
(2004) 10 AHC CK 0161

Allahabad High Court (Lucknow Bench)

Case No: Second Civil Appeal No. 915 of 1979

Ved Prakash Agrawal

APPELLANT

Vs

Nagar Palika

RESPONDENT

Date of Decision: Oct. 25, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2005) 2 ESC 1235

Hon'ble Judges: N.K. Mehrotra, J

Bench: Single Bench

Advocate: P.L. Misra, for the Appellant; Ashok Nigam, Riyaz Ahmad and Anuj Kumar Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Mehrotra, J.

This is second civil appeal u/s 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 30.8.1979 passed by the Vth Additional Distinct Judge, Hardoi in Civil Appeal No. 24 of 1979 allowing the same and setting aside the judgment and decree dated 6.1.1979 passed by the IVth Additional Munsif, Hardoi in Regular Suit No. 121 of 1978.

2. I have heard Shri P.L. Mishra for the appellant and Shri Anuj Kumar Srivastava, for the respondent.

3. It appears that the plaintiff-respondent filed a suit for permanent injunction restraining the defendant-appellant from interfering with the rights of the plaintiff to use land shown by letters Aa, Ba, Sa, Da, Ka, Kha, in the site plan situated in Line Puram, Hardoi and measuring 1726 Sq. Feet and also restraining the defendant from re-auctioning the sale and for directing the defendant to execute the lease-deed in respect of the said land in favour of the plaintiff. The disputed plot is nazul land. It was auctioned by Nagar Palika, Hardoi on 23.3.1978. The plaintiff

participated in the auction of the nazul land and his bid at the auction was highest at Rs. 5,000/-. The auction was concluded in favour of the plaintiff who deposited 1/4th amount at the spot. The conditions of the auction sale were read over at the time of the auction and its copy was also placed at the Notice-board at Nagar Palika, Hardoi. The entire proceedings of the auction took place in the presence of the Executive Officer and Prabhari Adhikari and other concerned officials of Nagar Palika and all the Rules and sub-rules pertaining to auction were followed. Subsequently, the Nagar Palika, Hardoi, communicated the plaintiff that the lease of the land would soon be executed according to law after getting the remaining amount deposited. The plaintiff went to the Nagar Palika Office to deposit the balance amount but the said amount was neither got deposited nor the lease-deed was executed. In the meantime one Radhey Shyam moved an application before the District Officer, Hardoi to cancel the auction and to conduct the auction again. According to the plaintiff, he is entitled to get the lease-deed executed in his favour.

4. The case of the defendant-respondent is that the disputed land was put to auction in which bid of the plaintiff was highest. It was alleged that the bid was subject to approval of the Administrator and the remaining 3/4th amount could only be deposited when the bid was approved by the Administrator. The Administrator did not accept the bid of the plaintiff and he ordered for re-auction of the plot. It was admitted that Radhey Shyam had moved an application on 23.3.1978. It is contended by the defendant-respondent that the plaintiff did not acquire any right by making highest bid of the auction because the bid was not approved by the Administrator, which was one of the conditions of the auction.

5. Following issues were framed :

"(i) Whether the proceedings of auction were completed in favour of plaintiff ? If not, its effect ?

(ii) Whether the suit has been under-valued and the Court Fee paid is insufficient ?

(iii) Whether the lease deed can be executed in favour of the plaintiff by getting Rs. 3,500/-deposited from him ?

(iv) To what relief, if any, is the plaintiff entitled ?"

6. The learned Munsif decided Issue Nos. (i) and (iii) in favour of the plaintiff-appellant and decreed the suit with costs.

7. The defendant-respondent filed an appeal. The appeal has been allowed vide judgment and decree dated 30.8.1979.

8. The learned first appellate Judge formulated a point for determination which is as follows :

"Whether the auction of the disputed land became final on the highest bid of the plaintiff ? If so, whether the plaintiff is entitled to get the lease deed of the disputed

land executed by the defendant in his favour after depositing the balance amount of Rs. 3,500/-"

9. The contention of the plaintiff-appellant is that Condition No. 5 in the auction notice is illegal, as Nazul Manual did not prescribe any such condition.

