



2026:AHC-LKO:20210

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW A.F.R.**

WRIT - C No. - 1001887 of 2006

Jai Narain Singh

.....Petitioner(s)

Versus

Board Of Revenue Lucknow Andothers

.....Respondent(s)

Counsel for Petitioner(s)	: Mohd. Arif Khan, Devendra K.Srivastava, Mohd. Aslam Khan
Counsel for Respondent(s)	: C.S.C., Manish Kumar Singh, Rayees Ahmad Khan, Satyendra Singh Rana, Tushar Gupta

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Mohd. Arif Khan, learned Senior Counsel for the petitioner assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner, Sri Manish Kumar Singh, learned counsel for legal heirs of respondent Nos.4 to 6 and Sri Devesh Mishra, learned Additional CSC for respondent - State.

2. By means of present writ petition the petitioner is challenging the order dated 29.03.2006 annexured 10 to the writ petition passed by respondent No.1 upholding the order dated 04.04.2001 annexure 9 to the writ petition passed by respondent No.2.

3. Factual matrix of the case is that Shyam Narain - grand father of respondent Nos.4 to 6 took a loan from State Bank of India which was not repaid with the result recovery certificate was issued on 09.08.1985 by the bank to the Collector for realization of the amount. Writ of citation moved and being aggrieved writ petition No.10002/88 was filed permitting the borrower to pay the dues in installments but the amount was not deposited.

4. Sale proclamations issued and served on the borrower and after due publicity auction could not held. Again sale proclamation issued but this time also sale could not be held. On 01.12.1990 sale proclamation issued and respondent Nos.4 to 6 made application to the Sub Divisional Officer

seeking time to deposit. Sale took place and on deposit of the amount, sale certificate issued in favour of the petitioner. Objections filed by the grand father of respondent No.4 to 6.

5. On 20.12.1992 respondent No.2 decided the objections and remanded the matter whereupon grand father of respondent Nos.4 to 6 filed a revision which was decided by respondent No.1 vide order dated 01.12.1994. On 02.05.1995, respondent No.2 dismissed the objections. On 31.10.1995 restoration application was dismissed. On 13.06.1996, revision filed by respondent Nos.4 to 6 dismissed by respondent No.1. On 23.11.2000 writ petition No.1688 (M/S) of 1996 was filed by respondent No.4 to 6 was allowed and case was remanded to respondent No.2

6. On 04.04.2001 objections were allowed by respondent No.2 and sale was set aside. On 29.03.2006 a revision filed by the petitioner was dismissed by respondent No.1. On 02.02.2001 respondent Nos.4 to 6 sold the earth to brickkiln owner and on the application made by the petitioner respondent No.2 passed an order of injunction / Stay. On 26.05.1995, sale certificate was issued to the petitioner. Name of the petitioner was mutated in the revenue records.

7. Submission of learned Senior Counsel for the petitioner is that once the sale was affirmed, the Commissioner and Board of Revenue was having no jurisdiction to set aside the confirmation of sale. He submitted that on the ground of inadequacy of amount to be deposited in sale confirmation, cannot be a ground for setting aside the sale confirmation.

8. He next submitted that the order passed by the Commissioner and Board of Revenue are wholly without jurisdiction as it is not amenable to pass order on the ground which was not available to the petitioner. He submitted that in the impugned order finding has been recorded that there is no wide circulation of the auction sale, otherwise the price fixed would have been raised in case wide circulation was made. He submitted that this finding is perverse and without any basis. The petitioner being highest bidder was granted sale and it was confirmed. On this ground alone, the right of the petitioner cannot be curtailed.

9. He further submitted that the order passed by the Commissioner as well

as Board of Revenue is wholly perverse in nature and illegal and finding recorded in this regard that the order passed on inadequacy of price fixed, the order is illegal in view of fact that in exercise of power in the revision, the Commissioner cannot set aside the auction sale which has been confirmed on the ground of inadequacy of price of said property. Rule 285 K provides that auction sale can only be cancelled on the ground of fraud and reference was also made to Rule 285(i) which prescribes that at any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake. For ready reference, Rule 285A, Rule 285 (I), 285(K) and 285 of U.P. Zamindari Abolition and Land Reforms Rules, 1952 are being quoted below:

"Rule 285A : Every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday or until after the expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued.

