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(2011) 07 AHC CK 0069

In the Allahabad High Court

Case No : C.M.W.P. No. 3295 of 1999

Raksha Pal Singh and others APPELLANT

Vs

Pokhi Singh and others RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Agricultural Credit Act, 1973 — Section 11A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 154(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285D, 285E, 285I

Citation : (2011) 8 ADJ 294 : (2011) 113 RD 778

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. Respondent No. 1 Pokhi Singh took some loan from State Bank of India ADB, Branch Etah, for purchasing a tractor. He could not repay the loan hence first his tractor was sold on 19.7.1985. However, the entire dues could not be satisfied hence agricultural land of respondent No. 1 consisting of his half share in Khatauni No. 507 (plot Nos. 200 and 2072) situate in Village Nagla Jalal, Tehsil Sikandra Rau, District Aligarh, now district Hathras was auctioned for Rs. 1,24,000/- in realisation of balance dues on 20.3.1987. Respondent Nos. 2 and 3 Habib Ahmad and Shamshad Ali were the auction purchasers (thereafter petitioners purchased the property from the auction purchasers). One fourth amount was deposited on the date of auction i.e. 20.3.1987. The balance 3/4 amount was required to be deposited within 15 days in accordance with Rule 285-E of U.P.Z.A.L.R. Rules. The auction purchasers respondent Nos. 2 and 3 gave a cheque dated 4.4.1987 for payment of the 3/4 balance amount. However, afterwards the cheque was taken back and the amount was deposited in cash on 18.4.1987.

3. Thereafter, names of auction purchasers and thereafter of the petitioners were

mutated in the revenue record inspite of objection of the respondent No. 1.

4. For challenging auction sale first respondent No. 1 filed suit in Civil Court for injunction etc. questioning the validity of the auction sale. The plaint of the suit is Annexure SA-1 to the supplementary affidavit filed by the petitioners on 15.11.2003. The plaint was filed on 8.4.1987. In para 9 of the plaint it was stated that land of respondent No. 1 had been auctioned but he did not know about the details of the auction. Neither date of sale nor the amount for which it was sold was mentioned nor the names of auction purchasers were given. The prayer was for rendition of account and permanent prohibitory injunction restraining the defendants from confirming the auction sale. No such ground was taken in plaint that the sale was illegal for non deposit of 3/4 amount within time. It was stated in paras 11 and 12 of the plaint that plaintiff was ready to pay the loan after proper accounting.

5. The suit was dismissed in default on 21.11.1988.

6. Thereafter, respondent No. 1 filed objections under Rule 285-1 of U.P.Z.A.L.R. Rules before the Commissioner on 3.6.1989. Additional Commissioner (Administration) Agra, Division Agra dismissed the objection (Objection No. 21 of 1988-89) through order dated 8.3.1990. In the objection date of the auction had been mentioned as 20.5.1989. An amendment application was filed seeking its correction and stating that date must be substituted by 20.3.1987. Through the judgment rejecting objection, amendment application was also rejected. In the objections auction purchaser respondent Nos. 2 and 3 or the petitioners were not made parties. The Additional Commissioner held that the objections were barred by time as under Rule 285-1 the objections were to be filed within 30 days.

7. Sale had also been confirmed on 15.5.1987.

8. Against the order of the Commissioner respondent No. 1 filed revision No. 51/ sale/89-90 before Board of Revenue, Lucknow. In the revision auction purchasers were impleaded as parties on their own application and were heard. The Board of Revenue allowed the revision and declared the auction to be void and set aside the order of Additional Commissioner dated 8.3.1990 and it was further directed that fresh auction proceedings should be taken. The said order was passed on 5.12.1998 by Board of Revenue Lucknow and has been challenged through this writ petition. In respect of non-impleadment of auction purchaser in the objections before Commissioner the Board of Revenue held that auction purchasers were necessary parties. However, Board of Revenue further held that as they had appeared and their impleadment application had been allowed in revision hence the defect stood cured.

9. In respect of non-deposit of the amount in cash (within 15 days from the date of sale) the Board of Revenue placed reliance upon an authority of the Supreme Court reported in Rao Mahmood Ahmed Khan v. Ranbir Singh 1995 RD 240 (SC) wherein it was held that Rule 285-D of U.P.Z.A.L.R. Rules (dealing with requirement of deposit of 1/4 amount of sale) is mandatory and the amount can

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be deposited only in cash and not through cheque.

10. In respect of delay in filing objections the Revisional Court/Board of Revenue held that apparently there was delay but according to the aforesaid authority of the Supreme Court the sale was utterly void hence delay was not material.

11. As far as the question of requirement of deposit is concerned the aforesaid authority of the Supreme Court is very clear. Deposit by cheque is no deposit either under Rule 285-D or 285-E.

12. However, as far as question of delay is concerned first of all Full Bench authority of this Court in Ram Swaroop v. Board of Revenue and others, 1990 RD 291 has held that provision for condonation of delay u/s 5, Limitation Act is applicable to the proceeding under Rule 285-I of U.P.Z.A.L.R. Rules (cancellation of auction sale).

