abolition and Land Reforms Rules. The nature of the proceeding under Rule 285-H U.P. zamindari Abolition and Land Reforms Rules is not judicial. A right is given to the person whose property is sold to get the sale set aside if he fulfills the requirement provided under that Rule. The right is absolute and if the requirements of the Rule are fulfilled there is no discretion left in the collector not to set aside the sale. There is no lis to be decided. The collector while dealing with the application does not act as a court, it is not a proceeding to which Section 5 of the Limitation Act may apply. The application of the petitioners dated 16.10.2002 has been filed long after the prescribed period of 30 days provided under Rule 285-H. Sri A.K. Mishra, learned Counsel for the respondents 4 to 6 relied upon *Indu Engineering and Textiles Ltd. Vs. Commissioner, Agra Division and Others*, in this case the provisions of Rule 285-H and 285-I were considered and it was held that the Commissioner in matters relating to realization of arrears of land revenue acts as Revenue Officer, and not as a revenue court. This decision has been overruled by the Full Bench in *Ram Swaroop v. Board of Revenue and Ors.* 1990 RD 29 in so far as its view regarding proceedings under Rule 285-I is concerned. In 1991 R.D 14 (*B.K. Electronics Wires and Anr. v. The Additional Commissioner, Meerut and Ors.*). Sections 172 and 173 of the U.P. Land Revenue Act in which the statutory period of limitation for filing objection is 30 days was considered and it was held that the statutory period could not be extended or relaxed and Section 5 of the Limitation Act does not apply. The Full Bench in *Ram Swaroop* held that the Commissioner while dealing with objections under Rule 285-I acts as a court. The view taken in *Indu Engineering* regarding Rule 285-H U.P. zamindari Abolition and Land Reforms Rules and about Section 172 of U.P. Land Revenue Act in *B.K. Electronics Wires* still holds good. In *Munni Lal Vs. Smt. Sona and Others*, it was held by this Court in a case relating to Order 29 Rule 89 Civil procedure code, which applies to auctions by civil court that deposit must be made within 30 days from the date of the auction and time can not be extended by the court; in

Order 21 Rule 89 as well as in Rule 285-H U.P. Zamindari Abolition and Land Reforms Rules the sale shall be set aside if the person whose property is sold applies to have the sale set aside on his depositing" the amount referred to in these provisions. The application is consequent to the deposit. Section 5 of the Limitation Act applies to limitation in appeals and applications but not to the act of deposit of money, which is the precondition for filing the application for setting aside the sale. For this reason too Section 5 of Limitation Act has no application.

4. It has also been found that no deposit under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules has been made and for this reason also the application is not maintainable. The reason given is sound. The view taken by the revisional court therefore does not suffer from any error of law.

5. In this writ petition the auction is sought to be challenged on the ground of fraud and collusion etc., which the petitioners have taken in the application filed under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules. Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules itself contains the proviso that if a person applies under Rule 285-I of the U.P. Zamindari Abolition and Land Reforms Rules to set aside the sale he would not be entitled to make an application under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules. Although application of the petitioners is headed under Rule 285-H of the U.P. Zamindari Abolition and Land Reforms Rules but the averments made therein are averments, which are within the scope of Rule 285-I of the U.P. zamindari Abolition and Land Reforms Rules. As already referred to above one of the ground attacking the sale is fraud and collusion. These are grounds, which are not relevant to Rule 285-H but are relevant to Rule 285-I. The petitioners can not therefore simultaneously pursue the application under Rule 285-H and under Rule 285-I of the U.P. Zamindari Abolition and Land Reforms Rules.

6. An application under Rule 285-I lies before the Commissioner. The application-giving rise to this writ petition has been filed before the Collector, it is therefore not maintainable, it is open to the petitioner to file a fresh application under Rule 285-I. Learned counsel for the petitioners submitted that the delay in filing the application, which is proposed to be filed has been caused not on account of the fact that the petitioners were sitting idle but they were prosecuting the application under Rule 285-H under bona fide advice in the circumstances it will be open to the petitioners to file an application u/s 5 of the Limitation Act also along with the application under Rule 285-1 of the U.P. Zamindan Abolition and Land Reforms Rules, which they may file. Sri A.K. Mishra, learned Counsel for the respondents 4 to 6 states that the respondents 4 to 6 will co-operate in the disposal of the application under Rule 285-I should the petitioners file the same, in case such an application is filed the commissioner shall try to dispose of the same expeditiously and if possible within a period of six months from the date the application along with a certified copy of this order is filed before him.

7. No ground for interference in this petition has been made out.

8. With the aforesaid observations the writ petition is disposed of.