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(1981) 08 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 279-Tax of 1976

Smt. Sumeria APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 17-08-1981

Acts Referred:

Citation : (1981) 48 STC 516

Hon'ble Judges : Satish Chandra, C.J;R.R. Rastogi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—The petitioner claims to be the owner of house No. 118-A, Rasoolabad, in the city of Allahabad. This house appears to have been attached in proceedings for recovery of sales tax dues from the firm M/s. Kisan Oil Mills, Rasoolabad, Allahabad. It appears that there were five partners in this firm-Brij Mohan was one of them. The respondents attached this house under the impression that Brij Mohan was its owner. The petitioner claimed that she was the owner and Brij Mohan had no interest in it. She filed an objection before the authority conducting the recovery proceedings but that objection was dismissed on the ground that there was no law under which he could take any action. The sale of the property was being conducted under the orders of the District Magistrate and so the objection was dismissed. Aggrieved, the petitioner has come to this Court.

2. In Ram Narain v. Collector 1970 U.P.T.C. 143, a Division Bench of this Court has held that realisation of money as arrears of land revenue from properties situate within the municipal limits is conducted under the provisions of the Land Revenue Act. Thereunder proceedings are governed by the principles of natural justice. In the course of such proceedings if a person approaches the recovery authority with an objection, stating that he was the owner of the property attached and the defaulter had no interest in it, then the authority was bound to hear the objection and decide it on merit. If the executing authority relies on

certain evidence against the objector, the objector should be given an opportunity to correct or contradict it. This view is fully applicable to the facts of the present case. The Additional Collector who was conducting the sale proceedings was in error in thinking that he had no jurisdiction to hear or decide the objection on merit. He should have asked the petitioner to prove her title.

3. The petition succeeds and is allowed. The impugned order dated 24th February, 1976, dismissing the objection is set aside and the matter is sent back to the recovery authority to hear and dispose of the objection in accordance with law. In the circumstances, the parties shall bear their own costs.

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