

Allahabad High Court

District Cooperative Federation ... vs State Of U.P., Through Its ... on 4 July, 2005

Equivalent citations: AIR 2005 All 286, 2005 (4) AWC 3219

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Bench: Y Singh, R Rastogi

JUDGMENT Yatindra Singh , J.

1. The main question involved in this writ petition is, whether an auction sale can be set aside for the reason that estimated value of the auctioned property was not mentioned in the sale proclamation.

THE FACTS

2. District Cooperative Federation Ltd (the petitioner) is a central cooperative society registered under the UP Cooperative Societies Act. The petitioner operates a cold storage and has property situate at Arazi no. 182 Cantonment, Varanasi. The cold storage was not successful and there were arrears. Two portions (area 17200 Sq feet and 13200 sq: feet total 30400 sq feet) of open land in Arazi no. 182 of the petitioner were attached on 6th June 2003 for payment of labour dues amounting to Rs, 5,04,177.80.

3. A sale proclamation in respect of attached land was issued on 6.11.2003 fixing 15.12.2003 for the auction but no auction was held on that date. In the meantime, the Collector received intimation of some more dues (labour as well as electricity) to be recovered from the petitioner as arrears of land revenue. Another sale proclamation in ZA Form 74 was issued on 6.12.2003 for realisation of these dues amounting to more than a crore of rupees. By this sale proclamation, auction was fixed for 6.1.2004. In pursuance of this sale proclamation, auction was held but the property fetched only Rs. 20 lakhs. This auction sale was disapproved on 7.1.2004.

4. A fresh sale proclamation for the attached property was issued on 8.1.2004 fixing 9.2.2004 as the date of auction. However only the labour dues amounting to Rs. 15, 00,801.89 were mentioned as arrears. Legal opinion was sought from the DGC, who opined that only that part of property may be sold which would satisfy the demand mentioned in the sale proclamation. A press release for auction was issued on 24.1.2004 and was published on 6.2.2004 in the newspaper Dainik Kal Bhairav. The auction was held on 9.2.2004. The portion consisting of 17200 Sq ft of land was auctioned and purchased by respondent no. 6 (the contesting respondent) for Rs. 60,80,000/-. One fourth of this amount was deposited on the same date and 3/4th was also deposited on 19.2.2004. The sale was confirmed on 17.5.2004 and the sale certificate was issued on 21.5.2004. The petitioner filed an application on 2.6.2004 before the Collector challenging the auction sale. Thereafter the present writ petition was filed on 9th June 2004 challenging the auction sale.

POINTS FOR DETERMINATION

5. We have heard counsel for the parties. The following points arise for determination.

(i) Whether any information regarding date of auction was given to the petitioner.

(ii) Whether the auction sale can be set aside on the ground that only part of the attached property was auctioned.

(iii) Whether the sale proclamation dated 8.1.2004 is illegal as it does not mention the electricity dues though it was mentioned in the earlier sale proclamation.

(iv) Whether estimated value of the property is required to be mentioned in the sale proclamation.

(v) In case the answer to the previous question is in affirmative then, can the auction sale be set aside as the estimated value of the property was not mentioned in the sale proclamation.

POINT-I: INFORMATION WAS GIVEN

6. The property was attached on 6.6.2003. Subsequently, a sale proclamation was issued on 6.12.2003 and the property was also auctioned on 6.1.2004 for a sum of Rs. 20, 00,000/-. This auction was disapproved on 7.1.2004. Subsequently, a fresh sale proclamation was issued on 8.1.2002. This was served personally on Sri Chaubey, Cashier of the petitioner on 22.1.2004: it is so reported by the collection amin on 3.2.2003. It has also been stated in paragraph 1 of the counter affidavit filed by Sri OP Tripathi, Tehsildar on behalf of the State of Uttar Pradesh and the report of the collection Amin is also annexed alongwith the counter affidavit. There is no reason to disbelieve it: the auction can not be set aside on the ground that no information was given to the petitioner.

POINT-II: PROPERTY CAN BE SOLD IN LOTS

7. The two portions of open land were attached on 6.6.2003. In the sale proclamation dated 8.1.2004, details of these portions with their respective areas were mentioned. It is always open to the Collector to auction attached property in lots. This depends on the facts and circumstances of the case. In this case, legal opinion was taken and thereafter one lot (part of the attached property) was auctioned. There is no illegality in the same. In case there are still arrears then the remaining attached property may also be sold.

POINT-III ELECTRICITY DUES NOT MENTIONED -NO ILLEGALITY

8. It is correct that in the earlier sale proclamation dated 6.12.2003 labour dues as well as electricity dues were mentioned. However in the proclamation dated 8.1.2004 only labour dues were mentioned. No reason has been indicated as to why electricity dues were omitted. However, there is no illegality on this account. The electricity department has not come forward claiming why its dues were not mentioned or were not given priority. In any case, the excess amount will be used in satisfying electricity or other dues; or the amount may be distributed proportionately but the petitioner can not get benefit from the same: the auction sale can not be set aside on this ground.

