

Rohtash (Minor) and ors. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/488009

Court : Allahabad

Decided On : Aug-18-2009

Reported in : 2010(1)AWC284

Judge : A.P. Sahi, J.

Appellant : Rohtash (Minor) and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. N.C. Tripathi, Shri. Tripathi, Shri. Radhey Shyam

Judgement :

A.P. Sahi, J.

1. Heard Shri N.C. Tripathi, learned Counsel for the petitioners and Shri R.K. Saini, learned Counsel appearing on behalf of the respondent No. 6 and the learned standing counsel appearing on behalf of the respondent Nos. 1 to 4. Shri Manoj Mishra has been served with a notice on behalf of the respondent No. 5 but no counter-affidavit has been filed nor anybody is present on behalf of the said respondent.

2. With the consent of the parties the matter is being disposed of finally at this stage.

3. The dispute centers around the auction of a plot of land of Khata No. 190 bearing plot No. 474/2 area 1.024 hectares. The said auction proceedings were initiated under the provisions of the U.P.Z.A. & L.R. Act against late Ilam Chand, the father of the petitioner Nos. 1, 2 and 3 and the husband of the petitioner No. 4. During the pendency of the recovery proceedings Ilam Chand died and the recovery proceeded by way of auction of said plot of land. According to the records of the State as brought through a counter-affidavit of the contesting respondent No. 6, the amount of Rs. 22,980. was sought to be recovered together with interest and other charges thereon. The total amount according to the report of the Tehsildar, a copy whereof is Annexure-1 to the said counter-affidavit, at the time of the auction had swelled to Rs. 48,551. For the satisfaction of the said amount the auction was conducted, in which it is alleged that the respondent No. 6 also participated and ultimately the bid was knocked down in his favour for a sum of Rs. 1,35,000 for the entire area of the land of the aforesaid plot. The auction sale was confirmed and possession was handed over to the contesting respondent No. 6.

4. After a lapse of more than a year, the petitioners moved an objection under Section 258(1) of the U.P.Z.A. & L.R. Act questioning the auction alongwith an application under Section 5 of the Limitation Act praying for condoning the delay. The delay was condoned by the learned Commissioner vide order dated 4.12.2003 and notices were issued inviting objections on behalf of the contesting respondents as well. The learned Commissioner thereafter disposed of the matter on merits rejecting the objections on the ground that there was no material irregularity in carrying out the auction proceedings and, therefore, the same did not require any interference.

5. Challenging the said order, the petitioners have approached this Court by filing the present writ petition under Article 226 of the Constitution of India. Notices were issued and a counter-affidavit has been filed on behalf of the contesting respondent No. 6. In spite of repeated time having been granted to the learned standing counsel no counter-affidavit has been filed on behalf of the State.

6. Shri Tripathi, learned Counsel for the petitioners has advanced his submissions urging that the petitioners had absolutely no knowledge of the proceedings of auction and that the respondent No. 6 taking undue advantage of his position and the disadvantageous status of the petitioners manipulated the auction proceedings and succeeded in getting it knocked down in his favour. Shri Tripathi further contends that, as a matter of fact, there was no requirement of having auctioned the entire land of the petitioners for such a minimal amount of Rs. 1,35,000. It is urged that there was no necessity of auctioning the entire land as laid down by this Court in the case of *Kewla Prasad v. Bank of Baroda and Ors.* : 2006 (3) AWC 2976 paragraphs 34 and 35. He contends that, as a matter of fact, the petitioner No. 4 being a widow and illiterate was misled by the respondent No. 6 to put her thumb impressions on certain papers under the grab of a promise to write off the loan that was due against the petitioners. He contends that the entire transaction smacks of a fraudulent act on the part of the respondent No. 6 and hence the auction proceedings deserve to be set aside.

7. In reply to the aforesaid contention, Shri Saini contends that the aforesaid allegations have been set up after a considerable lapse of time and that there is no evidence of any fraud having been practised or any manipulation having been attempted by the respondent No. 6. He further submits that the report of the Tehsildar, which has been brought on record as Annexure-1 to the counter-affidavit, clearly explains the entire process adopted by the authority for conducting the auction and further the petitioner No. 4 herself has withdrawn the amount, which was in excess of the amount of satisfaction, from the Tehsildar on 27.3.2002. He contends that the petitioner No. 4 had full knowledge of the entire proceedings and the allegations that the auction had been carried out behind her back and without giving any proper notice or information are incorrect allegations and which is not founded either in fact and law. He further contends that once the auction sale has been confirmed there is no occasion for the petitioners to have filed an application under Section 285(I) and, therefore, the learned Commissioner has rightly rejected the same. He further invited the attention of the Court to the fact that the possession has already been handed over to the respondent No. 6 and no case has been made out for inference by this Court under Article 226 of the Constitution of India.

8. Learned standing counsel, on the other hand, has urged that there being no material irregularity in the auction proceedings. The order of the learned Commissioner cannot be questioned merely on the ground of adequacy of the extent of the land to be auctioned, as has been urged on behalf of the learned Counsel for the petitioners. He contends that the auction having been confirmed and there being no irregularity pointed out, there is no cause for interference by this Court.