The Collector may from time to time postpone the sale.

Rule 285I : *(i) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.*

(ii) [* *]*

(iii) The order of the Commissioner passed under this rule shall be final.

Rule 285K : *If no application under Rule 215-1 is made within the time allowed therefore, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred :*

Provided that nothing contained in this rule shall bar the institution of a suit in the

Civil Court for the purpose of setting aside a sale on the ground of fraud.

Rule 285 : *Whenever any house or other building situated within the limits of a military cantonment or station is sold, the Collector shall as soon as the sale has been confirmed, forward to the Commanding Officer of such cantonment or station for his information or for record in the brigade or other proper office, a written notice that such sale, has taken place and such notice shall contain full particulars of the property sold and of the name and address of the purchaser."*

10. In support of his submissions, learned Senior Counsel for the petitioner placed reliance upon following judgments:

a) Ashwin S. Mehta and another Vs. Custodian and others; (2006) 2 Supreme Court Cases 385.

b) M/s. Kayjay Industries (P) Ltd. Vs. M/s. Asnew Drums (P) Ltd. and others; AIR 1974 Supreme Court 1331 (V 61 C 252)

c) Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and others; (2008) 9 Supreme Court Cases 299.

10. On the other hand, learned counsel for respondent Nos.4 to 6 by placing certain judgments argued that on the ground of non publication of sale auction in widely newspapers, the sale is illegal. In support of his submissions, he placed reliance upon following judgments:

a) Smt. Shanti Devi Vs. State of U.P. and others; C.A. No.6240 of 1997, decided on September 9, 1997.

b) Divya Manufacturing Co. Tirupati Wool Mills Shr. Shangharsha Vs. Union Bank of India, The Official Liquidator and others; 2000 AIR SCW 2465

c) Kunwar Mohan Swarup Vs. State of U.P. and others; Writ No.2391 of 1959 decided on September 11, 1964

d) Vindhayachal vs. Commissioner, Azamgarh Division, Azamgarh and others; 2009 (108) RD 63

e) Mohammad Rafiq Vs. Board of Revenue, Lucknow and others; 2012 (116) RD 483

f) Ramesh Kumar and others Vs. Collector, Gonda and others; 2004 (97) RD 628

g) M/s Jaswant Sugar Mills Ltd. Maliyana, Meerut Vs. Commissioner, Meerut Division, Meerut and others; 2001 (92) RD 478

h) State of U.P. and others Vs. M/s Swadeshi Polytex Ltd. and others; 2009 (107) RD 22

11. He next submitted that the Commissioner as well as Board of Revenue have recorded finding that the sale was confirmed without making adequate circulation in the news paper. The finding has also been recorded that in case adequate circulation was made, then certain persons would have applied giving high charges of the land in dispute. He submitted that the order of Commissioner and Board of Revenue do not suffer from any infirmity or illegality and are just and valid.

12. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the parties.

13. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the parties are being quoted below:

Judgments relied upon by learned Senior Counsel for the petitioner:

a) Ashwin S. Mehta and another (Supra):

"70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan [(1887) 15 IA 12] .) The

said decision has been affirmed by this Court in Gurjoginder Singh v. Jaswant Kaur [(1994) 2 SCC

71. In Janak Raj v. Gurdial Singh [(1967) 2 SCR 77 : AIR 1967 SC 608] this Court confirmed a sale in favour of the appellant therein who was a stranger to the suit being the auction-purchaser of the judgment-debtor's immovable property in execution of an ex parte money decree in terms of Order 21 Rule 92, Civil Procedure Code. Despite the fact that ordinarily a sale can be set aside only under Rules 89, 90 and 91 of Order 21, it was opined that the Court is bound to confirm the sale and direct the grant of a certificate vesting the title in the purchaser as from the date of sale when no application in terms of Rule 92 was made or when such application was made and disallowed and in support thereof Zain-ul-Abdin Khan [(1887) 15 IA 12] and various other decisions were referred to."

b) M/s. Kayjay Industries (P) Ltd. (Supra):

