(2007) 09 AHC CK 0059

In the Allahabad High Court

Surender Dube, Bhan Pratap Dube, Sri Newas Dube and Harish Chandra Dube	APPELLANT
Vs	
The Board of Revenue and Others	RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 43

Citation : (2007) 103 RD 116

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—In this case arguments were heard and judgment was reserved on 24.7.2007. Order of the said date passed on the order sheet is quoted below:

Heard learned Counsel for the parties.

Judgment Reserved.

Inspite of orders dated 13.1.2006 and 13.7.2006 learned Counsel for the petitioner has not informed the court regarding compliance of condition attached with the interim order dated 5.5.1981. It is therefore clear that the said condition has not been complied with. Learned Counsel for the contesting respondent No. 2 auction purchaser, states that auction took place on 25.3.1969 and it was confirmed on 4.10.1982, as condition attached with the interim order dated 5.5.1981 passed in this writ petition was not complied with. The main point to be decided is regarding applicability of Section 286(2) of U.P.Z.A.L.R Act which was amended with effect from 1.9.1969 i.e after about six months of auction sale. Through amendment of September 1969, it was provided that even Sirdari right could be auctioned in realization of dues.

2. This writ petition is directed against judgment and order dated 9.3.1981 passed by Board of Revenue U.P. Allahabad in Revision No. 127 of 1973-74 Jeet

Narain v. Surendra and Anr. The said revision was directed against order of Commissioner, Gorakhpur dated 17.11.2003.

3. Agricultural holding of Haridwar Dubey father of the petitioners was auctioned for realisation of income tax dues certified to be recoverable like arrears of land revenue. The auction took place on 25.3.1969. Sri Dubey the tenure holder filed objection under Rule 285-I of U.P.Z.A.LR Rules. The objections were allowed by the Commissioner on 17.11.1973 on the ground that the land which was sold through auction (or part thereof) was Sirdari land at the time of auction hence auction was illegal. Jeet Narain auction purchaser respondent No. 2 filed revision before the Board of Revenue, against the said order. One of the points raised before the Board of Revenue was regarding maintainability of revision. Board of revenue held the revision to be maintainable u/s 333 of U.P.Z.A.L.R Act.

4. The Board of Revenue allowed the revision on the ground that even though on the date of auction (25.3.1969) Sirdari rights in agricultural land were not transferable however by virtue of amendment in Section 286 (2) of U.P.Z.A.L.R Act which came into effect from 1.9.1969 Sirdari land was also liable to be auctioned. Before the Board of Revenue as well as this court an authority reported in Inayat Ali v. State 1967 ALJ 790 was cited. In the said authority, it was held that as u/s 153(1) of U.P.Z.A.L.R Act interest of Sirdar was not transferable hence Sirdari land could not be auctioned in realisation of arrears of land revenue. Board of Revenue referred to a judgment of this court given in Second Appeal No. 2487 of 1964 Gopal and Anr. v. Union of India. Unfortunately the date of decision of the said appeal is not mentioned in the judgment of the Board of Revenue, hence file can not be summoned from the record room. No learned Counsel has supplied copy of the said judgment.

5. Section 286(2) was amended by Section 18 of U.P. Act No. IV of 1969.Prior to the said amendment, Section 286(2) of U.P.Z.A.L.R Act provided as under:

Sums of money recoverable as arrears of land revenue but not due in respect of any specific land may be recovered under this section from any immovable properly of the defaulter.

6. U.P. Land Laws (Amendment) Act 1969 (U.P. Act No. IV of 1969) published in the gazette on 1.9.1969 added the following words to Section 286 (2) of U.P.Z.A.L.R Act "including any holding of which he is a bhumidhar, sirdar or asami". Relevant portion of the statement of objections and reasons to the Bill which was converted into U.P. Act No. IV of 1969 provided as under:

7. Clause 18 of the Bill amends Section 286(2) of the Act with a view to provide that sums recoverable as arrears of land revenue but not due in respect of any specific land may be recovered from any immovable property of the defaulter including any holding of which he is Bhumidhar, Sirdar or Asami. This is considered necessary in order to remove doubts as to the saleability of the Sirdar or Asami holdings in these proceedings.

8. In view of the above, it is quite clear that through U.P. Act No. IV of 1969, it was not for the first time provided that Sirdari land can be sold in auction for the realisation of sums recoverable like arrears of land revenue; on the other hand in view of the above Clause 18, it is clear that merely doubt was removed which meant that even earlier also there was no bar to the auction of Sirdari land.

9. There is one more aspect of the matter which is relevant. By U.P. Land Laws (Amendment) Act No. 1977 (U.P. Act No. 8 of 1977) Sirdari rights were abolished and converted into Bhumidhari rights. The said Amendment Act come into force W.E.F 28.1.1977. Section 130 of U.P.Z.A.L.R. Act as substituted by the said Amendment Act of 1977 is quoted below:

[130. Bhumidhar with transferable rights.- Every person belonging to any of the following classes not being a person referred to in Section 131, shall be called a bhumidhar with transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person who was a bhumidhar immediately before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977;

(b) every person who, immediately before the said date, was a sirdar referred to in Clause (a) or Clause (c) of Section 131, as it stood immediately before the said date;

(c) every person who in any other manner acquires on or after the said date the rights of such a bhumidhar under or in accordance with the provisions of this Act.]

10. It also substituted Section 153 of the Act. Substituted Section 153 is quoted below:

[153. Interest of an asami not transferable.- Except as expressly permitted by this Act, the interest of an asami shall not be transferable]

11. As stated earlier, sale was confirmed on 4.10.1982. On the said date Sirdari land which was auctioned stood automatically converted into Bhumidhari land.

12. Even though confirmation relates back to the date of sale however, on the principles of Section 43 of Transfer of Property Act, even if it is assumed that property was not saleable on the date of auction, on the date of confirmation it became saleable auction sale was quite illegal. Section 43 T.P. Act is quoted below:

[43. Transfer by unauthorised person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorise to transfer certain immovable property and profess to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.]

13. Lastly it may be observed that as a conditional stay order was granted in this writ petition and the condition was not complied with by the petitioner hence it may be said that petitioner did not act equitably and in just manner and on this ground also equitable relief under Articles 226/227 of the Constitution of India may be denied to him.

14. Accordingly, writ petition is dismissed.

