(2015) 10 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc Writ Petition No. 921 (M/B) of 2013

Indrawati Mishra and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 284, 286

Citation : (2015) 10 AHC CK 0083

Hon'ble Judges : Narayan Shukla and Akhtar Husain Khan, JJ.

Bench : Division Bench

Advocate : Shiwa Kant Tiwari, for the Appellant

Final Decision : Allowed

Judgement

Akhtar Husain Khan, J.—Petitioners Smt. Indrawati Mishra, Manoj Kumar Mishra and Anand Kumar Mishra have invoked jurisdiction of this Court under Article 226 of the Constitution of India by means of this writ petition.

2. Petitioners have made following prayers:

"(I) Issue a writ, order or direction in the nature of certiorari to quash the impugned Recovery Certificate and entire auction sale proceedings dated 01.09.90 as mentioned in Khatauni Extract (Annexure No. 1) by summoning the same in original from opposite parties.

(II) Issue a writ, order or direction in the nature of mandamus directing opposite parties 1 to 4 to restore ownership of land mentioned in Khatauni Extract (Annexure-1) in the name of late Shiv Bahadur son of late Kalp Nath and further in the name of heirs and legal representatives of late Shiv Bahadur Mishra.

(III) Issue a writ, order or direction in the nature of mandamus directing opposite party No. 5 to provide the Assessment Order of Tax due to the extent of Rs. 65385/- against late Shiv Bahadur Mishra and to permit them to prefer an

Appeal and if the Assessment Order is maintained to permit the petitioners to deposit the same in easy installments.

(IV) Issue an ad interim relief to above effects."

3. Affidavits have been filed by the parties.

4. We have heard Mr. Shiwa Kant Tiwari, learned counsel for petitioners as well as learned Additional Chief Standing Counsel.

5. In brief, relevant facts as alleged by petitioners are that petitioner No. 1 is widow and petitioners No. 2 and 3 are sons of Shiv Bahadur Mishra and all are legal heirs of Shiv Bahadur Mishra. Shiv Bahadur Mishra died on 18.04.2011. Thereafter when petitioners approached revenue authorities for mutation of their names as successors of Shiv Bahadur Mishra on his agricultural lands, they came to know that those lands of Shiv Bahadur Mishra have been auctioned on 01.09.1990 in favour of State of U.P. for recovery of sale tax dues.

6. Learned counsel for petitioner has contended that predecessor of petitioners Shiv Bahadur Mishra had never carried on business of brickkiln. The alleged dues of arrears of sale tax shown against him is false and alleged recovery certificate for the same had been wrongly issued against him.

7. Learned counsel for petitioner has further contended that whole proceedings of auction alleged to have been made by Tahsil Musafirkhana is false and fictitious. Mandatory legal provisions have not been complied with. Shiv Bahadur Mishra remained in possession of the entire lands till his life and after his death, petitioners are in possession of the entire lands which are alleged to have been auctioned.

8. Learned Chief Standing Counsel has contended that Shiv Bahadur Mishra was engaged in business of brickklin and sale tax was imposed upon him by Sales Tax Authority in accordance with law. The amount of sale tax imposed upon him was not deposited by him. Therefore, recovery certificate was issued for recovery of same and after receipt of recovery certificate, Tahsil Musafirkhana proceeded for execution of recovery certificate in accordance with law but Shiv Bahadur Mishra failed to pay the amount of recovery certificate. Ultimately auction of immovable properties of Shiv Bahadur Mishra was done by Tahsildar, Musafirkhana in accordance with law on 01.09.1990. Thereafter, sale letter was issued on 05.12.1992 in favour of State of U.P. in pursuance of auction sale made on 01.09.1990 and the name of State of U.P. was mutated in place of Shiv Bahadur Misrha in revenue records. Possession was also delivered to State of U.P. on spot but neither Shiv Bahadur Mishra paid arrears nor made any objection against the auction sale.

9. Learned Additional Chief Standing Counsel has contended that petitioners have filed present writ petition after 13 years of auction sale. Writ petition is delayed and is liable to be dismissed.

10. We have considered the submission made by learned counsel for the parties.

11. Indisputably about 12 Bighas of land of Shiv Bahadur Mishra, husband of petitioner No. 1 and father of petitioners No. 2 and 3, had been auctioned by Tahsil Musafirkhana for rupee one only for alleged arrears of sale tax.

12. Chapter X of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (in short ''UPZA & LR Act'') deals with land revenue.

13. Section 284 of Chapter X of UPZA & LR Act deals with attachment, lease and sale of holding in respect of which an arrear is due whereas Section 286 of Chapter X of UPZA & LR Act deals with power to proceed against interest of defaulter in other immovable properties. Sub-section (1) of Section 286 reads as follows:

"286. Power to proceed against interest of defaulter in other immovable property. - (1) If any arrears of land revenue cannot be recovered by any of the processes mentioned in clauses (a) to (c) of Section 279, the Collector may realise the same [by attachment and sale of the interest of the defaulter] in any other immovable property of the defaulter."

14. Clauses (a) to (c) of Section 279 of Chapter X of UPZA & LR Act reads as under:

"279. Procedure for recovery of an arrear of land revenue. - (1) An arrear of land revenue may be recovered by any one or more of the following processes--

(a) by serving a writ of demand or a citation to appear on any defaulter,

(b) by arrest and detention of his person,

(c) by attachment and sale of his movable property including produce,"

15. Rules 285-A and 285-B of Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 (in short ''UPZA & LR Rules'') are also relevant. Said Rules are reproduced below:

"285-A. Every sale under sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday, or until after the expiration of at least thirty days from the date on which the proclamation under rule 282 was issued.