13. Secondly, under somewhat similar circumstances Supreme Court in Shanti Devi v. State of U.P. 1997 (88) RD 583 (SC) did not decide this question finally. The facts of the said case were that the auction purchaser was already having 5 acres of land and in the auction 8.5 acres land was purchased by him. In this manner total land held by the auction purchaser came to 13.5 acres. However, by virtue of section 154, U.P.Z.A.L.R. Act such sale due to which purchaser becomes the tenure holder of more than 12.5 acres of land is illegal. The Supreme Court therefore held the auction to be null and void and held that even if no objection before Commissioner (under Rule 285-I) was maintainable still High Court in exercise of writ jurisdiction could set aside the auction sale. Para 16 of the said authority is quoted below:

The question also arises that if no objection was filed within 30 days of sale under: Rule 285-I or J, then no other application could have been filed before the Commissioner after the Confirmation. Assuming it to be so, we are of the view that the writ petition filed by the appellant can be treated as a challenge to the order of the Assistant Collector''s that he did not apply relevant factors which he was bound to take into account while confirming the order. The point raised u/s 154(1) does not refer to ''fraud'' and therefore remedy of suit mentioned in proviso to Rule 28-K is not attracted.

14. Accordingly, if the Board of Revenue had also dismissed the revision and respondent No. 1 had filed writ petition, the writ petition could be treated to be directed against auction sale and could be allowed by quashing the auction sale directly. For the same reason when Board of revenue in revision has set aside the sale which was void, such an order cannot be set aside in writ petition. Moreover, it is settled principle of law that writ jurisdiction may be refused to be exercised even if order challenged through the writ petition is found to be illegal if the effect of setting aside of the said impugned illegal order would be to revive another illegal order.

15. Accordingly, if this writ petition is allowed on the ground that objections were

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either not maintainable or filed late then the auction which was utterly void will revive.

16. Accordingly, as the auction sale was utterly null and void hence writ petition cannot be completely allowed and order of Board of Revenue, setting aside the auction sale, cannot be completely set aside.

17. Now comes the question of adjustment of equities. Writ jurisdiction is equitable jurisdiction. As held by the Supreme Court in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, while granting relief to the petitioner in writ petition he may be directed to shed the undue advantage reaped by him in relation to the transaction in question or under the order challenged by him in writ petition. On the same principle if the writ petition is dismissed in favour of the contesting respondent then the contesting respondent may also be directed to shed the undue advantage reaped by him under the transaction in question or in relation thereof.

18. In the aforesaid authority of the Supreme Court of Shanti Devi while granting stay order judgment debtor had been directed to deposit Rs. 1 lakh which was further directed to be invested in short term deposit.

19. In para 26 of the said authority directions for utilisation of the said amount were issued.

Para 26 is quoted below:

26. The amount of Rs. 1 lakh has been invested in short term deposit in this Court. The same shall, on maturity, be sent to the High Court to the credit of civil writ petition No. 6557 of 1983. The amount due as per the sale warrant amount with interest will be ascertained and the same shall first be disbursed to the concerned revenue authority, for satisfying the certificate issued to the said authority u/s 11-A of the U.P. Agricultural Credit Act, 1973. The High Court will ascertain the amount payable under the Certificate together with interest, if any, as stated in the sale proceedings and for satisfying the costs of the proceedings as incurred by the Govt. If the amount in deposit now transferred to the High Court is not sufficient, the appellant has to make good the deficiency. The amount deposited by the purchaser shall be returned to her together with interest at 12% from the date of deposit. The interest amount payable to the purchaser shall be disbursed out of the amount now being sent by this Court to the High Court. If after meeting the demand payable under the Certificate and costs to the government, there is no balance left to pay the interest component payable to the purchaser as stated above on the amount the purchase may have deposited in the revenue Court, the appellant shall again have to make good the deficiency. In respect of any such further sums payable by the appellant, as aforesaid, if need be, the High Court will grant reasonable time to the appellant. If of course, the amount now sent to the High Court is sufficient to meet all these directions, no question of further payment by the appellant will arise. In the absence of a confirmatory order, the sale dated 2.5.1982 is declared as otiose

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and ineffective and the appellant shall be treated as owner and entitled to the possession thereof. The appeal is disposed of accordingly.

Order accordingly.

20. Accordingly, the impugned order passed by the Board of Revenue is modified and the auction sale is set aside on the following conditions:

21. The amount of Rs. 1,24,000/- deposited by the auction purchaser respondent Nos. 2 and 3 shall be reimbursed to the petitioners by respondent No. 1 along with 12% per annum interest from the date of deposit (18.4.1987). This amount shall be deposited with the Collector for immediate payment to the petitioners.

22. Respondent No. 1 shall be entitled to take back possession of the land in dispute from the petitioners and get his name mutated in the revenue record only after deposit of aforesaid amount. Till then petitioners are restrained from alienating the property in dispute in any manner, changing its nature or creating any charge thereupon.

23. Writ petition is accordingly, disposed of.

Petition Disposed Of.

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