
(1999) 05 AHC CK 0116

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3948 of 1998

Ram Palat and Others

APPELLANT

Vs

Commissioner, Azamgarh Division and Others

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 05 AHC CK 0116

Hon'ble Judges : Sushil Harkauli, J

Final Decision : Disposed Of

Judgement

S. Harkauli, J.—Heard learned Counsel for the parties.

2. The respondent No. 3 was the owner of certain land and tractor. In a proceeding for recovery of loan taken by respondent No. 3, the tractor and the land were attached. By the auction dated 24/11/1997 the tractor was auctioned for a sum of Rs. 78,000. By a separate auction dated 28/11/1997 the land of respondent No. 3 was auctioned and was purchased at the auction by respondent No. 4. However before the sale could be confirmed, the respondent No. 3 filed Writ Petition No. 7602 of 1997, in which State of Uttar Pradesh, Tehsildar and the State Bank of India, were made respondents. After hearing learned Counsel for the petitioner, Counsel for the State Bank of India and the learned Standing Counsel, this Court passed an order dated 4/3/1997 disposing of the writ petition No. 7602 of 1997, finally by directing that the recovery proceeding against the petitioner Sri Ram Prasad, would remain stayed provided he deposits half of the amount sought to be recovered together with the recovery charges by 4/4/1997 and the remaining amount together with the recovery charges in two equal Installments by 4/5/1997 and 4/6/1997. The petitioner was also required by the said order to deposit upto date interest till the date of payment of each Installments. The first Installment of half of the amount was deposited by Sri Ram Prasad within time on 4/4/1997. The second Installment which was payable by 4/5/1997 was deposited by 5/5/1997 as 4th May, 1997 was Sunday. The last Installment

which was payable by 461997 was deposited on 261997 i.e. before time. The amount was not deposited by respondent No. 3 himself but it was actually deposited by the petitioners who had purchased part of the land from respondent No. 3 by saledeed dated 741997. It is not disputed that the entire amount together with recovery charges and interest has been deposited by the petitioner as directed by this Court by order dated 431997 in Writ Petition No. 7602 of 1997.

3. There are two basic disputes, one is that the Installment due on 451997 was deposited on 551997. Since 451997 was Sunday, therefore, the deposit on 551997 can not be said to be belated, but should be treated as within time.

4. The next dispute is that although the last Installment payable on 461997 was paid two days earlier i.e. on 261997 but cash was not deposited by the respondent No. 3 himself. It was deposited by the petitioners. This contention on the face of it is unacceptable. When this Court directed the respondent No. 3 to deposit certain amount, it was implied in the order that he should deposit the amount himself or would get it deposited through anyone else. The remaining respondents in this writ petition can only be concerned with the deposit being within time. They can not be said to be concerned, in any manner, by whom the money was got deposited. Learned Counsel for respondent No. 4 has disputed that the entire amount was not deposited, relying on paras 12 and 13 of the counteraffidavit filed by the State of U.P. According to respondent No. 4 the amount recovered from the auction of the Tractor should not have been considered while calculating the total amount payable. It is in my opinion the choice of the petitioner and the respondent No. 3, as to whether they wish to have auction of the tractor also set aside or whether they wish to have separate auction of the land alone set aside, in this case it is obvious that the petitioner have no interest in the tractor. The respondent No. 3 also does not appear to be interested in having auctioned or the tractor set aside. The respondent No. 4 has no concern with the auction of the tractor.

5. In the circumstances there seems to be no impediment in treating the auction of the tractor as valid and depositing only the amount which remained due after adjusting the amount realised from the tractor. In view of this since the entire amount has been deposited by the petitioner coupled with the respondent No. 3 in pursuance of the order in Writ Petition No. 7602 of 1997 the recovery proceeding must abate and the auction in favour of respondent No. 4 of the land must be set aside.

6. Learned Counsel for the respondent No. 4 has relied upon the provisions of U.P. Zamindari Abolition and Land Reforms Rules for arguing that application under Rule 285(i) was not maintainable being belated. The argument is not relevant because the petitioners get their right through respondent No. 3 on the strength of the order passed by this Court in Writ Petition No. 7602 of 1997 and not because of U.P. Zamindari Abolition and Land Reforms Rules.

7. Learned Counsel for respondent No. 4 then argued that the order dated 531997 in Writ Petition No. 7602/97 was obtained by respondent No. 3 by concealment of material facts namely that the auction of the tractor and land had taken place before filing of the writ petition. However, since no steps appear to have been taken by respondent No. 4 for getting the order dated 431997 in Writ Petition No. 7602 of 1997 set aside on the ground urged by him, therefore, this Court while deciding the present writ petition will have to follow and respect the order dated 431997 aforesaid.

8. In view of the facts and circumstances detailed above this writ petition succeeds and is allowed. The impugned order is quashed. The auction of land in favour of respondent No. 4, which has not been confirmed shall not be confirmed and no further proceeding shall be taken for transferring the land in favour of respondent No. 4. If the respondent No. 4 has deposited any amount in pursuance of the auction, he will be entitled to refund of the same from State of U.P. within a month on production of a certified copy of this order before the District Magistrate, Azamgarh..

9. Learned Counsel for the respondent claimed interest for the amount which has been deposited by him. This question may be decided by the Collector.