POINTS IV & V: AUCTION SALE CAN NOT BE SET ASIDE

9. Chapter X of the UP Zamindari Abolition and Land Reform Act 1950 (the ZA Act) is titled as 'Land Revenue'. Sections 275 to 294 are in this chapter and are under sub-heading 'Collection of land revenue'. They deal with how arrears of land revenue may be recovered. Section 294 of the ZA Act empowers the State Government to make rules for carrying into effect the provisions of Chapter X of the ZA Act; it includes making rules for attachment, transfer and sale of immovable property. The State Government has also framed UP Zamindari Abolition and Land Reforms Rules, 1952 (the ZA Rules), Chapter X of the ZA Rules is titled 'Land Revenue'; it deals with determination and collection of land revenue. Rules 281-286 Chapter X of the ZA Rules are sub-titled as 'Sale of Immovable Property'. Rule 282 and 283 (as it stands today) are as follows:

282. The proclamation for sale shall be in Z.A. Form 74.

283: In proclamation for sale under Section 286, Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual.

10. Rule 282 of the ZA Rules provides that the sale proclamation will be in ZA form 74. The format of this form is also provided in the ZA Rules. The present rule 283 clarifies that the following two things should be mentioned in the sale proclamation:

- (i) The amount of demand; and
- (ii) The estimated value of the property.

In the sale proclamation dated 8.1.2004 the amount of the demand has been mentioned but the estimated value of the property has not been mentioned. This sale proclamation is not in accordance with the rule as it stands today: does it invalidate the auction sale?

11. The counsel for the respondents submit that:

- (i) The sale is under Section 284 of the ZA Act and rule 283 is not applicable as this rule provides for sale proclamation under Section 286 of the ZA Act.
- (ii) The estimated value of the property was calculated but was not mentioned as ZA Form 74 does not have any column for mentioning estimated value of the property to be sold.
- (iii) The estimated value of the property is not required to be mentioned and in fact it is never mentioned. In case it was necessary then a column would have been specifically provided in the ZA Form 74 for mentioning the same.

Sale is Under Section 286

12. Section 284 of the ZA Act is titled as 'Attachment, lease and sale of holding' and deals with sale of that land in respect of which land revenue is due. Section 286 of the ZA Act is titled 'Power to

proceed against interest of defaulter in other immovable property' and deals with sale of other immovable property of the defaulter. In this case there were no arrears of land revenue in respect of the property auctioned and Section 284 was not applicable: Section 286 was applicable.

13. The estimated value of the two portions of open piece of land-that were attached and mentioned in the sale proclamation-has been done by applying the circle rate. The property lies in the cantonment area. The circle rate of the land adjacent to road in this area is Rs. 480 per sq foot and for other property is Rs. 375 per sq foot. The portion of 17,200 sq. feet is next to the road. Its value, after applying the circle rate of Rs. 480/- is Rs. 60,18,000/-. The other portion is inside and its value, after applying the circle rate of Rs. 375/- is Rs. 44.88.000/- This estimated value was calculated but is not mentioned in the sale proclamation. Two questions arise in this regard.

(i) Was the estimated value of the property rightly calculated?

(ii) What is the consequence of not mentioning the estimated value in the sale proclamation?

Estimated Value - Rightly Calculated.

14. Rule 283 states that estimated value is to be calculated in accordance with chapter XV of the Revenue Manual. This Chapter of the Revenue Manual is titled as 'Instructions regarding the Award and Apportionment of Compensation' It relates to making of award under the Land Acquisition Act. The basic principle under the Land Acquisition Act is that the market value of the property should be calculated.

15. In the present case, the Collector has calculated the estimated value of the property by multiplying the area with the circle rate. The circle rate is calculated under the Stamp Act. It used to be earlier calculated under chapter XV of the UP Stamp Rules but now separate rules titled as UP Stamp (Valuation of Property) Rules 1997 have been framed. Under the previous rules as well as under the newly framed rules the circle rate is calculated on the basis of the market value of the property and it roughly provides the market value of the property of that area. This also provides rough estimate of the market value of the property. There is no illegality in finding out the estimated value of the property with the help of circle rate.

Discrepancy between ZA form 74 and Rule 283

16. We have already quoted Rule 282 and 283 as in existence at present. There has not been any material change in rule 282 from its inception but Rule 283 earlier was different. The present rule 283 (quoted in paragraph 9 of this judgment) was substituted by Notification no. 196-11-3-(11)-7-3-Rajaswa/ dated February 18, 1974, w.e.f. March 16, 1974. Rule 283 prior to this notification was as follows:

Rule 283: In proposing sale under Section 286 the collector shall state amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual shall also be stated:

Provided that the valuation of a holding of Sirdar shall be 10 times the land revenue of the holding.

17. There is difference between Rule 283 as it was framed earlier and in the present form. Initially Rule 283 never stipulated that estimated value should be mentioned in the sale proclamation: the Collector only had to state it while proposing the sale. However now it has to be mentioned in the sale proclamation. The format of ZA form 74 was prescribed at the time of framing of the ZA Rules. It appears that, as there was no necessity of mentioning the estimated value of the property in the sale proclamation earlier, no column for mentioning it was provided in the prescribed format of ZA form 74. Now rule 283 has been substituted but correspondingly the ZA Form 74 has not been amended.

