
(2002) 01 AHC CK 0127
In the Allahabad High Court
Case No : Writ Petition No. 833 of 2002

Pawan Kumar Mishra

APPELLANT

Vs

Commissioner, Allahabad Division, Allahabad & Ors.

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 01 AHC CK 0127

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner and Mr. S. Chaturvedi, Advocate, who has appeared for respondent No. 3.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 1932001 passed by the respondent No. 1 allowing the objection and remanding the case to the SubDivisional Magistrate concerned for decision afresh on merit after affording opportunity of hearing to the parties concerned.

3. It appears that in the recovery proceedings, the property owned by the petitioner and other persons was put to public auction. The petitioner offered the highest bid, consequently his bid was accepted and the property in dispute was sold in his favour. Subsequently, an objection appears to have been filed by the contesting respondents before the respondent No. 1 claiming that auction proceedings were held illegally, behind their back and without any notice to them, they were, therefore, liable to be quashed. The respondent No. 1, after hearing the parties concerned, allowed the objection by order dated 1932001 and remanded the case to the SubDivision Magistrate concerned for decision afresh, as stated above. Hence, the present petition.

4. Learned counsel for the petitioner vehemently urged that the impugned order

has been passed by the Commissioner, Allahabad Division, Allahabad without affording an opportunity of hearing to the petitioner. It was also urged that the recovery certificate was issued against a dead person, the same was, therefore, legally non est. The impugned order, according to him, as such was, liable to be quashed.

5. On the other hand, learned counsel appearing for the contesting respondents supported the validity of the order passed by the Commissioner. It was urged that the findings recorded by the Commissioner are all findings of fact, which are based on relevant evidence on the record. It was also contended that the impugned order was passed after affording opportunity of hearing to the parties concerned. Further, if the petitioner felt that he was not given an opportunity of hearing, the remedy for the petitioner was before the respondent No. 1 himself and not before this Court under Article 226 of the Constitution of India. It was also contended that the impugned order is an order of remand, therefore, the writ petition against the said order is legally not maintainable.

6. I have considered the submissions made by the learned counsel for the parties and also perused the record.

7. Without going into the other questions raised by the learned counsel for the parties, this petition may be disposed of finally only on one question, i.e., as to whether opportunity of hearing was afforded to the petitioner or not, and if not, whether the remedy for him was before the Commissioner or before this Court under Article 226 of the Constitution of India. According to the case taken up by the petitioner, the petitioner was not afforded an opportunity of hearing and he was also not intimated about the date fixed in the case for hearing. If the above noted facts stated in the writ petition are correct, the remedy of the petitioner was before the Commissioner and not before this Court under Article 226 of the Constitution of India. The petitioner should have been better advised to approach the Commissioner and make an application for recalling the order dated 1932001 instead of filing a writ petition under Article 226 of the Constitution of India. The petitioner can still file an application for recalling the order dated 1932001.

8. In view of the aforesaid facts, it is observed that if the recall application is filed within 10 days from today, the same shall be decided expeditiously preferably within a period of one month after affording opportunity of hearing to all the parties and after following the procedure prescribed under the law.

9. Till disposal of the application filed by the petitioner or for a period of one month, whichever is earlier, the operation of the impugned order dated 1932001 shall remain stayed.

10. With these observations and directions, this petition is disposed of finally.