
Jagdish Chandra and Others Vs The Board of Revenue and Others

Writ Petition Miscellaneous Single (WPMS) 7485 of 1982 and New No. 5770 of 2001

Court: Uttarakhand High Court

Date of Decision: June 25, 2007

Acts Referred:

Constitution of India, 1950 " Article 226#Contract Act, 1872 " Section 56#Evidence Act, 1872 " Section 114#Income Tax Act, 1961 " Section 2, 222#Registration Act, 1908 " Section 17, 17(2)#Uttar Pradesh Reorganisation Act, 2000 " Section 35#Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 " Rule 285H

Citation: (2007) 2 UD 694

Hon'ble Judges: Prafulla C. Pant, J

Bench: Single Bench

Advocate: Sharad Sharma, for Petitioner Nos. 1 and 2 and Manoj Tiwari, for the Appellant; Learned Standing Counsel for Respondents Nos. 1, 2, 3 and 4 and J.C. Belwal, learned Counsel, for the Respondent

Judgement

Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of Constitution of India, the petitioners have sought writ in the

nature of certiorari, quashing the order dated 28.12.1981, passed by Board of Revenue, U.P. in revision No. 9-11/L.R. of 1978-79, District

Pithoragarh (copy Annexure-3 to the petition), order dated 18.12.1971, passed by Commissioner, Kumaun Division in appeal No. 08/71-72 and

order dated 19.09.1971, passed by Collector, Pithoragarh, in appeal No. 3/24 of 1969-70, whereby all the said authorities, have rejected the

petitioners4 case to save the house No. 195 (new No. 677 and 675), situated in Bazar, Pithoragarh, from being auctioned in pursuance to

realization of arrears of Income Tax and Sales Tax, outstanding against Krishna Nand Punera.

2. Heard learned Counsel for the parties and perused the record.

3. Brief facts of the case, as narrated in the writ petition are that one Shri Krishna Nand Punera used to carry business at Pithoragarh. Petitioners

are related to said Krishna Nand Punera with the following pedigree:

K.N. Punera

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Poornanand Govind Ballabh

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Harinandan Janardhan Jagdish Prakash

(Pet. No. 1) (Pet. No. 2)

4. Krishna Nand Punera was owner of several properties including the house situated in plot No. 195 in Bazar, Pithoragarh (herein after referred

as house in dispute). He died on 26.11.1967, leaving behind a liability of payment of arrears of Income Tax and Sales Tax. It is alleged in the writ

petition that a portion of afore mentioned house, came into the share of Jagdish Chandra and Prakash Chandra (petitioners). The Collector,

Pithoragarh (respondent No. 3), issued a citation, and proceedings were drawn for sale of house in dispute for realization of arrears of Income Tax

and Sales Tax, due from Krishna Nand Punera. Petitioners No. 1 and 2, filed objections before the Collector, Pithoragarh, against the attachment

and sale of the house in dispute. The same were rejected. On this, the said petitioners preferred appeal before the Commissioner, Kumaun

Division, Nainital. At that stage, petitioner No. 3- Geeta Devi also claimed the ownership of the house in dispute, alleging that she is adopted

daughter of Dr. Sita Devi to whom the house in dispute was allegedly mortgaged by Krishna Nand Punera. The Commissioner, Kumaun Division,

allowed the appeal on 28.03.1970 and remanded the matter back to Collector, Pithoragarh. Vide order dated 19.09.1971 (Annexure-1 to the

writ petition), Collector, Pithoragarh, by a common order, again dismissed the objections, filed by petitioners No. 1, 2 and 3. The petitioners No.

1 and 2 again preferred appeal (petitioner No. 3 filed separate appeal) before Commissioner, Kumaun Division, who by a common order,

dismissed the appeals, vide order dated 18.12.1971 (Annexure-2 to the writ petition). Meanwhile, the house in dispute, which was attached, was

sold in auction and highest bid of respondent No. 5 Murari Lal Sharma was accepted by the authorities concerned. The petitioners No. 1 and 2,

preferred a joint revision No. 80 (Z) of 1971-72, before the Board of Revenue, U.P. Allahabad, and petitioner No. 3 Geeta Devi, preferred

revision No. 81 (Z) of 1971-72, before said authority. Both the revisions were transferred to Board of Revenue at Lucknow, and renumbered as

revisions No. 9 and 10 of 1978-79. The Board of Revenue at Lucknow, vide its judgment and order dated 28.12.1981 (Annexure-3 to the writ

petition), dismissed the revision. Aggrieved by the aforesaid orders, passed by the Revenue authorities, this writ petition was filed before Allahabad

High Court by the petitioners on 12.07.1982, where it was admitted on 27.07.1982. The writ petition is received by this Court u/s 35 of U.P.

