

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL

W.P. NO. 1390 (MS) OF 2004

Karnail Singh, son of Sri Tara Singh, Village Gumsani, P.O. Bazpur, Tehsil Bazpur District U.S. Nagar.Petitioner.

Versus

1. Collector, Udham Singh Nagar.
2. Tehsildar Bazpur, District U.S. Nagar.
3. Branch Manager Co-operative Bank Bazpur, Udham Singh Nagar.Respondents.

Sri A.D. Tripathi, learned counsel for the petitioner.
Learned Standing Counsel for respondents no. 1 and 2.

Hon'ble Rajesh Tandon, J.

Heard Sri A.D. Tripathi, learned counsel for the petitioner and learned standing counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari for setting aside the operation of the impugned recovery notice and sale proclamation dated 21.12.2004 (Contain Annexure-1) passed by the respondent no. 2 and further has prayed for issuing a writ, order of direction in the nature of mandamus commanding the respondent to give a clear and correct account to the petitioner as he is ready to deposit the entire recovery amount of RS. 82,106/- (Rupees Eighty Two Thousand One Hundred and Six Only).

The present writ petition arises from the recovery certificate/notice issued by the Tehsildar, Tehsil Bazpur under Rule 23 and a sale proclamation under Section 284, 286 of the U.P.Z.A. and LR Act, 1950 for recovery of Rs. 82,106/- dated

21.12.2004 and the date for sale proclamation is 28.12.2004 is shown in the recovery notice/certificate issued.

The petitioner had taken a loan from the Cooperative Bank, Branch Bazpur, District U.S. Nagar for purchase of Buffalos and cultivation Papaya crops respectively to settle a dairy farming and improve his agriculture and increase the income.

After getting the loan money, the petitioner has purchased Buffalos and set up a Dairy farming and also cultivated Papaya crops but unfortunately the papaya crop was damaged by some disease and ruined, but he succeeded in dairy farming by which he also deposited the loan money in the bank.

Petitioner has alleged that the respondent no. 3 has neither given a clear and correct position of his account nor has given any information prior to this notice, however, the petitioner has deposited the loan amount regularly and is also to pay the loan amount nearly in future.

According to the petitioner, he is a poor agriculturist and unable to collect heavy amount of recovery of Rs. 82,106/- is a short period of ten days and some reasonable time may be granted to him to deposit the recovery amount in easy and half yearly instalments.

According to the petitioner no account has been furnished by the Bank so as to enable him to come to the conclusion that the citation issued against them is correct. In the case of Central Bank of India Vs. Ravindra and Others, AIR 2001 SC 3095 the Apex Court has observed:

"Statement of accounts supplied by banks to borrowers many a times do not contain particulars or details of debit entries and when written in hand are worse than medical prescriptions putting to test the eyes and wits of the

borrowers. Instances of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot be generalized."

Therefore, the Bank authorities are directed to furnish the account to the petitioners on production of certified copy of this order.

The petitioner has requested that he being a poor agriculturist, if the amount is realized from him through easy instalments, it will serve the purpose of the Bank and will also give relief to the petitioner, who is a poor agriculturist.

In my opinion the interest of justice shall be served, if the loan amount is realized in six equal quarterly instalments. The interest of the Bank shall also be fully protected on the principle of equity as well as on the principle of 'live and let live.'

The entire outstanding loan amount, therefore, shall be recovered in six quarterly instalments. The first instalment shall be paid in one month i.e. by 7th of March, 2005, thereafter, remaining five instalments will be paid after each three months. The amount of interest will be paid in the last instalment along with recovery charges, if any. In case of default of any instalment, the amount shall become recoverable from the petitioner and the liberty to repay the loan amount in instalments shall no more be available.

Subject to the aforesaid observation, the writ petition is disposed of.

(RAJESH TANDON, J.)

29.12.2004.

P.S.R.