

ALLAHABAD HIGH COURT

Nanak Singh

Vs.

State of U.P

Civil Misc. Writ Petition No. 3837 of 1977

(K.C. Agarwal and D.S. Bajpai, JJ.)

30.01.1986

JUDGMENT

K.C. Agarwal, J.

1. Nanak Singh Petitioner has filed this writ petition for mandamus directing the Respondents not to realize the sum of Rs. 45,631.30 as arrears of land revenue from the Petitioner.

2. The facts briefly are that the Petitioner on an auction held on 18.01.1970, offered a bid for plot No. 100 situate in Kilpura Uogari Range Forest at the rate of Rs. 430/- per hectare. The Petitioner being the highest bidder, his bid was accepted. Subsequently, the bid was approved by the Conservator of Forest and an agreement was executed between the Petitioner and the State of U.P. Under the agreement the Petitioner was required to pay the amount due under the auction by installments. The Petitioner, in spite of the repeated notices and the expiry of the period given to him did not deposit first installment of Rs. 14,334/- which was due on 15th October, 1970, nor harrowed the whole area as per condition 15. In view of this, the office cancelled the lease auctioned in favors of the Petitioner. Subsequently the Petitioner made an application dated 5th January, 1971, wherein he mentioned that he could not deposit the first installment on account of personal reasons. He deposited Rs. 2000/- on the same date and promised to deposit the remaining at an early date. On this application, the Divisional Forest Officer cancelled the earlier cancellation order for reduction. The Petitioner, however, did not deposit any further amount, as a result he was given a letter on 18th May, 71 calling upon him to deposit both first and second installment. He was warned that on failure, his plot would be cancelled. The Petitioner did not pay any heed to this letter. Due to the failure Rs. 45,631-30 has become due as against him. Consequently, the realization of

this amount as per term of the contract and condition No. ten started as an arrear of land revenue. Under condition No. 10 of the agreement the Petitioner had agreed that in the event of his failure it would be recovered as land revenue. Apart from this, the amount could be recovered under U.P. Public Rent Recovery Act. The Petitioner continued to occupy the disputed plot up to the full term as his lease was not cancelled.

3. The argument of the counsel for the Petitioner that the amount could not be recovered as an arrears of land revenue as the nature of the recovery was that of damages is not correct.

4. There was a controversy in between the parties whether the land was reauctioned or not We are satisfied from the counter affidavit that the reduction did not take place. However, in view of the admitted position that the land was not reauctioned, the contract between the State and the Petitioner did not come to an end. They continued to be the same as they emerged out of the auction held on 18.01.1970. In case, the auction would have taken place, the recovery of the shortfall could be in the nature of the damages. However, as this question does not directly arise in this case, we do not wish to express any concluded opinion on this. On the date fixed, the Petitioner's own case (which is not admitted to the contesting Respondent) is that the auction did not take place. As a result, the money which was due from the Petitioner continued to be "price". It did not get converted into damages for the recovery of the price, apart from anything else. Section 82 of the Forest Act would be applicable. Under it, price unpaid would be recoverable as an arrear of land revenue.

5. Reliance has been strongly placed by the Petitioner's counsel on a decision of Division Bench in the case of *Virendra Kumar v. State of U.P.*,¹ of the said ruling, which is relied upon as under: In the case of recovery of deficit, the basis is that the contractor was liable to make up the loss incurred by the State whist was occasioned by reselling the Forest produce. A case of that nature falls Under Section 54(4) of the Sale of Goods Act (1930). Inasmuch as after the cancellation of sale the relationship between the State and the Contractor ceased to be that of a seller and buyer. There was no existing sale, and, therefore no price was due.

6. The facts of the case were distinguishable. In that Case, forest had been resold and it fetched the price less than the amount payable by the contractor of that case. The Court held that the nature of the shortfall was damages In the instant case, there was no question of shortfall, as the land had not been put to re-sale what was being recovered from the Petitioner was unpaid price.

7. We do not agree with the Petitioner's counsel that since auction has been cancelled on 01.01.1971, the Petitioner ceased to under any contractual obligation to pay the price. We have noted the Recovery Act relating to this question above. From those facts, it would be found that the order cancelling the contract was recalled on 05.01.1971. Consequently, the nature of liability to pay the balance accrued against the Petitioner did not change.

8. In the result, the petition fails and is dismissed. The stay order dated 01.01.1971 is discharged.

Petition dismissed.

Cases Referred.

1. AIR 1980 Alld. 100 paragraph 17