"6. We now come closer to the finale. On August 28, 1969 a sale was held and the highest bids for land and buildings went up to Rs 5.70 lakhs and for machinery to Rs 5.40 lakhs. It must be noted that at this time the Judge, who was then holding the sale, was not the presiding officer but another judge, since the former was on leave. It was felt by the latter that it would be better to have some valuation report to serve as a basis and to guide the court in concluding whether a grossly unjust offer was being fobbed off on it. The Receiver who was in charge requested both the judgment debtor and the Corporation to get valuation reports from competent valuers and the sale itself stood adjourned. The judgment debtor did not bother to have the properties valued but the Corporation secured the services of a competent valuer, Corona Electricals of Bombay, who estimated the land and buildings to be worth Rs 10,46,096 and the machinery Rs 7,02,000. The total value thus arrived at was Rs 17,48,096. In the light of various facts, including the absence of an alternative evaluation report from the judgment debtor's side, these Corona figures were rightly treated by both Courts as tentatively sound. The auction held on September 3, 1969, however, fetched the highest offer for the two lots of only Rs 5,65,000 and Rs 5,00,000 respectively, in the latter case Rs 40,000 less than on the previous occasion. After considerable persuasion by the Judge, the appellant agreed to raise the offer for both lots together to a gross sum of Rs 11,50,000, and making an intelligent guess on the given circumstances the Court approved the sale, which is now being challenged in these proceedings as an insensible and injurious sanctioning of the sale, ignoring the

hopeful prospects of higher prices had the auction been adjourned and better and fuller publicity given.

7. Certain salient facts may be highlighted in this context. A court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so, when the subject-matter is a specialised industrial plant, which has been out of commission for a few years, as in this case, and buyers for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgment-debtor's instance, have "scare" value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bids made on May 16, 1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If Court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgment-debtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case.

8. A material circumstance which weakens the first respondent's case is that on both the dates — August 28 and September 3 — Shri B. Paul, director of the judgment-debtor company was present at the auction and never voiced any grievance about the conduct of the sale or asked for its postponement on the ground that better price may be obtained on a later date. Equally significant is the fact sworn to by the authorised officer of the Corporation that "the valuation of the total assets" was around Rs 15 lakhs "when the application was made by the petitioner Corporation for sale of the assets under Section 31 of the State Financial Corporation Act" and "that the said estimate was given on the basis of the information supplied by the applicants at the

time of the disbursal of the loan". The Dena Bank, the second charge holder with considerable stakes in the sale, was present on the August and September auctions through a senior representative and did not think it necessary to raise any objection regarding the conduct of the sale or the price tendered. Nor do the proceedings disclose an unfair undervalue on account of the absence of effective bidders or inertness of the Judge. On both occasions there were about 30 or 40 bidders. The judgment-debtor, the second charge holder, the Indian Oil Corporation, and other leading industrial concerns interested in the drum industry were represented. All the bidders on the 28th August were told of the next auction date and most of them participated passively or actively in the September sale. On both the sale dates the judges (they were different on the two days) were keen on maximising the price. A total of Rs 11,10,000 was the highest bid in late August and in early September the best offer for lot No. 2 sagged from Rs 5,40,000 to Rs 5,00,000. This downward trend could have persisted if further postponements of sale had taken place and the judge did his best to boost the total price to Rs 11.5 lakhs and finalised it, taking no chances by adjourning the auction. The trend of today may be the silhouette of tomorrow and the reduced offer for lot No. 2 this time may well infect lot No. 1 next time. The Court did a good job taking a conspectus of the circumstances and avoiding the ominous maybes of future auctions. Such are the broad facts to which the law must be applied. Section 32(8) of the Act attracts the Code of Civil Procedure, as far as practicable, in the realisation of the dues of the Corporation, and so it may be right to apply the provisions of Order XXI Rule 90. In short, was there any material irregularity in the conduct of the sale, and did it cause substantial injury to the debtor?

9. *The first respondent's Counsel, Shri Parekh, drew our attention to Condition 3 in the present proclamation of sale which is as follows:*

"The highest bidders for the two lots shall be declared to be the purchasers of the respective lots, provided always that he or they are legally qualified to bid, and provided that it shall be in the discretion of the undersigned Receiver holding the sale to decline acceptance of the highest bid for any lot when the price offered for any of the two lots appears so manifestly inadequate as to make its acceptance inadvisable. The highest bid offered by any bidders for any of the two lots shall be subject to the sanction and approval of the District Judge, Thana."

