(2011) 08 AHC CK 0124

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8658 of 2006

Kamal Kumar Srivastava	APPELLANT
Vs	
Board of Revenue and Others	RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90
Constitution of India, 1950 — Article 144, 226, 227
Penal Code, 1860 (IPC) — Section 43
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 284
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 281, 282, 283, 284, 285

Citation : (2011) 8 ADJ 737 : (2012) 2 AWC 1141 : (2011) 114 RD 388

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—This petition arises out of an order passed by the learned Commissioner Respondent No. 2 in objections filed by the Respondent No. 4 and 5 under Rule 285I of the Uttar Pradesh Zamindari Abolitional & Land Reforms Rules, 1952, in relation to an auction conducted for sale of plot No. 273 situate in village at Buxi Uparhar, Pargana & Tehsil Sadar, District Allahabad. The order has been affirmed by the Board of Revenue in revision.

2. The background in which the auction took place is that the Respondent No. 6 - Dinesh Kumar Pandey took a loan from the U.P. Financial Corporation to set up a Small Plastic Production Unit. He defaulted in repayment of the loan, as a result whereof, the Financial Corporation issued a recovery certificate.

The plot in dispute was mortgaged against the said loan and as such the same was put to auction to realise the dues as arrears of land revenue under the provisions of the U.P.Z.A. & L.R. Act, 1950. The auction for immovable property is conducted u/s 284 of the U.P.Z.A. & L.R. Act, 1950, read with under Rules 281 to 286 of the U.P.Z.A. & L.R. Rules, 1952.

3. The Petitioner claims to have participated in the said auction proceedings on 25th June, 2002, in which one Smt. Sobha Yadav was the highest bidder. The auction was however cancelled on the ground of inadequacy of the bid amount and the property was again put to sale on 7th September, 2002, on which date the Petitioner succeeded in offering an amount of Rs. 4,40,000/-for the land in dispute and the bid was knocked down in his favour.

4. The auction proceedings were challenged by the Respondent Nos. 4 and 5 by moving an objection under Rule 285I as provided for under the 1952 Rules, and the Commissioner, who is the competent authority, instead of deciding the matter himself remitted the matter to the Sub Divisional Magistrate who had conducted the auction. This order of the Commissioner dated 10th December, 2002 was subjected to challenge in writ petition No. 7370 of 2003 by the Respondent No. 4 Smt. Dhanpatti and the Respondent No. 5 Sarla Devi. This petition was allowed on 30th November, 2004 on the ground that it is the Commissioner who has to decide objection and the same cannot be remitted to the Sub Divisional Magistrate under the provisions of Rule 285I of the U.P.Z.A. & L.R. Rules, 1952. A rider was also put in that till the decision is taken on the objection, No. further constructions shall be made by the Petitioner auction purchaser.

5. The matter reached the learned Commissioner once again, and the same proceeded before him. The Respondent owner of the plot took a clear plea that the bid amount was inadequate as the property was worth Rs. 10 lacs, and that the auction was conducted in violation of the rules. It was also urged by the owner that Dinesh Kumar Pandey had misutilized the documents and title deed of the property by placing it in the custody of the Financial Corporation for the purpose of mortgage, and that the recovery was absolutely illegal. No. notice was given about the auction nor any attachment was carried out or proclamation issued to the said Respondent. There were only two participants in the auction and one of them was the Petitioner who is an employee in the Collector ate which fact is admitted by him. He is a clerk in the office of the District Development Officer, hence, he could not have participated in the auction in view of the bar operating by virtue of Rule 285B of the 1952 Rules.

6. The aforesaid objection was supplemented after remand by the High Court where it was stated that the recovery certificate which had been sent by the U.P. Financial Corporation indicated that the price of the property was Rs. 8,35,000/- and that the description of the property and address was not correctly shown. The notice was not received by the Respondent which was sent on a wrong address deliberately.

7. In Paragraph 18 of the said supplementary objection it was categorically stated that No. recovery should be made through the process of arrears of land revenue in view of the Act No. 51 of 1993 which is an Act of Parliament and the law had been declared categorically on this point in the case of AIR 2003 SC 2103 It was also asserted therein that the proceedings with regard to the

conduct of auction had been enquired into through the then Additional District Magistrate, Finance & Revenue, who had submitted a report on 6th March, 2003, clearly stating therein that the auction had been conducted under the undue influence of the Tehsil Sadar Authorities and had been hurriedly carried out. This supplementary objection dated 13.12.2004 is on record as Annexure CA-2 of the counter affidavit.

