

(2005) 09 AHC CK 0243

Allahabad High Court

Case No: C.M.W.P. No. 1633 of 2005

Indian Casting and Krishi Udyog

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 9, 2005**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 58, Order 21 Rule 77, Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 92
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 154, 282, 341
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 254, 271, 285(A), 285(H)

**Citation:** (2006) 1 AWC 212 : (2005) 2 RD 609**Hon'ble Judges:** Janardan Sahai, J**Bench:** Single Bench**Advocate:** A.K. Rai and S.N. Singh, for the Appellant; K.M. Tripathi, Pankaj Mithal and W.H. Khan and S.K. Mishra, S.C., for the Respondent**Final Decision:** Allowed

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**Judgement**

Janardan Sahai, J.

There were certain electricity dues against Respondent No. 5 M/s. S. K. Glass works. The dues were recovered as arrears of land revenue. Certain plant and machinery of S. K. Glass were brought to sale in an auction held on 29.5.2004. The Petitioner India Casting and Krishi Udyog was the purchaser. The auction sale was confirmed on 23.6.2004. It appears that objections under Rule 285-I of the U.P.Z.A. and L.R. Rules were filed by the Respondent M/s. S. K. Glass Works on 13.8.2004. The objections were allowed by the Commissioner, Varanasi Division by his impugned order dated 16.10.2004. The auction sale was set aside and it was directed that fresh auction sale be held. The Commissioner held that there was material irregularity in the publication and sale. He found that 30 days clear notice between the dates of the

proclamation of sale and the sale itself was not given. This constitutes breach of Rule 285A of the U.P.Z.A. and L.R. Rules. It was also found that the sale proclamation was published in an evening newspaper "Kashi Varta", which has scant circulation and that the valuation of the property was made by the P.W.D., which is not authorized to value plant and machinery. It was also found that the sale price was reduced on account of arbitrary fixation of the price of a portion of the machinery released from the sale. Further the properties were mortgaged with the Canara Bank and no notice had been given to it.

2. I have heard Sri S. N. Singh on behalf of the Petitioner and Sri Pankaj Mittal on behalf of Respondent No. 5 and the learned standing counsel on behalf of Respondents 1 to 4.

3. It appears that before the Commissioner an objection was raised by the Petitioner auction purchaser that the objections under Rule 285-I of the U.P.Z.A. and L.R. Rules were not maintainable as the properties were movable properties. The Commissioner has referred to this objection in his order but no finding has been given in this regard. The other submission raised by the Petitioner's counsel is that the order passed by the Commissioner is an ex parte order and no opportunity was given to the Petitioner. Learned Counsel for the Petitioner placed before me the release certificate dated 24.6.2004 issued by the Tehsildar in which reference is made to the property sold, which are described as movable property. In the letter of the Tehsildar dated 1.7.2004 reference is made to an earlier letter dated 29.6.2004 directing that the movable property be not removed. Reliance is also placed upon the admission made by the Respondent No. 5 in paragraph 4 of the counter-affidavit in which it is stated that movable property, plant and machinery were attached on 29.12.2003. In paragraph 30 of the counter-affidavit the property has been described as plant and machinery. On this basis it is submitted by Sri S. N. Singh that there was ample material on the record to indicate that the properties, which were the subject-matter of sale were movable property. On the other hand it is submitted by Sri Pankaj Mittal, learned Counsel for the Respondent that the plant and machinery were embedded in the earth and was therefore immovable property. He relied upon the averments made in paragraph 4 of the application filed on 11.4.2005, a portion of which is quoted below:

The plant and machinery was installed on a concrete platform and was fixing to the earth by means of steel nuts and bolts, which were embedded to the earth about 8"-10" deep.

4. The reply to this paragraph has been given in the rejoinder-affidavit in paragraph 5 that it is movable property, which was sold. The question as to whether the plant and machinery can be treated as immovable property was considered by the Apex Court in [Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad](#), . It was held ; Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the Appellant, that whatever is embedded in earth must be treated as

immovable property is basically not sound. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of Water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the papermaking machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the Appellant that the machine must be treated as a part of the immovable property of the company just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

5. The issue as to whether the properties were movable or immovable is a mixed issue of law and fact and in a writ petition it is not appropriate to decide it in the first instance as facts are involved. The Commissioner who is vested with the jurisdiction of deciding an objection under Rule 285-I is competent to go into this question to determine whether the objections are maintainable.

6. It was however submitted by Sri Pankaj Mittal that even if the properties are treated as movable properties Rule 285-I is still, applicable. He relied upon the decision of this Court in [Bharat Singh and Others \(In Jail\) Vs. State of U.P.](#), .In that case it was held that objections under Rule 285-I can be filed even in respect of movable property. This decision would ordinarily bind me. However, it appears that certain decisions of higher authority of Division Benches of this Court as well as certain provisions of the Statute were not brought to the notice of the Court in Bharat Singh's case. Before referring to the Division Bench decisions on the point I will refer to the statutory provisions governing the point. Section 282 of the U.P.Z.A. and L.R. Act provides that the procedure for the sale and attachment of movable property shall be the same as that in execution of a decree under the CPC Code. The U.P.Z.A. and L.R. Rules also contain certain provisions relating to attachment and sale of movable properties. These rules find place under the heading of attachment and sale of movable property and begin from Rule 254 and continue upto Rule 271. To the extent to which direct provision has been made under the U.P.Z.A. and L.R. Rules the rules would prevail. However, recourse to the CPC in respect of matters on which the U.P.Z.A. and L.R. Rules are silent has to be made. This follows not only from the provisions of Section 282 of the U.P.Z.A. and L.R. Act but also in view of the provisions of Section 341 of the U. P. Z.A. and L.R. Act, which makes applicable to the proceedings under the U.P.Z.A. and L.R. Act the provisions of the CPC Code. There is a clear bifurcation under the CPC between the procedure for the sale of movable property and for the redressal of grievance in respect of them on the one hand and for the sale of immovable property on the other hand. Although under the CPC objections to the attachment of movable property can be filed under Order XXI, Rule 58 CPC but there is no provision under which the sale of movable property can be challenged on the ground of material irregularity in the publication or sale. This