Form 29 prescribed in Appendix E to the Code contains Condition 3 which is in like terms The Court's activist obligation to exercise a discretion to make a fair sale out of a court auction — and avert a distress sale — is underscored by this provision. In all

public sales the authority must protect the interests of the parties and the rule is stated by this Court in Neyalkha and Sons v. Ramanya Das [(1969) 3 SCC 537 : (1970) 3 SCR 1] thus: (at p. 5)

“The principles which should govern confirmation of sales are well established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion.”

Be it by a receiver, commissioner, liquidator or court this principle must govern. This proposition has been propounded in many ruling cited before us and summed up by the High Courts. The expression “material irregularity in the conduct of the sale” must be benignantly construed to cover the climax act of the Court accepting the highest bid. Indeed, under the Civil Procedure Code, it is the Court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply its mind to this aspect of the conduct of the sale may amount to material irregularity. Here, substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient. And where a Court mechanically conducts the sale or routinely signs assent to the sale papers, not bothering to see if the offer is too low and a better price could have been obtained, and in fact the price is substantially inadequate, there is the presence of both the elements of irregularity and injury. But it is not as if the Court should go on adjourning the sale till a good price is got, it being a notorious fact that court sales and market prices are distant neighbours. Otherwise, decree-holders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. Maybe, subsequent events, not within the ken of the executing Court when holding the sale, may prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable, conclude the sale. The Court may consider the fair value of the

property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous post mortem is proper. If the Court has fairly, even if silently, applied its mind to the relevant considerations before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of court sales will be introduced.

10. So viewed, we are satisfied that the district Court had exercised a conscientious and lively discretion in concluding the sale at Rs 11.5 lakhs. If the market value was over 17 lakhs, it is unfortunate that a lesser price was fetched. Mere inadequacy of price cannot demolish every court sale. Here, the Court tried its best, time after time, to raise the price. Well-known industrialists in the public and private sectors knew about it and turned up. Offers reached a stationary level. Nor could the Corporation be put off indefinitely in recovering its dues on baseless expectations and distant prospects. The judgment debtor himself, by his litigious exercises, would have contributed to the possible buyers being afraid of hurdles ahead. After all, producing around Rs 11.5 lakhs openly to buy an industry is not easy even for apparently affluent businessmen. The sale proceedings had been pending too long and the first respondent could not, even when given the opportunity, produce buyers by private negotiation. Not even a valuer's report was produced by him. We are satisfied that the District Judge had committed no material irregularity in the conduct of the sale in accepting the highest offer of the appellant on September 3, 1969."

c) Valji Khimji and Company (Supra):

"28. If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed if they do not come forward to bid at the time of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is

finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.

30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

31. In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

Judgments relied upon by learned counsel for the respondent Nos.4 to 6:

a) Smt. Shanti Devi (Supra):

"26. The amount of Rs 1 lakh has been invested in short-term deposit in this Court. The same shall, on maturity, be sent to the High Court to the credit of Civil Writ Petition No. 6557 of 1983. The amount due as per the sale warrant amount with interest will be ascertained and the same shall first be disbursed to the Revenue authority concerned for satisfying the certificate issued to the said authority under Section 11-A of the U.P. Agricultural Credit Act, 1973. The High Court will ascertain the amount payable under the certificate together with interest, if any, as stated in the sale proceedings and for satisfying the costs of the proceedings as incurred by the Government. If the amount in deposit now transferred to the High Court is not sufficient, the appellant has to make good the deficiency. The amount deposited by the purchaser shall be returned to her together with interest at 12% from the date of

deposit. The interest amount payable to the purchaser shall be disbursed out of the amount now being sent by this Court to the High Court. If after meeting the demand payable under the certificate and costs to the Government, there is no balance left to pay the interest component payable to the purchaser as stated above on the amount the purchaser may have deposited in the Revenue Court, the appellant shall again have to make good the deficiency. In respect of any such further sums payable by the appellant, as aforesaid, if need be, the High Court will grant reasonable time to the appellant. If of course, the amount now sent to the High Court is sufficient to meet all these directions, no question of further payment by the appellant will arise."

