

(2008) 12 AHC CK 0380

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17434 of 1993

Manorma Singh

APPELLANT

Vs

S.D.M., Ghosi, Mau and others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0380

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and pursued the record.

2. This writ petition arises out of the proceedings regarding auction sale of chak No. 195 area 7.657 acres belonging to respondent No. 3 situated in village Havatpur Tehsil Ghosi, District Mau.

3. The facts of the case are that respondent No. 3 took loan from the Union Bank of India for agricultural purposes regarding purchase of tractor, which was not repaid to the Bank. Consequently, a recovery certificate was issued against respondent No. 3. Even after the recovery certificate having been issued he did not repay the loan, hence, proceedings for auction of the land of respondent No. 3 were taken fixing 9.1.1990 for auction sale.

4. The bid of the petitioner being highest was accepted by the authority concerned and she was directed to deposit Rs. 5125/ as 1/4th auction sale consideration of the whole with regard to auction of chak No. 195 aforesaid.

5. The grievance of the petitioner is that when she went to despot the balance amount before respondent Nos. 1 and 2 they did not accept the balance 3/4 amount towards sale consideration but on the pretext that they will accept it after some time, as some formalities have to be completed by them. Thereafter a notice for reauction of the land was issued on 24.4.1993.

6. Aggrieved, the petitioner has come up in this writ petition on the ground that

the land could not be reaucted when 1/4th amount of the whole amount had already been deposited by the petitioner and she was willing and ready to deposit the remaining 3/4th balance amount within time and had also offered the same which has not been accepted by respondent Nos. 1 and 2 on one pretext or the other.

7. No counteraffidavit has been filed by the respondents inspite of time having been granted to them.

8. The Standing Counsel has placed reliance upon Annexure2 to the writ petition in support of the reauction notice under challenge by the petitioner.

9. It appears from Annexure2 to the writ petition that the petitioner has been shown as defaulter in payment full amount of auction sale consideration.

10. In view of the fact that no counteraffidavit has been filed by the Standing Counsel and the contention of the Counsel for the petitioner that she is not defaulter is to be proved by her. There is no proof of tendering the remaining 3/4th auction sale money by the petitioner as claimed by her. Mere a bald statement can not be taken as proof of tendering of the remaining 3/4th amount of auction sale, hence on the facts of the writ petition itself the petitioner could not establish before this Court that remaining 3/4th of the amount of auction sale has been deposited by her.

11. For the reasons stated above, this Court is not inclined to interfere in the matter in exercise of its power under Article 226 of the Constitution.

12. The amount of 1/4th of auction sale consideration i.e. Rs. 5125/ along with 9% simple interest shall be returned to her by the respondents within one month from today.

13. It is open to the petitioner to participate in the reauction proceedings or not.

14. The writ petition is accordingly, dismissed.

15. No order as to costs.