
(2001) 11 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 14583 of 1996

Rajwati

APPELLANT

Vs

Commissioner, Agra Division and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 AWC 189

Hon'ble Judges : Binod Kumar Roy, J;A.K. Yog, J

Bench : Division Bench

Advocate : Vipin Sinha, Navin Sinha and Arun Kumar Singh, for the Appellant;
Sarita Singh, SC and H.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and A.K. Yog, JJ.—Heard learned counsel. Perused the writ petition, counter-affidavit of respondent No. 4 and the rejoinder of the petitioner.

2. The petitioner has come up with a prayer to quash the order dated 9th June, 1995 passed by respondent No. 1, the Commissioner, Agra Division, Agra, as contained in Annexure-VIII to the writ petition on the grounds, inter alia, that the petitioner was a bona fide transferee for consideration and thereby the auction sale in her favour, which was confirmed and a sale certificate was also issued, could not be nullified without giving any opportunity of hearing while passing the impugned order as stated in paragraph-24 of this writ petition.

3. A bare perusal of the document appended as Annexure-VIII shows that in fact, a communication was made by respondent No. 1 to the District Magistrate, Aligarh vide letter dated June 9, 1995, intimating him of the nullification of the sale of half share of Smt. Munni Devi (respondent No. 4) bearing Gata No. 383 area 10 bighas, 7 biswas, 10 biswansi in the immovable property holding that the entire recovery proceedings were on account of wrong sending of the demand letter by the Electricity Department and thus cost should be recovered from the

Electricity Department.

4. The Electricity Department has not been impleaded as a party-respondent to this writ proceeding.

No one apprises us that this order is under challenge at the instance of the Electricity Department.

5. From the averments made in the counter-affidavit of respondent No. 4, it appears that the defence of respondent No. 4, inter alia, are that since nothing was due to be recovered from her, therefore, the initiation and continuance of the recovery proceeding, the auction sale and the sale certificate, which were done without any notice to her, all were/are void and that she is still in actual physical possession of her lands.

6. Sri Arun Kumar Singh, holding brief of Sri Vipin Sinha, learned counsel appearing for the petitioner, submitted that the stand of respondent No. 4 may be true but having regard to the peculiar facts and circumstances including that the principles of natural justice were grossly violated by the Commissioner while passing his orders, therefore, his order must be set aside highlighting that the petitioner is a bona fide purchaser of the lands in question for a valuable consideration of Rs. 14.000 in the year 1986 and thus according to the decision of the Hon''ble Supreme Court in Janak Raj Vs. Gurdial Singh and Another, the sale of the petitioner ought to have been confirmed.

7. It is not the submission of the learned counsel for the petitioner that the observations made by the Commissioner in Annexure-VIII vis-a-vis the Electricity Department are incorrect on merits. The correctness of defence set-up by respondent No. 4 not having been disputed before us, we do not feel satisfied to exercise our discretionary jurisdiction in favour of the petitioner as a writ petitioner cannot, as a matter of right, take a stand that his prayers must be allowed since principles of natural Justice have been violated. In the instant case, the facts are slightly different and thus the ratio laid down by the Hon''ble Supreme Court is of no help.

8. Consequently, we dismiss this writ petition, but without cost.

9. Let a copy of this order be handed-over to Smt. Sarita Singh, learned standing counsel, within one week, for its intimation to respondent No. 1.