

Neutral Citation No. - 2024:AHC-LKO:31001

Reserved

Court No. - 14

Case :- WRIT - B No. - 1000707 of 1995

Petitioner :- Shyam Sunder Singh

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- R.K.Srivastava,Shyam Mohan Pradhan

Counsel for Respondent :- C.S.C.,Ashwini Kumar

Tripathi,M.S.Rana,N.K.Seth,Prabhat Kumar,Ratnakar

Tewari,S.B.Mishra,Santosh Kumar Misra,Sharad Dwivedi,Shashi Saurabh

Tiwari,Vivek Bhooshan Tiwari

Hon'ble Jaspreet Singh,J.

1. Heard Shri Shyam Mohan Pradhan, learned counsel for the petitioner, the learned Standing Counsel for the State-respondents and Shri Sharad Dwivedi, learned counsel for the respondent-Bank. None has put in appearance on behalf of the private-respondent No.4.

2. By means of the instant petition, the petitioner challenges the impugned order dated 06.03.1995 passed by the Board of Revenue upholding the order dated 27.10.1992 passed by the Commissioner Faizabad Division as a result the auction which was held on 23.03.1992 was confirmed and the objections filed by the petitioner challenging the auction were rejected.

3. The father of the petitioner Tejai Singh and the petitioner himself Shyam Sunder Singh, had jointly taken a loan from the State Bank of India, Nawabganj, District Gonda to purchase a tractor and a sum of Rs.62,000/- was sanctioned. To secure the aforesaid loan, Plot No.357 measuring area 0.41, Plot No.564 measuring area 6.48, Plot No.1660 measuring area 0.25 situate in village Bangaon, Pargana Diksir Tahsil

Tarabganj, District Gonda was mortgaged with the bank and the loan was serviced as per the terms.

4. The father of the petitioner died on 07.07.1988 and thereafter the name of the petitioner was also duly recorded and substituted in place of his father in the revenue records.

5. Later, it is alleged that the petitioner received a notice dated 10.03.1992 indicating that his property were being put to auction which was scheduled to be held on 23.03.1992. It is further stated that prior thereto the petitioner had not received any notice and the petitioner was taken by surprise . It has further been alleged that the first auction could not fetch the necessary amount, hence it was cancelled but no further date for a fresh auction was notified.

6. It is alleged that again on 23.03.1992 the property of the petitioner was put to auction in the Tahsil compound and it was sold out to Smt. Shanti Devi, private-respondent no.4, for a meager sum of Rs.50,000/- whereas as per the valuation report, the property at the relevant time was not less than rupees one lakh and twenty thousand. It is in the aforesaid backdrop that the petitioner had earlier filed Writ Petition No.902 (M/S) of 1992 which was disposed of on 31.03.1992 with the observation that the petitioner could approach the Collector for setting aside the auction.

7. It is in the aforesaid backdrop that the petitioner filed his objections under Section 285-I of the U.P. Z.A. & L.R. Act, 1950 before the Commissioner, Faizabad Division. The alleged auction held on 23.03.1992 was challenged on several grounds including that no demand

notice was issued to the petitioner as required in terms of Rule 245 frame as U.P. Z.A. & L.R. Act, 1950. It was submitted that the entire proceedings have been held behind the back of the petitioner nor the procedure was followed and even otherwise the auction was held by an incompetent authority and as such the entire auction proceedings including the auction sale in favour of the private respondent no.4 was bad and a deliberate attempt was made to cause harm to the petitioner as his valuable property was sold for hugely meagre amount.

8. It was also the case that despite a stay granted vide order dated 23.04.1992 passed by the Commissioner i.e. before the expiry of 30 days from the date of auction sale yet the auction was confirmed. It is in the aforesaid factual backdrop, the objections filed by the petitioner did not find favour with the Commissioner and it was further challenged before the Board of Revenue, but unsuccessfully. These two orders including the auction sale itself has been challenged in the instant writ petition.