b) Divya Manufacturing Co. Tirupati Wool Mills Shr. Shangharsha (Supra):

13. From the aforesaid observation, it is abundantly clear that the court is the custodian of the interests of the company and its creditors. Hence, it is the duty of the court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. As stated above, in the present case, the sale proceedings have a chequered history. The appellant started its offer after having an agreement with the Employees' Samity for Rs 37 lakhs. This was on the face of it under bidding for taking undue advantage of court sale. At the intervention of the learned Single Judge, the bid was increased to Rs 85 lakhs. Subsequently, before the Division Bench, the appellant increased it to Rs 1.30 crores. At that stage, Respondent 7 "Sharma" was not permitted to bid because it had not complied with the requirements of the advertisement. It is to be stated that on 26-6-1998 the Division Bench has ordered that offers of Eastern Silk Industries Ltd. and Jay Prestressed Products Ltd. would only be considered on 2-7-1998 and confirmation of sale would be made on the basis of the offers made by the two parties. Further, despite the fact that the appellant "Divya" had withdrawn its earlier offer, the Court permitted it to take part in making further offer as noted in the order dated 2-7-1998. In this set of circumstances, there was no need to confine the bid between three offerors only.

14. In LICA (P) Ltd. (1) v. Official Liquidator [(1996) 85 Comp Cas 788 (SC) [see below at p. 79]] this Court dealing with a similar question observed thus:

"The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large.

The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case.”

15. The matter was again brought before this Court and in *LICA (P) Ltd. (2) v. Official Liquidator* [(1996) 85 Comp Cas 792 (SC) [see below at p. 82]] the Court held:

“Proper control of the proceedings and meaningful intervention by the court would prevent the formation of a syndicate, underbidding and the resultant sale of property for an inadequate price. The order passed by this Court yielded the result that the property which would have been finalised at Rs 45 lakhs, fetched Rs 1.10 crores and in this Court a further offer of Rs 1.25 crores is made. In other words, the property under sale is capable of fetching a higher market price. Under these circumstances, though there is some force in the contention of Shri Ramaswamy that the court auction may not normally be repeatedly disturbed, since this Court, on the earlier occasion, had limited the auction between the two bidders, the impediment will not stand in the way to direct sale afresh. Even today the parties are prepared to participate in the bid.”

c) Kunwar Mohan Swarup (Supra):

"10. If the payment is not made within the period of 15 days the Court has the discretion to forfeit the deposit and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all the claim to the property.”

11. In *Nand Lal v. Mohd. Siddiquan* [A.I.R. 1957 All. 558.] , it was held, “if a sale had been confirmed, such sale could be set aside not necessarily under Order 21, rule 92 as that rule only applies to a valid sale. If there is no valid sale there can be no confirmation of an invalid sale. If the confirmation of an invalid sale has been made it will be an invalid confirmation. “Here an auction purchaser fails to deposit the full amount of purchase money payable by him on the 14th day from the sale of the property then under rule 84 the sale by which the auction purchaser purchased the property is automatically cancelled and he can have no interest in the property which was the subject of sale. But if there is no interest then acquired by the auction purchaser there is no question of confirmation of the sale. The sale can only be if there is no interest acquired by the auction purchaser.”

12. In view of these authorities it is idle for the department to contend that there is an alternate remedy which ought to have been pursued by the petitioner under the provisions of the Z.A. & L.R. Rules or the Code of Civil Procedure, Order 21, rules 84, 85 and 86. According to the Supreme Court, such a sale where the auction purchaser has not deposited the balance of 75% within 15 days of the sale, for any reason whatsoever, is non-existent in the eye of law. The sale is a complete nullity and it is non est and as such the writ jurisdiction of this Court would be the appropriate forum for ventilating such a grievance. That apart, the realisation and recovery of tax having been stayed by the Board of Revenue the recovery, if any, made after the stay order would not be in accordance with law and would therefore contravene the provisions of Art. 265 of the Constitution, vide *Banwari Lal v. Rajasthan State* [A.I.R. 1953 Raj. 180.] . In any view of the matter, this would be a fit case for the exercise of the writ jurisdiction, particularly as the only relief to which the petitioner would be entitled to is a re-auction of the property in view of the mandatory, provisions of rule 285-E of the Z.A. & L.R. Rules read with order 21, rule 85 of the C.P.C. and as such no injustice can be said to be done to the Department by acceding to this writ petition."

