

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ-Petition (M/S) No.2141 of 2018

Sh. Anirudh Chandra

... Petitioner

Vs.

State of Uttarakhand and Others

... Respondents

Advocate: Mr. Ramji Shrivastava, learned counsel for the petitioner.
Mr. Yogesh Chandra Tiwari and Mr. Rajesh Pandey,
learned Standing Counsel for the State.

Hon'ble Sharad Kumar Sharma, J.

The facts, which engage consideration in the instant case, are that there lies a property, bearing Municipal No.5, Rajpur Road-I, Dehradun popularly known as Digvijay Talkies and the dispute pertains to the first floor of the said property, which was initially owned by one Chanda Devi (now deceased)(herein to be called disputed property).

2. Late Chanda Devi, the predecessor owner of the property in dispute, fell in arrears of the Municipal taxes, which was otherwise payable by her to the Nagar Nigam. As a consequence thereto, as per the municipal records, the arrears of taxes, which was assessed to be made payable by her till 1994-99 was assessed to be Rs.1,31,911.20.

3. Since the taxes were not remitted within time, as demanded by the Municipality, the

property was put to auction and, for that purpose, as per Land Revenue Act of 1901, prior to auctioning the property, the same was attached in the light of the provisions of Section 163 of the U.P. Land Revenue Act. The attachment was not questioned by any party.

4. Non-questioning of the validity of attachment under Section 163 of the U.P. Land Revenue Act had, ultimately, resulted into issuance of proclamation of sale by the Collector on 23.11.2019 under the Act of 1901.

5. Ultimately, the property was scheduled to be auctioned on 30.12.1999, in which, the petitioner along with the other probable purchasers had participated in the auctioning proceedings and since the petitioner had offered the highest bid price of Rs.7,40,000/-, the auction was confirmed in his favour with the fall of hammer.

6. As a consequence to the fall of hammer, the petitioner had deposited the amount of Rs.7,40,000/- and a receipt, in lieu thereof, was issued in his favour on 30.12.1999, being the total deposit, which had been made by him before the Nagar Nigam on 13.01.2000.

7. The argument of the learned counsel for the petitioner is, that as soon as the property has been validly put to auction on 30.12.1999 and the period of 30 days has expired, in the light of the

provisions contained under Section 173 of the U.P. Land Revenue Act, 1901, the auction, thus conducted on 30.12.1999, would automatically stand confirmed in favour of auction purchaser, owing to the implications of the provisions, contained under Section 174 of the U.P. Land Revenue Act 1901.

8. As argued by the learned counsel for the petitioner that there are two aspects – **one**, that as soon as the auction is confirmed with the fall of hammer, the Collector becomes *functus officio* to pass any order on the same and he could not have put the property to re-auctioning and that too, particularly, when the auction has been confirmed after the expiry of the statutory period provided under Section 174 of the U.P. Land Revenue Act 1901.

9. **Secondly**, the petitioner contends that the attachment, the proclamation, the auction and its consequential confirmation was not questioned by any aggrieved person before any superior forum. He further submits that none of the defaulters, claiming of under the principal owner of the property Chanda Devi, had not deposited any amount before the Collector, after the culmination of first set of auction which was held on 30.12.1999. Even no one had filed any objection as such against the auction proceedings, before the

Commissioner. Hence, for all practical and legal purpose the said auction proceedings had attained finality.

10. The exact controversy starts germinating, at the stage, when the Collector had set aside the auction, based on his own whims and fancies, contending therein that the bid money, as it was offered by the petitioner of Rs.7,40,000/- on 30.12.2019, did not commensurate with the circle rate, as it was then notified by the Collector, which, according to his perception, was prevalent, at the time, when the auction was conducted.

11. First of all, this cannot be a valid reason to sit over an order of confirmation of an auction sale and, particularly, in the light of the provisions, contained under Section 174 of the U.P. Land Revenue Act 1901, for the reason being, that the Collector cannot take an advantage of his own mistakes, as he was the principal person and authority, who was instrumental in attaching the property upon the default being observed by the Nagar Nigam to him, to be recovered as arrears of land revenue, because it was he who had fixed the minimum probable price of the property, which was supposed to be auctioned. Therefore, it goes without saying that when he was an exclusive authority fixing the minimum price of the property to be auctioned, presumption would be that he has

done it in accordance with the rates which were prevalent at that point of time, because subsequent circle rate will not have retrospective effect.

12. In that eventuality, as soon as the implications of Section 174 of the U.P. Land Revenue Act 1901 comes into play, the Collector, as observed above, since loses his authority under law to interfere, in any manner whatsoever, except for the fact, that any person aggrieved could approach before the Commissioner and since none has approached the Commissioner in revision, the Collector's authority stands ceased to cancel the auction, on the alleged ground, that the bid money offered by the petitioner was lesser than the circle rate as notified by the Collector. Based upon the said perception, the Collector passed an order on 06.03.2000, which was communicated to the petitioner informing therein, that the auction which was held on 30.12.2099 was vitiated and hence, it was cancelled.

