(2009) 10 UK CK 0007

In the Uttarakhand High Court

Harendra Singh APPELLANT

Vs

Commissioner Garhwal Region and Others
 Sardar Ranbir Singh and Another Vs Sardar Harendra Singh and Others
 Sardar Ranbir Singh Vs Chief Revenue Commissioner and Others RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

State Financial Corporations Act, 1951 — Section 32(G)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 288

Citation : AIR 2010 Utt 19 : (2010) 1 UD 120

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—All these petitions are interconnected with the consent of parties, all these petitions are being heard and disposed off together. With the consent of learned Counsel appearing for the parties, I am taking W.P. No. 424 (M/S) of 2003 as leading case.

2. Present writ petition is filed challenging the order dated 02.12.2002 passed by Additional Revenue Commissioner, Uttaranchal Dehradun in L.R. revision No. 4/2001-02 Harendra Singh v. State and order dated 08.06.1998 passed by Commissioner Garhwal Region in Z.A. Misc. Appeal No. 26/93-94 Harendra Singh v. State. Petitioner further seeks writ of mandamus commanding the respondents not to interfere in the possession of the petitioner.

3. The Brief facts of the present case are that the petitioner is owner of the property known as "80, Nashvilla Road, Dehradun". It is further pleaded that petitioner has taken loan from U.P.F.C./respondent No. 3 to purchase Truck. It is further pleaded that property ''80, Nashvilla Road, Dehradun'' (hereinafter referred as dispute property) was put in auction by Revenue Authorities on the request (Recovery certificate) of U.P.F.C. on 23.07.1994 against which petitioner has filed objections/appeal before the Commissioner, Garhwal Region which was

dismissed vide order dated 08.06.1998 and revision thereafter was also dismissed by Additional Revenue Commissioner, Uttaranchal vide order dated 02.12.2002.

4. Heard, learned Counsels for the parties and perused the record.

5. It is stated that both authorities i.e. Commissioner, Garhwal Region and Additional Chief Revenue Commissioner, Uttaranchal failed to appreciate that U.P.F.C. can not issue recovery certificate to the Collector under the provision of U.P. Public Moneys (Recovery of Dues) Act, 1972. It is further stated the all the proceedings of the auction pursuant to recovery certificate under U.P. Public Moneys (Recovery of Dues) Act, 1972 are without jurisdiction and ipso facto illegal hence impugned auction can not be confirmed.

6. Sri R.C. Arya, Advocate appearing for respondents No. 1 & 2 contended that once recovery certificate is issued then collector is duty bound to proceed to recover the amount shown in the recovery certificate. It is also contended by Mr. Arya that Collector shall not look into as to whether authority issuing recovery certificate is competent to issue recovery certificate and as to whether, amount shown in the certificate can be recovered as arrears of land revenue or not. He, while referring the Section 288 of U.P. Zamindari Abolition and Land Reforms Act, 1950, argued that once recovery certificate is issued then amount shown would be recovered as arrears of land revenue.

7. Sri Anil Kumar Joshi, learned Counsel for the respondents No. 4 to 10 (Highest bidder) fairly stated that auction has not been confirmed as yet because Stay order was passed by the Court. He states that if loan is granted to the petitioner under some Government scheme, same can be recovered as arrears of land revenue. He further contended that he has deposited entire money hence auction can not be cancelled at this stage. According to Sri Anil Kumar Joshi, being highest bidder for no fault of them, they should not be allowed to suffer adversely.

8. I do not agree with the arguments of Mr. Arya, learned Brief Holder for the State that once recovery certificate is issued to the Collector he should proceed to recover the amount shown in the certificate without satisfying himself on the point as to whether amount is recoverable as arrears of land revenue or not.

9. I am of the view the moment Collector receives Recovery certificate requesting him to recover the amount as arrears of land revenue he should not proceed mechanically to recover the same as arrears of land revenue. Before proceeding he should record his satisfaction as to whether amount is recoverable as arrears of land revenue in the relevant law? And as to whether authority sending the certificate has any authority/jurisdiction to issue the Recovery Certificate?

10. In the present case, Collector without looking into two questions as observed above commenced the recovery proceedings. Had the Collector been vigilant he

would have returned the recovery certificate to the UPFC saying UPFC can not recover loan amount as arrears of land revenue.