d) Vindhayachal (Supra):

"6. The State also does something which is extremely harsh if not cruel. It auctions borrowers' lands for petty amounts without proper advertisement. If the auction is advertised in widely circulated News Paper well in advance land may be auctioned for proper consideration. State further charges 10% recovery charges. In this scenario some times the borrower of agricultural loan feels himself pitched into Shylocks (plural, not singular).

9. It is utmost essential to ascertain that what minimum part of the land of borrower can satisfy the arrears and only that much part should be put to auction (vide (2006) 3 SCC 49 : AIR 2006 S.C. 1458 *Balakrishnan v. Malaiyandi Konar*). It is all the more necessary when property/land is purchased by the State under the aforesaid proviso to Rule 285-B. State is not supposed to take over the property/purchase the property of a person, even though he may be the defaulter for less than the market value. If auction takes place then the presumption is that the properties are sold for the market value. Excess amount (more than the arrears) for which property is auctioned is to be returned to the owner of the land. However, if State purchases the property under the aforesaid proviso then there is no excess amount. Accordingly, it is utmost essential in

such cases where State purchases the property under the aforesaid proviso to determine that what minimum part of the property to be auctioned can satisfy the entire arrears."

e) Mohammad Rafiq (Supra):

"19. For proclamation of sale under section 286, the Collector shall state the amount and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual. The Collector has given estimated value of the property as Rs. 7,370/-. This has been done by simply multiplying the rate of lagan $\times$ 1000. The proper course for calculating the approximate estimated value of the plots would have been, on the basis of the ratio of three sale-deeds of the same time of the adjoining plots. While the auction was being made for the purposes of repayment of bank loan, the Officer should have estimated the value in such a manner so as to fetch maximum of the amount of money arising out of the auction. The manner in which the valuation of the land has been calculated, gives credence to the allegation of the petitioner that all these documents have been fabricated later on, only to fill up the lacuna when the case came up for final hearing and the counter-affidavit was required."

f) Ramesh Kumar and others (Supra):

20. In view of above, effective service of every ZA Form provided under the rules and provisions referred hereinabove is mandatory otherwise the action taken by the authorities shall be illegal, arbitrary unjust and improper and will vitiate the proceedings.

g) M/s Jaswant Sugar Mills Ltd. Maliyana, Meerut (Supra):

15. Learned counsel for the petitioner is also right in his submission that without deciding the objection filed by the petitioner, the respondent No. 1 had no jurisdiction to auction the properties in question. It is not disputed that on receipt of Z.A. Form No. 74, petitioner filed an objection on 12.04.1992 before the respondent No. 1, which was not decided and auction was held by the respondents. Not only the objection filed by the petitioner was ignored by the contesting respondents but also the direction issued by this Court in Civil Misc. Writ Petition No. Nil of 1992, vide order dated 20.04.1992, which was served upon the contesting respondents well within the time, to decide the objection before proceeding further with the auction proceedings. A

reference in this regard may also be made to the decisions of this Court in the case reported in 1996 (1) Current Civil Cases 190 and Smt. Prabha Devi v. Bhoop Singh [1991 (18) A.L.R. 94.] . Not only the auction was held in violation of the orders passed by this Court but the auction sale was also confirmed without deciding the objection filed by the petitioner under Rule 285-I of the Rules framed under the Act, therefore, the auction sale held by the respondents was illegal and invalid.

h) State of U.P. and others (Supra):

10. We now examine the primary arguments in the background of the above provisions. The question arises as to whether the provisions for the attachment and sale of the property had been followed scrupulously, as would be necessary in such a case. We notice that the learned Single Judge has examined the matter and has concluded that there was no material on record to show that proper procedures had been adopted. A positive finding has been arrived at on facts that the Tehsildar or the Collector had even attempted to serve the demand notice personally or by registered post on SPL, as called upon under section 327 of the Act and Rule 246, as the notice had been served on the Chowkidar who could not be said to be an agent of SPL. It must also be noticed from a bare reading of the Rule 246 that the notice can be served on the agent only if it is not possible to serve it on the actual defaulter. In the present case we find that no attempt whatever had been made to serve the notice to the actual defaulter and had been served on the Chowkidar at the very initial on had stage.

