(2007) 08 AHC CK 0249

In the Allahabad High Court

Smt. Savitri Singh — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 280

Citation : (2008) 2 AWC 1983 : (2008) 104 RD 728

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—This writ petition is directed against the order dated 30.1.1997, passed by Board of Revenue, U.P., Lucknow allowing Revision No. 6 (Sale) 94-95, district Gonda, Hari Ram Singh v. Savitri Devi setting aside order dated 9.2.1995, passed by Commissioner, Faizabad Division, Faizabad.

2. This Court after hearing learned Counsel for the parties required original record by the order dated 24.7.2007. Record was not produced on the date fixed. Hence, by another order dated 2.8.2007, this Court again directed to produce original record. Original record was produced on 7.8.2007. From perusal of original record it transpires that loan was granted by Allahabad Bank, Wazirganj Branch, district Gonda for purchasing Tractor. A recovery certificate was sent by the Bank for recovery of Rs. 1,10,829. In the proceedings for recovery, the tractor of the petitioner was sold by auction sale for Rs. 51,500 on 20.1.1994 in favour of one Ram Gopal Singh son of Sumer Singh. The payment was made and auction-sale was confirmed on 31.1.1994.

3. From perusal of report dated 4.10.1994, it transpires that only Rs. 48,276 + interest was due and on 18.7.1994 one Kunwar Singh moved an application that he may be permitted to deposit the amount of his share. No orders were passed on his application. On 2.10.1994. an application was moved by petitioner Smt. Savitri Devi to the effect that she had no knowledge about any such auction of

the land. By said auction more than 8 acres of land of the petitioner was auctioned only for Rs. 51,000. She also mentioned that the Naib-Tehsildar colluded with opposite parties. She prayed that the proceedings for auction may be permitted to be inspected by the petitioner or her counsel. It further appears that an affidavit was also filed before Tehsildar in support of the application dated 27.9.1994 to the effect that no auction has taken place and all the proceedings were manufactured in collusion with Tehsil Authorities. It further appears that no notice was issued or summons were served to the petitioner. It is important to mention that Hari Ram Singh auction purchaser was real nephew of the petitioner who is widow of Ganga Singh. It further transpires that auction has not taken place in the village but it has taken place at Tehsil Head Quarters. Ganga Singh was already dead in 1992 and notice was issued against a dead person on 24.8.1994 fixing 26.9.1994 for auction sale.

4. From perusal of record it transpires that petitioner had already moved applications before Tehsil Authority that Ganga Singh has never taken any loan or purchased any tractor. The whole thing was done by one Kunwar Singh and the property of Ganga Singh cannot be sold. No orders were passed by Tehsil authorities on that application, Notice were issued in the name of Ganga Singh on the basis of which auction alleged to have taken place on 26.9.1994 of the land in dispute though Smt. Savitri Singh was recorded in Revenue Record by order dated 27.3.93.

5. From original record it further transpires that Tehsildar, Tarabganj, district Gonda has submitted a report on 24.3.1995 by which he has given the following details of deposit made by petitioner.

26.9.1993 Rs. 3,000 28.10.1993 Rs. 43,553 29.5.1994 Rs. 4,000 7.8.1994 Rs. 5,000 27.7.1994 Rs. 5,000 29.7.1994 Rs. 5,000 1.3.1995 Rs. 51,314 ________________ Total Rs. 1,16,867 __________________

6. It appears that in spite of the fact that no notice was issued as required under Sections 279 to 280 of U.P. Zamindari Abolition and Land Reforms Act and notice was issued against Ganga Singh to which objections were filed on the next date by the petitioner before Tehsil Authority on 27.9.1994 and 2.10.1994, no orders were passed on the petitioner''s application, but without taking any thing on record, the order dated 26.10.1994 was passed confirming the auction sale dated 26.9.1994 against the property recorded in the name of petitioner in revenue record on the notice against a dead person. In an objection filed by the petitioner before Commissioner, Faizabad Division, Faizabad u/s 285-I of U.P. Zamindari Abolition and Land Reforms Act, the Commissioner, Faizabad Division, Faizabad permitted petitioner to deposit Rs. 53,814 which was deposited on 6.2.1995. The Commissioner set aside the order dated 26.10.1994 and directed that District Magistrate shall get the name of the petitioner remutated in the revenue record and also allowed to continue in possession. Against aforesaid order, the opposite parties preferred a revision before Board of Revenue. The Member, Board of Revenue by order dated 30.1.1997 set aside the order dated

9.2.1995, on the ground that the proceedings u/s 285-I were barred by time and Commissioner was wholly incompetent to condone the delay and set aside the auction sale if application was not filed within 30 days and held that Commissioner was also not competent to permit petitioner to deposit the remaining amount. This order was challenged on the ground that entire proceeding is null and void. Notice was issued against a dead person Ganga Singh who died in 1992 and name of petitioner was mutated in revenue record in 1993. The proceedings were initiated by nephew of the petitioner in collusion with Tehsil authorities and more than 8 acres land was wrongly and illegally tried to be grabbed by collusive and illegal proceedings. He urged that the rate of land in the area where petitioner''s land is situated was Rs. 44,000 per acre whereas the entire property of petitioner was auctioned for Rs. 51,000 only. It was further urged that petitioner was ready to deposit the entire amount within prescribed period which was not permitted to be deposited by Tehsil Authority on one pretext or the other in spite of the repeated applications and efforts made by the petitioner who is helpless (widow). Learned counsel for the petitioner urged that impugned order is liable to be quashed in view of the fact borne out from the original record, but the Tehsil Authorities collusively auctioned the property and confirmed without taking into consideration the fact that proceedings was initiated against a dead person as well as petitioner was ready to deposit the entire amount.