Reorganisation Act, 2000, for its disposal.

5. In the writ petition, the impugned orders are challenged by the petitioners on the ground that the proceedings of attachment and sale of the house

in dispute are in violation of the proceedings of Section 222 of Income Tax Act, 1961, as the arrears of Income Tax are allegedly not recoverable,

as arrears of land revenue. Apart from this, it is alleged that as per the Will executed by Krishna Nand Punera, the liability to pay the arrears of

income tax was on Janardhan Punera (one of his grand son) and the property in the share of the petitioners cannot be sold. It is further alleged that

in the year 1959, the house in dispute was mortgaged by Krishnanand Punera to Km. Sita Devi and the sale of the mortgaged property by the

revenue authority is illegal. Lastly, it is alleged by the petitioners that the Board of Revenue has erred in holding that the petitioner No. 3 Geeta

Devi, should approach civil court for adjudication of right that she is adopted daughter of Sita Devi.

6. No counter affidavit has been filed on behalf of the respondents No. 1, 2, 3 and 4. It is only respondent No. 5 Murali Lal Sharma, the auction

purchaser, on whose behalf counter affidavit was filed before Allahabad High Court. In the counter affidavit, filed on behalf of the said respondent,

it is stated that the income tax dues were outstanding against Krishna Nand Punera. It is also stated that he (Krishna Nand Punera) left the

property after his death including the property in dispute. It is further stated in the counter affidavit that neither the mortgage is proved before the

revenue authorities nor the Will through which the petitioners No. 1 and 2, are claiming their rights. In the counter affidavit, it is also stated that

respondent No. 1 was the highest bidder in the auction and made necessary deposit of 1/4th amount i.e. Rs. 10, 250/-, as per the rules. Remaining

amount of Rs. 30,750/- was deposited as per order dated 22.01.1983 (Annexure- C.A. 1), passed by Collector, Pithoragarh. It is alleged that

Janardan Punera regarding whom it is stated in the writ petition that he was to deposit arrears of Income Tax and Sales Tax, did not deposit the

same. Defending the procedure adopted by the Collector, Pithoragarh, in realization of the dues, payable by Krishnanand Punera, it is alleged that

no irregularity, has been committed. The factum of adoption of Geeta Devi by Sita Devi was also not proved before the revenue authorities. In the

counter affidavit, filed on behalf of respondent No. 5, it is also stated that he has deposited remaining amount of Rs. 30,750/-, as balance amount

on 07.02.1983 (copy Annexure-C.A. 2 to the writ petition), as there was no stay order on said date in the matter.

7. In the rejoinder affidavit filed, on behalf of petitioners No. 1 and 2 to the aforesaid counter affidavit, it is stated that on 19.07.1998 during the

pendency of this writ petition, a fire broke in the market of Pithoragarh and some 85 shops were gutted. In said devastating fire, the house in

dispute also burnt to ashes. As such, it is stated that the auction purchaser of 1968 in whose favour sale certificate was not issued till the fire

engulfed the house cannot grab the new building, raised by the petitioners in place of the old house. It is further stated in the rejoinder affidavit that

during the pendency of proceedings pending before the revenue authorities, lease of the land on which the house in dispute was situated, expired

on 01.03.1974. And the petitioners have applied for converting land into freehold for which they have deposited 25% of the value of the property

on 30.01.1999. After the writ petition was transferred from Allahabad High Court to this Court, according to the petitioners, they had no

information of the transfer of the petition and the same was dismissed in default but later on got restored. Meanwhile, when respondent No. 5

sought possession of the house in dispute, the Tehsildar and the Sub-Divisional Magistrate of the area, submitted their report (copy Annenure-

R.A. 5 and R.A. 6) in the year 2003, which clearly show that after the house was destroyed in fire, the possession of the house purchased cannot

be given, as there is new construction, standing thereon. It is also alleged by petitioners in the rejoinder affidavit that the house in dispute cannot be

transferred to respondent No. 5 on the basis of Doctrine of Frustration. It is also stated in the rejoinder affidavit that during the pendency of the

proceedings before Revenue authorities, the respondent No. 5 himself at one point sought withdrawal of 25% of the auction money, deposited by

him, as such, the sale should not have been confirmed legally in his favour.

