

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 742 of 2012

Smt. Manju Sharma

... Petitioner

Vs.

State of Uttarakhand through
Collector and others

... Respondents

Advocate: Mr. Bharat Tewari, Advocate, for the petitioner
Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State.
Mr. Vipul Sharma, Advocate, for the respondent No. 3.

Hon'ble Sharad Kumar Sharma, J.

Brief facts of the instant case are that the present petitioner was a defaulter, in remittance of the financial assistance, which was extended to her by respondent No. 2 herein, i.e. Uttar Bhartiya Sahakari Avas Ltd. Since the default having been committed by the petitioner, a recovery citation was issued as against her, by invoking the provisions contained under Section 286, to be read with Rule of 282 of the Rules framed under U.P.Z.A. & L.R. Act and as a consequence thereto, a recovery citation was issued in CH74 under Rule 236 for recovering the said amount, which had been defaulted by the present petitioner and as per the CH74 issued under Rule 282 of the U.P.Z.A. & L.R. Act, a sale proclamation was issued under Rule 284 to be read with Rule 286 on 18.01.2006, thereby fixing a date on 21.02.2006 for conduct of an auction.

2. In pursuance to the said notice which was issued under CH74 under Rule 282 of the U.P.Z.A. & L.R. Act, the auction was conducted on 21.02.2006 and accordingly, on the culmination of auction and its subsequent confirmation, a sale certificate was issued in favour of the auction

purchaser i.e. respondent No. 3 herein, with regard to sale of the property as described in CH74.

3. After the sale certificate dated 21.07.2006, the petitioner had preferred a Revision, being Revision No. 174 of 2005-2006, Smt. Manju Sharma Vs. State of Uttarakhand and others. The revision thus preferred by the present petitioner as against the auction confirmation was filed on 02.06.2007, as against the order which was passed by the Commissioner on 07.03.2007.

4. As regards to the tenability of the Revision is concerned, as against the order dated 07.03.2007, its bearing would be from the implications of the provisions contained under Rule 285-I of the U.P.Z.A. & L.R. Act, which provides for, that as against an auction made under Section 286 to be read with Rule 282 of the U.P.Z.A. & L.R. Act, a Revision could be preferred under Rule 285(I) of the Rules. Accordingly, the revision was preferred by the present petitioner invoking Rule 285-I.

5. The said Revision would not be tenable for the reason being, that in accordance with the provisions contained under the aforesaid Rules, it provides that a Revision under Section 285-I, which has been made maintainable by the judgment of Full Bench of Allahabad High Court, as reported in **RD 1990 (1) 291, Ram Swaroop Vs. Board of Revenue and Others**, the same could have been preferred by invoking the provisions contained under Rule 285-I and if at all the Revision is preferred by the present petitioner, it would be tenable within the period of

limitation, as prescribed under Rule 285-I and not beyond that.

6. Apart from it, the provisions contained under Rule 285 has got its very limited scope of interference, owing to the simpliciter language used under Rule 285-I, which is extracted hereunder:-

“**285-I.** (i) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material-irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.

(ii) [* * *]

(iii) The order of the Commissioner passed under this rule shall be final.”

7. The legislature in its clear terms has provided, that the auction could be set aside subject to the condition, that there is an apparent established irregularity and not as a matter of course, until and unless the debtor establishes the fact about the apparent anomaly in the auction proceedings.

8. Be that as it may, the Revision thus preferred by the petitioner had been dismissed by an order dated 21.07.2006. The learned counsel for the respondent submits, that if CH74, as issued on 21.02.2006, which was put to challenge in a Revision on 17.07.2006, if that itself is taken into consideration, the Revision itself would be barred in the light of the provisions as contained under Rule 285-I.

9. Be that as it may, even the Revisional Court, while deciding the Revision by an order dated 21.07.2006, had left it open for the petitioner, to deposit the amount in installments in view of an accommodation extended by the Commissioner, vide its order dated 21.07.2006, but the direction given therein was not yet again complied with by the petitioner on the multifaceted grounds, that when he had approached before the Tehsildar for depositing the said amount, though there is no proof of the same, the same was declined to be accepted because the Tehsildar was not clear as to under which head the amount had to be deposited.

10. The respondent No. 3 preferred the Recall Application, seeking recall of the Revisional Court's order dated 21.07.2006 and the Court of Commissioner had passed an order on Recall Application observing thereof, that since the accommodation granted by the Revisional Court's order dated 21.07.2006, the same was not complied with by the petitioner, the Commissioner, Kumaon Mandal recalled the order dated 21.07.2006 vide his order dated 07.03.2007 and confirmed the sale certificate dated 04.07.2006. It is against these orders, that the Revision was preferred by the petitioner, which too has been dismissed by an order dated 27.03.2012.

11. The controversy could be summarised in a manner, that once CH74 has been issued under Rule 282 for recovering of an amount as an arrear of land revenue, which was due to be paid to the respondent upon the default being committed by the principal borrower, i.e. the petitioner herein, the auction proceedings, as held as a

consequence to CH74, if at all there was any anomaly, it could have been challenged within a specified time period, by invoking the provisions contained under Rule 285-I, though the revision was preferred, but yet again, the directions given therein were not complied with. Hence, the subsequent rejection of the revision thereafter didn't suffer from any apparent illegality under law, which could be called for any interference by this Court in the instant case of its supervisory jurisdiction under Article 227 of the Constitution of India.

12. Thus, the writ petition lacks merit and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

13.09.2023

Mahinder/