18. In this case, estimated value of the property has been calculated but it has not been mentioned in the ZA Form 74. It appears that old practice-of calculating the estimated value of the property at the time of proposing the auction sale but not mentioning it in ZA Form 74-was followed. Neither the state has kept pace with the newly substituted rule 283 (by prescribing new format of ZA form 74), nor the authorities have done so (by mentioning the estimated value of the property in the sale proclamation). The ZA form 74 should now provide a column for mentioning estimated value of the property so that the authorities, while issuing sale proclamation, do not forget to mention it. Nevertheless, does this mistake invalidate the auction sale?

No Substantial Injury

19. Rule 285-H and 285-I of the Rules prescribe procedure for setting aside auction sale. Rule 285-H provides that the auction sale may be set aside in case the amount as detailed in that rule is deposited before the Collector. Under rule 285-1, the Commissioner has been empowered to set aside the auction in case of material irregularity or mistake in publishing or conducting the auction. In the present case, no application has been filed before the Commissioner and the counsel for the respondents submit that . The writ petition is not maintainable . It should be dismissed on the ground of alternative remedy under Rule 285-I.

. The delay in filing the application under rule 285-1 can be condoned in view of *Prithvipal v. State of UP and Ors.* 1998(1) AWC 471.

20. The writ petition has been admitted and the counter and rejoinder affidavits have been exchanged. Considering these circumstances, we instead of dismissing the writ petition on the ground of alternative remedy, are deciding it on merit

21. The writ petition has been directly filed instead of filing an application under rule 285-I. This does not mean that the principles underlining rules 285-I are to be ignored. Sale of immovable property is held not only under the ZA Act and Rules but also under Civil Procedure Code (CPC). Rule 285-I of the ZA Act, Section 173 of the UP Land Revenue Act (for non ZA areas) and Order 21 Rule 90 of the CPC provide for setting aside the auction sale. Under these provisions, no auction sale can be set aside unless the irregularity or mistake is such so as to have caused substantial injury to the aggrieved person: there is no point in setting aside the sale in absence of substantial injury; the result would have been the same even if there was no irregularity or mistake. The principle of setting

aside the auction sale-only if there is substantial injury-should be applied here also.

22. The estimated value of the property auctioned was Rs. 60.18.000/-. The auction has been held for Rs. 60,80,000/-. It is more than the estimated value of the property. This property was also attached. Nothing has been shown that the attachment was illegal or wrong. There is nothing to show that any substantial injury has been caused to the petitioner. Merely because the land adjacent to the road has been sold does not mean that any substantial inquiry has been caused to the petitioner. This portion was attached and in any case was to be sold. There is no substantial injury. In absence of any substantial injury, the auction sale can not be set aside merely because the estimated value of the property was not mentioned in the sale proclamation.

SOME SUGGESTIONS

23. The property is situate within the cantonment area of Varanasi, Perhaps, the ZA Act is not applicable and the recovery ought to have been done under the UP Land Revenue Act (kindly see B. Prakash v. State of UP: 1969 ALJ 276; R. Vaish v. State of UP: 1968 ALJ 106 WP 10065 of 1978 Jalan Industrial v. Board of Revenue decided on 15.12.1982). However, neither any basis has been laid down in the writ petition nor any arguments were advanced that the proceeding ought to have been taken under the Land Revenue Act. In view of this, we have also decided this writ petition as if the ZA Act was applicable.

24. The provisions of the ZA Act and the Land Revenue Act-so far as recovery of arrears of land revenue is concerned-are more or less similar. Even if there was any basis or any arguments were advanced that proceeding ought to have been taken under the UP Land Revenue Act, the result in this writ petition would have been the same. Nevertheless, it is possible that in some cases it might be different. The authorities proceeding to recover the dues as arrears of land revenue may be properly advised or law be suitably amended that arrears will be recovered as arrears of land revenue under the ZA Act and the Rules.

25. While deciding points no. IV and V under the sub heading 'Discrepancy in ZA form 74 and Rule 283' (paragraph 16 to 18 of this judgment), we have indicated the reasons as to why there is no column for mentioning estimated value of the property in ZA form 74, This pro-forma has not kept pace with Rule 283. It should be suitably amended to conform to the newly substituted Rule 283. The State government will be well advised to do so otherwise this irregularity will happen in every auction sale and there will always be possibilities of challenging the auction sales on this ground.

CONCLUSIONS

26. Our conclusions are as follows:

(a) The petitioner had information regarding auction sale.

(b) The attached property can be sold in lots.

(c) No auction sale can be set aside for any irregularity or mistake in publishing or conducting the auction sale unless the aggrieved person proves that he has sustained substantial injury due to the same.

(d) There is no irregularity or mistake in calculating the estimated value of the property.

(e) There is mistake in not mentioning the estimated value of the property in ZA Form 74, however because of this mistake no substantial injury has been occasioned to the petitioner.

27. In view of our conclusions, the auction sale can not be set aside. The writ petition has no merit. It is dismissed.