

CASE NO.:
Appeal (civil) 3361 of 2005

PETITIONER:
Kedar Nath Dubey (D) By Lrs. & Ors

RESPONDENT:
Sheo Narain Dubey (D) By Lrs. & Ors

DATE OF JUDGMENT: 12/05/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.24424/2004)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the decision by a learned Single Judge of the Allahabad High Court holding that the auction sale on 18.8.1989 and confirmation thereof was illegal. Kedar Nath Dubey, the predecessor of the appellant was the successful bidder. Objection filed by Sheo Narain Dubey, the predecessor of non-official respondents was rejected by order dated 18.8.1989.

A brief reference to the factual aspects would suffice.

The writ petitioner, Sheo Narain Dubey, the predecessor of non-official respondents had taken a loan for purchasing pumping set from U.P. State Sahkari Agricultural Avam Gram Vikas Bank Limited, Salenpur, Deoria. As the said loan was not repaid within the stipulated time, proceedings were initiated for recovery of amount as arrears of land revenue under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (in short 'the Act'). Land belonging to the writ petitioner was auctioned on 18.8.1989. Bid of Kedar Nath Dubey, the predecessor of the present appellant was accepted. Sheo Narain Dubey filed objection under Rule 285(I) of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1953 (in short 'the Rules'). The stand taken was that there was material irregularity in the service of notice as well as in conducting the sale and thereby Rule 285(A) of the Rules had been violated. The said objection was rejected and the sale was confirmed. The writ petition was filed in 1991. Mutation proceedings had been undertaken in the meantime by Kedar Nath. In the counter affidavit filed before the High Court, stand taken was that the order of the concerned authority i.e. the Commissioner, Gorakhpur Division, Gorakhpur dated 7.1.1991 clearly indicated that the plea of the writ petitioner was untenable. When the amount alongwith interest and other dues were not paid, the bank had requested for recovery proceedings. Form 73 and Form 73 A were sent to the writ petitioner which were

personally served. Thereafter date of auction was fixed on 18.8.1989 and the request notice was duly served. As Kedar Nath Dubey was the highest bidder, his bid was accepted. Considering the materials on record it was found that the requisite procedure and the prescribed rules had been followed and there was no necessity for interfering in auction. It was indicated that the loan account had already been closed on 5.2.1991 as the entire amount had been recovered by sale of the land. It was highlighted with reference to the order dated 7.1.1991 that Sheo Narain Dubey was a habitual loan taker and had defaulted on many occasions in re-paying the loans. The writ petitioner filed a rejoinder affidavit stating that there was no compliance with the requirements of confirmation. The writ petitioner's stand was that he wanted to deposit the amount on 1.5.1991 but the same was not accepted and, therefore, he approached Additional District Magistrate (in short the 'ADM') to direct the Tehsildar, Salempur to accept the amount and the amount had been deposited on 6.5.1991.

Primary stand before the High Court was that the prescribed Rules were not followed, and in any event the auction sale was confirmed by the Sub-Divisional Magistrate (in short the 'SDM') who did not have the authority to confirm the sale or conduct the sale. The confirmation was, according to the writ petitioner, by an incompetent authority and, therefore, the entire proceeding was invalid. The High Court took the view that the application filed by the writ petitioner for setting aside the auction sale was full of vague and evasive statements relating to the allegation that the norms laid down in Rule 285(I) were not confirmed and there was material irregularity. The High Court, therefore, held that the Commissioner was right in holding that the order passed by the Commissioner did not suffer from any infirmity. However, it was held that the crucial issue was that the Collector is the authority to confirm the sale. In this context reference was made to Rules 285-A, 285-H, 285-I, 285-J, 285-K and 285-L and it was held that under Rules 284 and 285 the confirmation of the sale has to be done either by the Collector in person or by an Assistant Collector specifically appointed by him in that behalf. It was held that the SDM did not have any authority. A reference was made to a Notification dated 17.1.1976 to conclude that the Assistant Collectors of the First Class who are in charge of the Sub Division can discharge the function of the Collector subject to the condition that the sales are approved by the Collector. The High Court was of the further view that except power of approval of sale, the SDM has every other power of Collector. It was, therefore, held that the Collector alone is empowered to confirm the sale and issue sale certificate. The Assistant Collector is not authorized in that behalf in view of the scheme of the Rules as indicated in the notification dated 17th January, 1976.