8. The learned Commissioner proceeded to consider the objections and recorded a finding that the Petitioner (auction purchaser) was not in a position to influence the auction proceedings and therefore the objection that he being an employee of the Collector ate has affected the auction proceedings does not appear to be correct.

9. On the issue relating to the irregularities mentioned in the objection the learned Commissioner came to the conclusion that he is not fully in agreement with the said objections even though some of the steps relating to procedure have not been correctly taken. He however, held that since the Respondent - Smt. Dhanpatti had information about the auction, therefore the contention of the Respondent that she had No. information about the second round of auction cannot be accepted.

10. Learned Commissioner further went on to hold that the Petitioner''s contention that there was No. fault on the part of the auction purchaser appears to be correct and that he has raised constructions after having purchased the plot. However the Commissioner went on to allow the objection filed by the Respondent solely on the ground that in view of the provisions of 1993 Act, it would be appropriate to set aside the auction. The role of the U.P. Financial Corporation was not found to be justified.

11. The said order of the learned Commissioner was assailed before the Board of Revenue which also came to the conclusion that since the recovery proceedings initiated fell within the scope of the powers of the Debt Recovery Tribunal, therefore, any arguments raised on behalf of the Petitioner cannot be accepted and the revision was accordingly dismissed. Aggrieved, the Petitioner is before this Court under Article 226 of the Constitution of India.

12. The petition was entertained and an interim order was passed on 21.2.2006 to the effect that the parties shall maintain status quo and that the Petitioner will not alienate the property in dispute.

13. Sri Gajendra Pratap learned senior counsel for the Petitioner advanced his submissions focused on the point that the learned Commissioner while allowing the objection has travelled completely beyond the scope of Rule 285I of the U.P.Z.A. & L.R. Rules, 1952. To understand his submissions further Rule 285I is reproduced herein under:

Rule 285I (i) At any time within thirty days from the date of the 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 it; but No. sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.

(ii) [* **]

(iii) The order of the Commissioner passed under this rule shall be final.

14. The submission of Sri Gajendra Pratap is to the effect that an auction can be set aside only if there is a material irregularity in the holding of the auction either in the publication thereof or its conduct and further the objector will have to prove to the satisfaction of the Commissioner that the objector has sustained substantial injury by reason of such irregularity or mistake.

15. In the instant case Sri Gajendra Pratap submits that the finding with regard to any such irregularity or mistake is against the Respondent and the Commissioner has categorically held that he has not found any irregularity in the conduct of auction. Once, this finding has been arrived at it was not open to the Commissioner to enter into the issue of legality of the auction, namely, the impact of the 1993 Act (supra), and the law as declared in M/s Unique Butyle''s case (supra).

16. He contends that No. effort was made by the Respondent to move any application under Rule 285H to set aside the sale, and if the Respondent was aggrieved by any fraud having been played by the original borrower Mr. Dinesh Kumar Pandey, and the auction having been conducted on account of some fraud in relation thereto, then a suit could have been filed in the Civil Court for setting aside the sale on the ground of fraud as provided for under the proviso to Rule 285K. He contends that the learned Commissioner under Rule 285I acts as a Tribunal with limited jurisdiction and authority to set aside a sale on the ground as defined therein. It has No. authority to decide the validity of the proceedings of recovery or its own authority to decide such an objection. He submits that even if the proceedings of auction were void as contended by the Respondent then the same could have been ignored at an appropriate forum but it could not have been subject matter of adjudication on an objection under Rule 285I. The sale could not have been set aside on such a ground under the said rule. He further submits that there is No. finding on any substantial injury having been caused to the owner of the property and in the absence of any ingredient as defined in the rules the sale could not have been annulled. He submits that an auction purchaser needs a equal protection under the law inspite of a complete procedure having been provided for the protection of the debtor.

17. Sri Pratap further invited the attention of the Court to the original objection filed under 285I, to contend that No. such plea had been taken initially in the year 2002, nor such a plea was taken before this Court when the previous writ petition No. 7370 of 2003 had been filed. In such a situation, this pleading in this proceeding should be treated to be barred on the principles of Order II Rule 2.

18. He has cited the following decisions in support of his submissions:

1 Ram Chandra Arya Vs. Man Singh and Another,

2 Union of India (UOI) Vs. Tarachand Gupta and Bros,

3 1998 ACJ Pg. 1462 (Paras. 2 and 5), Smt. Mahmooda v. District Judge, Bahraich and Ors..

4 1991AWC Pg. 842 (Para. 9), Bachi Ram v. Swami Santosha Nandji.