9. I have considered the rival submissions and from the facts as brought on record, it appears that an application was moved on behalf of the petitioners for setting aside the auction proceedings after the sale certificate has been issued and the sale had been confirmed in favour of the respondent No. 6. It is also admitted that the application itself was filed after a lapse of more than a year and it is for this reason that an application under Section 5 of the Limitation Act was moved while filing of the said objections. The said application under Section 5 of the Limitation Act was disposed of by the learned Commissioner on 4.12.2003 clearly recording a finding to the effect that the circumstances existed for condoning the delay. From a perusal of the records and the affidavits exchanged, it is also evident that the said order dated 4.12.2003 was not questioned by the contesting respondent No. 6 and the objection under Section 285(I) was contested on merits. In such a situation, the question as to whether the objection was filed at a delayed stage or not, is not the issue between the parties.

10. The objection, which was filed on behalf of the petitioners, was contested by the contesting respondents on the ground that the petitioner No. 4-Smt. Kamlesh herself has given an affidavit on 28.2.2002, wherein she had admitted that all the auction proceedings were correct and had also clearly stated that she had no objection to the auction being finalized in favour of the contesting respondent No. 6. The said affidavit was questioned by the petitioners before the learned Commissioner and it was urged on behalf of the petitioners that the entire proceedings are fraudulent and that she had not put her signature or thumb impression on any such affidavit. It was further contended on behalf of the petitioners before the learned Commissioner that, as a matter of fact, they had absolutely no knowledge of the auction proceedings and, therefore, the auction

proceedings being materially affected should be set aside.

11. Before this Court a contention has been advanced on the strength of the decision in the case of Kewla Prasad (supra). Paragraphs 34 and 35 of the said decision relied upon by Shri N.C. Tripathi is quoted below:

34. The third issue raised by Shri Radhey Shyam also deserves consideration which is that the respondents after having taken a decision to issue a fresh auction notice upon a deposit of Rs. 1,25,000 having been made by the petitioner, the same could have been proceeded after a consideration of the fact as to whether it was necessary to put to auction the entire mortgaged property for satisfying the reduced amount. It is evident that the amount according to the fresh auction notice stood considerably reduced as is evident from a perusal of the Z.A. Form No. 74 dated 29.10.1998.

35. Shri Radhey Shyam learned Counsel for the petitioner is right in his submission by placing reliance on the decision of the Apex Court in the case of A. Narriya v. M. Subbarao AIR 1990 SC 219. the Apex Court in the said decision has clearly indicated that the tendency to blind foldedly sell the entire property mortgaged without assessing the necessity of doing so, would be sufficient to set aside the sale proceedings. The said decision clearly supports the stand taken by the petitioner in the facts of the present case as well, inasmuch as once the amount was considerably reduced on account of the bona fide attempts made by the petitioner in depositing a substantial amount of money as is evident from the records then the respondents should have assessed the necessity of putting the entire property to auction before issuing of fresh auction notice. The aforesaid exercise does not appear to have been undertaken and the fresh auction notice was again issued in a cyclostyled fashion which auction cannot be sustained in law.

12. According to the law laid down in the said Division Bench decision, following the decisions of the Apex Court, it is abundantly clear that in order to satisfy the amount of recovery, the authority is under an obligation to first decide as to whether it is necessary to auction the entire property or not. The law laid down is clearly to the effect that in the event a part of the property can be sold to satisfy

the amount, then it is not necessary to put to auction the entire property of the debtor. In the instant case, it is evident that neither the authority, who conducted the auction, nor the learned Commissioner has adverted to this aspect of the matter. From the report of the Tehsildar, which has been relied upon by the learned Counsel for the respondents, it is evident that the property was worth more than the amount which was sought to be recovered from the petitioners. According to the admitted case of the respondents themselves, the property has been sold for Rs. 1,35,000 whereas the amount which was required to satisfy the loan was only Rs. 48,551. In this view of the matter, this aspect deserved consideration by the learned Commissioner at least while disposing of the objection. Admittedly this aspect having not been looked into, the impugned order is liable to be set aside.

13. Apart from this, it is further evident that the question as to whether the petitioners had knowledge of the proceedings or not were clearly pleaded in paragraph 6 of the objection filed under Section 285(I). Learned Counsel for the respondents could not point out any findings having been recorded by the learned Commissioner on this aspect of the matter. On the other hand, Shri N.C. Tripathi also could not provide any explanation as to once the amount had been received by the petitioners as refunded on 27.3.2002 then, why was this aspect of the matter not explained before the learned Commissioner in the objection filed before him. In this view of the matter, this aspect also requires to be considered by the learned Commissioner for drawing an appropriate conclusion. The order impugned is therefore unsustainable and as such is set aside. The learned Commissioner is directed to decide the matter afresh in accordance with law as expeditiously as possible preferably within a period of three months from the date of presentation of a certified copy before him.

14. Needless to say that the respondent No. 6 has already been put in possession and, therefore, the possession of the respondent No. 6 shall not be disturbed nor the status thereof shall be altered till the matter is finally disposed of by the authority.