

Ram Awadh Tiwari Vs Sudarshan Tiwari and Others

Court: Allahabad High Court

Date of Decision: July 16, 2008

Acts Referred: Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 198, 286

Citation: (2009) 1 AWC 310 : (2008) 105 RD 322

Hon'ble Judges: Ashok Bhushan, J; Arun Tandon, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.

Heard Sri Veer Singh learned Counsel for the appellant and Sri A.P. Srivastava on behalf of the

respondent.

2. This appeal has been filed against the judgment and order dated 11.11.2003 passed by the learned Single Judge allowing the writ petition filed

by respondent No. 1.

3. The brief facts necessary for deciding the appeal are that the respondent No. 1 took an agriculture loan of Rs. 59,000/- from the Chandauli

Branch of Union Bank of India. The loan was repayable in 17 equal half yearly installments. The respondent No. 1, who was writ petitioner,

committed default in depositing the installments, due to which recovery proceedings were initiated at the instance of the bank for recovery of the

outstanding amount as arrears of land revenue. A citation to appear was issued on 25th November, 1995. In pursuance of the citation to appear,

writ-petitioner was arrested and after deposited Rs. 30,000/- he was released. Writ-petitioner thereafter represented the matter to the bank and

also filed a writ petition in this Court challenging the recovery proceedings.

4. In the writ petition, under an interim order he was directed to deposit 50% of the amount and to furnish security for the balance amount. A sum

of Rs. 9,500/- was deposited by the writ-petitioner on 22.01.1996 and a security was also furnished. The interim order in the writ petition could

not be extended, due to which the recovery proceedings revived and sale proclamation was issued fixing 06.01.1997 for sale. Ultimately auction

took place on 12th March, 1997, and the appellant is stated to have offered the highest amount of Rs. 60,400/-. The Tehsildar conducted the sale

and the Sub Divisional Officer has confirmed the sale on 31st March, 1997.

Against non-extension/grant of interim order in writ petition, the writ petitioner filed an Special Appeal No. 260 of 1997. The Division Bench

passed an order for deposit of the entire sale price with 5% interest. Pursuant to the order of the Division Bench in special appeal, the writ-

petitioner deposited an amount of Rs. 63,420/- on 27.05.1997. In the meantime it appears that the Sub Divisional Officer also executed a sale

deed in favour of auction purchaser.

5. The learned Counsel for the parties have submitted that amount deposited by the writ-petitioner i. e. Rs. 64,420/- in the treasury is still lying

there and has not been withdrawn by either of the party. The auction purchaser was subsequently impleaded as a party and he also filed his

counter affidavit.

6. The learned Single Judge, after hearing the parties, allowed the writ petition vide its judgment and order dated 11.11.2003. Learned Single

Judge took the view that sale was never confirmed by the Collector as required by the rules and confirmation made by the Sub Divisional Officer

was of no legal consequence. The writ petition was allowed. The auction sale, confirmation of sale and consequential sale deed have been set

aside.

7. It is against this order of the learned Single Judge that the auction purchaser has filed this appeal.

8. Sri Veer Singh Advocate on behalf of the appellant, challenging the order, contended that the view taken by the learned Single Judge that Sub

Divisional Officer was not competent to grant approval to the auction sale is not correct. He submits that Sub Divisional Officer by virtue of

notification issued u/s 3(4) of the U.P.Z.A. & L.R. Act was fully empowered to exercise all functions of Collector under the U.P.Z.A. & L.R. Act,

1950. He has also relied upon the notification dated 11th June, 1953, published on 13th June, 1953 in the U.P. Gazette, whereby all Sub

Divisional Officers in the whole State, except for four districts, were empowered to discharge all the functions of the Collector.

9. He has also placed reliance upon the judgment of the Apex Court reported in Kedar Nath Dubey (D) by Lrs. and Others Vs. Sheo Narain

Dubey (D) by Lrs. and Others,

10. Learned counsel for the respondent supporting the order of the learned Single Judge contended that view taken by the learned Single Judge

that Sub Divisional Officer has no jurisdiction to approve the auction sale, is in accordance with law. He submits that the learned Single Judge after

taking into consideration subsequent notification dated 17.01.1976 has rightly come to the conclusion that Sub Divisional Officer has no power to

confirm the auction sale.

11. The issue which has come up for consideration is as to whether the Sub Divisional Officer while conducting a sale has jurisdiction to approve

the sale u/s 286 of the U.P.Z.A. & L.R. Act or not. Section 286 of the U.P.Z.A. & L.R. Act, 1950 which is relevant for the present purpose

reads as follows:

286. Power to proceed against interest of defaulter in other immovable property.-(1) If any arrears of land revenue cannot be recovered by any of

the processes mentioned in Clauses (a) to (e) of Section 279, the Collector may realize the same by attachment and sale of the interest of the

defaulter in any other immovable property of the defaulter.

(2) Sums of money recoverable as arrears of land revenue but not due in respect of any specific land, may be recovered by process under this

section from any immovable property of the defaulter including any holding of which he is a bhumidhar or asami.

12. In the present case there is no dispute to the fact that the recovery was initiated against the writ-petitioner on account of the agriculture loan

taken from the bank. The auction of the agriculture property of the writ-petitioner was proceeded with under the relevant rules for conducting the

sale of immovable property, which are contained in Chapter X of the U.P.Z.A. & L.R. Act, 1952. Rule 285-J, which is relevant for the present

purpose is extracted below:

285-J. 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.

13. Section 3 (4) of the U.P.Z.A. & L.R. Act 1950 defines the Collector, which is extracted as below:

3. Definitions.- In this Act, unless there is anything repugnant in the subject or context:

(4) ""Collector"" means an officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901, and includes an Assistant

Collector of the first class empowered by the State Government by a notification in the Gazette to discharge all or any of the functions of a

Collector under this Act.

