

**(1998) 09 AHC CK 0075**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 15477 of 1997

Atar Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision:** Sept. 7, 1998

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 43, Order 21 Rule 58, Order 21 Rule 76, Order 21 Rule 77, Order 21 Rule 78
- Constitution of India, 1950 - Article 226
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 282, 282(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 285

**Citation:** (1999) 1 AWC 658

**Hon'ble Judges:** S.R. Singh, J

**Bench:** Single Bench

**Advocate:** Ali Hasan and R.S.P. Rao, for the Appellant; S.C., Satish Chaturvedi and K.S. Yadav, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

S.R. Singh, J.

The petitioner herein seeks issuance of a writ of certiorari quashing the order dated 31.3.1997 passed by the respondent No. 4 and the recovery proceedings initiated against the father of the petitioner which culminated in the auction sale of tractor bearing registration No. UMV 9482, on 28.2.1997 and issuance of sale certificate dated March 6, 1997. The ground on which certiorari is sought is that the recovery proceedings were initiated against the petitioner's father Dhanus Dhari Singh who died on 9.9.1996 but the petitioner who is legal heir of Dhanus Dhari Singh was not brought on record and the recovery proceedings were initiated against dead person.

2. In 1994 a writ petition was filed by Dhanus Dhari in which the recovery proceedings initiated vide citation dated 28.1.1994 for the recovery of a sum of Rs. 1,74,527 were sought to be quashed. This Court by Judgment and order dated 1.4.1994 (quoted in paragraph 1 of the writ petition) stayed the recovery proceedings subject to the condition that the petitioner would deposit a sum of Rs. 70,000 within a month and a sum of Rs. 30,000 within one month next thereafter and the balance amount plus interest plus recovery charges in two monthly four equal Installments. The tractor which had already been attached, it was further provided, would remain in the custody of the Recovery Officer till such time as the amount of Rs. 70,000 was deposited. The Recovery Officer was given option to consider the prayer of the borrower for the release of the tractor on payment of Rs. 70,000. It was further provided in the judgment and order dated 1.4.1994 that in case of default of any of the conditions, indulgence granted by the Court would not be available to the defaulter-petitioner therein. The writ petition was disposed of with these observations. It is alleged that a sum of Rs.70,000 was deposited on 3.4.1994 pursuant to the Judgment and order of this Court dated 1.4.1994 but it is nowhere stated that the tractor which was already seized and attached during the life time of Dhanus Dhari was ever released. It was on default being committed in respect of the payment of installments pursuant to the judgment and order dated 1.4.1994 that the tractor was put to auction on 28.2.1997 in which the contesting respondent was the highest bidder having offered a sum of Rs. 1,04,500. He deposited one-fourth of the bid money on spot and the remaining three fourth on 4.3.1997 on which date certificate was issued under the joint signatures of Deputy Collector, Handia, Allahabad. Tehsildar Handia, Allahabad and Nilam Adhikari, Naib Tehsildar, Handia, Allahabad. The auction, it is alleged in the counter-affidavit, was approved on 6.3.1997 and the vehicle which was under attachment was released in favour of the auction purchaser on 11.3.1997. It is further alleged in the counter-affidavit, that the tractor was in a ruined condition and a sum of Rs. 44,448 was spent in its repair by the auction purchaser.

3. Sri AH Hasan, learned counsel appearing for the petitioner urged, placing reliance on a decision of this Court in Smt. Sushila Devi v. State of U. P. and others 1996 CRD (CRS), that the auction sale was void in that it was conducted in respect of the property of a dead person without giving any notice to the legal heirs of the deceased. Sri Kamal Singh Yadav, learned counsel for the respondent- auction purchaser submitted that the recovery proceedings were initiated during the life time of Dhanus Dhari and the tractor was in fact seized and attached before it was put to auction on 28.2.1997 but no objection was filed by the petitioner against the attachment and seizure and, therefore, submitted the learned counsel, the auction sale became absolute after the auction purchaser deposited the entire auction money and hence it was not liable to be cancelled merely because on the date of auction sale Dhanus Dhari was not alive. Learned counsel placed reliance on a Division Bench decision of this Court in Shiv Narain Tiwari v. District Magistrate,

Fatehpur and others, 1991 AWC 210. Learned counsel also submitted that objection under Rule 285-1 of the Rules made under the U.P.Z.A. and L.R. Act. 1950 would not be maintainable in respect of an auction sale of movable property and the Commissioner was justified in rejecting the objection of the petitioner.