5 Ganpat Singh (Dead) by Lrs. Vs. Kailash Shankar and Others,

6 Kadiyala Rama Rao Vs. Gutala Kahna Rao (Dead) By Lrs. and Others,

19. He has further invited the attention of the court to the provisions of Order XXI Rule 90 CPC and the celebrated authorities on this branch of jurisprudence by Wade & Forsyth and that of De-Smith.

20. Replying to the said submissions Sri Dharm Pal Singh learned Senior Counsel assisted by Sri H.S. Mishra submits that the Petitioner manipulated this auction in his favour as he was a Collector ate employee and under Rule 285B of the 1952 Rules, such an employee was ineligible to participate in the auction. He contends that after the first proclamation, the auction was conducted but set aside, and the second proclamation was issued on 23.8.2002 for holding an auction on 7th September, 2002. He therefore contends that the second auction was held in violation of Rule 285A, which requires 30 days of notice, whereas the proclamation only gives 15 days time. He submits that even though the findings recorded by the learned Commissioner were not challenged separately yet the finding of the learned Commissioner that there was No. irregularity in the auction, is incorrect. The violation of the said Rule as also the participation of the Petitioner both are material irregularities that vitiate the auction and therefore the sale deserves to be set aside. No. notice was given to the answering Respondent and that the finding of knowledge about the second proclamation is perverse. Not only this, the Collector before proceeding to put up the property to an auction failed to acknowledge his inability to do so in view of the law as expounded in M/s Unique Butyle''s case (supra), and apart from this, the U.P. Financial Corporation had clearly written a letter on 31st January, 2002, requesting the Collector not to recover the amount as against the Respondent - Smt. Dhanpatti. He further submits that the value of the property was not indicated in the proclamation and Rule 283 appears to have been violated for which reliance is placed on the judgment of a learned single Judge in the case of Pravesh Kumar Sachdeva v. State of U.P. and Anr., reported in 2006 (4) ADJ 34.

21. He has further invited the attention of the Court to Paragraph 13 of the decision in the case of Martin Burn Ltd. Vs. The Corporation of Calcutta, to contend that the meaning of the word irregularity should not be confined only to procedural defects, and which would also include within its fold the authority to hold auction. He further submits that the Commissioner in his own order had

clearly held that all steps that were required to be taken had not been followed. Hence, the order of the Commissioner should not be construed as if there was No. irregularity in the auction proceedings.

22. Having considered these rival submissions and in view of the position of law that emerges, the contention of Sri Gajendra Pratap that the Commissioner has to proceed within the precincts of Rule 285I cannot be doubted. The authority cited by him in the case of Shanti Devi (Smt) Vs. State of U.P. and Others, the scope of the said rules have been explained in paragraph 8, 12 and 13 thereof. There an objection had been raised at the stage of the confirmation of sale that the auction of the land was in violation of Section 154 of the U.P.Z.A. & L.R. Act, which provides that No. person can hold land in excess of 12.50 acres. This nature of objection was held to be entertain able after confirmation and it was not an objection relating to any irregularity or mistake in publishing or conducting the auction. Such an objection was therefore held not to be barred and could have been raised. The scope of the said decision was in relation to the statutory duty of the Collector to ensure that the provision of Section 154 is not violated. While deciding the case, the apex court derived support from the provisions of the CPC to hold that Rule 285H and Rule 285I are akin to Order XXI Rule 90.

23. Sri Gajendra Pratap submits that this authority therefore should be extended to construe that the Commissioner cannot travel beyond the irregularities or mistake as defined under Rule 285I of the U.P.Z.A. & L.R. Rules, and enter into the question of illegality. He supports his contention with the recital contained in the authority of the Wade & Forsyth to the following effect:

As to these ''jurisdictional facts'' the tribunal''s decision cannot be conclusive, for otherwise it could by its own error give itself powers which were never conferred upon it by Parliament.

24. On this issue he has also invited the attention of the court to the language used in Order XXI Rule 90 and he therefore submits that the authorities relied on by him clearly establish that the Commissioner had committed an error in proceeding to entertain the objection after having found that there was No. irregularity in the auction proceedings.

25. On this issue Sri Gajendra Pratap is right in his submission that this objection came to be raised after the matter was remitted by this Court on 30th November, 2004. His submission is that this Court had only directed the decision on the original objection which had been filed along with the said petition dated 18.9.2002. What he intends to communicate is that the supplementary objection filed in the year 2004 by the Respondent after remand could not have been subject matter of consideration.