14. It is not disputed that the property in question was put to auction in recovery proceedings initiated for realization of dues of the bank and the petitioner was declared the highest bidder. It is further admitted that the auction sale was duly confirmed, a sale certificate dated 26.05.1995 was issued in favour of the petitioner and his name was mutated in the revenue records. Thus, the rights of the petitioner as an auction purchaser stood crystallized upon confirmation of the sale.

15. The principal issue for consideration is whether a confirmed auction sale can be set aside by the revisional authority on the ground of alleged inadequacy of price and lack of wide publicity, in absence of fraud or material irregularity causing substantial injury.

16. Rule 285-I of the U.P. Zamindari Abolition and Land Reforms Rules,

1952 provides that a sale may be set aside within 30 days from the date of sale on the ground of material irregularity or mistake and only upon proof of substantial injury. Rule 285-K further bars any challenge to the sale on the ground of irregularity or mistake after expiry of the prescribed period, except in cases of fraud.

16. In the present case, no finding of fraud or collusion has been recorded by the authorities below. The interference with the sale has been made primarily on the ground that adequate publicity was not given and the property fetched a lower price. Such grounds, in absence of proof of substantial injury, do not satisfy the statutory requirements of Rule 285-I.

17. Learned Senior Counsel for the petitioner has rightly placed reliance upon judgment in the case of **Ashwin S. Mehta vs. Custodian (Supra)**, wherein it has been held that the rights of a *bona fide* auction purchaser are protected and cannot be lightly interfered with once the sale is confirmed. In **Valji Khimji & Co. vs. Official Liquidator (Supra)**, the Hon'ble Supreme Court has categorically held that a confirmed sale can be set aside only in exceptional circumstances such as fraud or collusion and not merely because a higher price could have been obtained. Similarly, in the case of **Kayjay Industries vs. Asnew Drums (Supra)**, it has been held that a court sale is a forced sale; mere inadequacy of price is not a ground to set aside the sale; the Court must adopt a pragmatic approach and once discretion is exercised, the sale should not be unsettled. The aforesaid judgments fully support the case of the petitioner and are squarely applicable to the facts of the present case.

18. The Commissioner and Board of Revenue have proceeded to set aside the sale on the premise that wider publicity might have resulted in a higher bid. Such a finding is based on mere conjectures and surmises and not on any cogent material on record. There is no evidence to demonstrate the actual market value of the property that the price fetched was grossly inadequate or that any substantial injury was caused to respondent Nos. 4 to 6. The authorities below have, thus, exercised jurisdiction in a manner not sanctioned by law, rendering the impugned orders legally unsustainable.

19. The judgments relied upon by learned counsel for respondent Nos. 4 to 6 are distinguishable on facts and law. In those cases, interference was warranted due to absence of proper notice, violation of mandatory procedure or the sale being void *ab initio*. In the present case no such foundational illegality has been established. The sale proceedings were conducted after due process and over a considerable period and the respondents had sufficient opportunity to participate and raise objections. Therefore, the said judgments do not advance the case of respondent Nos. 4 to 6 and are not applicable to the present controversy.

20. In view of the aforesaid discussion, this Court holds that the impugned orders suffer from manifest illegality and jurisdictional error and the same are perverse and contrary to settled legal principles. The confirmed auction sale in favour of the petitioner has been illegally set aside.

21. In view of reasons recorded above, the writ petition succeeds and is **allowed**.

22. The impugned order dated 29.03.2006 passed by respondent No.1 and the order dated 04.04.2001 passed by respondent No.2 are hereby quashed.

23. The auction sale in favour of the petitioner, along with the sale certificate dated 26.05.1995 and consequential mutation, is hereby restored.

24. No order as to costs.

(Irshad Ali,J.)

March 19, 2026

Adarsh K Singh