8. In the supplementary counter affidavit, filed by respondent No. 5 Murali Lal Sharma, the auction purchaser has stated that the factum of fire has

no relevance with the decision of this case. Respondent No. 5 has denied the knowledge relating to the incident of fire, as he had shifted from

Pithoragarh to Haldwani. It is further stated in the supplementary counter affidavit that if the petitioners or any one else has raised unauthorized

construction, it has no affect on the rights of respondent No. 5. It is also stated in the supplementary counter affidavit that on 30.11.2002, the sale

certificate has been issued by Collector, Pithoragarh in favour of respondent No. 5. It is alleged that the Tehsildar and the Sub-Divisional

Magistrate, had submitted their reports due to the political links of the petitioners and they are not entitled to get benefit on the basis of the reports

relating to the changed circumstances at the spot. As to the application of withdrawal of 25% of the deposit purporting to have been made by

respondent No. 5, it is stated that the person, who made said application was not authorized by the deponent (respondent No. 5). Regarding the

observation made by Board of Revenue, while dismissing revisions filed by petitioners, that the dues for which the recovery proceedings were

issued, could be deposited at the discretion of Collector, by the petitioners along with the recovery charges i.e. 5% of the amount to be recovered,

it is alleged by respondent No. 5 that the said observation of the Board of Revenue is per in curiam, as Rule 285H of U.P. Zamindari Abolition

and Land Reforms Rules, provides only thirty days time for said purpose. In the supplementary counter affidavit, it is also alleged that after

30.11.2002, i.e. date when the sale certificate was issued in favour of respondent No. 5, the tenants in the property have executed rent notes in

favour of respondent No. 5, treating him to be the landlord of the property.

9. In the supplementary rejoinder affidavit, it is alleged that the respondent No. 5 had not chosen to file counter affidavit before Allahabad High

Court till the house in dispute was gutted in fire and it was only in the year 1998 when for the first time, respondent No. 5 filed his counter affidavit.

It is further stated in the supplementary rejoinder affidavit that the Collector, Pithoragarh, is bound to pass orders on the application of the

petitioners in compliance of the observations of the Board of Revenue to permit them to make deposits under Rule 285 H of U.P. Zamindari

Abolition and Land Reforms Rules. As to the rent notes, obtained by respondent No. 5 from the tenants, it is stated in the supplementary rejoinder

affidavit that the same was done by exerting pressure and influence on the tenants in a clandestine manner. It is further alleged in this regard by the

petitioners that there was no occasion for respondent No. 5 to let out the property to the tenants, as there are already suits, pending against the

tenants, which are registered as S.C.C. case No. 01 of 2003, S.C.C. case No. 02 of 2003, S.C.C. case No. 03 of 2003 and S.C.C. case No.

04 of 2003, and the deposits of the rent are now being made in the courts subject to the decision of the writ petition.

10. The first submission made on behalf of the petitioners is that Section 222 of Income Tax Act, 1961, provides that when an assessee is in

default, the Tax Recovery Officer would issue certificate of amount of arrears, required to be recovered and the same can be recovered by four

modes, mentioned in the Section. In para-7 of the writ petition, the petitioners have admitted that on 26.11.1967, Krishna Nand Punera, died

leaving behind a liability of payment of arrears of Income Tax and Sales Tax. In view of provision of Section 114 of Indian Evidence Act, 1872,

the court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events,

human conduct and public and private business, in their relation to facts of particular case. As such, once liability is admitted by the petitioners, it is

not open for them to say that the procedure mentioned in Section 222 was not adopted by the Income Tax authorities before the certificate is

issued. Learned Counsel for the petitioners further argued that the recovery of the arrears of Income Tax cannot be made, as arrears of land

revenue. I do not see force in the contention of the learned Counsel for the petitioners for the reason that the definition of 4Tax Recovery Officer4

given in Sub-section (44) of Section 2 of Income Tax Act, 1961, as it existed prior to amendment made in said Section vide Act No. IV of 1988,

included the Collector also. That being so, the Collector was competent u/s 222 of Income Tax Act, to attach and sell the assessee's immovable

properties, which is one of the modes, provided under said Section. The submission of learned Counsel for the petitioners that the recovery was to

be made, as per the procedure provided in Second Schedule of the Income Tax Act, 1961, has no force, as the Schedule relied by the petitioners

was substituted vide Act No. IV of 1988, while the recovery had already been made prior to the substituted Second Schedule under the aforesaid

Act.

