
(2007) 08 AHC CK 0060
In the Allahabad High Court

Ram Barai Prasad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Citation : (2008) 2 AWC 1675 : (2008) 3 BC 175

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—List revised. No one is present on behalf of the auction purchaser, respondent No. 5. Heard learned Counsel for the petitioner as well as learned standing counsel for the respondents No. 1 to 3 and 6. Learned standing counsel for respondent No. 4 Union Bank of India is also not present.

2. Petitioner took some loan for purchasing a tractor from respondent No. 4, Union Bank of India, Jangipur Branch Ghazipur. Petitioner defaulted in payment of instalment of loan, hence, recovery certificate was issued by the bank to the Tehsil authorities who in turn issued citation. Thereafter, according to the petitioner, he cleared all the dues on 14.6.1990 by paying balance amount to the Amin. It has further been stated that some excess amount had also been paid by the petitioner which was to the tune of Rs. 354.92. The said amount of Rs. 354.92 remained over paid as rebate of Rs. 10,000 was granted to the petitioner.

3. The agricultural property of the petitioner was auctioned on 22.8.1990 for realisation of the dues even though there were no dues on that date. Hari Prasad respondent No. 5 was auction purchaser. The land was sold for Rs. 60,000 while according to learned Counsel for the petitioner reserved price was fixed for Rs. 2 lakhs.

4. Thereafter, when petitioner came to -know about the auction sale he raised objection and ultimately filed application under Rule 285(1) of the Rules framed under U.P.Z.A. and L.R. Act, being sale Case (Objection) No. 4/17/38/4/13/21/1

of 1990. The said application was rejected on 30.12.1995 by Additional Commissioner, (Administration) Varanasi Division, Varanasi. The said order has been challenged through this writ petition.

5. The State in its counter-affidavit has admitted that there were no dues on 22.8.1990. It may be mentioned that sale was confirmed on 22.9.1990. Even in the counter-affidavit of respondent No. 5 there is no specific denial of the fact that dues had been cleared on 14.6.1990. In the counter-affidavit filed on behalf of the State by the Tehsildar Saidpur District Ghazipur in para 15, it is clearly admitted that "it is stated that during the continuance of the recovery proceedings, the petitioner had obtained the receipt from the collection Amin of the tehsil after depositing arrear/loan amount".

6. As there were no arrear against the petitioner hence there was no occasion for auction sale of petitioner's agricultural property. The sale was therefore void ab initio. The learned Commissioner while dismissing the objection under Rule 285 (1) has gone on technicalities like delay etc. The Supreme Court in Shanti Devi (Smt) Vs. State of U.P. and Others, has held that if sale is void then it can be set aside by the High Court in exercise of writ jurisdiction.

7. Accordingly, writ petition is allowed. Order dated 30.12.1995 passed by learned Additional Commissioner (Administration), Varanasi Division, Varanasi is set aside. Auction sale dated 22.8.1990 and sale confirmation order dated 22.9.1990 are also set aside. Let no interference be made in the possession of the petitioner and name of the petitioner be also re-entered in the revenue records by the Tehsil authorities.

8. The amount of Rs. 65,000 directed to be deposited by the petitioner under interim order dated 13.2.1996, passed by this Court in this writ petition shall at once be returned to the petitioner alongwith accrued interest, if any.