

Allahabad High Court

Babu Ram vs State Of U.P. & Others on 12 July, 2010

Court No. 21

Civil Misc. Writ Petition No. 33147 of 2010

Balau Ram

Versus

State of U.P. and others

Hon'ble V.K.Shukla, J.

Present writ petition has been filed by petitioner questioning the validity of the auction notice dated 02.04.2010.

Brief background of the case is that petitioner had taken loan and said loan amount has not been re-paid in this background recovery proceeding was initiated against petitioner and at that stage petitioner preferred Civil Misc. Writ Petition No. 21107 of 2002 before this Court and this Court has proceeded to pass following order which is being quoted below:

"Heard learned counsel for the petitioner, learned Standing counsel Mr. N. Mishra, Advocate who has appeared for respondent no. 3 and also perused the record.

By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ order or direction in the nature of certiorari quashing the citation dated 21.04.2002 issued by respondent no.

2. Prayers for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to supply upto date statement of account to the petitioner and not to adopt coercive measure against the petitioner in the recovery proceedings have also been made.

It appears that petitioner took loan from respondent no. Bank but committed default in payment of amount of loan. Consequently, respondent Bank issued a recovery certificate on the basis of which the amount in question is being recovered from the petitioner as arrears of land revenue. Learned counsel for the petitioner submitted that petitioner is willing to deposit for him to deposit the whole amount in lump sum. He prayed that petitioner may be permitted to deposit the amount in question in four instalments of equal amount within twelve months.

In view of the aforesaid fact, this petition is disposed of finally with the direction that recovery proceedings initiated against the petitioner shall remain stayed for a period of twelve months. The petitioner is further directed to deposit the amount in question in four instalments of equal amount. The first instalment shall be deposited within a period of three months, the second instalment within a period of six months, the third instalment within a period of nine months and the fourth and last instalment within a period of twelve months, from today. The amount, if any, already deposited

by the petitioner (or exempted under G.O. dated 30.05.1990) shall be adjusted. The property- movable or immovable of the petitioner, if any attached in the recovery proceedings, after first instalment is deposited and security other than cash or bank guarantee for the balance is furnished to the satisfaction of the Competent Authority, shall be released in favour of petitioner unless sold and the sale has already been confirmed.

In case the property of the petitioner has not been attached or sold the respondent shall not be entitled to charge the recovery charges from the petitioner, in view of law laid down in *Mirza Javed Murtaza Vs. U.P. Financial Corporation Kanpur and another*, AIR 1983 Allahabad 234. The respondent Bank will charge simple interest from the petitioner in view of the decision of Apex Court in *Corporation bank Vs. D.S. Gowda and another* J.T. 1994 (7) SC-87 unless the agreement of loan entered into between the parties provided to the contrary as held by a Division Bench of this Court in the case of *State Bank of India Chaghsara, Gorakhpur through its Manager, Sri Ashok Kumar Sharma Vs. Ram Bahal and others* reported in 2000 All C.J. 663.

After first instalment is deposited the respondent Bank shall furnish statement of account to the petitioner in terms of direction noted above. The amount, if any found due, shall be deposited by the petitioner within the time specified above.

If the whole amount is paid by the petitioner, as indicated above the recovery proceedings initiated against him shall be dropped failing which the respondents shall be at liberty to recover the amount outstanding against the petitioner in accordance with law."

Thereafter order passed by this Court has not been complied with and the entire loan amount in question has not been deposited, petitioner has again filed Civil Misc. Writ Petition No. 13726 of 2004 and this Court passed following order which is being quoted below:

" For the purpose of agriculture, loan has been taken from the concerned Bank/Samiti. It is said that part of the loan has been paid but entire loan amount could not be paid. Respondents have issued recovery process for recovering the loan amount as arrears of land revenue. Hence the present writ petition.

Heard learned counsel for the petitioner, learned counsel who appears for the Bank/Samiti and learned Standing counsel.

