(2011) 08 AHC CK 0220

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53626 of 2002

Ved Prakash APPELLANT

Vs

Board of Revenue U.P. LKO. and Others RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285I

Citation : (2011) 7 ADJ 940 : (2011) 6 AWC 5463

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble A.P. Sahi, J.—Heard Sri Viresh Mishra, learned Counsel for the Petitioner and Sri B.D. Mandhayan, learned Senior Counsel for the Respondent Nos. 2 to 5.

Affidavits have been exchanged between the parties, hence the matter is being disposed of finally with their consent at this stage itself.

2. The proceedings arise out of an alleged auction in favour of the Petitioner of the holding of the contesting Respondents which was subject matter of an attachment and sale by the Tehsil Authorities. The said auction, which was held on 29.8.1998, came to be confirmed on 15th June, 1999. The Respondents filed an objection under Rule 285-I of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 on 1st of November, 1999. A copy of the objection has been filed as Annexure 1 to the writ petition. In para 11 of the said objection a clear plea had been raised that the objector came to know about the said proceedings only a day before, and therefore, he has not committed any wilful delay in the presentation of the objection which ought to have been condoned and the objection should be allowed. It appears that a formal application u/s 5 of the Limitation Act had not been moved which came to be filed on 31st July, 2001 in the said proceedings. The learned Commissioner proceeded to reject the said objection, vide order dated 18th April, 2002, on the ground that Section 5

application has been filed after one year and nine months of the filing of the objection, and therefore, the said delay disentitles the Petitioner from maintaining the objection. The Respondent went up in a revision before the Board of Revenue and the same was allowed on 18.10.2002 on the ground that there were irregularities in the auction including the fact that the U.P. Financial Corporation had already been approached by the contesting Respondents for withdrawal of the recovery certificate, and therefore, it would not be appropriate to confirm the same in the aforesaid circumstances. The learned Member of the Board of Revenue not only set aside the order of the learned Commissioner but also set aside the auction as well.

3. Learned Counsel for the Petitioner submits that the Board of Revenue has travelled beyond its jurisdiction in setting aside the auction, inasmuch as, there was neither any material irregularity nor any inadequacy of bid and as such no ground was available so as to set aside the auction. Even if, the Board was of the opinion that the delay deserves to be condoned, then the matter should have been remitted back to the learned Commissioner for deciding the same on merits and hence the impugned orders vitiated.

4. Sri B.D. Mandhayan, learned Senior Counsel submits that as a matter of fact, the Board has taken notice of the circumstances in which the auction came to be carried out and he has invited the attention of the Court to the allegations contained in the objection to contend that the land could not have been put to auction, and as a matter of fact, the auction has been made in favour of the son-in-law of the brother of the Petitioner who manipulated the auction in his favour. It is further submitted that the delay ought to have been condoned by the learned Commissioner and there is no error committed by the board in setting aside the auction.

5. Having heard learned Counsel for the parties, it appears that an auction can be set aside only on the grounds as referred to in the provisions of Rule 285-I read with the other ancillary provisions under the U.P.Z.A. & L.R. Rules, 1952. In the opinion of the Court, the board has erred in taking into account a factor without clinching evidence that the recovery certificate had been rightly withdrawn. In case this was the contention then this requires an enquiry at the hands of the Commissioner himself and therefore the matter was to be heard on merits. The Board of Revenue had to remit the matter for a decision afresh. In view of the aforesaid conclusions, the order of the Board to that extent cannot be sustained.

6. So far as, the issue of delay is concerned, the Commissioner was not right in treating an application filed in 2001 to be the cause of explanation of delay as pointed out hereinabove. Paragraph 11 of the objection filed by the Respondents clearly indicated an explanation and if a formal application came to be filed later on, alongwith a Section 5 application, then the same ought to have been read together and should not have been treated to have been filed with any inordinate delay. This approach of the learned Commissioner is, therefore, erroneous.

Accordingly, the Court is of the opinion that the Petitioner had explained his delay in the application itself and the same was not taken into account by the Commissioner. Accordingly, the order of the Commissioner also cannot be sustained.

7. For the reasons aforesaid, the order of the Board dated 18th October, 2002 is quashed the order of the learned Commissioner is also set aside. The explanation of delay given by the Respondents is accepted and the delay shall stand condoned.

Learned Commissioner shall now proceed to decide the entire claim on merits after giving opportunity to the parties concerned due notice within a period of six months from the date of presentation of a certified copy of this order before him.

The writ petition is allowed subject to the directions given hereinabove.