7. In reply to the same, learned Counsel for the opposite party No. 3 conceded that the notice was issued on different forms against a dead person Ganga Singh but he urged that the notice was issued against Ganga Singh and Kunwar Singh, hence proceedings against Kunwar Singh could be maintained, he denied any collusion of Tehsil Authorities with Hari Ram Singh and urged that though contesting opposite party is nephew of petitioner. There was no collusion with Tehsil Authorities and auction was rightly taken place and order of Board of Revenue be confirmed.

8. Heard learned Counsel for the parties.

9. After considering the entire materials on record and perusal of record it is established that proceeding against petitioner''s husband was initiated in 1993 though he died in 1992 and entire property was mutated in the name of the petitioner and was usurped by initiating proceeding against a dead person. The entire proceeding is liable to be quashed on this ground. The Board of Revenue has taken too technical view of law. It is settled in Ram Swarup v. Board of Revenue and Ors. 1990 RD 291 (FB). that impugned proceeding u/s 285 and Section 5 of the Indian Limitation Act fully applies and authorities are competent to condone the delay in proceeding and pass order on merits.

10. From original record it transpires that the whole proceedings was initiated in collusion with Tehsil Authorities and the auction purchaser. Auction purchaser was real nephew of the petitioner who is a helpless widow without any child. Notice was issued against Ganga Singh (husband of petitioner) a dead person and

tractor was seized and thereafter auctioned. Tehsil Authorities never received any fresh recovery certificate from Bank for initiating fresh recovery proceeding as arrears of land revenue. The old proceeding had already terminated by auction of tractor in continuance in the same proceeding against a dead person without any fresh recovery certificate and fresh notices to recorded tenure holder and auctioning the land in dispute was without any authority in law. No fresh notice or citation was issued to petitioner and entire proceedings initiated by Tehsil Authorities was on the basis of old recovery certificate which has already lost its life as the recovery certificate of proceeding was initiated and completed by auctioning tractor. In case any amount remained due to Bank even after auction and deposit Bank should have sent fresh recovery certificate for unpaid amount. But from the original record it transpires that it is the Tehsil Authorities who sent a number of reminders to Bank without Bank request for initiating the recovery proceeding as arrears of land revenue against immovable property, i.e., plot in question. Tehsil Authorities initiated proceeding on its own without any fresh request from the Bank. The Court is of the view that proceeding for recovery as arrears of land revenue on earlier recovery certificate terminated finally by auctioning the tractor. In case Bank could not recover any amount if due, thereafter Bank should have sent fresh recovery certificate for recovery of the unpaid amount. No such recovery certificate was sent. No notice was given to recorded tenure holder and entire proceeding was initiated against notice on Forms 73 and 74 against a dead person. The record further makes it clear that Kunwar Singh moved application to deposit the amount of his share but no orders were passed on his application. Petitioner''s application that entire auction was ex parte without notice to petitioner, she may be permitted to deposit the unpaid amount by Tehsildar. The applications received on 27.9.1994 and 2.10.1994 are undisposed of. In such a situation, confirmation of auction-sale was without any authority in law and Commissioner rightly set aside auction sale and its confirmation and permitted petitioner to deposit the remaining amount and accordingly the entire amount was deposited. According to Tehsildar report mentioned above no amount is due to Bank and every penny has been deposited by the petitioner.

11. Without considering anything from the record, Board of Revenue has wrongly and illegally set aside the order passed by Commissioner dated 9.2.2005. From perusal of original record it transpires that entire auction sale has taken place in collusion with Tehsil Authorities and Hart Ram Singh nephew of petitioner. Board of Revenue without taking into consideration of all these fact, it wrongly and illegally set aside the order dated 9.2.1995. Paragraph 21 of the writ petition and 21 of the rejoinder-affidavit make it clear that the property in dispute was sold in auction proceeding in the same area about Rs. 44,000 per acre and in the present case 8.25 acre land was sold in auction proceeding for Rs. 51,000 only. This will be additional ground to set aside the auction sale and its confirmation.

12. My view is supported by judgments rendered in Rakesh Kumar and Others Vs. Collector and Others, Smt. Surinder Kaur Vs. Collector/District Magistrate,

Fatehpur and others, and Noor Ahmad Vs. Board of Revenue and Others,

13. In view of the above, the entire proceeding is vitiated in law and is liable to be quashed. The order of Board of Revenue suffers from error of law apparent on the face of record.

14. With the result, writ petition succeeds and is allowed. Order dated 30.1.1997, passed by Board of Revenue is quashed. The auction proceeding dated 26.9.1994 which was confirmed on 26.10.1994 is also quashed. The order of Commissioner dated 9.2.1995 is maintained. Since nothing is due against the petitioner and every penny has been paid to the Bank, recovery proceeding against petitioner, if any, is also quashed.

15. An inquiry into the matter be made by District Magistrate, Gonda relating to conduct of then Sub-Divisional Officer, Tehsildar and other concerned officials involved in aforesaid collusive auction in question quashed by this Court within 3 months and if they are found guilty, disciplinary action against them shall be taken by the authority concerned after completion of the inquiry on the basis of the said inquiry report. Petitioner is widow and according to learned Counsel for the petitioner she has been extended threats of her life and property, District Magistrate, Gonda and Senior Superintendent of Police, Gonda are directed to give full protection to petitioner''s life and property. This order shall be communicated to District Magistrate, Gonda and Senior Superintendent of Police, Gonda within 7 days through learned chief standing counsel for its compliance.