11. The second contention advanced on behalf of the petitioners is that since the house in question has already been destroyed in fire in the year

1998, now sale cannot take effect in view of Doctrine of Frustration. From the annexure R.A. 5, filed with the rejoinder affidavit, it is clear that

Tehsildar, Pithoragarh, expressed inability to deliver possession of the house, which was purchased in auction by the respondent No. 5- Murari Lal

Sharma on the ground that the house, which existed in 1968, has already been destroyed in July 1998, in the devastating fire and in its place a

three storey building with five shops has come up. Annexure- R.A. 8 to the rejoinder affidavit, filed by the petitioners, shows that Additional

District Magistrate (Pariyojna), has submitted his report on 11/15.8.1998 to District Magistrate, Pithoragarh that in the intervening night of 19th -

20th of July, 1998, several shops of Gandhi Chowk in Pithoragarh, were destroyed in fire. The detailed inquiry report of 20 pages, of the incident,

is annexed with said document. As such, it is established from the record that house of Krishna Nand Punera, which was attached and in respect

of which the highest bid of respondent No. 5, was accepted in auction in the year 1968, got destroyed in fire.

12. The interim order, passed in this writ petition by Allahabad High Court on 27.07.1982, reads as under:

Issue notice in case confirmation of sale has not already taken place, the sale shall not be confirmed in respect of the house No. 677, 675 M, at

plot No. 197 (old) situate on Bazar Pithoragarh.

After the writ petition was transferred from Allahabad High Court to this Court u/s 35 of U.P. Reorganisation Act, 2000, for its disposal, it was

dismissed in default on 11.11.2002. However, petitioners moved restoration of the writ petition on the ground that they had no knowledge of

transfer of the petition and the writ petition was restored by this Court vide order dated 03.03.2003. As such, during the intervening period

between 11.11.2002 and 03.03.2003, the said interim order stood vacated and it appears that during this period Collector, Pithoragarh, issued

sale certificate in favour of respondent No. 5, as mentioned in his supplementary counter affidavit, which is annexed as Annexure C.A. 1 to the

counter affidavit dated 02.08.2006. It is strange that when the house has already been destroyed in fire in the year 1998, and in its place new

building has come up, how the Collector, issued the sale certificate of the house, which was sold in auction on 03.10.1968 but destroyed in fire in

July, 1998. It is mentioned in the sale certificate that the sale was confirmed by Commissioner, Kumaun Division on 18.12.1971. The question is

whether after the sale had already been confirmed before the fire took place, the petitioners can take benefit of doctrine of frustration even if the

house was destroyed in fire in the year 1998 or not. Interim order, passed by Allahabad High Court, as quoted above, protected the interest of the

petitioners conditionally i.e. ""in case confirmation of sale has not taken place.

13. Section 56 of Indian Contract Act, 1872, provides that an agreement to do an act impossible in itself is void. It further provides that a contract

to do an act, which after the contract is made becomes impossible, becomes void. On behalf of learned Counsel for the respondent No. 5 it is

argued that since it is not a case of contract, as such, the petitioners are not entitled to the possession on the basis of Doctrine of Frustration.

Having gone through the facts and circumstances of the case, this Court is of the view that if the highest bid of the respondent No. 5 was accepted

by Collector, Pithoragarh, there was an implied contract between the Collector, Pithoragarh and respondent No. 5 to issue sale certificate and

deliver the possession of the house in dispute, after the sale is confirmed. Since before delivery of possession due to accidental fire in whole of

market, the house in dispute also gutted as such the delivery of possession became impossible. However, after the petitioners have raised new

constructions on said land even after the sale is confirmed, they have done it so at their own risk. It is admitted by the petitioners in para-4 F of

their rejoinder affidavit that the land was a lease land and the lease expired in the year 1974. The petitioners have alleged that they continued in the

possession of the land and they have sought free hold of said land in the year 1998 and deposited 25% of the value on 30.01.1999. But the

question is whether on that date infact had the petitioners right to continue in possession as the sale had already been confirmed by then.

14. Learned Counsel for the petitioners also drew attention of this Court to Annexure R.A. 9 to the rejoinder affidavit, which purports to be a

copy of letter dated March 3, 1971, in which it is mentioned on behalf of the respondent No. 5 that though he had purchased the house for Rs.

41,000/-, by making a highest bid to purchase the house but since for two years the sale was not confirmed, as such, he wanted to withdraw the

deposit of Rs. 10,250/- (1/4th share of the sale amount), made by him. This Court is of the opinion that this document does not help the petitioners

for two reasons. Firstly, this document is not signed by respondent No. 5- Murali Lal Sharma, but by one Mukut Lal Sharma, regarding which it

has been stated in the supplementary counter affidavit that he was not the authorized person to make such application. Secondly, assuming for a

moment, such request was made, the same does not appear to have been accepted by the authorities concerned.