13. As against the order of cancellation of an auction or any controversy, which arises out of the auctioning proceedings, would be amenable to a revision before the Collector, as per the dictum of the Hon'ble Allahabad High Court (Lucknow Bench), as it has been rendered by the full bench of the said Court in the judgment of **Ram Swaroop and another Vs. Board of Revenue, U.P. at**

Lucknow and others as reported in **1990 RD 291(FB)**. The relevant excerpts are given hereunder:-

“24. In view of the fact that the Commissioner is to be deemed revenue court for the purposes of deciding objections under Sections 173 and 174 of U.P. Land Revenue Act, the matter of recovery of arrears and the order passed by the Commissioner will be amenable to the revisional jurisdiction to the Board of Revenue under Section 279 of U.P. Land Revenue Act.

28. Rule 285-I as extracted above indicates that the Commissioner is to adjudicate certain rights and interest of the parties in respect of immovable property. The Commissioner is to decide as to whether there was any irregularity which was material in nature or there was mistake in publishing or conducting the sale for which purpose a procedure is prescribed and in case the Commissioner comes to the conclusion that such things existed, he is to set aside the sale. The order so passed by the Commissioner has been made final. Obviously the proceedings so taken by the Commissioner are judicial in nature. Though it could be said that the Commissioner is not sitting as a Court to decide the same, and there is no specific provision in this behalf, the Commissioner will be deemed to be sitting in the Court and the order passed by the Commissioner will be amenable to the revisional jurisdiction of the Board of Revenue under Section 333 of the U.P.Z.A. and L.R. Act which is analogous to Section 219 of U.P. Land Revenue Act.”

14. Meaning thereby, the Full Bench judgment has observed, that as against any anomaly or an action taken after culmination of an auction proceedings, the matter would be revisable before the Commissioner.

15. Consequently, the order passed by the Collector on 06.03.2000, since being an order without an authority, since the Collector having become *functus officio*, in the light of the

implications of the provisions contained under Section 174 of the U.P. Land Revenue Act 1901, the order would be revisable.

16. Hence, the petitioner preferred a revision by invoking the provisions contained under Section 219 to be read with Rule 285-I of the Rules of the U.P. Land Revenue Act 1901 being Revision No.3 of 1999-2000.

17. The revision was allowed by the judgment of 08.08.2000 and the matter was remanded to the Collector directing for confirmation of sale. The relevant observations made by the Revisional Court while deciding the revision is extracted hereunder:-

“बलव्युक्त होने के कारण निगरानियां स्वीकार की जाती हैं तथा प्रश्नगत सम्पत्ति को पुनः सीज किये जाने संबंधी आदेश निरस्त किये जाते हैं। भू-राजस्व अधिनियम के तत्संबन्धी प्राविधानों के अनुरूप न होने के कारण नीलाम निरस्त किये जाने संबंधी आदेश दिनांक 15-2-2000 भी निरस्त किये जाते हैं तथा प्रकरण इस निर्देश सहित कलेक्टर देहरादून को प्रतिप्रेषित किया जाता है कि प्रश्नगत नीलाम की पुष्टि हेतु अधिनियम के प्राविधानों के अनुसार अग्रेतर कार्यवाही की जाए। मूल नीलाम पत्रावली लौटाई जाए तथा इस आदेश की प्रति दूसरी पत्रावली पर भी रखी जाए।”

18. To be precise, in its directions the Revisional Court had observed, while remanding the matter, that the Collector would hereinafter pass an order of confirmation of sale. Meaning thereby, in pursuance to the order passed by the Commissioner on 08.08.2000, the Collector did not have any option except to confirm the sale already made in favour of the petitioner in pursuance to the auction which was conducted on 30.12.1999, but, for the reasons best known to the Collector, contrary to the

directions issued by the Commissioner in the Revision, instead of confirming the auction, as directed by the Commissioner in the revision, has proceeded to put the property to auction once again by issuing of proclamation on 12.01.2021.

19. Since the petitioner having succeeded at the Revisional stage and the said order having attained finality because the Collector or any instrumentality to his office, has not challenged the order of the commissioner whereby the direction was issued to the Collector to confirm the sale in favour of the petitioner, the petitioner did not have any option, except to put a challenge to the order of the Collector dated 12.01.2021 before the regular Civil Court, in the light of the provisions contained under Section 40A of the U.P. Land Revenue Act, for the reason being, that after allowing of the revision by the judgment of 08.08.2000, the petitioner did not have any remedy under the Revenue Law and rather as against the order of the Collector of re-auctioning the property by an order of 12.01.2021, could have been subjected to a civil proceedings by filing a suit. Hence, the petitioner preferred a suit, being **Suit No.723 of 2000, "Anirudh Chander Vs. State of Uttaranchal"**.

