
(1999) 04 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 35818 of 1999

Jag Bhushan Kumar Jain and another	APPELLANT
Vs	
State of U. P. and another	RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 341

Citation : (1999) 3 AWC 1835

Hon'ble Judges : Lakshmi Behari, J; D.S. Sinha, J

Bench : Division Bench

Advocate : V.K. Shukla and V.C. Dexit, for the Appellant; S.G. Husnain and Addl. C.S.C., for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri Yogesh Narain Dubey, holding brief of Sri V. K. Shukla, learned counsel appearing for the petitioners and Sri S. G. Husnain, learned Additional Chief Standing Counsel of the State of U. P. representing the respondents.

2. From the averments made in the petition, it appears that an amount of Rs. 17.293.71 by way of sales tax, besides recovery charges, etc., is due from Smt. Vidyawati Jain wife of Sri Jag Bhushan Kumar Jain, the petitioner No. 1 and the proprietor of M/s. Mittal Brothers, and the same is being recovered as arrears of land revenue. In connection with the said recovery, the immovable properties specified in the two sale proclamations (Annexures-"1" and "4" to the petition), which are impugned in this petition have been attached and notified for sale.

3. The petitioners assert that the properties in question belong to them and are not liable to attachment and sale. Further allegation of the petitioners is that against the attachment and proposed sale of the properties, they filed objection before the Collector. Muzaffarnagar. But, the objection has not been decided so far.

4. It is to be noticed that Smt. Vidyawati Jain against whom recovery proceedings have been initiated and the properties in question have been attached has not challenged the recovery proceedings. Instead a proxy war is being thought by her husband Sri Jag Bhushan Kumar Jain, the petitioner No. 1. The petitioner No. 2 is claiming himself to be the owner of one of the properties under attachment.

5. In the opinion of the Court, instant petition is wholly misconceived. If the properties in question really belong to the petitioners and are not liable to attachment and sale in connection with the recovery of the sales tax dues from Smt. Vidyawati Jain, their remedy was to file appropriate objection under Order XXI, Rule 58 of the Code of Civil Procedure, 1908. (hereinafter called the "Code") and other relevant provisions therein. It cannot be disputed that the provisions of Order XXI, Rule 58 of the Code are applicable to the instant recovery proceedings by virtue of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act, 1950. Indeed, as asserted in the petition they have filed objection under Order XXI, Rule 58 of the Code, a copy whereof is Annexure-"2" to the petition. They should pursue the same. The Court has no reason to doubt that by now the said objection must have been decided. In case, the said objection has not been decided, the Court expects the same would be decided very expeditiously by the Collector, Muzaffarnagar.

6. Subject to what has been said above, the petition is dismissed. The interim order dated 5th October, 1993 is vacated.