would be clear from Order XXI, Rule 78A of the CPC Code, which in terms provides that no sale shall be set aside on the ground of irregularity in the publication but the remedy of the person aggrieved is to obtain compensation. Under Order XXI, Rule 77 the sale of movables becomes absolute on payment of the purchase money. Sale of immovable property can however be set aside under the provisions in Order XXI, Rule 90, CPC on ground of material irregularity or fraud in the publication or conducting of the sale. A sale of immovable property can also be set aside under Order XXI, Rule 89, CPC on payment of the purchase price and certain additional amount. In case no objections are filed, the sale shall be confirmed in accordance with the provision of Order XXI, Rule 92 CPC Code. The scheme of the U.P.Z.A. and L.R. Act and the Rules framed thereunder appears to be similar in this regard. This is what appears from the provisions contained in Rules 285H and 285-I. Rule 285H provides that any person aggrieved by the sale whose holding or other immovable property has been sold can apply for setting aside the sale on payment to the purchaser the sums mentioned therein. It is clear from this, provision that it applies only to immovable property. Rule 285-I, which follows this rule provides that the remedy of a person whose property has been sold is to apply before the Commissioner for setting aside the sale on account of material irregularity or mistake in publishing or conducting it. The proviso to Rule 285H takes away the right of the person who applies under Rule 285-I to get the sale set aside under Rule 285H. The consequence of not filing objections under Rule 285-I or of their dismissal have been given in the Rules 285J which is that the sale shall be confirmed if the Collector is satisfied that the purchase of land would not be in contravention of Section 154. Rule 285J thus refers to land, which is immovable property. Rule 285M also refers to the sale of immovable property and provides for putting the purchaser in possession. It will thus be seen that the consequences contemplated for not filing objections or of confirmation of sale are in respect of immovable property. The consequence of filing objections under Rule 285-I is the deprivation of right to apply under Rule 285H which relates to immovable property. If the consequences of not filing objections under Rule 285-I fall upon immovable property it can be inferred that the objections contemplated under Rule 285-I relate to immovable property.

7. The provisions of Section 282 of the U.P.Z.A. and L.R. Act were considered by a Division Bench of this Court in [Shiv Narain Tewari Vs. District Magistrate and Others,](#) . This was a case relating to sale of a bus as arrears of land revenue under the provisions of the U.P.Z.A. and L.R. Act. The Court referred to Section 282 and applied the provisions of Order XXI, Rules 77 and 78 of the CPC and held that the sale becomes absolute on payment of the purchase price and the remedy of the person whose property is sold is to obtain compensation. The Division Bench relied upon an earlier Division Bench in Seth Hira Lal v. State of U. P., that a sale of movable property becomes complete on payment by the purchaser of the price and issuance of receipt and no order or confirmation of sale is necessary. This Division Bench was not considered in the case of Bharat Singh v. State of U. P. and Ors. decided by the

learned single Judge of the Lucknow Bench of this Court. A learned single Judge of this Court while considering the provisions of Section 282 of the U.P.Z.A. and L.R. Act has held that the auction sale of movable property does not require any confirmation and that the sale becomes absolute on payment of purchase money. Sri S. N. Singh also placed reliance upon a decision in *Lakshmi Narayan v. Sub-Divisional Officer, Gyanpur, Varanasi* and Anr. 1967 (37) AWR, on the point that an objection under Rule 285-I of the Rules has to be disposed of judicially on evidence and by an order recording findings on the relevant points.

8. In view of the aforesaid Division Bench decisions, which are of binding effect and of higher authority than the single Judge decision in *Bharat Singh's* case and also because attention of the Court was not drawn to Section 282 of the U.P.Z.A. and L.R. Act in *Bharat Singh's* case, the decision in that case is per incuriam. In view of what has been stated above I am of the view that no objection against the sale of movable property can be filed within the scope of Rule 285-I of the U.P.Z.A. and L.R. Rules. The question as to whether the property in dispute is movable property has to be decided by the Commissioner. If the Commissioner holds that the property in question was immovable property it will be open to him to decide the objections on merits. If he comes to the conclusion that it is movable property the objection would have to be dismissed as being not maintainable. It is not necessary for me to advert to the other submission made by Sri S. N. Singh that the order passed by the Commissioner was an ex parte one and without opportunity as the order is being set aside on another point.

9. In view of the discussions made above the writ petition is allowed and the order dated 16.10.2004, passed by the Commissioner, Varanasi Division, Varanasi, is quashed. The Commissioner is directed to decide the matter afresh and if possible within a period of six months from the date of presentation of a certified copy of this order before him. Counsel for the parties agree that they will appear before the Commissioner on 26.9.2005 and in case for any reason that is not a working day then on the next working day.