26. This in my opinion would not be the correct position of law, inasmuch as, once the matter had been remitted to the Commissioner to decide the matter afresh then the objection will be deemed to have been pending before the

Commissioner and it was open to the objector to raise all other pleas that were available for the purpose of the decision on the objection. Secondly, what was brought to the notice of the learned Commissioner was the correct position of law in relation to the authority to hold auction. Whether this could have been gone into by the Commissioner or not is a different issue, but the supplementary objection filed by the Respondent could not have been rejected merely because it raised additional points in support of the objection already filed. The Petitioner was not prejudiced as he had full opportunity to contest the said objection.

27. Coming to the main issue advanced, an action authorised by law is one which is sanctioned by law. Such an action which is authorised by law has to be in accordance with law or in other words in conformity with law. An action which is unlawful cannot be described as lawful only on the ground that authority which has been conferred with the power to deal with the action has No. authority by itself to decide such an objection. It is true that the Commissioner cannot travel beyond the scope of the power invested in him under Rule 285I, which has the ingredient only of material irregularity or mistake coupled with the satisfaction of substantial injury. The Commissioner cannot by a wrong decision clutch at a jurisdiction which he does not posses nor can he refuse to exercise jurisdiction which he otherwise possesses. He can only decide a question which is within his jurisdiction.

28. In the instant case the Commissioner, to translate his own words, has stated that he does not fully agree with the contention of the objector that the auction should be annulled on the ground of non-compliance of procedure. In the very next sentence he holds that it is true that every step that was required to be taken has not been taken. He however, again holds that the meaning of the word step stood fulfilled as it substantially means, notice by the authority, and which according to him was given to the Respondent. The Commissioner therefore himself did not spell out each step that had been complied with or those steps which had been faulted with. It is here where Sri Gajendra Pratap insists that even if it is assumed that there was some irregularity, and that the finding is incomplete, then the matter would at best require a remission before the Commissioner as it cannot be conclusively said that there was any material irregularity.

29. The said argument of Sri Gajendra Pratap has to be understood in the light of the other two submissions made by Sri Dharm Pal Singh, who has pointed out that Rule 285A and Rule 285B have been violated. The second proclamation gave only 15 days notice and the finding that the Respondent had notice of the said second proclamation is perverse.

30. Sri Gajendra Pratap contends that once the proclamation that had been issued after the first auction, had been set aside, the Respondent will be presumed to have knowledge, more so, when the first auction had been set aside and was in the knowledge of the Respondent. The aforesaid contention of Sri Gajendra Pratap is not borne out from the record.

31. The learned Commissioner could not have travelled beyond Rule 285I, and after having recorded a finding in favour of the Petitioner on the issue of irregularity, should have further gone to record a finding of substantial injury, which he did not do. To that extent the Commissioner may not have fulfilled his obligation as required under Rule 285I, nonetheless the gamut of the findings do indicate that the Commissioner had doubt about all the steps having been taken for holding of the auction in accordance with rules. The finding on irregularity was therefore neither clinching nor conclusive so as to read it entirely in favour of the Petitioner. The Commissioner for reasons best known to him employed a dubious language to make his reasoning look more obscure than transparent.

32. In this background, the auction was set aside by the Commissioner on the ground of an illegality, apart from any irregularity or mistake as urged on behalf of the learned Counsel for the Petitioner, holding that recovery was impermissible through a procedure as arrears of land revenue. This basis has been affirmatively enunciated in matters relating to loans taken from the Financial Corporation clearly and unequivocally in the matter of M/s Unique Butyle''s case (supra). The Apex Court has already referred this matter to a larger bench but so far as the law already declared is concerned, it still holds the field. The decision in the case of M/s Unique Butyle (supra), therefore clearly declares law that such a recovery cannot be undertaken as arrears of land revenue.

33. If the very authorisation of conducting an auction under the revenue law as arrears of land revenue cannot be countenanced then it would be a travesty of justice to allow the Commissioner to reject such an objection where the very basic authority of auction is outside the purview of the Act. It is correct on the part of Sri Gajendra Pratap to urge that the Respondent could have straight away challenged the auction proceedings before the Collector by raising an objection or by assailing the same through a writ petition before this Court which has not been done.

34. Sri Gajendra Pratap may be right in his submissions on the scope of the Commissioner''s powers under Rule 285I but it is equally true that this Court in the exercise of its jurisdiction under Article 226 read with Article 227 of the Constitution of India is not denuded of its power to come to the aid of a litigant whose rights should be taken away on account of an incorrect forum having been approached by him. Otherwise also, the law declared by the Apex Court binds all under Article 141, the tribunals and the courts alike.

