(2003) 07 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No. 657 of 2003 (M/S)

Yudhvir Singh	APPELLANT
Vs	
Mahendra Singh and Others	RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4A), 333
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285(1)

Citation : (2003) 07 UK CK 0011

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Judgement

Rajesh Tandon, J.—The present writ petition has been filed for setting aside the entire auction conducted by the revenue authorities in respect of the agriculture plots detailed in the petition and for issuing directions to the Chief Revenue Commissioner to decide the application of the Petitioner dated 21.7.2003.

2. The brief facts giving rise to this writ petition are that one Sri Budhu (now deceased) resident of Vishnupur Zhardha, Pargana Jwalapur, District Haridwar in the year 1981 has obtained certain loan from U.P. State Cooperative Agriculture and Krishi Evam Grmya Vikas Bank Ltd; Haridwar. He expired in April 1985. There were certain default in making payment of loan. Budhu was the owner of agricultural land comprised in khasara No. 19/2 measuring 0.082 hectare, khasara No. 21/2 measuring 1.056 hectare, khasara No. 22/1 measuring 0.533 hectare, khasara No. 23/1 measuring 0.348 hectare and khasara No. 26/2 measuring 1.999 hectare, total land measuring 4.018 hectare of village Vishnupur, Zhardha, pargana Jwalapur, District Haridwar. After the death of Budhu the land in question was mutated in the name of Vedpal and Babulal both sons of Budhu. Respondent No. 3 Kalloo who is the brother sold the land in dispute vide sale deed dated 29.10.1990 in favour of the Petitioner.

3. It appears that there was some recovery of the Respondent No. 6 i.e. Krishi Evam Gramya Vikas Bank Ltd; which was payable by Sri Budhu in pursuance of

recovery certificate dated 13.5.93 of the Collector, Haridwar. The Petitioner raised his objection that no such recovery proceedings can be initiated against a dead person and further there being limitation of three years the entire recovery proceedings are time barred.

4. In pursuance of the certificate of demand the property was attached and auction had taken place and the property of the Petitioner was put to auction.

5. The Petitioner has filed Civil Suit No. 40 of 1994 but the suit failed on account of the fact that civil Court has no jurisdiction and the plaint was returned to the Petitioner. The Petitioner, therefore, has filed objection before the Divisional Commissioner, Meerut, vide his order dated 5.6.98 rejected the objections and confirmed his sale. Aggrieved by the aforesaid order Petitioner has challenged the order passed by the Divisional Commissioner dated 5.6.98. Revision was preferred before the Chief Revenue Commissioner. After creation of Uttaranchal State on 9.11.2000, the revision is pending before the Chief Revenue Commissioner. The authority concerned has power u/s 333 of Z.A. and L.R. Act to call for the record in which no appeal lies. Section 333 of Z.A. and L.R. Act is quoted below:

The Board or the Commissioner or the Additional Commissioner may call for the record of any suit or proceeding other than a proceeding under Sub-section (4-A) of Section 198 decided by any court sub ordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate court appears to have-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of jurisdiction illegally or with material irregularity,

the Board or the Commissioner or the Additional Commissioner, as the case may be may pass such order in the case as he thinks fit.

6. Once a revision has been preferred which is an alternative remedy to the Petitioner writ petition under Article 227 cannot be entertained.

7. Since the Petitioner has already availed alternative remedy and has filed revision it will be proper under the circumstances of the case that the revisional authority/Chief Revenue Commissioner, Dehradun may decide the entire controversy as contained in the present writ petition. So far as the question of limitation is concerned, it will be open for the Petitioner to raise the objections before the authority concerned referring the illegality of auction proceedings.

8. In the case Ram Swaroop v. Board of Revenue and Ors. 1990 R.D. 291, it has already been held that the order passed by the Commissioner while deciding the objection under Rule 285-1 of U.P.Z.A. and L.R. Rules will be a court and the proceedings before the Chief Revenue Commissioner will be judicial proceedings.

The observations of the Full Bench are quoted below:

Accordingly, we are of the view that the Commissioner while deciding the objection under Rule 285-I of U.P.Z.A. and L.R. Rules will be a ''Court'' as such and the proceedings taken before him will be deemed judicial proceedings as such and the commissioner who otherwise is a court under U.P.Z.A. and L.R. Act will be deemed to be a court. We are accordingly of the view that the cases of Indu Engineering (supra) and Nihal Singh (supra) were not correctly decided and are over-ruled.

9. In view of the facts and circumstances it will be open for the Petitioner to raise all the objections before the Chief Revenue Commissioner exercising the powers u/s 333 of U.P.Z.A. and L.R. Act, who shall dispose of the revision within two months after filing of the certified copy of this order.

10. With the aforesaid observations the writ petition is disposed of.