
(2007) 07 AHC CK 0258
In the Allahabad High Court
Case No : C.M.W.P. No. 7536 of 1984

Om Prakash Gupta

APPELLANT

Vs

Commissioner, Moradabad Division and Others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, Order 21 Rule 90
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 286
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285I

Citation : (2007) 6 AWC 5493 : (2007) 103 RD 214

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Ajay Kumar Srivastava, K.M.L. Hajela and S.K. Pandey, for the Appellant; S.C, for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—In realisation of an amount of Rs. 17,284.02 due against the Petitioner which was realisable like arrears of land revenue Petitioner's agricultural land comprised in Khata No. 352 and measuring 3.61 acres was sold in auction on 12.5.1982. Respondent No. 3 - Irfan purchased the property in auction for Rs. 40,000. Petitioner filed objections under Rule 285-I of the Rules framed under U.P. Z.A. and L.R. Act which is equivalent to Order XXI, Rule 90, C.P.C. Objections were filed on 9.6.1982, copy of which is Annexure - 2 to the writ petition. Commissioner, Moradabad Division, Moradabad before whom objections were registered under Rule 285 - I as objection No. 45 of 1982 Prem Prakash v. Kar Nirdharan Adhikari, rejected the objections on 23.4.1984. This writ petition is directed against the said order.

2. The objections were general in nature. The Commissioner decided each and every objection taken by the Petitioner. The Commissioner held that property was properly valued in auction ; that due notice to the Petitioner was given as required by the relevant sections and rules i.e., Sections 279 to 286 of U.P. Z.A.

and L.R. Act ; that proclamation of sale was duly issued and published in Form 74 and that S.D.M. approved the sale proceedings which was perfectly in order.

3. Commissioner also held that mere fact that there was some variation in the ink did not make any difference.

4. However, the Commissioner further held that objections were not maintainable as Collector or State had not been made party. I do not agree with the said finding. Impleading auction purchaser is sufficient.

5. Learned Counsel for the Petitioner has vehemently argued that the land of the Petitioner which was auctioned was comprised in two plots i.e., Plot Nos. 166 and 167 of Khata No. 352 and the amount sought to be realised could very well be realised by selling only one of the two plots. This argument is quite substantial. Supreme Court in Balakrishnan Vs. Malaiyandi Konar, has held that provisions of Order XXI, Rule 64, Code of CPC are mandatory and its violation renders the sale illegal. However, this point was not raised by the Petitioner before the Commissioner. In the entire objection copy of which is Annexure 2 to the writ petition this point was not mentioned hence it cannot be permitted to be raised for the first time in writ petition. Even in the grounds of writ petition this point has not been taken.

6. Accordingly, there is no merit in the writ petition hence it is dismissed.