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Court : Allahabad

Decided On : Oct-25-2004

Reported in : (2005)1UPLBEC264

Judge : V.M. Sahai and ;Tarun Agarwala, JJ.

Acts : Uttar Pradesh Land Revenue Act, 1901 - Sections 28

Appeal No. : Civil Misc. Writ Petition No. 35328 of 2002

Appellant : Abdullah

Respondent : District Magistrate and anr.

Disposition : Petition allowed

Judgement :

V.M. Sahai and Tarun Agarwala, JJ.

1. The Executive Officer, Nagar Panchayat Dasna, District Ghaziabad, respondent No. 2 published a notice in the newspaper for auctioning the land of Dasna Nagar Panchayat. The petitioner participated in this auction and was the highest bidder for plot No. 1231, measuring five biswa for Rs. 6,31,469/- . On the basis of the terms and conditions of the auction, notice, the petitioner deposited 1/4th of the amount, i.e. Rs. 1,60,000/- on the same date. The auction in favour of the petitioner was subsequently approved by the State Government vide its order

dated 29.11.1999. It transpires, that one Sri Alok Kumar and Sanjana filed a case under Section 28 of the Land Revenue Act before the Collector, Ghaziabad with regard to the plot in question. In these proceedings, the Additional Collector (Finance and Revenue), Ghaziabad passed an interim order dated 18.7.2000 directing the parties to maintain status quo. As a result of this dispute raised by Sri Alok Kumar and Sanjana. the petitioner did not deposit the balance amount. Subsequently, it transpires that the aforesaid case filed by Sri Alok Kumar was rejected by an order of the Additional Collector (Finance and Revenue), Ghaziabad dated 14.6.2002. Prior to the decision of the Additional Collector (Finance and Revenue), the Executive Officer, Nagar Panchayat Dasna, respondent No. 2, issued a letter dated 19.4.2002 intimating the petitioner that the Nagar Panchayat Dasna by a resolution dated 22.1.2001 had cancelled the auction on account of non-deposit of the balance amount by the petitioner.

2. Being aggrieved by this order, the petitioner has filed the present writ petition for quashing the resolution of the Nagar Panchayat Dasna dated 22.1.2001 as well as the notice dated 19.4.2002 issued by the respondent No. 2. The petitioner has further prayed that the respondents should also be directed to execute the sale deed in favour of the petitioner.

3. A counter affidavit has been filed by the respondent No. 2 admitting most of the allegations made by the petitioner. The respondents have only contended that even though an interim order was passed by the Additional District Magistrate (Finance and Revenue), Ghaziabad, directing the parties to maintain status quo, nonetheless the petitioner was required to deposit the balance amount. The respondents have further submitted that they had issued five notices on various dates directing the petitioner to deposit the balance amount but the petitioner failed to deposit the balance amount, and therefore, the Nagar Panchayat Dasna rightly passed the resolution cancelling the auction.

4. We have heard the learned Counsel for the parties.

5. In our opinion, the action of the respondents in cancelling the auction was arbitrary and the same had been done without any application of mind. Admittedly, the petitioner was a bona fide purchaser through an auction conducted by the

respondents. Based on the terms and conditions, the petitioner deposited 1/4th of the amount. Nothing has been shown by the respondents to the effect that the petitioner was required to deposit the balance amount within a stipulated period. On the other hand, the respondents have admitted that on account of a litigation initiated by a third person, the parties were directed to maintain status quo. The petitioner could not deposit the amount in view of the interim order passed by Additional District Magistrate (Finance and Revenue), which in our opinion was also binding upon the petitioner. Even otherwise, the petitioner was justified in not depositing the balance amount till the disposal of the controversy pending before the Additional District Magistrate (Finance and Revenue). We also find that the Nagar Panchayat acted arbitrarily and proceeded hastily in the matter. In our opinion, the Nagar Panchayat ought to have awaited the result of the dispute pending before the Additional District Magistrate (Finance and Revenue), Ghaziabad before passing the resolution dated 22.1.2001. In the present, case, the resolution for the cancellation of the plot was passed on 22.1.2001, whereas the Additional District Magistrate (Finance and Revenue), Ghaziabad, decided the controversy only on 14.6.2002. Further, it has nowhere been stated that after the disposal of the case by the Additional District Magistrate, on 14.6.2002, the Nagar Panchayat had issued a notice to the petitioner to deposit the balance amount. In fact, all the notices which were served upon the petitioner, was issued during the period when the case was pending before the Additional District Magistrate, Ghaziabad. No notice had been issued to the petitioner after the decision of the Additional District Magistrate (Finance and Revenue), Ghaziabad. Consequently, in our view, the action of the respondents in cancelling the auction in favour of the petitioner was wholly arbitrary and without any application of mind.

6. In view of the aforesaid, the writ petition succeeds and is allowed. The resolution dated 22.1.2001 passed by the Nagar Panchayat Dasna cancelling the auction held on 23.1.1999 as well as the notice dated 19.4.2002 issued by the Executive Officer, Nagar Panchayat Dasna, district Ghaziabad, respondent No. 2 are hereby quashed. The petitioner is directed to deposit the balance amount within three months from today alongwith simple interest at the rate of 7% per annum. Upon deposit of the amount, the respondents shall execute the sale deed in favour of the petitioner within one month thereafter. In the event of failure to

deposit the balance amount alongwith interest, as stated aforesaid, it would be open to the respondents to initiate proceedings for the cancellation of the auction. In the circumstances of the case, there shall be no order as to cost.

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