
(2007) 04 AHC CK 0327
In the Allahabad High Court

Guru Prasad and Others

APPELLANT

Vs

District Assistant Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 92(b)

Citation : (2008) 1 AWC 857

Hon'ble Judges : U.K. Dhaon, J;S.K. Jain, J

Bench : Division Bench

Judgement

U.K. Dhaon and S.K. Jain, JJ.—Heard Sri S.M.K. Chaudhary, learned Counsel for the petitioners and Sri Rakesh Kumar learned Counsel for the opposite parties No. 1 and 2 and Sri R.P. Dwivedi, learned Counsel appearing for opposite party No. 3.

2. The brief facts of the case are that the father of the petitioners Nakchhed was bhumidhar of Khasra Nos. 41, 50 and 51 situated at village Faqirchak, Pargana, Tehsil and District Bahraich who had taken some loan from the Sadhan Sahkari Samiti Rahwa Bishampur District Bahraich and as he could not repay the loan an award dated 15.4.1960 was passed by the Assistant Registrar Cooperative Society Bahraich for Rs. 1,592 against the father of the petitioners. Out of Rs. 1,592 a sum of Rs. 600 was the principal amount Rs. 572 was the interest and Rs. 420 was the collection amount. In pursuance of the award dated 15.4.1960, the opposite party No. 1 moved the execution on 28.9.1975 and after attachment the property of Nakchhed, i.e., father of the petitioner was auctioned in a public auction dated 16.1.1976. The opposite party No. 3 was the highest bidder of Rs. 4,100 and accordingly he deposited 1/4th of the amount, i.e., Rs. 1,025 on the same day. Soon after the auction proceedings the father of the petitioners filed objection before the opposite party No. 1 under Rule 348 of the Co-operative Societies Rules, 1968.

3. The petitioners have alleged that they were minor at the time when the property was auctioned and on 17.5.1985 the petitioners moved a representation

under Rules 339(K) and 342 of the U.P. Cooperative Societies Rules, before the District Magistrate (Recovery Officer) Bahraich, a copy of which has been annexed as Annexure-2 to the writ petition. On 24.9.1985, the Assistant Registrar sent a communication to the District Magistrate stating inter alia that the opinion of the D.G.C. Civil is necessary in the matter. On 24.12.1985, the D.G.C. Civil sent his opinion to the District Magistrate stating inter alia that the confirmation of sale will not be proper. Thereafter on 28.1.1986 the auction was confirmed by the District Assistant Registrar and the opposite party No. 3 was permitted to deposit the remaining 3/4th amount. Soon after the sale was confirmed on 28.1.1986, the petitioner filed the instant petition in August, 1986 and on 11.8.1986 the following interim order was passed by this Court.

Hon"ble S.S. Ahmad, J.

Hon"ble D.S. Bajpai, J.

Issue notice to opposite parties Nos. 2 and 3. Notice on behalf of opposite party No. 1, has been accepted by the Chief Standing Counsel. Having regard to the facts that there was a writ petition filed earlier by the petitioner's father which was dismissed and that some civil proceedings were initiated which were also dismissed we were initially not inclined to entertain this petition but the petitioner filed a supplementary-affidavit in which he has indicated that the execution of the award has been made under Clause (b) of Section 92 of the U.P. Cooperative Societies Act, for which recovery the procedure of attachment and sale prescribed by the U.P. Cooperative Societies Rules, 1968, should have been followed. Since in the instant case, the sale appears to have been held without any previous notice to the petitioners, the provisions of Rules 352 have not been complied with. We, accordingly, direct that notice be issued to opposite parties 2 and 3 to show cause why the writ petition may not be admitted. It shall be indicated in the notice that the petition shall be listed for orders on the application, on 20.10.1986. Till that date if the petitioners are still in possession in spite of the sale having been confirmed in favour of the opposite party No. 3 and mutation having already been affected in his favour the petitioner shall continue to remain in possession.