10. The contention of the defendant-respondent is that the bid was subject to the approval by the Administrator and the auction would become final only when the highest bid made at the auction was approved by the Administrator. The plaintiff did not acquire any right in respect of the disputed land by merely making the highest bid at the auction. The Administrator of the Nagar Palika, Hardoi had full right and authority to accept or not to accept the highest bid made at the auction.

11. The finding of the first appellate Court is that there is Condition No. 5 in the notice of the auction that the Administrator/District Magistrate could, without assigning any reason, not accept, the bid made at the auction and the auction would not be deemed to be completed till the bid is accepted by the Administrator or the District. Magistrate. The plaintiff-respondent clearly knew this condition before he participated in the auction aforesaid. The auction did not become complete because the highest bid was not accepted by the Administrator of the defendant-respondent. The learned Additional District. Judge also held that the view taken by the learned Munsif that Condition No. 5 of the auction notice is contrary to the Nazul Manual does not appear to be legally correct. It was also held by the Additional District. Judge in appeal that the terms and conditions, under which the auction was to be held, were formulated by the defendant-appellant in pursuance of the powers vested in it under Para 66 of the Nazul Manual. It was also held that the highest bid made by the plaintiff-appellant at the auction aforesaid did not confer any right upon him in respect of the disputed plot.

12. With the aforesaid findings, the learned Additional District Judge allowed the appeal and set aside the judgment of the learned Munsif.

13. Aggrieved by the aforesaid judgment, of the Additional District Judge, Hardoi, this Second Civil Appeal has been preferred.

14. The appeal was admitted on 23.11.1979 on the basis of the substantial question of law stated in the memo of the appeal.

15. Following substantial questions of law were formulated by the appellant as stated in the memo of the appeal :

"(a) Whether auction sale in respect of a premium of a lease is complete as soon as highest bid is accepted and the sale is knocked down in favour of the purchaser by the officer conducting the sale or it needs further approval ?

(b) Whether the sale of a premises of the Nazul land is regulated by the provisions of the Nazul Manual which has got the force of law or the terms and conditions for

such a sale can be formulated arbitrarily by the Nagar Palika ?

(c) Whether a legal right, is acquired by an auction purchaser on the acceptance of his highest bid or he does not acquire any of such rights ?

(d) Whether the terms and conditions set forth arbitrarily will have an over-riding effect on the rules contained in the Nazul Manual ?

(e) Whether the acceptance or refusal of the bid by the Administrator of Nagar Palika is arbitrary or is to be regulated by the provisions of Nazul Manual ?"

16. The first substantial question of law as formulated by the appellant is whether auction sale in respect of a premium of a lease is complete as soon as highest bid is accepted and the sale is knocked down in favour of the purchaser by the officer conducting the sale or it needs further approval ? It is admitted case of the parties that in the auction notice there is a Condition No. 5 that the Administrator/District Magistrate could, without assigning any reason, not accept the bid made at the auction and the auction would not be deemed to be completed till the bid is accepted by the Administrator or the District Magistrate. If, this condition had not been there, the sale would have completed as soon as hammer falls on the last bid because under the general law the sale becomes complete but here because of this condition in the auction notice based on the rules in the Nazul Manual, the sale cannot be said to be completed unless the final bid is accepted by the Administrator/District Magistrate. I may refer here certain provisions of the Nazul Manual, which are as follows :

"48. Sale or lease of a plot shall, subject to the provisions of Rule 50, be sanctioned by--

(1) The Collector, if the estimated value does not exceed Rs. 2,500 ;

(2) The Commissioner, if the estimated value exceeds Rs. 2,500 but does not exceed Rs. 10,000;

(3) The State Government in other cases.

The terms of the sale or lease as finally arranged, shall be subject also to confirmation by the Commissioner, the State Government or the Collector as the case may be, unless the terms have already been set forth in the proposal for sale or lease and have been approved. Copies of orders sanctioning sale of nazul property shall be forwarded to the Accountant General, Uttar Pradesh.

