(2006) 04 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1889 of 2005

Noor Ahmad APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285, 285I

Citation : (2006) 9 ADJ 681 : (2006) 4 AWC 3190 : (2006) 2 RD 3

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Rahul Sahai, for the Appellant; M.A. Qadeer and Ateeq Ahmad Khan and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, petitioner has challenged the judgment of the Board of Revenue dated 16.9.2004 and that of the Commissioner of the Division dated 5.8.1996 (annexure No. 1 and 2 respectively).

2. Heard Sri Rahul Sahai, learned Advocate in support of this petition, Sri Qadir, learned Advocate who appeared for the auction purchaser and Sri Khan, learned Advocate who appeared on behalf of the U. P. Financial Corporation.

3. There is no dispute about certain facts and therefore it may be summarised in brief for the purpose of disposal of the case. Petitioner took the loan from the U. P. Financial Corporation in the year 1985 to establish a bone mill, which was set up in the name of M/s. Ansari Bone Mill Private Limited on plot No. 402/3 (area 1,78 acres) in village Maudaha, district Hamirpur. Admittedly there was default in payment of the amount upon which U. P. Financial Corporation gave a notice to the petitioner for payment of the loan amount and ultimately on account of non payment the property which is said to be under mortgage was put to auction on 4.7.1994 in which respondent No. 7 who is represented by Sri Qadir in this Court

was the highest bidder who offered an amount of Rs. 1,30,000. The authorities being not satisfied with the price so offered by the respondent No. 7 cancelled the auction proceeding/sale on 10.8.1994. Thereafter again fresh auction took place on 12.9.1994 in which again respondent No. 7 happened to be the highest bidder for the same amount of Rs. 1,30,000/-, which this time was accepted by the competent autbority. Auction sale stood confirmed on 22.11.1994. It is thereafter it is said that sale certificate was issued on 5.12.1994. Objection was filed by the petitioner under Rule 285(i) of the U. P. Z. A. & L. R. Rules on 13.12.1994 and as there was delay in filing the objection he filed an application u/s 5 of the Limitation Act on 23.7.1996. It is claimed that one Abdul Kaleem also filed his objections on 17.2.1995. Learned Commissioner by the order dated 5.8.1996 by recording a finding that the petitioner has not made out a case for condonation of delay in filing the objection chose to reject the objection upon which petitioner filed revision before the Board of Revenue which came to be dismissed vide order dated 16.9.2004 and thus two orders i.e. order of the Board Revenue and that of learned Commissioner referred above are under challenge in this petition.

4. Submission of the learned Counsel for the petitioner is that proceeding on filing the objection under Rule 285-I of the Rules being judicial in nature, the learned Commissioner and the Board of Revenue were supposed to go into details of the objections/grounds so taken and they were supposed to record minimum required reasons and the findings for rejecting the petitioner''s objection on merits and the grounds which were taken for condonation of delay. Submission is that both orders on their perusal can be safely termed to be perverse and totally non speaking and therefore, on the facts as the petitioner has submitted before the courts below that he has suffered serious prejudice on account of impugned auction, he is entitled for a fresh consideration in detail on the merits by the courts below. Submission is that petitioner has clearly stated before the learned Commissioner, before the Board of Revenue and before this Court also that second auction proceedings dated 12.9.1994 took place without any publication, and any kind of notice but neither the authorities have given any finding on this score nor in this Court in the counter affidavit filed by the two respondents there is any positive reply. No finding or any detail has been given in either of the judgment to reject the petitioner''s contention in this respect and, therefore, submission is that matter needs fresh attention. Submission is that this is not for this Court to go into the sufficiency of the cause by dealing with the allegations/counter allegations by referring to the record which too is not before this Court and, therefore, safe course will be to remit the matter for fresh consideration within the time bound schedule so that respondents may also not suffer,