4. The learned Counsel for the petitioners submits that the award was made by the Assistant Registrar Cooperative Societies on 15.4.1960 and the execution of the Award was moved on 28.9.1975, on the basis of which, the auction was held on 16.1.1976. He further submits that the execution was moved by the Assistant Registrar after more than 12 years and, therefore, the award dated 15.4.1960 was not competent for execution in view of the provisions of Section 92 of the U.P. Cooperative Societies Act, as the limitation prescribed under the Act is only 12 years. He further submits that the principal amount due under the award was only Rs. 600 and Rs. 572 was the amount of interest and against this meagre amount 3.79 acres of land of the father of the petitioners was sold in a public auction for Rs. 4,100 in a most arbitrary and illegal manner and against the provisions of Rule 317 of U.P. Cooperative Societies Rules, 1968, which provides

that the attachment made shall not be excessive, that is to say, the property attached shall not normally exceed in value of 10% above the sum due. He further submits that the petitioners have not deposited the remaining 3/4th amount within 15 days from the date of auction as provided under Rule 339(J) of the U.P. Cooperative Societies Rules, 1968 and as such the sale could not have been confirmed after the expiry of 30 days. He further submits that the sale was confirmed after about 10 years from the date of the auction and during these 10 years the rate of the properties was increased in the area. He further submits that the entire exercise done by the opposite parties No. 1 and 2 for auction of the property of the petitioners are against the provisions of the U.P. Cooperative Societies Act and Rules and as such it deserves to be quashed. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in *Ambatinarasayya v. M. Subba Rao* and *Anr.* 1989 (2) SCC 693 and *Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma and Others*,

5. Sri R.P. Dwivedi learned Counsel for the opposite party No. 3, submits that 1/4th amount was deposited by the opposite party No. 3, on 16.1.1976 and thereafter the remaining amount was deposited by the opposite party No. 3 on 28.1.1986 when the auction was confirmed and thereafter the sale certificate was given to the opposite party No. 3 and his name was also mutated in the revenue records. He further submits that the petitioners have not approached this Court with clean hands and they were having full knowledge about the litigation prior to 1985. He further submits that the writ petition as well as civil suit preferred by the father of the petitioners were dismissed and as such petitioners are not entitled for any relief in the instant writ petition. He further submits that when the sale was confirmed the father of the petitioners was alive.

6. Sri Rakesh Kumar, learned Counsel for the opposite party No. 2 submits that in pursuance of the award dated 15.4.1960 the auction was held on 16.1.1976, which was duly confirmed by the competent authority on 28.1.1986 and there is no illegality in the proceedings. He further submits that the father of the petitioners also filed a civil suit, which was dismissed and the writ petition filed by him was also dismissed. He further submits that the award was not challenged by the Nakchhed u/s 98 of the U.P. Cooperative Societies Act, which was the remedy available to him.

7. We have considered, the submissions made by the learned counsel for the parties and gone through the record.

8. It is the admitted case of the parties that the award dated 15.4.1960 was passed by the Assistant Registrar Cooperative Societies against Sri Nakchhed, the father of the petitioners for a total sum of Rs. 1,592 and the execution was moved by the opposite party Nos. 1 and 2 on 28.9.1975 on the basis of which the property of the Nakchhed was attached and the auction in respect to Plot Nos. 41, 50 and 51 total area of about 3.79 acres was held on 16.1.1976. Under the award the principal amount due was Rs. 600 only and the amount of interest was Rs. 572.

9. Rule 317 of the U.P. Cooperative Societies Rules, 1968, is as under:

The attachment made shall not be excessive, that is to say, the property attached shall normally not exceed in value of ten per cent above the sum due from the judgment-debtor together with the interest and all expenses incidental to the attachment and the sale.