11. Learned Counsels, appearing for the parties, admitted that the recovery certificate is issued by U.P.F.C. under the provision of U.P. Public Moneys (Recovery of Dues) Act, 1972. Copy of recovery certificate is on the file of WP (MS) 1166 of 2002 as annexure No. 8 to the Counter affidavit. Perusal of the recovery certificate reveals that it has been issued under provision of U.P. Public Moneys (Recovery of Dues) Act, 1972.

12. Now, main question arises as to whether UPFC can issue recovery certificate to the Collector to recover the loan amount as arrears of the land revenue?

13. Mr. V.K. Kohli, learned Senior Advocate has drawn attention of this Court on the judgment of Apex Court in the matter of AIR 2003 SC 2103 . The Apex Court in this matter has clearly laid down that U.P. Financial Corporation can not proceed under the U.P. Public Moneys (Recovery of Dues) Act, 1972 although corporation can proceed against defaulter under the relevant law.

14. I fully agree with the argument of Mr. V.K. Kohli, Senior Advocate. As per the judgment of the Apex Court/Supra, recovery certificate can not be issued by UPFC to recover the loan amount as arrears of land revenue. Hence, Recovery certificate issued by UPFC to Collector was without jurisdiction. I find since loan advanced by the UPFC was to purchase the truck (Goods vehicle) hence Section 32(G) of State Financial Corporation Act is also not attracted.

15. Since, recovery certificate sent by UPFC to Collector was without jurisdiction hence entire recovery proceedings including impugned auction pursuant thereof is ipso facto illegal and without jurisdiction. Hence, this Court can not uphold impugned auction dated 23.07.1994.

16. The next argument of Mr. Kohli is that pursuant to letter dated 29.05.2002 written by UPFC (annexure No. 8 to the writ petition). Petitioner has deposited entire amount due with the U.P.F.C. Hence, impugned auction should not be confirmed. Para No. 43 (b) of the writ petition reads as under:

43(b) That during pendency of the petition due of U.P. Finance Corporation Ltd. have been paid to them along with interest and the U.P. Finance Corporation Ltd. wrote a letter to the Collector calling back their recovery proceeding and thus, the recovery proceedings, auction and all other proceedings in consequent thereto are liable to be set aside. A true copy of letter written by U.P. Finance Corporation Ltd. to the Collector, Dehradun dated 03.06.2003 may be taken on record as annexure No. 10 to the writ petition.

17. Sri Naresh Pant, Advocate appearing for the U.P.F.C. has not denied contention of Mr. Kohli and stated that he has instructions not to contest the petition.

18. Mr. Arya and Mr. Anil Kumar Joshi are not in a position to reply or deny the

allegation made in para No. 43(b) of Writ Petition. Now this Court has no other option except to accept the contention made in para 43(b) of the writ petition that petitioner has in fact deposited the entire due amount with U.P.F.C.

19. Now, question comes if defaulter makes payment of outstanding amount after the auction but before its confirmation as to whether sale should be confirmed or not?

20. It is settled law that highest bidder acquires no right over the property auctioned prior to confirmation of sale. If defaulter makes entire payment or debtor and creditor settle the claim before the confirmation of auction/making the sale absolute, court/authority can refuse to confirm the sale.

21. In view of observations made herein before impugned auction is liable to be quashed. Since, this Court is quashing impugned auction dated 23.07.1994, hence Court is not examining other points raised in the petition.

22. The writ petition No. 424 (M/S) 2003 is allowed. The impugned judgement dated 02.12.2002 and 08.06.1998 passed by Additional Revenue Commissioner, Uttaranchal and Commissioner, Garhwal Region as well as auction dated 23.07.1994 are hereby quashed.

23. However, auction purchasers are entitled for refund of money deposited by them. Parties shall bear their own cost.

24. In view of the order passed in W.P. No. 424 of 2003 (M/S), W.P. No. 1166 (M/S) of 2002, W.P. No. 1211(M/s) of 2002 also stands disposed off. Copy of order passed in W.P. 424 of 2003 (M/S) be kept on the record of W.P. No. 1166 (M/S) of 2002 and W.P. No. 1211 (M/S) of 2002.