35. As a matter of fact the Respondent had approached this Court by filing a writ petition where this issue had not been raised yet the Commissioner was directed to decide the objections filed by the Respondent. The Commissioner or the Board could not have taken it as a ground of irregularity or mistake but they could not have ignored a patent want of jurisdiction to hold the auction. The authority cited by Sri Gajendra Pratap in the matter relating to a conditional sale would not be applicable in the instant case where by operation of a statute of Parliament and declaration of law to that effect by the Apex Court, the very authority of the

revenue officials under a statute has been taken away denuding them of any authority to hold any auction. The proceeding of auction, therefore would be void and this Court would not upturn the order once it is established that the law declared by the apex court clearly comes to the aid of the Respondents. The operation of a statute cannot be subjugated by the incompetence of the authority to decide an objection under a rule.

36. The Commissioner may not have the authority to decide an illegality but he can always acknowledge that the auction could not have been held under the procedure of the U.P.Z.A. & L.R. Act, and the rules prescribed thereunder. If the very authority to hold an auction is taken away then the Commissioner or the Board of Revenue cannot be said to have committed any error in declaring the auction to be illegal. This Court would also not exercise its discretion where any interference may cause the restoration of an unlawful auction.

37. This Court is not oblivious of the distinction between "illegality" and "irregularity" as pointed out by Sri Gajendra Pratap with the aid of Law Lexicon by P. Ramanatha Aiyer. The word "illegal" has been defined in Section 43 of the Indian Penal Code which is comprehensive in nature. Illegality, in my opinion, is a higher degree of patent infirmity in law which is fundamental, as compared to an irregularity which is limited generally to procedural lapses. The Commissioner under Rule 285I may not be conferred with powers to deal with any illegality other than the irregularity or mistake defined therein, but he is also not empowered to ignore the mandate of substantive law declared by the apex court. The Commissioner cannot say that he has the choice to turn blind to a law enunciated directly on the issue by the highest court of the land. Even this Court has hardly any or little choice. The duty of all courts and tribunals under Article 144 of the Constitution of India is to come to the aid of the Supreme Court to uphold the laws and therefore all options to avoid law stand ruled out. The binding nature of the law in Unique Butyl''s case (supra) eclipses all arguments of mere procedural irregularities. It would be impossible for any tribunal or court to guess, probe, adjudicate and decide the wisdom of any law declared by the apex court. Neither equitable considerations nor principles of estoppel would be attracted in the face of the decision of the Supreme Court.

38. That which is fundamental cannot be avoided or buried under a canopy of assumed helplessness. This would bring about more injustice than adherence to law. It is correct for Sri Gajendra Pratap to say that if the rules require the performance of a duty by the Commissioner in a particular manner, then it has to be performed in that manner alone. However, this duty cannot be performed by sacrificing law itself at the altar of diminished jurisdiction. The Commissioner has not lost the authority to obey law. He cannot pretend to be blind and continue to see things with open eyes simultaneously. The functions being quasi-judicial, the Commissioner continues to have a judicious duty to perform with a conscience to guide him to apply his mind. He cannot turn a blind eye or a deaf ear to the decision in Unique Butyl''s case by any contrivance of ignorance or by cultivating

any art of forgetfullness. Obedience to law is not only a duty but also a moral obligation towards society. Performance of a statutory duty cast under a rule has to be underlined with such principles. The Commissioner, in the given circumstances of a case, may have to ensure such a performance by avoiding the dilemma between an illegality and irregularity.

39. Sri Gajendra Pratap then urged that the Petitioner had raised certain constructions and he has sold away a parcel of the land to a third party and as such the matter can be disposed of by compensating the Respondent adequately in lieu of the said property in terms of money. Sri Dharm Pal Singh clearly denied accepting any such offer. It will be relevant to repeat that this Court while allowing the writ petition on 30th November, 2004, restrained the Petitioner (auction purchaser) from raising any further constructions. Not only this, in the new writ petition there was a restraint of a status quo and from alienating the property in dispute. Sri Singh has further indicated that there were other interim orders operating before the learned Commissioner and the Board of Revenue and that any deliberate attempt on the part of the Petitioner to sell the property or raise any constructions is hit by such orders and by the doctrine of pendenti-lite. There can be No. dispute on the said proposition.

40. In view of the conclusions drawn hereinabove, it is difficult to upturn the decision of the Commissioner as affirmed in revision.

The writ petition fails and is hereby dismissed.

