(2007) 11 AHC CK 0160

In the Allahabad High Court

Indu Bhushan Gupta (D) by L.Rs. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 47, 80

Citation : (2008) 1 AWC 1037 : (2008) 104 RD 290

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This is plaintiffs first appeal arising out of Original Suit No. 50 of 1968. The suit was dismissed in part on 13.6.1986 by IVth Additional District Judge, Azamgarh. The main relief sought in the plaint of the suit was for declaring void auction sale dated 25.6.1968 in favour of defendants No. 7 to 16. (Fifty five acres of land was sold to these 10 persons separately, area wise. Defendant No. 11--Rudra Pratap Singh did not deposit the amount, hence sale in his favour did not materialise.

3. According to the plaint allegations in brief, plaintiff as karta of Joint Hindu Family consisting of himself and defendants No. 5 and 6, Sri Sashi Bhushan Gupta and Sri Sachindra Nath Gupta obtained a loan of Rs. 1,22,000 (one lac twenty two thousand only) from defendants No. 2 and 4, Collector, Azamgarh and Secretary, Board of Revenue, Lucknow for improvement of Joint Hindu Family, Mukundpur Farm having an area of 183.722 acres situate in village Mehanajpur and Gaibpur of Tehsil Sagri, district Azamgarh after mortgaging Zamindari rights of the said Joint Family in 34 villages of Tehsil Sagri, 9 villages of Tehsil Ghosi and one village of Tehsil Sadar, district Azamgarh. The loan was taken on 22.3.1948. Ultimately, property of the plaintiff was sold for realization of the aforesaid loan alongwith interest on 25.6.1968. The sale was afterwards

confirmed.

4. Several grounds to challenge the auction sale dated 25.6.1968 were taken in Para 17D of the plaint. The main grounds are mentioned below:

(i) The auction purchasers did not deposit the purchase money within the time prescribed by Rules 285D and 285E of U.P. Zamindari Abolition and Land Reforms Rules, 1952. Under the first Rule, 25% of the amount of bid is to be deposited forthwith and under second Rule remaining amount is to be deposited on or before 15th day from the date of the sale at the District Treasury or any Sub-Treasury. Both the Rules are quoted below:

285D. The person declared to be the purchaser shall be required to deposit immediately twenty five per cent of the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold and such person shall be liable for the expenses attending the first sale and any deficiency of price which may occur on the re-sale which may be recovered from him by the Collector as if same were an arrear of land revenue.

285E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any sub-treasury and in case of default the deposit, after the expenses of the sale have been defrayed therefrom, shall be forfeited to Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may be subsequently sold.

(ii) Plaintiff had given notice to the defendant No. 2. Collector, Azamgarh u/s 80, C.P.C., which had been received by Collector before 25.6.1968, hence auction sale was illegal.

(iii) The sale was void by virtue of Section 291 of U.P.Z.A. and L.R. Act (since repealed in 1976).

(iv) Sale is vitiated by fraud, illegality and material irregularity, which substantially injured the plaintiff and there were irregularities and mistakes in publishing and conducting the sale.

(v) That on the date of the sale, plaintiff did not owe any thing to defendant.

(vi) Plaintiff was not allowed to inspect the sale file.

(vii) Sale was conducted without permission of the Commissioner.

5. It was also prayed in the plaint that lease executed on 7.6.1988 be also declared null and void.

6. A decree of permanent injunction restraining the defendants Collector and State from realizing any further amount of the loan from the plaintiff was also sought alongwith decree for rendition of account of the attached properties in between 1952 to 1965.

7. However, during arguments in this appeal learned Counsel for appellant mainly confined his argument to non-deposit of 3/4th amount in sub-treasury within 15 days from sale.

8. Sale of immovable property in realization of arrears of land revenue or such dues, which are recoverable like arrears of land revenue, can be challenged under Rule 285-1 of the U.P.Z.A. and L.R. Rules. Under the said Rule, within 30 days from the date of sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting the sale due to which applicant has sustained injury.

9. Under Rule 285K, it is provided that:

If no application under Rule 285-I is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred:

Provided that nothing contained in this Rule shall bar the institution of a suit in the civil court for the purpose of setting aside a sale on the ground of fraud.

10. In the instant case, plaintiff filed objections under Rule 285-I, which were rejected.

11. Under Rule 285K, it is provided that without filing objections under Rule 285-I, suit may be filed challenging the sale on the ground of fraud. The question is as to whether after filing and rejection of such objections, suit to challenge the sale on the ground of fraud is maintainable or not? However, in this appeal, I need not decide this question.