In support of the appeal, learned counsel for the appellant submitted that the High Court considered a new ground of challenge which is impermissible. After having noticed that the respondents did not make out a case for interference in terms of Rule 285-H it proceeded to consider an issue which was not even pleaded in the Writ Petition. High Court erroneously made reference to 17th January, 1976 notification without noticing that other notifications which held the field clearly indicated that the Sub-Divisional Officer has the power to accord approval to the

auction sale. Particular reference in this regard was made to Notification dated 11.6.1953 and letter of the Secretary, Revenue Board U.P. dated 7.7.1983. As the Writ Petitioner rested its case on Rule 285-I and the High Court did not find anything irregular in the order of the Commissioner holding that the provision to Rule 285-I had been complied with, no interference by the High Court was called for.

In response, learned counsel for the non-official respondents submitted that the question of confirmation was intermittingly linked with the question of legality of the auction which was impugned. According to him the High Court's order does not suffer from any infirmity to warrant any interference. Rules 285-A, 285-H, 285-I, 285-J, 285-K and 285-L read as follows:

"285-A \026 Every sale under Sections 284 and 285 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 expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued.

285-H \026 Any person whose holding or other immovable property has been sold under the Act, he 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% of the purchase money; and

(b) for payment on account of arrears, the amount specified in the proclamation in Z.A. Form 74 for recovery of which 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 cost of the sale.

On the making of such deposit, the Collector shall pass an order setting aside the sale.

Provided that if a person applied under Rule 285-I to set aside such sale he shall not be entitled to make an application under this rule.

285-I \026 (i) At any within thirty days from the date of sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the

satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake;

(ii) deleted.

(iii) The order of the Commissioner passed under this rule shall be final.

285-J \026 On the expiration of thirty days from the date of the sale if no such application as is mentioned in Rule 285-H or Rule 285-I has been made or if such application has been made and rejected by the Collector or the Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154 every order passed under this rule shall be final.

285-K \026 If no application under Rule 285-I is made within the time allowed therefore, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred.

Provided that nothing contained in this rule shall bar the institution of a suit in the civil court for the purpose of setting aside a sale on the ground of fraud.

285-L \026 Whenever the sale of any holding or other immovable property is set aside under Rule 285-H or Rule 285-I the purchaser shall be entitled to receive back his purchase money plus an amount not exceeding five percent of the purchase money as the Collector or the Commissioner, as the case may be, may determine."

At this juncture, it would be necessary to take note of the Notification dated 11.6.1953 issued by the Revenue Department and published in U.P. Gazette dated 13.6.1953. The Notification dated 11.6.1953 reads as follows:

"Revenue Department Notification No. 1756/1A-1073-53 dated June 11, 1953, published in U.P. Gazette dated June 13, 1953:

In exercise of the powers conferred by clause (4) of Section 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 [(Act 1 of (1951)], the Governor is pleased to empower all the Sub Divisional Officers in Uttar Pradesh except those in the districts of Almora, Garhwal, Tehri Garhwal and Rampur to discharge all the functions of a "Collector" under the said Act."

The Notification makes the position clear that in all the districts of Uttar Pradesh except districts of Almora, Garhwal, Tehri Garhwal and Rampur SDOs were authorized to discharge all the functions of the Collector under the Act. A bare reading of the Notification dated 11.6.1953 as published in the official gazette dated 13.6.1953 shows that it empowered all SDOs in Uttar Pradesh except those in the enumerated districts to discharge all the functions of the Collector under the Act. Letter of the Secretary, Revenue Board, U.P. dated 7.7.1983 also throws light on the controversy. It related to discharge of power under various provisions of the Act. It noted that by notification of 5.12.1968 Sub-Divisional Officers have been authorized to discharge all functions of the Collector under the Act except Section 198. Prima facie the stand of the appellant is correct. It appears that these pleas were not considered by the High Court. We remit the matter to the High Court for considering it in accordance with law. We make it clear that no opinion has been expressed by us on the merits of the case. The High Court may dispose of the matter as expeditiously as possible as the writ petition is pending for more than a decade. It would be proper for the High Court to hear the matter afresh and take a decision on the various issues involved, as there are certain vital questions which were not considered by the High Court. The effect and relevance of the notification dated 11.6.1953 and the letter dated 7.7.1983 shall be considered.

Appeal is disposed of in the aforesaid terms with no orders as to costs.