Legislative changes.--Amendment in Rules 14 and 48 of the Nazul Manual (corrected upto March 21, 1958) sanctioned under Swayatta Shasan (KA) Vibhag G.O. No. 3162-A/IX-A-186-54, dated October 17, 1958.

"Estimated value" shall be taken as twenty times the Annual value of the plot and shall include the value of any building on the plot, if the building is the property of

Government."

17. Rule 66 of Nazul Manual is also relevant and it is also as follows :

"66. Sale or lease of nazul by public auction.--In the case of a sale or lease by auction all the conditions of the sale or lease shall be published in the auction notice, and shall also be read out before the auction begins. In the case of a sale or lease otherwise than by auction, the conditions shall be brought to the notice of the purchaser or lessee before conclusion of the transaction, and the fact that this has been done shall be recorded."

18. In view of the aforesaid rules, it appears that the procedure has been followed in laying down the condition in accordance with Rule 66 of Nazul Manual and the condition of the approval is in accordance with Rule 48 of Nazul Manual. I agree with the respondent that the view taken by the learned Munsif that the Condition No. 5 in the auction notice is contrary to the Nazul Manual ; is not in accordance with the Rules. The finding recorded by the first appellate Court that the sale is not complete without approval of the Administrator/District Magistrate; is in accordance with the Rules. Therefore, I hold that if, there is a condition for approval of the highest: bid by any authority, the sale shall be complete after the acceptance of that bid by the. competent authority as mentioned in the notice.

19. So far as the second substantial question of law formulated by the appellant is concerned, I hold that the sale of premises of the Nazul land is regulated by the provisions of Nazul Manual and the terms and conditions in such sale can be formulated in accordance with Rules 48 and 66 of the Nazul Manual cited above.

20. So far as the third substantial question of law formulated by the appellant is concerned, I agree with the finding of the first appellate Court that in this case the bid of the auction purchaser had not been accepted. It is immaterial that the bid was highest because according to the auction notice and the Rules of the Nazul Manual, the legal right shall be acquired only on the acceptance of the highest bid in the matter of the nazul property. Since the auction notice and the Rules of Nazul Manual specifically provides for acceptance of the bid by the competent authority as stated therein, the plaintiff-auction purchaser cannot acquire any right.

21. The next substantial question of law as stated in the memo of the appeal is as to whether the terms and conditions set forth in the auction notice will have over-riding effect on the rules contained in the Nazul Manual ? This substantial question of law does not arise from the rules of Nazul Manual. There is no question of any over-riding effect because of the provisions under Rules 48 and 66 of Nazul Manual.

22. The next substantial question of law as formulated by the appellant in the memo of appeal is as to whether the acceptance or refusal of the bid by the Administrator of the Nagar Palika is arbitrary or is to be regulated by the provisions of Nazul

Manual ? I do not find any case of the plaintiff-appellant in the plaint how the refusal of the bid by the Administrator/District Magistrate is arbitrary ? Unless there is something on the record, there can be no finding that the refusal of the bid is arbitrary.

23. After hearing the learned Counsel for the parties, I find that this is a suit for injunction by a prospective lease purchaser against the Nagar Palika, which is the true owner of the nazul land on behalf of the State Government. Rule 42 of Nazul Manual provides that for the purpose of the rules under Nazul Manual, any land is the nazul land, which is owned by the Government, the management has been delegated to a local body. Here the disputed land being Nagar Palika land is the Government's land and Nagar Palika is in the management of this disputed land against which the plaintiff-appellant has sought the relief of injunction. In *Paras Ram v. Sukhdeo Prasad and Anr.* 1980 (6) ALR 586, it has been held by this Court that the relief of injunction could be sought by the plaintiff if, he had succeeded in establishing his ownership of the plot in dispute or his lawful possession over it. Here in the instant case under judgment, the plaintiff is neither the owner nor in lawful possession. Therefore, the suit of injunction could not be decreed. Here in the instant case, there is no dispute that the nazul land belongs to the Government and the Nagar Palika is the Manager of this nazul land, so the suit for injunction cannot be decreed in any case whatsoever.

24. No other substantial question of law has been pressed by either of the learned Counsel for the parties.

25. In view of the above, the Second Civil Appeal is dismissed with costs to the respondent.