12. Rule 285-I is pari materia with Order XXI. Rule 90, C.P.C.

13. Interpreting Order XXI, Rule 90 and Section 47, C.P.C. Supreme Court in the authority of Kiran Singh and Others Vs. Chaman Paswan and Others, has held that if the sale amount is not paid within time prescribed by the Rules, then sale is void and even in suit, this question can be raised.

14. Supreme Court has applied the same principle to the auction sale under U.P.Z.A. and L.R. Act, and Rules framed thereunder in Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others, . In the said case, objections had been filed before Collector.

15. Fifteen grounds of challenge to the auction sale were mentioned in Para 17D of the plaint. Issue No. 4 related to the said aspect, which was to the following effect "whether the auction dated 25.6.1968 is ultra vires, illegal and vitiated by fraud and material irregularity as alleged in Para 17D (1 to 15), if so to what effect".

16. Objections under Rule 285-1 were filed on 2.9.1972, which was rejected and rejection order was upheld by this Court dismissing the Writ Petition No. 2454 of 1977 on 29.11.1979. The trial court held that as objections to the sale had been

rejected, hence in the suit, sale could not be challenged on the ground of illegality in auction proceedings.

The one fourth amount was deposited on 25.6.1968, the date of auction sale, which was Rs. 24,575 (Twenty four thousand five hundred seventy five only). Three fourth amount was deposited on 9.7.1968, which was Rs. 73,725 (Seventy three thousand seven hundred twenty five only). D.W. 3, Uma Dutt Pandey, who was at the time of auction Naib Nazir of Tehsil Sagari, stated the said facts in his deposition (Page 200 of appellant''s paper book). In the cross-examination, he stated that the three fourth amount was handed over to him on 9.7.1968, which was kept in box of Naib Nazir under double lock. The amount was deposited by him (Naib Nazir) in the treasury on 15.7.1968. The main argument of learned Counsel for the appellant is that the deposit shall be deemed to have been made on 15.7.1968 and as it was after 15 days from the sale, hence sale became void. I do not agree with this contention. Under Rule 285E (supra), it is clearly mentioned that the amount shall be paid at the District Treasury or any Sub-Treasury.

17. Receipt of deposit of amount by Naib Nazir in Sub-Treasury dated 15.7.1968 is on Page 88 of paper book filed by the State respondent. Naib Nazir-Uma Dutt Pandey further stated that one fourth amount was not separately deposited and the entire amount, which had been received on 25.6.1968 and 9.7.1968, was deposited by him in the Sub-Treasury on 15.7.1968. Receipts were given to the auction purchaser on 9.7.1968, two of the receipts are on Pages 92 and 94 of the paper book filed by the State. Two receipts of deposit of one fourth amount are on Pages 91 and 93. Plaintiff has not been able to prove that on 9.7.1968, the amount had not been paid by the auction purchasers. The only argument of learned Counsel for the plaintiff is that Naib Nazir deposited the amount in the Sub-Treasury on 15.7.1968, hence it must be deemed to have been deposited on 15.7.1968. This argument is not tenable. A valid receipt on the printed proforma signed by the Government servant Naib Nazir was issued to the auction purchasers on 9.7.1968, hence payment by them was complete on the said date. Naib Nazir also stated that due entries of the deposit were made on the relevant registers by him.

18. Receipts issued by Naib Nazir on 9.7.1968 (Pages 92 and 94 of the paper book) are on printed proforma, which is Form No. 885. The following is printed on the form:

Receipt for payment to Government

(Form No. 1, Chapter III, Paragraph 26, Financial Handbook, Vol. 5 Part-I).

19. In U.P. Revenue Manual, under Chapter V, Nazir''s accounts, Paragraph 108 deals with the accounts, which shall be kept by the Nazir in the Forms, noted against each.

20. Sub-para (i) deals with account of the consolidated permanent advance in

Form-I.

21. Sub-para (v) deals with accounts of sums received by Nazir for deposit into treasury as Government receipts in Form-V.

22. Para-115 of the said Chapter (Nazir''s account) is quoted below:

115. All sums, including the amounts which are credible directly to the revenue of the State such as rent of shops, sale proceeds of waste paper, price of arms or of condemned articles of furniture, etc. which should be paid into the treasury and are received by the Nazir after the treasury has been closed, must be paid into the treasury on the morning of the next working day.

23. The entries of receipt and payment will be made in Register No. V. Receipts which cannot be credited under a head for revenue for want of particulars may, at the end of the month, be credited as "Revenue Deposit."