The counsel for the petitioner has made statement at the bar that this is the first writ petition against the recovery proceedings and this fact has also been stated in the writ petition. According to the petitioner, he could not pay the loan amount due to unavoidable circumstances.

At this stage without challenging correctness of amount sought to be recovered a prayer has been made that if amount sought to be recovered is permitted to be deposited in easy instalments deposit

of entire amount alongwith interest due till date can be made.

In view of aforesaid this Court feels in the ends of justice that amount sought to be recovered be permitted to be deposited in the following manner, which will protect loanee depriving of immovable properties casing irreparable loss to the family which is to occur on account of coercive process and at the same time, concerned Bank/Samiti will also get its amount. To the aforesaid learned counsel appearing for Bank/Samiti also have no objection.

Accordingly this petition is disposed of with the following directions:

(i) Petitioner may deposit the entire amount sought to be recovered directly in concerned Bank/Samiti in six equal instalments. In calculating the arrears the amount (if any) already paid will be adjusted.

(ii) The first instalment may be deposited by the end of 30th June, 2004, second instalment by 30th September 2004, third by 31st December 2004, fourth by 30th March, 2005, fifth by 30th June, 2005 and sixth by 30th September 2005. These deposits may be made before the branch of the Bank/samiti from where the loan was taken in case instalments are deposited in the Bank/Samiti then the recovery charges will not be recovered from the petitioner.

(iii) During period the recovery proceedings will be kept in abeyance. In case petitioner defaults in depositing any of the instalments within the above stipulated time it will be open to the respondents to start recovery proceedings again by taking coercive process at once to which the petitioner undertakes not to challenge.

(iv) Petitioner may file an application for the statement of account alongwith the duly stamped self addressed envelope. In case any such application is filed, the concerned branch of the Bank will give the same to the petitioner after deposit of first instalment within fifteen days.

(v) This order will not affect any auction if it has already taken place. In that event the petitioner may take appropriate legal proceedings to set aside the auction under U.P.Z.A & L.R. Act and Rules 1952 or file a suit in accordance with law.

(vi) It is clarified that this order will not be operative and will not come in way of recovers process in any manner, if any, other writ petition has been filed before this Court against the recovery proceeding for the loan amount.

(vii) Property (Immovable/Moveable) belonging to the petitioner, if attached will be released (unless it has been auctioned) after deposit of first instalment."

Petitioner has tried to contend that pursuant to order dated 05.04.2004 petitioner tried to level best to make deposit but it was not accepted in this background Contempt Application No. 336 of 2005 has been filed and then petitioner submits that he deposited sum of Rs. 1,86,500/- on 03.09.2005 which was sought to be recovered though recovery citation dated 23.02.2004. Petitioner has

contended that respondent-Bank has not issued no dues certificate and then thereafter letter has been issued showing balance amount Rs. 5,08,734/-. Petitioner submits that at this stage he preferred Civil Misc. Writ Petition No. 37903 of 2009 and this Court passed following order which is being quoted below:

" Upon hearing the learned counsel for the petitioner, this Court disposes of the writ petition directing the petitioner to make an appropriate application before the respondent bank for supply of the statement of account. If such an application is made, the respondent bank will supply a statement of account with regard to the loan taken by the petitioner within 15 days."

Petitioner submits that thereafter petitioner represented the matter and statement of account has been issued showing balance amount of Rs. 6,04,013/-. Petitioner submits that thereafter recovery citation has been issued. Once amount in question has been disclosed and same has not been re-paid then recovery is only inevitable conclusion. In this background no interference is warranted by this Court. In case petitioner is questioning the validity of the amount sought to be recovered then under the provision as contained under U.P. Co-operative Societies Act, 1965, petitioner can always move application under Section 70. As on date as amount is outstanding then there is no shortcoming in the recovery proceeding.

Consequently, writ petition is dismissed.

Dated 12.07.2010 Dhruv