9. Submission of the learned counsel for the petitioner is that the proper procedure as required to hold a public auction has not been followed apart from the fact that the valuation report was also manipulated and despite the reserved price of rupees one lakh and twenty thousand, the property was sold out for a sum of Rs.51,000/-. It is also urged that the auction was conducted by the Sub Divisional Officer and also confirmed by him which could not have been done and the Collector alone could have held the auction and confirmed it. Thus, where the auction was held and confirmed by an incompetent authority, no rights could pass to the private respondent no.4 and the auction stands vitiated

and it deserves to be set aside. The petitioner is ready to pay the private respondent no.4 appropriately as she too could not get the possession and her auction money remained blocked since in the year 1995. In support of his submission, learned counsel for the petitioner has relied upon the Division Bench decision of this Court in ***Ram Awadh Tiwari Vs. Sudarshan Tiwari and others 2008 (6) ADJ 776*** and ***Rakesh Verma Vs. District Magistrate, Ambedkar Nagar and others 2017 (1) ADJ 290 (DB)(LB)***.

10. Though the matter was heard on 11.03.2024 and 13.03.2024 but none had put in appearance on behalf of the private respondent, hence the judgment was reserved. The Court had granted an opportunity to the private respondent to file the written submission which has been done by Shri Vivek Bhushan Tiwari. In the said written submissions it has been submitted that the present petitioner did not raise the issue of jurisdiction before the Commissioner or the Board of Revenue and this issue has been raised before this Court for the first time, hence the same may not be material. It is further submitted that several notices were sent and the petitioner was also aware of the entire matter but he avoided to liquidate the outstanding sum and once the private respondent was declared as a successful bidder after depositing the auction money only thereafter the litigation was commenced at the behest of the petitioner.

11. It was further submitted that the private respondent no.4 being the highest bidder had deposited a sum of Rs.50,000/- with the State Government and more than 31 years have lapsed. The private respondent is an illiterate person and she cannot be deprived of her rights nor she can

be made responsible if the auction was held and confirmed by an incompetent authority hence the writ petition deserves to be dismissed and the right of the respondent no.4 be uphold.

12. The learned Standing Counsel has submitted that the auction was held in accordance with law and the sale deed was also executed in favour of the private respondent, hence after a passage of 30 years, the petitioner is attempting to unsettle the factual status, hence the petition deserves to be dismissed.

13. Shri Sharad Dwivedi, learned counsel for the respondent no.5-Bank submits that they have received their outstanding sum, hence they are merely formal party and as such they do not have to add anything as part of their submissions.

14. The Court has considered the rival submissions and also perused the material on record.

15. The core question which requires adjudication in the instant case is, whether the auction said to have been held on 23.03.1992 was by a competent authority or its suffered from the vice of exercise of powers by an incompetent authority vitiating the auction as well as the confirmation of sale.

16. In order to appreciate the respective contention of the learned counsel for the parties, it will be necessary to take a glance at the relevant provision of the U.P. Z.A. and L.R. Act. Particularly section 279 which provides for a procedure for recovery as arrears of land

revenue. It in this context that if the rules of the U.P. Z.A. & L.R. Rules, 1952 are seen the then Rule 222-A and more particularly rules relating to sale of immovable property which commence from Rule 281 and Rule 285-A to Rule 285-N it reveals that a complete procedure for recovery of dues as arrears of land revenue including holding of auction, its confirmation and challenge to it has been provided.

17. It will be relevant to notice that Rule 285-A clearly states that every sale held under 286 shall be made either by the Collector in person or by an Assistant Collector specifically appointed by him in this behalf.

18. Thus, it would reveal that the Rules clearly specify that the auction is to be held by the Collector or an Assistant Collector who has been specifically authorized by the Collector to hold the auction and no other authority. In the instant case, it could not be disputed that the auction was held by the Sub Divisional Officer concerned who is definitely not the Collector nor the Assistant Collector who was authorized specifically to hold the said auction.

19. In this regard it will also be relevant to notice the Division Bench decision of this Court in **Ram Awadh Tiwari (supra)** and the relevant portion in paragraphs 26 and 27 have been reproduced hereinafter for ready reference:

"26. Thus, after notification dated 17.1.1976 it has to be accepted that the power to approve the auction sale conducted under Section 286 of the U.P.Z.A. & L.R. Act vest with the Collector and Sub Divisional Officer cannot exercise the power of approval.

27. In the present case it is admitted position that Collector has not approved the auction sale and learned Single Judge has rightly set aside the auction and also its confirmation by Sub Divisional Officer and all other consequential action on that ground."

