(2011) 08 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ petition No. 25588 of 1991

Shyama Ram APPELLANT

Vs

The Board of Revenue and Others RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 285H, 285I
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285H, 285I

Citation : (2011) 10 ADJ 109 : (2011) 6 AWC 6240 : (2011) 114 RD 687

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This is a dispute relating to auction of a property that had been mortgaged in lieu of a loan taken by the predecessor in interest of the Respondent No. 3 for purchase of a tractor. The loan amount having been defaulted, a recovery certificate was issued for realizing a sum of Rs. 1,19,000/- against which the mortgaged property was put to auction. The proceedings are governed by the relevant provisions of the U.P.Z.A. & L.R. Act, 1950 and the 1952 Rules framed thereunder.

2. From the facts it appears that the property was owned by five persons including Sukhraj Singh who claimed that he had deposited 1/5th share of his amount as against the loan taken whereas the other defaulters had not. The entire property was put to auction. The Respondent Ranjeet Singh also participated in the auction but the Petitioner being the highest bider, the bid was knocked down in his favour, who deposited the entire amount. The auction was held on 10th April, 1989 and it was confirmed on 29.5.1989. The possession was delivered according to the Petitioner on 12.9.1990.

3. Ranjeet Singh, Respondent No. 3 claimed that Sukhraj Singh had executed a Will in his favour and, therefore, he was the legal heir of late Sukhraj Singh and

he accordingly set up his claim on the strength of a Will dated 25.9.1984 and also filed a civil suit being Original Suit No. 891 of 1989, which was dismissed on 27.11.1990. A revision was filed against the same which is stated to be still pending.

4. Ranjeet Singh filed an objection under Rule 285I of the U.P.Z.A. & L.R. Rules, 1952 for setting aside the sale. This objection is stated to have been filed barred by time but without there being any condonation of delay, the learned Commissioner allowed the objection vide order dated 16.1.1991 on the ground that the name of the successor of Sukhraj Singh had not been substituted and the sale proclamation of an auction had been carried out against a dead person. The revision was filed by the Petitioner against the same which has also been dismissed.

5. Sri Arun Kumar Mishra, learned Counsel for the Petitioner submits that once the sale had been confirmed, the sale auction cannot be set aside, inasmuch as, No. substantial injury has been demonstrated and No. objection either under Rule 285H or 285I had been filed within time for taking any such action. He has invited the attention of the Court to the decision in the case of Janak Raj v. Gurdial Singh reported in 1967 AIR (SC) 608 and the judgement of the Division Bench of this Court in the case of R.K. Kapoor v. Purshottam Das Poddar reported in 1981 ACJ 118 to support his submission. He has further cited the decision in the case of Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, to contend that the Petitioner being a bonafide purchaser and the sale having been confirmed in his favour there was No. occasion to have entertained a time barred objection beyond the period prescribed and allow it illegally.

6. Sri Arun Kumar further submits that it was the obligation of the Respondent No. 3, Ranjeet Singh to have informed the authorities about the death of Sukhraj Singh as he had knowledge about the same as he was also claiming entitlement on the basis of a Will. Thus, his submission is on the basis of the fact that Ranjeet Singh had participated in the auction and he could have pointed it out at the time of auction itself or could have filed an objection u/s 285H to that effect. Having not done so, it was not open to Ranjeet Singh, the Respondent No. 3 herein to turn around and file a belated objection under Rule 285I which has been entertained beyond the time prescribed.

7. Replying to the said submissions, learned Counsel for the Respondent No. 3 and his substituted heirs submits, that out of five persons, who had taken the loan and after the auction was set aside under the impugned order, their portion of the land which had also been auctioned has been restituted as they deposited their share of the recovery amount, and the auction purchasers of that portion of the land had also taken back their money.

8. He contends that the answering Respondent had deposited his money even before the auction the extent of his share, and his property was wrongly

auctioned in spite of a report in this regard dated 13.7.1982. A copy of the said report has been annexed as annexure-2 to the counter affidavit of the Respondents which was also approved by the competent authority on 16.7.1982, copy whereof is annexure-3. On the strength of these documents, learned Counsel for the Respondent submits that the permission to auction was only in regard to the shares of the other four persons and not that of the answering Respondent. The auction was, therefore, conducted in violation of the said report as accepted by the auctioning authority itself.

9. He further submits that the recovery against a dead person is impermissible and the Section 5 of the Limitation Act provides for condoning of delay which is also applicable to proceedings under Rule 285I as held by this Court in the case of Smt. Savitri Singh v. Board of Revenue, U.P. Lucknow and Ors. reported in 2008 (104) RD 728. He has further relied on in the case of Smt. Sushila Devi v. State of U.P. and Ors. 1996 (87) RD 401 to substantiate his submission.