The Collector may from time to time postpone the sale.

285-B. No officer having any duty to perform in connection with any such sale, and no person employed by, or subordinate to, such officer shall, either direction or indirectly, bid for, acquire or attempt to acquire the property sold or any interest therein:

Provided that where at any auction under section 284, no bid is offered up to the amount of the arrear, for which the sale has been ordered, the Collector may bid up to the mount of such arrear."

16. Record of auction proceedings has been produced by learned Additional Chief Standing Counsel on behalf of opposite parties.

17. Perusal of record shows that proclamation (Paper No. 58 of records of auction proceedings) was issued under Rule 282 of UPZA & LR Rules on 30.07.1990 in which 11.09.1990 was fixed date for auction sale. But proceedings of auction dated 01.09.1990 (Paper No. 61 of the said records) shows that auction was made on 01.09.1990 and none appeared to bid in the auction. Therefore, Lekhpal authorized by SDM bade on behalf of State of U.P.

18. In view of above, it is apparent that auction dated 01.09.1990 has been conducted before the date fixed i.e. 11.09.1990 in proclamation issued under Rule 282 of UPZA & LR Rules for auction.

19. Furthermore, perusal of proviso of above Rule 285-B of UPZA & LR Rules shows that only where at any auction under Section 284 of UPZA & LR Act, no bid is offered up to the amount of arrear, for which sale has been ordered, the Collector may bid up to the amount of such arrear. It means, the Collector is authorized to bid only in case of auction made under Section 284 of the UPZA & LR Act but in present case, the auction sale was not being made for recovery of revenue of land being auctioned but for arrears of sale tax. Therefore, auction was being made under Section 286 of UPZA & LR Act and not under Section 284 of the UPZA & LR Act. Therefore, in view of proviso of Rule 285-B of UPZA & LR Rules, Collector was not authorized to bid in the auction.

20. The alleged auction proceedings dated 01.09.1990 does not contain area and details of properties which have been auctioned, whereas, the sale letter (Paper No. 64 of the record) shows that auctioned land were lying in 44 plots. This also makes the alleged auction sale doubtful, fictitious and illegal.

21. In view of above, we are of considered opinion that the auction sale dated 01.09.1990 is fictitious and illegal.

22. In the case of Mohd. Rafiq Vs. Board of Revenue, Lucknow and others reported in 2012 (116) RD 483, Hon''ble Single Judge of this High Court has dealt with similar case, in which, 7 Biswa, 17 dhur and 12 Biswa, 15 dhur land has been auctioned in rupee one for recovery of loan amount of Bank. Hon''ble Single Judge has observed as under:

"24......The irregularities have been committed in violation of all the rules; none of the provisions of UPZA and LR Rules, relating to sale of immovable property, have been adhered to. Even if, all the allegations of the petitioner are not believed, it is difficult to justify the action of the opposite parties on the basis of their admitted case....."

23. In view of above, Hon''ble Single Judge has set aside auction sale.

24. Facts of present case before us are also identical to said case.

25. Perusal of records of auction proceedings submitted by opposite parties shows that there is nothing on record to show that Shiv Bahadur Mishra was dispossessed from the land auctioned and thereafter possession was delivered to State of U.P. Paper No. 65 of proceedings of auction sale only shows that on 18.06.1995, board of State of U.P. was affixed on the property auctioned and all the auctioned lands were demarcated. In this Paper No. 65, description of said properties have not been given. It is a vague paper. It does not indicate that Shiv Bahadur Mishra was dispossessed from the land.

26. It is also relevant to mention that there is nothing on record to show that the State Government managed the land after taking possession.

27. In view of above, after having gone through affidavits filed by rival parties, we are of the view that it is difficult to accept that after alleged auction sale Shiv Bahadur Mishra was dispossessed from the land alleged to have been auctioned. The contention of petitioners appears to be reliable that Shiv Bahadur Mishra remained in possession of the land till his death and after his death, petitioners have succeeded him.

28. In view of discussion made above, considering the whole facts and circumstances of the case, we are of the view that false and fictitious auction sale made against law should be set aside.

29. Petitioners have alleged that their predecessor Shiv Bahadur Mishra have never carried on business of brickklin but perusal of record of auction proceedings shows that sale tax has been imposed by Assessing Officer on said Shiv Bahadur Mishra for carrying on business of brickklin and has not been paid by him. Therefore, recovery certificate has been issued against Shiv Bahadur Mishra for realization of arrears of sale tax as land revenue.

30. Shiv Bhadur Mishra has made no objection before Assessment Officer of Sales Tax Department or before appellate authority. Therefore, in this writ petition, no finding can be recorded that the alleged arrear of sale tax shown against Shiv Bahadur Mishra is false. As such, no order can be passed in this writ petition to exonerate petitioners from liability of said arrears.

31. In view of above, petitioners are liable to pay the arrears of sale tax due against their predecessor Shiv Bahadur Mishra to the extent of property inherited by them from Shiv Bahadur Misrha.

32. In view of above, we are of the view that the auction dated 01.09.1990 should be set aside but petitioners cannot be exonerated from the liability of payment of sale tax due against their predecessor Shiv Bahaudr Misrha up to the limit of property inherited by them.

33. Writ petition is allowed accordingly. Auction sale dated 01.09.1990 is set aside subject to condition that petitioners shall be liable to pay arrears of sale tax

due against their predecessor Shiv Bahadur Mishra to the extent of properties inherited from him. If petitioners fail to pay the said arrears of sale tax within two months from today, the Collector concerned shall be at liberty to start fresh proceedings for attachment and sale in accordance with law.

34. The original record, which was kept for preparation of order, is returned to learned Additional Chief Standing Counsel in court.