24. Under Rule 117 of the said Chapter, it is provided:

117. Whenever the total sum in the hands of the Nazir or Naib-Nazir at a Tahsil (from whatever source derived) exceeds the amount of his security by Rs. 20 or Rs. 10, respectively, the whole sum in excess should be placed in a separate box and kept under double lock in the treasury strong-room till the following morning.

25. In view of the above rules, it was quite permissible for the auction purchasers to deposit the amount with Naib Nazir. They made the deposit with the Naib Nazir within 15 days, hence it was perfectly valid. Thereafter, if Naib Nazir deposited the said amount in the Sub-Treasury, not on the next date but after few days, it was the fault of Naib Nazir. Auction purchasers had no concern therewith. Neither they could be aware of the actual date of deposit of their money by the Naib Nazir in the Sub-Treasury nor they could ask the Naib Nazir to deposit the said amount in the sub-Treasury on the next date.

26. In this regard, learned Counsel for the appellant has cited an authority of Himachal Pradesh High Court in State Bank of India v. Smt. Mohini Devi and Ors. 1999 (2) CCC 275, which has placed reliance upon a Division Bench Authority of this Court in Hiralal v. Musammat Champa AIR 1955 All 256. In the said authorities, sale was conducted by the civil court under Order XXI, C.P.C. Under Order XXI, Rule 85, C.P.C. it is provided that 3/4th amount of the auction money shall be paid by the purchaser into Court before the Court closes on the 15th day from the sale of the property. In the aforesaid two authorities, the amount had been paid by the purchaser to the officer conducting the sale, hence it was not in accordance with Order XXI, Rule 85, C.P.C. The ratio of the said decisions will not apply to the instant case as in the instant case, sale was conducted under U.P.Z.A. and L.R. Rules and by virtue of Rule 285E, amount was to be deposited in Sub-Treasury and by virtue of aforesaid rules of U.P. Revenue Manual deposit before Naib Nazir was valid deposit, hence it tantamounted to deposit in sub-Treasury.

27. Plaintiff-appellant also filed Writ Petition No. 1862 of 1959 challenging the action taken by the State Authorities for recovery of the loan in question, which was advanced under Land Improvement Loans Act, 1883. The writ petition was dismissed by this Court on 16.3.1966, copy of the said judgment is on Page 278 of the paper book filed by defendants-respondents-State Authorities. The last two paragraphs of the said judgment are quoted below:

There is a further prayer by the petitioner, it is claimed that upon accounting it will be found that from the amount recovered by letting out the area of the Mukundpur farm the entire liability of the petitioner has been satisfied. The submission calls for an accounting of the amounts received by such letting out. No such proceeding can, in my opinion, be undertaken by this Court upon the material contained in the instant petition. The prayer that accounts be taken must, therefore, be refused.

The petition is dismissed, but in the circumstances of the case, there is no order as to costs.

28. Against the said judgment, Special Appeal No. 247 of 1966 was filed, which was dismissed on 23.5.1968 by Division Bench of this Court. The said judgment is on Page 292 of paper book filed by the State/defendant respondent.

29. Accordingly, I do not find any such illegality in the auction sale on the ground of which auction sale could be set aside in the suit. The deposit was made by the auction purchasers within the time prescribed by Rules 285D and 285E of U.P.Z.A. and L.R. Rules. Other objections could be raised and had been raised and rejected in proceedings under Rule 285-I of U.P.Z.A. and L.R. Rules. As far as the question of rendition of account is concerned, the suit has been decreed by the court below for the said relief.

29.1 Appellant and legal representatives of one of the auction purchasers-Ram Pyarey Singh, who was respondent No. 11 in this appeal and defendant No. 14 in the suit have entered into compromise in this appeal. Compromise application was filed on 21.8.2007 signed by learned Counsel for both the parties on 18.8.2007 as well as by both the parties. This appeal in between appellants and legal representatives of respondent No. 11, i.e., respondent Nos. 11/1 and 11/2 is decided in terms of compromise, which shall be part of this judgment. After judgment was reserved, learned Counsel for legal representatives of respondent No. 11 filed an application seeking time till 15.12.2007 for removal of boundary wall constructed in excess of the area purchased by respondent Nos. 11. The said application is allowed. Time till 15.12.2007 for the said purpose is granted.

30. Accordingly, there is no merit in the first appeal, hence it is dismissed in respect of all respondents except respondent No. 11/1 and 11/2. In respect of these respondents, first appeal is decided in terms of compromise as above.

