

Manminder Singh Vs. Chandra Cold Storage and Others

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Court : Allahabad

Decided On : Mar-14-2000

Reported in : 2000(2)AWC1505

Judge : N.K. Mitra, C.J. and ;S.R. Singh, J.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rules 245 (H) and (I) and 285 (D), (H), (I) and (J); [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 154; [Court Fees Act, 1870](#) - Sections 11

Appeal No. : Special Appeal No. 196 of 1999

Appellant : Manminder Singh

Respondent : Chandra Cold Storage and Others

Advocate for Def. : Pankaj Bhatiya and ;R.N. Singh, Adv.

Advocate for Pet/Ap. : Y.K. Saxena and ;P.C. Shakya, Adv.

Judgement :

S.R. Singh, J.

1. This appeal is directed against the judgment and order dated 12.2.1999 passed in Civil Misc. Writ Petition No. 5350 of 1999 in Re : Chandra Cold Storage v. State

of U. P. and others, as well as against the order dated 23.2.1999 passed on the Modification Application moved in the writ petition aforesaid.

2. Respondent M/s. Chandra Cold Storage had taken certain loan from the Bank of India. Fatehgarh Branch, Farrukhabad which was repayable in instalments. It appears that on default being made in payment of the instalments, a writ of demand and citation was issued which was challenged in Civil Misc. Writ Petition No. 30427 of 1998. The writ petition came to be disposed of vide judgment and order dated 18.9.1998 thereby directing that the petitioner therein would deposit the entire amount of loan in tri-monthly four instalments. It was provided that the first instalment would be payable on or before 31.12.1998 up to which date the proceeding for recovery would remain stayed and upon deposit of the first instalment, seal and lock put on the petitioner's cold storage would be removed by the District Magistrate and the recovery proceeding would remain stayed so long as the petitioner went on depositing the instalments. In the event of failure to deposit any of the instalments, it was provided that the stay order would cease to be operative. It appears that the respondent deposited a sum of Rs. 3,00,000 but failed to deposit the entire outstanding dues whereupon the cold storage of the respondent was put to auction on 31.1.1999 pursuant to an advertisement in that regard published in Amar Ujala and Dainik Jagran on 21.11.1999. The appellant herein was the highest bidder having offered Rs. 52,40,000 for the purchase of the properties belonging to M/s. Chandra Cold Storage. He deposited a sum of Rs. 1,00,000 in cash and Rs. 12,10,000 in the shape of bankers cheque No. E.M.G./C. No. 968833 dated 30.1.1999 on the fall of the hammer in his favour. The rest of the 3/4th amount, i.e., Rs. 39,30,000 is said to have been deposited on 10.2.1999 vide another bankers cheque.

3. The writ petition giving rise to this Special Appeal came to be filed by the respondent cold storage challenging the aforesaid auction sale. The learned single Judge after hearing the counsel for the parties directed that 3/4th of the outstanding amount of loan might be deposited by March 15, 1999 and the remaining 1/4th outstanding amount of loan by April 30, 1999. This direction contained on stipulation that in the event of default to deposit 3/4th of the outstanding amount of loan, the sale already held would be confirmed after March

15, 1999. A clarification application was filed on the premises that it was not clear as to what amount was to be deposited under the orders of the Court. The said application came to be disposed of by the order dated 23.2.1999 with the direction that the petitioner, (respondent herein) would deposit 3/4th of the amount which was due to be paid by it with the respondent bank by the date fixed by order dated 12.2.1999. The two orders dated 12.2.1999 and 23.2.1999 are under challenge in this Special Appeal.

4. We have had heard Sri Y. K. Saxena for the appellant and Sri R. N. Singh, senior advocate for the respondent cold storage.

5. The submissions made by Sri Y. K. Saxena, learned counsel for the appellant is three-fold. Firstly, that the writ petition giving rise to this special appeal was not maintainable in view of the fact that earlier the respondent cold storage had filed a writ petition challenging the recovery proceeding which had been disposed of by fixing certain instalments and the second writ petition challenging the auction proceeding was being based on the same cause of action was not maintainable : secondly, that the petitioner had an alternative remedy under the provisions of the U. P. Zamindari Abolition and Land Reforms Act. 1950 and Rules made thereunder : and thirdly, that the learned single Judge ought not to have issued direction in exercise of power under Article 226 of the Constitution which had the effect of depriving the appellant of his right to get the auction sale confirmed after expiry of 30 days from the date of auction. Sri R. N. Singh, senior advocate appearing for the respondent cold storage has submitted that the writ petition giving rise to this special appeal was based on a different cause of action ; that the alternative remedy stipulated under the U. P, Zamindari Abolition and Land Reforms Act. 1950 (hereinafter referred to as the Act of 1950) was not an absolute bar : and that the appellant had no vested right to get the auction sale confirmed which was not held after giving thirty days clear notice.

6. In so far the maintainability of the writ petition is concerned, suffice it to say that the alternative remedy being not an absolute bar, we are not inclined to dismiss the writ petition on the plea of alternative remedy particularly in view of the fact that in compliance of the order dated 12.2.1999 and 23.2.1999 of the learned

single Judge, the respondent cold storage deposited the entire outstanding amount, on the deposit of which the auction sale could have been set aside by the Collector in exercise of power under Rule 285H of U. P. Zamindari Abolition and Land Reforms Act, 1952 (hereinafter referred to as the Rules) and the appellant herein has already withdrawn the amount so deposited.

