(1980) 04 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4188 of 1975

Mangali APPELLANT

Vs

The Board of Revenue and Others RESPONDENT

Date of Decision : 08-04-1980

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 161, 163, 176, 178, 178(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 159(B)

Citation : (1980) AWC 353 : (1980) RD 255

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : J.N. Dubey, for the Appellant; Devendra Swarup, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—This petition is directed against the order passed by Board of Revenue in second appeal arising out of a suit filed u/s 176 of the U.P.Z.A. and L.R. Act, 1951. The suit was filed by opposite party No. 4 in which preliminary decree was passed on 22nd February 1971. When the Petitioner moved application for preparation of final decree an application was filed by opposite party stating that as the land in question was less than the minimum prescribed which could be subject matter of partition, the land should be auctioned in accordance with Sub-section (1) of Section 178 of the. Act. The trial court found that the application filed by opposite parties was correct and, therefore, directed valuation of the holding to be done in accordance with Section 179 of the Act. It, however, directed that as opposite parties had preferential rights, he was entitled to land in dispute after depositing the amount valued by the court. Against this order, Petitioner filed an appeal which was allowed and it was directed that the trial court committed an error in passing the order without complying with the procedure provided in Sections 181, 182, 161 and 163 of the Act. This order was again set aside by Board of Revenue and the order pas-ed by the trial court was restored.

2. The mode of division of a holding is provided u/s 178 of the Act. It is not denied that in this case Sub-section (1) applied, nor is denied that in a case where sub-section applied the valuation of the holding is done in accordance with Section 179 of the Act. The only question is whether the preferential right determined under Rule 159(B) was correct or not. Section 180 which deals with ''preferential right of purchase'' reads as under:

If two or more co-tenure-holders having an equal preferential rights severally ask for leave to buy, the court shall order the sale of the same to such one of them as offers to pay the highest price above the price ascertained u/s 179.

3. The procedure, therefore, that should have been followed by the trail court was that as Petitioner and opposite parties were co-tenure-holders having equal preferential right it should have offered the land to one of them who was prepared to offer highest price above the price ascertain ed u/s 179. The trail court on the other hand applied Rule 159(B) which runs as under:

159-B: The following shall be the order of preference for sale to co-tenure-holders u/s 179.

(a) Co-tenure-holder, who does not hold and land in the circle other than his interst in the holding in suit; (b) A con-tenure-holder who is an asami in the circle but does not hold any land as bhumidhar or sirdar other than his interest in the holding in suit; and (c) A co-tenure-holder, holding land less than 3-1/2 acres in area in the circle as a bhumidhar or sirdar other then his interest in the holding in suit.

This obviously did not apply as the opposite parties did not come in either of the clause It has not been found that he was a co-tenure-holder who did not hold any bhumidhari or sirdari land other than the land which was subject matter of auction or he held less than 3-1/2 acres as Bhumidhar. He applied this rule on basis that opposite parties had lesser area that the Petitioner. This is not a ground of which he could be treated having a preferential right under Rule 159-B. In absence of application of Rule 159-B both Petitioner and opposite parties were co-tenure-holders having equal preferential right and their claim for land in dispute should have been decided u/s 180. It may also be observed that the Additional Commissioner was not justified in applying Sections 181 and 182 in this case.

4. In the result, this petition succeeds and is allowed. The order passed by the Board of Revenue is quashed. The order of Additional Commissioner also being contrary to the provisions of law is quashed. The trail court is directed to auction the land in accordance with Section 180 of the Act. Parties shall bear their own costs.