14. The Sub Divisional Officer has been empowered to exercise powers of Collector vide notification published in Gazette, being notification dated

11th June, 1953. The notification dated 11th June, 1953 is as follows:

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.

15. Another notification which has been relied upon by the appellant is dated 05th December, 1968 under which Sub Divisional Officers were

empowered to exercise all powers of the Collector under the U.P.Z.A. & L.R. Act except the power u/s 198 of the U.P.Z.A. & L.R. Act.

16. The third notification, which has been referred to by the learned Single Judge and has been quoted in the order, is dated 17.01.1976, is to the

following effect:

In exercise of the powers under Clause (4) of Section 3 of the U.P. Zamindari Abolition and land Reforms Act, 1950 (U.P. Act No. 1 of 1951),

the Governor is pleased to empower all the Assistant Collectors of the First Class, who are Incharge of the sub-division, to discharge the functions

of a "Collector" u/s 286 of the said Act in respect of any holding of a defaulter of which he is a Bhumidhar. Sirdar or Assami subject to the

condition that such sales are approved by the Collector.

17. The Hon"ble Supreme Court in its judgment in the case of Kedar Nath Dubey (supra), while considering the powers of the Sub Divisional

Officer in the context of U.P.Z.A. & L.R. Act, 1952 and Rule 284 and 285 of the U.P.Z.A. & L.R. Rules, 1954, with reference to the notification

issued on 11.06.1953, 05.12.1968 read along with the letter of the Secretary, Board of Revenue, Uttar Pradesh dated 07.07.1983, in paragraph

7 has specifically stated that it is not expressing any final opinion on the merits of the case. Paragraph 7 of the judgment of the Apex Court in the

case of Kedar Nath Dubey (supra), which is relevant, is reads as follows:

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 11.06.1953 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.

18. Thus the Apex Court, after noticing the submissions of the parties and all the notifications, without expressing its final opinion remitted the

matter for High Court's consideration afresh.

19. On being asked as to whether the High Court has decided the issue on remand under the judgment of the Apex Court, referred to above, the

counsel for the parties are unable to inform the Court as to whether any decision has been given by the High Court or not.

Since the Apex Court has not itself finally decided the issue, this Court has to look into the notifications and consider the said issue which has

arisen in the present case also and which is material for deciding this appeal.

20. Section 3(4) of the U.P.Z.A. & L.R. Act empowers the State Government to issue notifications empowering the Assistant Collector of first

class to discharge all or any of the function of the Collector under the Act. The power to issue notification, given u/s 3(4), can be exercised from

time to time and power is also given to entrust all or any of the function according to the exigencies of administration.

21. The notification dated 11th June, 1953 empowered the Sub Divisional Officers to exercise all the powers of the Collector under the Act. By

subsequent notification dated 5.12.1968 the powers given to Sub Divisional Officers were again confirmed with the exception of the power u/s

198. Thus the notification dated 5th December, 1968 takes away the power of Sub Divisional Officer, which was earlier exercisable by him by

virtue of notification dated 11th June, 1953 with regard to Section 198. By virtue of notification dated 5th December, 1968 the Sub Divisional

Officer was no more empowered to exercise the power u/s 198.

22. The subsequent notification dated 17.1.1976 contains the same scheme empowering the Assistant Collector first class, who is incharge of the

division, to exercise the functions of the Collector u/s 286 of the said Act in respect of any holding of a defaulter of which he is a Bhumidhar, Sirdar

or Assami, subject to the condition that such sales are approved by the Collector. Thus, the empowerment of the Assistant Collector qua the

powers under Rule 286 by notification dated 17.1.1976 is hatched by a condition that Sub Divisional Officer shall exercise all the powers except

the power to approve the sale, which shall be done by the Collector.

23. There is inconsistency in the various notifications referred to above. The notification dated 17.1.1976 does not alter the position as it was

continuing, except with regard to approval of sale. It has been specifically provided that the same would be exercised by the Collector. The

notification dated 17.1.1976 read with Rule 285-J thus makes it clear that power to approve the auction sale vest in the Collector alone.

24. Learned counsel for the appellant has also referred to and relied on the letter of the Secretary, Board of Revenue, U.P. dated 7.7.1983. The

said letter has not been brought on record. However, learned Counsel for the appellant has referred to paragraph 7 of the judgment of the Apex

Court in the case of Kedar Nath Dubey (supra) where this letter has been referred. Reading of paragraph 7 indicates that the said letter dated

7.7.1983 records 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.

25. Thus letter dated 7.7.1983 only explain the position which was as per the notification dated 5.12.1968. A reading of paragraph 7 of the

judgment does not lead to any other meaning. Moreover, the power is vested with the State Government to empower Assistant Collector by a

gazette notification and the Secretary, Board of Revenue cannot alter the empowerment, which has been made by the gazette notification by the

State in any manner. This letter dated 7.7.1983 does not improve the case of the appellant any further.

26. Thus, after notification dated 17.1.1976 it has to be accepted that the power to approve the auction sale conducted u/s 286 of the U.P.Z.A. &

L.R. Act vest with the Collector and Sub Divisional Officer cannot exercise the power of approval.

27. In the present case it is admitted position that Collector has not approved the auction sale and learned Single Judge has rightly set aside the

auction and also its confirmation by Sub Divisional Officer and all other consequential action on that ground.

28. In view of the aforesaid observations, we are of the considered opinion that the learned Single Judge has rightly allowed the writ petition. We

do not find any error in the order of the learned Single Judge.

29. The appeal is dismissed.

30. However, the auction purchaser shall be entitled to refund of the amount of Rs. 60,400/- which was deposited in pursuance of the auction sale

along with 5% interest as deposited by the writ petitioner.