4. I have given my anxious consideration to the submission made across the Bar. The fact that the petitioner's father had taken loan of a sum of Rs. 1,10,000 from the State Bank of India, Branch Phoolpur. district Allahabad for agricultural purposes on 17.2.1988 and that he committed default in repayment of installments and, therefore, the proceedings for recovery of the loan in lump-sum was initiated during the life time of the borrower-Dhanus Dhari Singh vide citation dated 28.1.1994 is not disputed. Liability to repay the outstanding amount of loan is admitted to the petitioner. In the circumstances of the case set out above, the decision in Smt. Sushila Devi [supra] relied on by Sri Ali Hassan learned counsel for the petitioner cannot be pressed into service for that was a case of sale of Immovable property and the recovery proceedings were initiated against a dead person and the allegation was that the entire loan had been repaid and nothing was due against the deceased. In the present case, as pointed out above, recovery proceeding was initiated during the life time of the borrower-Dhanus Dhari and the tractor was also attached and seized. The petitioner who is the son of Dhanus Dhari Singh, filed no objection on the tractor being seized and attached and his objection filed after sale was rightly rejected by the Commissioner as not maintainable Shiv Narain Tiwari v. District Magistrate (supra) is application to the facts of the present case on all fours. In that case it was held as under :

"Section 282 of the U. P. Zamindari and Land Reforms Act (hereinafter referred to as Act) provides for attachment and sale of movable property for realising any amount as arrears of land revenue and it sub-section (2) lays down that every attachment and sale shall be according to the law in force for time being for attachment and sale, of movable property in execution of decree of civil court. Sub-section (2) of Section 282 of the act is quoted below :

"Every attachment and sale under this section shall be made according to the law in force for the time being for the attachment and sale of movable property in execution of a decree of a civil court."

Order XXI, Rule 43, C.P.C. lays down that movable property in the possession of the judgment debtor is to be attached by the actual seizure. Rule 58 of the same Order provides for objection against the attachment of any property, attached in execution of a decree, on the ground that such property is not liable to attachment and if such objection is made the same is liable to be decided in accordance with the provisions contained therein. Clauses (4) and (5) of this rule provide for appeal against the adjudication and if the objections have been refused to be entertained a provision for suit has been laid down. Rule 66, which deals with the proclamation of sale by public auction of the attached property, requires such proclamation to be drawn up

after notices to the decree holder and judgment debtor. Rule 77 of Order XXI lays down that where movable property is sold by public auction its price shall be paid at the time of sale or within such time as the officer conducting the sale directs. Clause (2) of this rule further provides that on payment of purchase money the sale shall become absolute. This clause is quoted below :

"On payment of purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute."

Rule 78 declares that no irregularity in publication and conducting the sale of movable property shall vitiate the sale, but the persons who sustains injury by reason of such Irregularity, have been given liberty to institute suit for compensation. It is thus clear that after movable property is sold by public auction and its price has been paid by auction-purchaser ; the sale becomes absolute and the property stands vested in the purchaser. A Division Bench of this Court in the case of Hira Lal V. State of U. P. 1978 AWC 538. has, while considering the provisions of the Rule 77 of Order XXI laid down that,

"Provisions contained in Rule 77 of the C.P.C. make it amply clear that if the price is paid at the time of sale or afterwards with the permission of the officer holding the sale and a receipt is issued to the auction purchaser, the sale shall become absolute. No order of any other authority is necessary for confirming the sale in case of movable property."

Supreme Court also in case of [Balkrishan Gupta and Others Vs. Swadeshi Polytex Ltd. and Another](#) , has observed that :

"On such sale either under Rule 76 or under Rule 77, the purchaser acquires title".

The bus in question was attached on 22.8.1990 by its actual seizure. It was open to the petitioner to file objection under Order XXI, Rule 58, C.P.C. but he did not do so, even though admittedly he had full knowledge of the actual seizure of the bus on the aforesaid date. Sale proclamation was also prepared after observing all the formalities and allegations made by the petitioner against the sale proclamation have been denied. The petitioner could have raised objection against sale proclamation also, but he did not do so. Petitioner also did not raise any objection at the time when auction sale was conducted and even thereafter before the officer who conducted the sale. The auction-purchaser, respondent No. 8 deposited the auction money and sale of the bus became absolute in his favour and he became Us owner. Not having raised any objection at any stage of the proceedings, it is not open to the petitioner to challenge the recovery proceedings before this Court for the first time. When law provides forum and the method for redress of the grievances the affected person concerned should take recourse of these forum and the methods and It is not open to him to bye-pass then and straight-away file the writ petition under Article 226 of the Constitution of India. As mentioned herein before the respondent No. 8 has become absolute owner of the bus after he

deposited the auction money and he has also been delivered its possession along with sale certificate. We cannot undo the sale under Article 226 of the Constitution of India, thereby depriving the auction purchaser of the right which he acquired lawfully without any objection from the side of the petitioner. We are as such are not inclined to interfere in exercise of power under Article 226 of the Constitution of India."

5. In view of what has been held by the Division Bench in Shiv Narain Tiwari (supra), the auction sale in respect of the tractor in question has become absolute and the auction -purchaser acquired title in relation to the said tractor and since the proceedings had been initiated during the life time of the borrower and the petitioner who was fully aware of the tractor having been seized and attached and who failed to file any objection at appropriate stage, cannot be permitted to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution merely because the borrower against whom recovery proceedings were initiated had died during the pendency of the proceedings. In case the petitioner has sustained any injury due to any irregularity in conduct of the sale, he may institute suit for compensation as provided under Order XXI, Rule 78 of the Code of Civil Procedure.

6. In the result the writ petition fails and is dismissed with cost on parties.