Bank of India Vs. Devendra Singh and Others

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Court : Allahabad

Decided On : Apr-17-1999

Reported in : 1999(3)AWC2117

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

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 274, 279, 279(1), 285, 286, 286(1) and 286(2); Uttar Pradesh Act, 1951 - Sections 279

Appeal No. : Special Appeal No. 458 (M/s) of 1996

Appellant : Bank of India

Respondent : Devendra Singh and Others

Advocate for Def. : C.S.C. and;H.S. Sahai, Adv.

Advocate for Pet/Ap. : N.K. Seth and;Sudeep Seth Advs.

Judgement :

N.K. Mitra, C.J. and S.R. Singh, J.

1. This special appeal is directedagainst the judgment dated 14.8.1996 by which the learned single Judge was disposed of the writ petition attended with the following clarification :

'It is thus clarified that neither the petitioners shall be arrested nor their immovable property including the Tractor will be auctioned. Straightway, the sum outstanding against the petitioners will be recovered by attachment and sale of immovable property recorded in their names in the khatauni situated in village Manpur. Rampur, Hadha, Naipura district Barabanki.'

2. The petitioner had taken certain loan from the appellant Bank which was repayable in certain instalments. It appears that the petitioners defaulted in making payment of instalments as a result of which the proceeding for recovery was initiated. Thereafter, the writ petition giving rise to this Special Appeal, was filed for issue of a writ of mandamus commanding the Recovery Authorities to recover the dues outstanding against the petitioner-respondent from the immoveable property which according to them, 'was mortgaged in favour of the appellant. It was the case of the petitioners that the sums of money recoverable as arrears of land revenue but not due in respect of any specific land, may be recovered by process under Section 286 (2) of the U.P.Z.A. and L.R. Act from any immovable property of the defaulter including any holding of which the defaulters are Bhumidhars or Asami and not from any movable property. The learned counsel appearing for the appellant submitted and in our opinion rightly that Section 286 (2) of the U.P.Z.A. and L.R. Act will not in any manner, affect the generality of the procedure for recovery of arrears of land revenue as specified in Section 279 of the U. P. Act 1 of 1951. The point raised herein is covered by a Division Bench decision of this Court in Chhote Lal v. State Electricity Board. 1986 ALJ 404, in which it was held as under :

'After going through the various provisions of the Act and the Rules, we find that Sections 279 to 285 and rules framed thereunder make no distinction between land revenue and sums of money recoverable as arrears of land revenue. It is only in Section 286 that a distinction has been drawn between arrears of land revenue and sums of money recoverable as arrears of land revenue. While subsection

(1) of Section 286 provides that if any arrears of land revenue cannot be recovered by the processes mentioned in clauses (a) to (e) of sub-section

(1) of Section 279, the same may be realised by attachment and sale of immovable property of the defaulter. Sub-section

(2) of Section 286 provides that sums of money recoverable as arrears of land revenue, but not due in respect of any specified land, may be recovered by process under this section from any immovable property of the defaulter including any holding of which he is a bhumidhar or ass ami. in our opinion, the distinction between the two sub-clauses of Section 286 is that while under sub-section

(1) which deals with the recovery of arrears of land revenue, the dues can be realised by attachment and sale of the immovable property of the defaulter only if the same cannot be recovered by any of the processes mentioned in clauses (a) to (e) of sub-section

(1) of Section 279, there is no such restriction under sub-section

(2) which deals with the recovery of sums of money recoverable as arrears of land revenue which means that for recovery of such dues recourse could be taken to the mode provided in clause (j) of sub-section

(1) of Section 279 irrespective of the fact that the same could be recovered by other processes mentioned in clauses (a) to (e) of sub-section

(1) of that section. Hence we are unable to accept the contention of the learned counsel that the modes prescribed under Section 279 are not available for recovery of the sums of money recoverable as arrears of land revenue and that such sums of motley can be recovered only by the mode provided under sub-section

(2) of Section

286. The arrears of land revenue and the sums of money recoverable as arrears of land revenue are kept at par under Section 279 and other cognate provisions of Chapter X of the Act except Section 286, which deals with the mode prescribed under clause (f) of sub-section

(1) of Section

279. Only because some distinction is made between the land revenue and the sums of money recoverable as arrears of land revenue under Section 285, it cannot be noted that the other modes contained in Section 279 are not available for recovery of the sumwhich through not land revenue are recoverable as arrears of land revenue.'

3. Following the said decision we are inclined to allow this appeal.

4. In the result, the appeal succeeds and is allowed. The judgment of the learned single Judge is set aside. The appellant shall have the liberty to recover the money due against the writ petitioners-respondents in the manner prescribed by Section 279 read with Section 286 (2) of the U. P. Act 1 of 1951.