20. This decision was followed by a subsequent Division Bench in

Rakesh Verma (supra) and the relevant portion thereof reads as under:-

"9. Rule 285-A of the U.P.Z.A. & L.R. Rules, 1952 clearly provides that every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. The Rule 285-A is extracted herein below:

285-A. Every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday or until after the expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued.

The Collector may from time to time postpone the sale.

16. Under the scheme of U.P. Z.A. & L.R. Act and rules framed thereunder, no authority is vested with the Sub Divisional Officer either to confirm or cancel the auction sale. There are two situations where an auction can be cancelled; firstly under Rule 285-H if the defaulter approaches the Collector with his willingness to deposit the entire amount of arrears against him, the sale can be cancelled by the Collector on such deposition to be made by the defaulter alongwith an additional sum of 5% of the value of the auction and secondly, in case the auction suffers from material irregularity in conducting and publishing the sale, the same cannot also be set aside on an appropriate application to be moved in this behalf before the Commissioner of the Division under Rule 285-I. Rule

285-L envisages a situation where the sale of any holding is set aside under Rule 285-H or 285-I and provides that in such an eventuality the purchaser shall be entitled to receive back his purchase money plus an amount not exceeding 5% of the purchase money as the Collector or the Commissioner, as the case may be, may determine."

21. In view of the clear dictum of the two Division Bench in **Ram Avadh and Rakesh Verma** (supra) which has clarified the law and in view thereof, there can be no manner of doubt that the auction in question could be held only by any other authority as provided in law. In the instant case, the auction was admittedly held by the Sub Divisional Officer and it was also confirmed by an authority who was not authorized as per law, hence the said auction could not get any validity.

22. Learned counsel for the private respondent and the learned Standing Counsel for the State could not deny the fact that the auction was held by the Sub Divisional Officer and he did not have the power to hold or confirm the said auction. In light of the above, this Court has no hesitation to hold that the auction was held by an incompetent authority. However, what is further relevant to notice that the Commissioner as well as Board of Revenue while passing the impugned order have only examined the procedural aspect of the auction and for the said reason, it did not set aside the auction.

23. The question regarding jurisdiction which has been raised before this Court reveals that it goes to the root of the matter and

requires to be examined as it is a pure question of law based on admitted fact, hence this Court can very well look into it in exercise of its powers confirmed under Article 226 of the Constitution of India.

24. As already noticed above, neither the State Government nor the counsel for the Bank or the private respondent could establish that the auction was held by a competent authority. This Court finds that both the impugned orders passed by the Commissioner as well as Board of Revenue are liable to be set aside as the auction was held and confirmed by an incompetent Authority as a result the auction which was held and confirmed was by an Authority which did not have any jurisdiction hence the exercise to hold and confirm the auction was wholly without jurisdiction and void *ab initio* and it is liable to be set aside.

25. Since a sum of Rs.50,000/- was paid by the private respondent to the State which was onwards paid to the Bank who has foreclosed the loan account and the private respondent also could not get any right as the auction was held by an incompetent Authority, hence this Court in order to do complete and substantial justice between the parties directs the petitioner to pay a sum of rupees five lakh to the private respondent no.4 within a period of six weeks from the date of this judgment, as the private respondent has been deprived of her funds to be utilized for more than three decades as well as losing

out on the property that she had purchased in auction and that too on account of the State holding the auction by an incompetent authority.

26. Subject to the aforesaid condition, the writ petition deserves to be **allowed**. The impugned orders dated 06.03.1995 passed by the Board of Revenue as well as the order dated 27.10.1992 passed by the Commissioner Faizabad Division respectively shall stand quashed. The auction held on 23.03.1992 and confirmed on 24.04.1992 shall also stand quashed. In case if the petitioner does not pay the aforesaid mentioned sum to the private respondent no.4 within the period as indicated above, the private respondent shall have the right to recover the same from the petitioner through the Collector concerned by moving an application in this regard and in case if such an application is moved, the Collector shall get the amount recovered from the petitioner as arrears of land revenue and pay the same to the private respondent. Accordingly, subject to the aforesaid condition the writ petition is **allowed**. Costs are made easy.

Order Date :- 22nd of April, 2024
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