5. Sri Qadir, learned Advocate in response to the aforesaid submits that as petitioner has not filed any objection against the auction proceeding/auction sale and he has filed objection only against the confirmation of the auction sale dated 22.11.1994, petitioner is not entitled to argue before this Court or even before

the courts below about any illegality or irregularity in auction proceeding. Submission is that petitioner having not filed objection within a period of thirty days as contemplated under Rule 285(i) of the Rules against the auction proceeding/auction sale, sale having been confirmed now petitioner cannot get any relief either in the proceedings before the court below or before this Court. It was submitted by Sri Qadir that learned Commissioner has given a clear finding that petitioner had knowledge about the auction sale/proceeding well in time, therefore, this being a finding of fact in respect to the knowledge to the petitioner about the auction proceeding if learned Commissioner has chosen not to condone the delay, no exception can be taken to it. It was then submitted that as the entire record was before the learned Commissioner and before the Hoard of Revenue, if on examination they were satisfied that no irregularity has been committed in the auction proceeding, it is not for this Court to record a contrary finding. Lastly it was submitted that as after the confirmation of the auction sale, the answering respondent has proceeded with various kind of improvements/ developments over the land in dispute, in the event now the auction proceedings/ auction sale is disturbed the answering respondent may suffer irreparable injury and, therefore, on this score also this Court is not to interfere.

6. Sri Khan, learned Advocate who appeared on behalf of the Corporation adopted the arguments of Sri Qadir in respect to the question of knowledge to the petitioner about the auction proceedings and he reiterated that learned Commissioner has recorded a positive finding about the knowledge of the proceedings. It was then argued that no material has been placed by the petitioner before this Court that he has no knowledge about the auction proceedings, therefore, this being the question of fact petitioner is not entitled for any relief. Submission is that as there was default, the Corporation rightly proceeded and the auction proceeding has taken place in lawful manner which has been confirmed also and, therefore, no interference is required.

7. In view of the aforesaid submission as has come on record this Court has examined the merits therein.

8. There cannot be any quarrel about the proposition that proceedings in question has been held to be judicial proceeding by the Full Bench judgment of this Court in the case of Ram Swaroop v. Board of Revenue and Ors. reported in 1990 RD 291. In fact earlier these proceedings were held to be administrative in nature by a Division Bench of this Court in the case of Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra and Ors. reported in 1984 RD 229 which was specifically overruled by the Full Bench in the case of Ram Swaroop (Supra). Thus the proceedings being the judicial in nature it is not to be emphasized that the courts exercising the judicial function or to deal with the pleadings of the parties, the submission so advanced and thereafter they are supposed to record reasons for rejecting/accepting the same. There is a specific ground taken by the petitioner in the objection filed before the Commissioner to the effect that auction sale has taken place without any publication and notice in

any manner. This was specific ground taken before the Board of Revenue also which is clear from perusal of the material as placed on record of this Court. Neither the learned Commissioner nor board of Revenue has recorded any finding in respect to any publication or notice in respect to the sale proceedings which took place on 12.9.1994. The judgment of both the courts is silent on this point. In the back drop that the auction sale dated 12.9.1994 was without any proclamation or notice if the petitioner has pleaded want of notice/knowledge then it was required for the learned Commissioner who is first court to give reasons that how he is coming to the conclusion that the petitioner has knowledge of the proceedings. Merely by saying a word that petitioner had knowledge unless it is supported by any positive factor or instance the finding cannot be accepted to be a proper finding. Petitioner has further stated in the objection that the adjoining plot which was of very small area was sold in the year 1994 for very high price. The property in question is having an area of 1.78 acres including the building and the machinery of which land and building is said to be auctioned for a price of Rs. 1,30,000/- was liable to be considered by the concerned authority that it was just and proper in the facts and circumstances of the case. There is no dispute about the fact that the authorities themselves proceeded to cancel the auction dated 4.7.1994 which was for Rs. 1,30,000/- but again on 12.9.1994 just about after two months accepted that very price to be good in favour of the same private respondent but this Court is not to express any opinion on this score as this is the concern of the concerned authorities to go into facts of the case as was highlighted/stated by the petitioner specifically in the objection which was placed before the court by Sri Qadir during the course of the argument. In view of the aforesaid this was for the courts below to consider that whether the petitioner has suffered serious prejudice on account of the auction proceeding and whether the auction proceeding was without any notice/ publication in any manner.

9. Be as it may, now the technical submission as raised by Sri Khan and Sri Qadir will have to be taken note. Sri Qadir vehemently resisted the claim of the petitioner on the ground that there was no objection from the side of the petitioner against auction proceeding/auction sale rather objection was only against the confirmation of the auction for which he referred the provisions as contained in Rule 285-I of the Rules which can be quoted hereunder for convenience :

285-I (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.