10. Replying to the aforesaid submissions, Sri Arun Kumar submits that the impugned orders nowhere indicate any condonation of delay and this aspect of the matter has been completely over looked both by the Commissioner and the Board of Revenue. He further submits that merely because the other four persons had retrieved their shares, the auction in favour of the Petitioner would not be invalid. The auction was completed and the sale was confirmed and possession was delivered to the Petitioner and therefore, the facts of this transaction are distinguishable from the other four auctions. Not only this, in the instant case, the person, who has filed the objection has himself participated in the auction proceedings and, therefore, this plea is not available to the learned Counsel for the Respondent.

11. Another fact which deserves to be noted is with regard to the fact that Sukhraj Singh died on 25.9.1984. A mutation application was moved by the Respondent Ranjeet Singh on 6.11.1984 on the basis of a Will and his name came to be recorded on 1.8.1989. Thus, when the auction was held on 10th April, 1989, there was No. order in favour of the Respondent Ranjeet Singh for recording his name on the date of the confirmation of the sale on 29.5.1989. The contention of the Respondent is that it was the obligation of the Tehsil authorities to have found out the name of the legal heir of Sukhraj Singh who had died issueless, and ought not to have proceeded with the auction against a dead person without an appropriate substitution.

12. Having heard learned Counsel for the parties, it is true that a proclamation issued for auction in the name of a dead person, would be invalid. This issue would be in turn dependent upon the fact of the death of the tenure holder being brought to be notice of the Authority. The Authority does not appear to have been informed either from its own sources or by any other person. It is to be noticed that the tenure holder had died in the year 1984 and the Respondent No. 3, Ranjeet Singh had already moved an application for mutation on the basis of a Will which was pending before the Tehsil Authorities.

13. On the other hand another fact which deserves to be noted is that the Respondent No. 3, Ranjeet Singh, who claims succession through a Will, had himself participated in the auction proceedings which is evident from the Auction Bid Note filed as annexure-1 to the writ petition. The same mentions the name of Ranjeet Singh S/o-Kalp Nath Singh as one of the bidders. The auction took place in the year 1989, five years after the death of the tenure holder. Ranjeet Singh had also been pursuing the mutation matter in his favour and, therefore, he knew about the death of the tenure holder. Ranjeet Singh also does not appear to have informed the Auctioning Authority about the death of Sukhraj.

14. Another fact which is noticeable is that there was a report dated 13th July, 1982 which was confirmed by the Competent Authority on 16.7.1982 for proceeding to hold auction. This report, filed as Annexure-C.A-2 to the counter affidavit, also indicates that the tenure holder Sukhraj Singh S/o Ganesh Singh had already deposited Rs. 11995/-being his share of 1/5th against the loan amount and, therefore, Form No. 73 was to be issued in relation to the other four share holders. This report does indicate that the auction was not meant for being conducted as against the share of Sukhraj.

15. These irregularities, therefore, did exist and could have been subject matter of scrutiny in an application u/s 285I of the Rules. The issue relating to the death of Sukhraj Singh was, therefore, relevant and the auction could have been set aside as the proclamation had been issued against a dead person. This was to be adjudged in the background of the information about his death.

16. There is yet another aspect which has been urged on behalf of the Petitioner about the delay in filing of the objection by the Respondent under Rule 285I. The contention raised by the learned Counsel for the Petitioner is that the delay in filing the objection under Rule 285I had not been condoned and, therefore, the objection could not have been entertained. There does not appear to be any finding in this regard and the contention, raised on behalf of the learned Counsel for the Respondent that the delay can be condoned in a proceedings under Rule 285I, has to be taken into account in view of the decisions in the case of Smt. Savitri Singh (Supra) and in the case of Smt. Sushila Devi (Supra) relied upon by the learned Counsel for the Respondent.

17. Ordinarily once it is established that there is a material irregularity then the sale has to be set aside and the auction has to be held again. Apart from this, on equities also, the money had been deposited by Sukhraj Singh. Even though, the Board of Revenue had taken notice of the aforesaid fact yet on the issue relating to the objection having been filed within time there does not appear to be any finding. To that limited extent, the matter may require a remand before the Board. The Board shall, therefore, now proceed to decide the matter again in view of the fact that the provisions of Section 5 of the Limitation Act would be available in proceedings under Rule 285I as well and in the light of the other observations made hereinabove.

18. Another aspect which deserves to be taken note of is that the land which was apportioned in five parts, had been put to auction. The other four parts which had been sold have been restored back to the co-tenure holders of Sukhraj. It is only the share of Sukhraj which has been ultimately confirmed after the auction sale. The impact of the auction, which has been set aside against the other four share holders, would also be a matter to be considered by the Board.

19. Accordingly, the writ petition is partly allowed and the order of the Board dated 7.8.1991 is set aside. The Board shall now proceed to decide the matter afresh in the light of the observations made hereinabove as expeditiously as possible preferably within a period of three months from the date of presentation of a certified copy of this order before it.