10. In the instant case for a meagre amount of Rs. 1,592 the entire agricultural land, i.e., 3.79 Acres of Nakchhed was put to auction in violation of Rule 317 of the U.P. Cooperative Societies Rules, 1968. On 16.1.1976 only 1/4th amount was deposited by the auction purchaser and as per the provisions of Rule 339 (J) of the U.P. Cooperative Societies Rules, 1968, the auction purchaser was required to deposit the remaining amount and the amount required for the general stamp for the sale certificate within 15 days from the date of sale but in the instant case the remaining 3/4th amount was deposited by the opposite party No. 3, after the sale was confirmed on 28.1.1986. The record reveals that the District Magistrate on the representation of the petitioners as early as on 17.10.1983 had asked the opposite parties 1 and 2 to get the opinion of D.G.C. (Civil) in the matter. On 17.5.1985, the petitioners moved a representation under Rules 339 (K) and 342 of the U.P. Cooperative Societies Rules before the District Magistrate (Recovery Officer) and thereafter the Assistant Registrar through communication dated 24.9.1985 sent to the District Magistrate made a request for the opinion of the District Government Counsel (Civil) in the matter. The District Government Counsel on 24.12.1985 submitted his opinion before the authorities stating inter alia that the confirmation of the sale will not be proper but in spite of this, the sale was confirmed on 28.1.1986. For a very meagre amount the property of Nakchhed was auctioned after more than 16 years. Nakchhed had taken all steps for redressal before the civil court as well as by filing a writ petition in this Court, as evident from the record but neither the petitioner nor the opposite parties have filed the copies of the judgment passed by this Court as well as the civil court. The petitioners have alleged that their names were mutated in the revenue records on 10.3.1985 and they are in possession.

11. Section 92 of U.P. Cooperative Societies Act, is as under:

1. Execution of certain orders and awards.--Every award made under 71, and capable of execution in the manner provided below and every order so capable of execution made by the Registrar u/s 67 or Sub-section (2) of Section 68 or u/s 91, or by the liquidator u/s 74 or by an appellate authority on appeal u/s 97 or 98 or on review u/s 99 or as an interlocutory order u/s 100 [or a certificate for recovery issued u/s 95A] shall, if not carried out, be executed-

(a) in the manner provided by law for the time being in force for the recovery of arrears of land revenue:

Provided that an application for the recovery of any such sum is made to the Collector and accompanied by a certificate signed by the Registrar or any person authorised by him in this behalf:

Provided further that such application is made within 12 years from the date fixed for payment in the order or award and if no such date is fixed, from the date of the order or award, as the case may be; or

(b) by the Registrar or any other person subordinate to him and empowered by him in this behalf, by attachment and sale or sale without attachment of any property of the person or the cooperative society against whom the order or award has been made ; or

(c) by the civil court having jurisdiction over the matter as if the order or award were the decree of that Court.

12. The execution of the award as per Section 92 can be made within 12 years from the date of the award. Admittedly, the execution was moved on 28.9.1975, which was time barred in view of the specific provisions contained in Section 92 of the Act. The auction which was held on 16.1.1976 was not a valid auction as a time barred award could not be executed through a public auction. The entire proceedings subsequent to the expiry of 12 years from the date of award, i.e., 15.4.1960 are of no consequence irrespective of the facts that the father of the petitioners was knocking the door of the Courts and failed to get any relief. The record reveals that the father of the petitioners expired in December, 1983.

13. The writ petition succeeds and is hereby allowed. A writ in the nature of certiorari is issued quashing the auction proceedings, which was held on 16.1.1976 and the confirmation of the auction, which was held on 28.1.1986 a copy of which has been annexed as Annexure-3 to the writ petition.

14. Since we have quashed the auction proceedings on the ground of limitation the petitioners shall deposit the amount of the award dated 15.4.1960 plus up to date interest with the opposite party No. 2, within six weeks from today and the amount deposited by the petitioners shall be refunded to opposite party No. 3, within eight weeks from today.