10. A perusal of the aforesaid rule makes it. clear that within a period of thirty days from the date of the sale application has to be filed before the Commissioner to set it aside. In the aforesaid rule there is absolutely no mention that if the auction sale has been confirmed then the objection will not He. So far the auction proceeding/auction sale is concerned that includes the confirmation also as it is consequential step which is bound to take place. If this is accepted that after confirmation of the sale no objection will lie then the purpose of applying principles of Limitation Act will stand frustrated and decision of the Full Bench of this Court will become meaningless. Now in view of law laid down by this Court objection even after the prescribed period of 30 days has to be entertained, of course on the satisfaction of the courts about the explanation so given for coming to the court after period of limitation. As the confirmation of the auction sale is just a step ahead in the auction proceeding if that has been challenged with the clear averment/pleading that auction proceeding has not taken place in accordance with law, and there was no notice, information, publication then this Court is of the considered view that propriety/irregularity in the auction sale/auction proceeding will have to be considered on the merits and thus the objection of Sri Qadir is hereby overruled.

11. So far the argument of Sri Qadir, learned Advocate that Commissioner has recorded a finding about the knowledge to the petitioner of the proceeding, suffice it to say that it is totally perverse finding as not a single word has been stated in the orders that how petitioner had knowledge about the auction proceeding although there is a specific averment that there is no publication in respect to the second auction proceeding. Needless to say that any auction proceeding/auction sale without any proclamation/publication can be safely said to be void as unless there is publication and publicity in respect to any auction, possibly the prospective buyers may not come on the scene and that itself is to cause irreparable injury to the person who is owner of the property and there will be always chances of not getting the fair market price of the property so auctioned. If a loanee is in default the auction of his property is a mode of recovery but the intention behind the auction is that property so being auctioned has to fetch a fair price so as to meet out the loan amount and if amount is surplus then that has to be paid to the owner of the property as his property is being taken away in one of the modes of the recovery.

12. As the learned Commissioner and the Board of Revenue has not addressed in any manner on all these aspects and on a reading of both the judgments this Court is satisfied that there cannot be any more unsatisfactory judgment from one in hand, the matter needs fresh attention on all these scores.

13. At this stage the submission of Sri Qadir is that after the auction sale which was confirmed as subsequent developments and improvements have taken place, this Court is not to interfere. If this argument is to be accepted then that is to cause irreparable injury to the person whose property has been auctioned. Take a case that after playing some mischief/fraud without proper publication or

other kind of fatal irregularity, any property is got auctioned and that is confirmed and immediately the beneficiary invests some money and got some improvement over property so received in auction and even though court finds that auction sale is illegal and void and is in gross violation of established procedure, the court will have to refuse the relief to the owner of the property, on the ground as raised by Sri Qadir, learned Advocate as noticed above. This Court cannot approve the objection so raised by Sri Qadir as that will lead to grant of the license to a person, who is in a position to use/utilize his unlawful means and reasons to manage a sale of property which may be otherwise found to be illegal and void but now he becomes immune of any problem. Law has to take its own course. If a proceeding/auction is valid it is valid, if it is invalid and void then it will have to be treated/accepted to be as such. While considering the equities as has been argued by Sri Qadir this Court has to consider the equity in favour of the petitioner also whose property is (sic). Here is the case where agricultural land plus other improvement over it, has been auctioned which is claimed to be worth much more, for what it was auctioned. At this stage Sri Qadir submits that only land and the building has been sold and not machinery. Be as it may, this Court is not recording any finding on this score.

14. As both the judgments are wholly unsatisfactory and absolutely no reason has been assigned either for rejecting the application for condonation of delay or for rejecting the objection on the merits, the matter needs fresh consideration on both score in the light of the objection/pleadings and the material which appears on record. As the matter is quite old this Court has to direct the concerned authority to move fast and to get the needful done after giving adequate opportunity of hearing to the parties preferably within a period of three months from the date of receipt of certified copy of this order from either sides.

15. Accordingly this petition succeeds and is allowed. Impugned judgments of the Board of Revenue and the learned Commissioner dated 16.9.2004 and 5.8.1996 are hereby quashed. Matter is sent back to the concerned Commissioner to revive the petitioner''s objection again on the merits and to deal the same in accordance with law within the time bound schedule as indicated above. Needless to say that decision on objection of the petitioner includes the decision on the question of limitation/Section 5 application also so filed by the petitioner. It goes without saying that both authorities i.e. learned Commissioner and the Board of Revenue as the situation maybe will exercise their own independent discretion on the merits of the matter and they will not be guided by any observation which might have come either in favour/against any party in the judgment of this Court.