20. Unfortunately, the State did not contest the proceeding before the Court of Civil Judge

(S.D.) Dehradun. Hence, the regular Civil Court was constrained to decree the suit of the petitioner, whereby while decreeing the suit, based upon the judgment passed in a revision on 08.08.2000, the Regular Civil Court, which will be a Court falling within the ambit of Section 40A of the U.P. Land Revenue Act, has issued a direction of affirmation of the order of 31.12.1999 and, accordingly, restrained the State and its agencies from interference over the property. The relevant part of the decree as rendered by the Court of learned Civil Judge (S.D.) on 18.03.2006 is extracted hereunder:-

“आदेश

बाद एक पक्षीय रूप से सव्यय डि की किया जाता है।
परिणामस्वरूप प्रतिवादी को स्थायी व्यादेश द्वारा न्यायालय आयुक्त
गढ़वाल मण्डल देहरादून द्वारा एल.आर. निगरानी संख्या 2/99-
2000 व 3 / 99-2000 में पारित निर्णय दिनांकित 2.8.2000 के
अनुरूप वादी की नीलामी पुष्टि हेतु कार्यवाही निष्पादित किये बिना ,
प्रश्नगत सम्पत्ति को पुनः विधि विरुद्ध रूप से नीलाम किये जाने से
निषिद्ध किया जाता है।”

21. While despite of the passing of the decree, while despite of there being the Revisional Court's order, under Section 219 of the U.P. Land Revenue Act 1901 dated 08.08.2000, when the auction thus made in favour of the petitioner on 30.12.2019 was not confirmed, the petitioner was constrained to file this writ-petition invoking the supervisory jurisdiction of this Court under Article 227 of the

Constitution of India by filing the writ on 24.07.2018 praying for the following relief(s):-

"PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court may graciously be pleased:-

- A. Issue a suitable order or direction in the nature of mandamus directing the Respondent No. 3 to get the auction sale dated 30.12.1999 confirmed from Respondent no. 2 in accordance to the provisions of section 171 to 174 of UP Land Revenue Act, 1901 on the basis of common judgment and order dated 02.08.2000 passed by Learned Commissioner Pauri Garhwal, Pauri in LR Revision no. 2 of 1999-2000 and LR No. 3 of 1999-2000, Sh. Anirudh Chandra V/S State.*
- B. Any other writ or order or direction may also be awarded which the Hon'ble High Court may deem fit and proper under the facts and circumstances of the case.*
- C. To award cost of the petition to the petitioner against the respondents."*

22. This matter was heard yesterday. The argument continued for quite a long time. The Standing Counsel was called upon to answer the questions as to what would be the impact of Section 174 of the U.P. Land Revenue Act 1901, as well as that of the civil decree rendered under the regular civil suit after the exhaustion of his remedy under Section 219 of the U.P. Land Revenue Act 1901, when the petitioner has invoked his rights under Section 40A of the U.P. Land Revenue Act 1901 by filing the suit which too was decreed.

23. In fact, no plausible reason was forthcoming from the State, because, in fact, legally as per the records, which has been brought before

this Court, in view of the subsistence of an unchallenged order dated 08.08.2000, as it has been passed by the Court of Commissioner, Garhwal Division and the decree rendered in the suit, being Suit No.723 of 2000, there was no embargo, as such in confirmation of the sale based upon the decree on 18.03.2006.

24. In that eventuality, the Act of the respondents, particularly, the Collector / respondent no.3, herein would be contemptuous in nature, as he has declined to adhere to the order of the Commissioner, Garhwal Division issuing direction for confirmation of the auction sale by judgment of 08.08.2000, apart from it, being in dereliction to the judgment and decree rendered in the Civil Suit on 08.03.2006.

25. Owing to the fact, that the judgments rendered in favour of the petitioner have not been questioned by the State or its agencies nor even it is the case of the respondent before this Court that the aforesaid orders have been put to challenge before any other forum, the writ-petition would stand allowed and the writ of mandamus is issued to respondent no.3 with the direction that he would ensure to confirm the sale, in the light of the provisions contained under Section 174 of the U.P. Land Revenue Act 1901, in the light of the judgment rendered by the Commissioner, Garhwal

Division on 08.08.2000 and as well in the light of the judgment and decree rendered on 18.03.2006, as it has been rendered in Suit No.723 of 2000, “Anirudh Chander Vs. State of Uttaranchal”.

26. Subject to the aforesaid, the writ-petition stands allowed.

(Sharad Kumar Sharma, J.)

15.09.2023

Sukhbant/