15. Next contention, made on behalf of the petitioners is that the Board of Revenue (respondent No. 1) in its impugned order dated 28.12.1981,

had given option to the Collector that instead of making recovery of the arrears of Income Tax and Sales Tax by sale of property of Krishna Nand

Punera, he can accept the offer of the petitioners to deposit the entire dues. However, while making said observation, the Board of Revenue has

held that none of the orders passed by Collector and by the Commissioner, challenged before said authority, were found illegal. Also, the Board of

Revenue did not direct the Collector to leave the sale proceedings rather it left open to the Collector to consider the offer if made by the

petitioners.

16. Shri J.C. Belwal, learned Counsel for respondent No. 5 drew attention of this Court to provision contained in Rule 285 H of U.P. Zamindari

Abolition and Land Reforms Rules, which permits the Collector to set aside sale on deposition by the person concerned, the entire amount offered

by the purchaser along with 5% of the purchased money. This option is open to the Collector within a period of thirty days of sale, which means

that it was not open for the Collector after the sale is confirmed. Lastly, it is argued that the authorities concerned ignored the fact that the property

was mortgaged to Sita Devi by late Krishna Nand Punera and also the fact that Shri Krishna Nand Punera in the Will desired that the dues, if any,

payable by him, shall be paid by Janardan Punera, his another grand son. I see little force in the contention of the learned Counsel for the

petitioners for the reason that Janardan Punera was not party to the proceedings nor is he party in this writ petition. Nor such disputed facts can be

decided in the writ petition. Apart from this, there is concurrent finding of the authorities below that the petitioners failed to prove alleged mortgage

in favour of Sita Devi, adoption of Geeta Devi by Sita Devi (mortgagee) and the will executed by Krishna Nand Punera in respect of the house in

question.

17. Half heartedly, it is also argued on behalf of the petitioners that the sale certificate, issued in favour of respondent No. 5 is not a registered

document and the same is hit by provision of Section 17 of Registration Act, 1908. The argument in the opinion of this Court, has no force, as

Clause (XII) of Sub-section (2) of Section 17 of Registration Act, 1908, exempts certificate of sale, granted to the purchaser of any property sold

by public auction by a civil or a revenue officer.

18. Copies of the rent notes Annexure S.C.A. 2 to 5 to supplementary counter affidavit, filed on behalf of the respondent No. 5 show that he has

entered into agreement with tenants in the shops (which are not raised by respondent No. 5) after destruction of house in fire even before the

delivery of possession of the house by the authorities concerned. This act on the part of the respondent No. 5 appears to have been made in

disregard to laws.

19. In view of above discussion, in peculiar facts and circumstances of this case that after the accidental fire in market of Pithoragarh, in which

house in dispute burnt to ashes before sale certificate is issued in favour of auction purchaser not only the petitioners raised new building, at their

own risk, the respondent No. 5 (auction purchaser) inducted the three tenants (rent notes are filed by respondent No. 5 as annexures to the

supplementary counter affidavit) in the shops built by the petitioners, in a clandestine manner even before DAKHALNAMA (possession note) is

executed by or on behalf of the respondent No. 3 Collector, Pithoragarh, since both the parties have not abided the law, to do complete justice

between the parties, this Court feels it just and proper to adopt path of equity and to dispose of this writ petition with following directions:

(i) If the petitioners pay to respondent No. 5 or deposit in his favour in the office of Collector, Pithoragarh, entire sale consideration of Rs.

41,000/- with 9% simple interest thereon till date (on Rs. 10,250/- w.e.f. 03.10.1968 and on Rs. 30, 750/- w.e.f. 07.02.1983) along with Rs.

10,000/- towards costs of the litigation incurred by the respondent No. 5 within one month from today, the sale certificate (in respect of house

which had already burnt in fire) executed by respondent No. 3 on 30.11.2002, shall stand cancelled.

(ii) In case, the petitioners fail to comply with the above condition, the possession of the building as it exists (reconstructed by the petitioners at

their risk after the confirmation of sale of the house) may be delivered to the respondent No. 5 in pursuance to the sale certificate issued by the

Collector.

(iii) It is observed that as far as the interest of State as to recovery of the arrears of income tax and sales tax due from Late Krishna Nand Punera

is concerned, the same stood satisfied from the sale proceeds deposited by the respondent No. 5 in the year 1968 and 1983.

(iv) The impugned orders, passed by respondents No. 1 to 3 need no interference, except to the extent and subject to observations made above,

as there is no illegality found in the same.

The writ petition stands disposed of.