(1994) 02 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8330 of 1981

Manohar Lal	APPELLANT
Vs	
State Government of U.P. and Others	RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 333

Citation : (1994) 1 AWC 617 : (1994) RD 271

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Misra, J.—Manohar Lal, Petitioner challenges the impugned order dated 4-7-1981 passed by Board of Revenue ''returning the revision on the ground of jurisdiction and directing the revision to be laid before the Board of Revenue, Lucknow as the same relates to the realisation of arrears of land revenue, by means of the present writ petition.

2. The point arises for consideration in the present case is as to whether a revision arising out of realization of, arrears of land revenue in accordance with the provisions of the U.P. zamindari Zan?ndari Abolition and Land Reforms Act (hereinafter referred to as ''the ZA and LR Act''), and Rules framed thereunder will lie under the provision of ZA and LR Act, or under the Land Revenue Act.

3. The facts, as stated in the petition, in brief are that sales tax amounting to Rs 7784 87 together with 18% interest fell due against the firm Sudershan Oil Mills, Gorakhpur from 1963-64 to 1969-70. There were other partners as well. On account of non-payment, recovery proceeding started as a result whereof petitioner''s house, was attached by issuance of Z. A. Form 73-D dated 22-7-1975. Thereafter, Petitioner deposited an amount of Rs. 2291.36P towards interest. Another amount of Rs. 5473.21 together with interest at the rate of

18% remained outstanding and, therefore, proclamation in Z.A. Form No. 74 for sale of the attached house was issued on 2-9-1975. The date of auction was fixed as 7-10-1975, which happened to be a holiday for Idul fitri. Since this was a holiday, the Petitioner claimed that no auction could have taken place under Rule 285 (A) of the Rules framed under the UP ZA and L.R. Act. However, the auction took place on 8-10-1975, to which, Petitioner alleges, that he did not have any notice or information. The highest bidder, namely, Durga Prasad did not deposit 1/4th amount of Rs. 13,000 and, therefore, one Kanhaiya Lal Jaiswal, who had earlier given a bid of Rs. 11,000 moved an application offering Rs. 16,000 behind the back of the Petitioner and after completion auctions proceedings. His offer was accepted.

4. Thereupon, Petitioner moved an application under Rule 285-1 for cancellation of the sale on various grounds, which was rejected. Aggrieved, the Petitioner filed a revision.

5. Sri Sashi Nandan, learned counsel for the Petitioner drew my attention to the provisions of U.P. Z. A. and L. R. Act and the Land Revenue Act. He also strenuously argued on the merits of the case by contending that since the Department had accepted part payment from the Petitioner, it was estopped from auctioning the property in question which could not be done without issuing fresh notice and proclamation. The negotiation between the Department and the auction-purchaser was held under the thick veil of secrecy and everything happened after the auction was over. He further urged that recovery of arrears as land revenue is regulated by Section 279 of the UA ZA and LR Act and Rules 281 to 285 of the. Rules framed thereunder. Rule 285-E is analogous to order XXI Rule 85 CPC. The view of the Board of Revenue that since the dispute arises out of recovery of amount as arrears of land revenue, the provisions of Land Revenue Act will be applicable, is erroneous in law.

6. On the other hand, learned counsel for the Respondents tried to justify the order of the Board of Revenue on various grounds. Since the case is fully covered by Full Bench decision of the this Court, the submissions advanced by learned counsel for the Respondents have no substance and, therefore, they are not being discussed

7. The question as to whether the realization of the amount in the present case will fall under the provisions of UP ZA and LR Act, or, under the Land Revenue Act, is a pure question of law. While going through the impugned order passed by Board of Revenue, I find that the Board of Revenue has completely overlooked this aspect of the matter that when a procedure - is prescribed for realisation of amount as arrears of land revenue under the UP ZA and LR Act, any grievance, or, adjudication of right of the parties in regard to the conduct of sale, and the validity of the said sale, will be subject matter to be determined by Commissioner. The order of Commissioner may be treated to be final but the proceedings before the Commissioner are certainly judicial in nature. The Commissioner may not be sitting as Court but in law, the order passed in such

proceedings by the Commissioner, will be deemed to be an order passed by Court and such order be amenable before revisional jurisdiction u/s 333 of the UP ZA and LR Act, which is analogous to Section 219 of the Land Revenue Act. Thus, the Commissioner, while deciding objection under Rule 2"85-l of the Rules framed under the UP ZA and LR Act will be deemed to be a Court and such proceedings before him are certainly judicial in nature, in view of this aspect of" the matter, the view taken by the Board of Revenue is erroneous.

8. I find support for reaching to the aforesaid conclusion from a Full Bench decision of this Court in Ram Swaroop v. Board of Revenue (Lucknow) 1990 RD 291 wherein it was held that the proceedings before the Commissioner are judicial in nature and the rights and objections decided by Commissioner under Rule 285-1 are judicial proceedings, against which revision will lie before the Board of Revenue u/s 333 of the UP ZA and LR Act, and, not u/s 219 of the Land Revenue Act.

9. In the normal circumstances ,the Commissioner may be a revenue Court, but he will not act as Revenue Court for the purpose of entire Land Revenue Act. If the dispute is for realization of an amount as arrears . of land revenue, one may say the proceedings before the Commissioner and the Board of Revenue as that of Land Revenue Act, but once the amount '' is , sought to be realised as arrears of land revenue and sales takes place, there is no provision, except the provisions of UP ZA and LR Act for conducting such sale and filing objection in respect thereof. Thus, it is absolutely clear that the procedure described under the UP ZA and LR Act and, the rules framed thereunder, empowers, the Commissioner to decide the objection and the rights of-the parties as a Court. While doing so, he does not act under the provisions of Land Revenue Act but he decides the rights of the parties and objections under the provisions of UP ZA and LR Act. and rules framed thereunder. Thus, no other inference can be drawn except to hold that the Commissioner, while deciding objection under Rule 285-I of the Rules, acts as a Court and the revision arising out of the order passed by Commissioner will certainly lie before the Board of Revenue. Thus, the view taken by the Board of Revenue that the matter relates realisation of arrears of land revenue and, therefore, the same is under the land Revenue Act, is erroneous in law.

10. In view of what has been discussed above, the judgment and order passed by Board of Revenue deserves to be set aside.

11. la the result, the judgment and order dated 4-7-1981 of the Board of Revenue is quashed and the Board of Revenue is directed to decide the revision afresh, according to law, in the light of observations made above. The writ petition, therefore, stands allowed. Parties shall bear their own costs.