7. Coming to the question whether the appellant has any vested right to the sale being confirmed, we may refer to the related provisions. Rule 285H of Rules provides that any person whose holding or other immovable property has been sold under the Act may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office:

'(a) for payment to the purchaser, a sum equal to 5 per cent of the purchase money ; and

(b) for payment on account of the arrear, the amount specified in the proclamation in Z. A. Form 74 as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account : and

(c) the costs of the sale.'

8. It is further provided therein that on the making of such deposit, the Collector shall pass an order setting aside the same. It may be observed that though earlier there was some dispute at the Bar as to whether the entire amount stipulated in Rule 285H of Rules of 1952 had been deposited by the respondent cold storage but on 7.2.2000 when the matter came up for hearing, it was agreed at the Bar that the respondent cold storage had deposited the entire amount which has already been withdrawn by the appellant herein. The auction sale has not been confirmed till date. True, on the expiration of the 30 days from the date of sale, the Collector was enjoined to pass an order confirming the sale after satisfying himself that the purchase of the land in question by the bidder would not contravene the provisions of Section 154 of Act of 1950 provided that no application as mentioned in Rules 285H and 285-I of the Rules of 1952 had been made for cancellation of the auction sale or if made had been rejected by the Collector. A learned single

Judge of this Court has held in *Raghunath Prasad v. Board of Revenue*, 1987 RD 380, that the highest bidder would acquire right, title or interest in the property only after the confirmation of the sale and till then he would not acquire any interest in the property merely on his depositing the amount of highest bid offered at the auction sale and further that the Collector, apart from having a power regarding making of confirmation of sale or its refusal as envisaged under Rule 285J of the Rules has also an inherent power either to accept or reject the highest bid on the ground that the bid offered was inadequate. We agree with the view taken in *Raghunath Prasad* (supra) and accordingly held that the appellant herein acquired no right in the property merely because he had deposited the entire amount offered by him at the auction sale. On merit also, the auction sale was liable to be set aside firstly due to the reason that 30 days clear notice was not given and secondly, because 25% of the amount of the bid was not deposited 'immediately' as stipulated by Rule 285D of the Rules of 1952 inasmuch as the deposit by cheque was not a valid deposit as per law laid down by the Apex Court in *Mahmood Ahmad Khan (dead) through L.Rs. v. Ranbir Singh and others*, 1995 AWC 896. We are of the view that the auction sale was no sale at all in the eye of law and 25% of the purchase money had not been deposited 'immediately' on the appellant being declared as the highest bidder. In the circumstances, it would be deemed that no sale had taken at all as held by the Apex Court in *Marti Lal Mohan Lal v. Syed Ahmad*, AIR 1954 SC 349.

9. In so far' as the question whether the order passed by the learned single Judge has the effect of defeating the provisions of Rules 285H and 285-I of the Rules of 1952 is concerned. It has been submitted by Shri Y. K. Saxena, learned counsel for the appellant that the statute provides 30 days time to deposit the amount or move an application before the Commissioner within the same period for setting aside the sale to get an order of cancellation on the ground that there had been material irregularity to avoid confirmation thereof stands defeated by the order passed by the learned single Judge who gave time up to 30.4.1999 to deposit the entire amount. In our opinion, the submission made by the learned counsel is misconceived. As stated (supra), the appellant acquired no vested right to get the auction sale confirmed automatically and that apart the power of this Court to extend the period of depositing the amount stipulated in Rule 285H of the Rules of

1952 is not in any manner fettered by Rule 285J of the Rules. In *Gulab Chandra v. Bahuria. Ram Murat Koer*, 1911 Ind Cos 268 : 13 Cal LJ 432, a question arose as to whether the Court had the power under Section 11 of the Court Fees Act to enlarge the time fixed for payment of court fees even when the application to enlarge the time was made after the expiry of the time within which the court fees were ordered to be paid. It has been held by Calcutta High Court in that case that. 'It is not reasonable construction of Section 11 of the Court Fees Act to hold that the Court, has no power to enlarge the time originally fixed for the payment of court fees' and further 'that 'the application to the Court to enlarge the time for giving security might be made either before or after the expiration of the time within which the security had been ordered to be furnished, and the Court might thereupon enlarge the time according to any necessity which might arise, where it was proper that they should do so. The High Court under Article 226 of the Constitution has the power not only to issue prerogative writs but it can also issue such orders or directions as may be deemed fit and proper in the ends of Justice for the enforcement of the rights conferred by Part III and 'for any other purpose.' In the fact situation of the case discussed above, the learned single Judge, in our opinion, was justified in giving time to the respondent cold storage to make necessary deposits and avoid confirmation of the auction sale. The appellant suffered no loss since he had acquired no vested right to get the auction sale confirmed. The auction sale suffered from serious infirmities and irregularities in conduct thereof. We are, therefore, not inclined to interfere with the order passed by the learned single Judge.

10. The appeal fails and is dismissed without there being any order as to costs.