
(2008) 09 RAJ CK 0107
In the Rajasthan High Court

Anukampa Avas Vikas Pvt. Ltd. and Another	APPELLANT
Vs	
State of Rajasthan and Another	RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 RLW 2295

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—By the instant writ petition, the petitioners have initially prayed for a writ of prohibition or any other appropriate writ, order or direction in the nature thereof restraining the respondents from interfering in the peaceful possession of the. petitioners and further restraining them from taking any action to dispossess the petitioners from the property in question situated at S-I, Poultry Farm, Ajmer Road, Jaipur measuring 7000 Sq. Metres. The petitioners have also prayed for payment of Rs. 50,000/- as damages for breaking down the entry gate in question and causing mental harassment.

2. On disclosure of the fact that vide order dated 4.3.2006 the lease deed dated 17.10.2005 which was duly registered on 18.10.2005, as corrected on 19.1.2006, has been cancelled and the amount of Rs. 1,93,08,001/- was also refunded vide Cheque No. 770731 and the possession was also taken and further when the petitioners refused to receive the same then the order was affixed at the premises in question. Subsequently also, the said order dated 4.3.2006 was sent through registered post. The petitioners filed rejoinder and" submitted that after execution of the sale/lease deed no notice was given to them and the order dated 4.3.2006 has not been communicated to them. It was also stated in the rejoinder that the possession of the property was handed over to the petitioners on 10.10.2005 and the sale/lease deed was executed on 17.10.2005, therefore, the petitioners made constructions which will be referred hereinafter and

ultimately, it was prayed in the rejoinder that the order dated 4.3.2006 is without jurisdiction and violative of principles of natural justice.

3. Briefly stated, the relevant facts of the case are that on 26.10.1993, auction of the plot in question was held by the respondent JDA wherein the petitioner No. 1 M/s. Anukampa Avas Vikas Pvt. Ltd. was the highest bidder and it deposited Rs. 13,65,000/- within twenty four hours and thereafter, the bid was approved by the Commissioner, J.D.A. i.e. the competent authority. On 23.11.1993, demand notice of thirty days was issued requiring the petitioner No. 1 to deposit the balance amount of Rs. 79,48,001/- of the sale consideration. Before the expiry of the said period of thirty days, the respondent J.D.A. issued a letter dated 21.12.1993 whereby the petitioner No. 1 was informed that there was stay on the auction of the aforesaid plot granted by the High Court hence 15% amount deposited by the petitioner No. 1 was ordered to be refunded. The petitioner No. 1 submitted reply on 30.12.1993 (Anx. 4) to the said letter dated 21.12.1993 and demanded a copy of the said order as has been stated in the aforesaid letter dated 21.12.1993 with the further request that till the matter is finally decided, the advance amount deposited by the petitioner No. 1 may be kept/retained by the JDA. The said representation/letter was followed by remainder dated 24.8.1994 (Anx. 5).

4. In the mean while, the petitioner No. 1 filed writ petition before this Court in the year 1993 which was registered as SBCWP No. 6773/1993 and contended therein that after confirmation of the bid no decision had been taken by the Commissioner, JDA in spite of the representation submitted by the petitioner No. 1. After notice to the other side, the said writ petition was decided by this Court on 26.9.1994 (Anx. 6) with a direction to the Commissioner, JDA to take decision within a period of fifteen days from the date of receipt of the certified copy of the said order. It is further stated in the present writ petition that the Court had accepted the contention of the petitioner No. 1 that no final decision with regard to the Bid submitted by it had been taken by the Commissioner, JDA after letter dated 21.12.1993. After the said judgment the petitioner No. 1 submitted a representation on 5.10.1994 (Anx. 7) along with copy of the aforesaid judgment dated 26.9.1994 with a request to the JDA to take an early decision in the matter. The same was following by reminders dated 17.8.1995, 25.6.1996, 1.6.1997 and 28.9.1999 for compliance of the judgment of this Court dated 26.9.1994.

5. On 26.4.2000, the JDA. issued a notification (Anx. 8) in the newspaper stating therein that the land situated at Ajmer Road, popularly known as Poultry Farm (plot in question) is held by it and the same is free from all encumbrances, upon which the petitioner No. 1 submitted a representation on 18.5.2000 (Anx. 9) and requested to comply with the directions of this Court dated 26.9.1994. On the aforesaid representation, the petitioner No. 1 was called for personal hearing on 25.5.2000 and a meeting was convened which was presided over by the Commissioner, JDA with coordinate Members-Director (Finance) and Director

(Law). In the said meeting, it was decided to charge the balance amount along with interest @ 15% per annum from the petitioners which the petitioners although initially opposed levying interest and relied on the decision of this Court in K.K. Complex Pvt. Ltd. and Ors. v. JDA reported in 1993(2) WLC 652. However, no decision was communicated to the petitioners and the respondent JDA further delayed the implementation of the judgment of this Court dated 26.9.1994.

6. In the aforesaid facts and circumstances, the petitioner filed the petition before the State Level Settlement Committee constituted by the State Government for deciding the disputes between the concerned parties. It is also stated by the petitioners that the said dispute was mainly with regard to the interest @ 15% per annum which was held to be reasonable by the said State Level Settlement Committee and direction was issued to deposit the balance amount along with interest. Thus, contention of the petitioners not to charge the interest was rejected by the State Level Settlement Committee vide its decision dated 5.3.2002 (Anx. 10) and the decision of the JDA was held to be just and proper. The petitioners deposited the balance amount of sale consideration of Rs. 79,48,001/- and further requested the JDA vide representation dated 10.5.2002 to inform the amount of interest payable by the petitioner No. 1. When no information was received from the JDA then the petitioners, at their own, on 10.7.1993, calculated the amount of interest as Rs. 99,95,000/- which was paid by cheque dated 10.7.2003.

7. The JDA though retained the total principal amount of auction, however returned the cheque of interest amount vide letter dated 26.7.2003 (Anx. 13) on the ground that this Court had granted stay on the decision of the State Level Settlement committee. The petitioner No. 1 vide representation dated 16.8.2003 (Anx. 14) informed the JDA that no stay order had been passed by the Rajasthan High Court and further requested the JDA to make available copy of the stay order, if any. Again on 19.12.2003, the petitioners wrote to the JDA to make available copy of the alleged stay order. In the said representation dated 19.12.2003 (Anx. 15), it was also clarified by the petitioners that they had enquired into the matter through their counsel and it was found that no stay order was passed by this Court more particularly in the present matter. The petitioners submitted another representation dated 25.1.2005 (Anx.-16) on which Officer of the JDA informed the Commissioner, JDA that there was an oral stay passed by the High Court, to which the petitioner opposed and submitted that under the Rajasthan High Court Rules, there could be no oral stay. The Commissioner, JDA after fully satisfying recorded on the representation that the applicant is ready to deposit Rs. 1 Crore, there cannot be oral stay and further the applicant is ready to take the liability of the contempt. Ultimately, after verifying all the facts, the JDA issued the demand letter dated 6.10.2005 (Anx. 17) and in this letter, the JDA has acknowledged confirmation of the bid dated 26.10.1993. The Commissioner, JDA accorded approved for levying of the interest from the petitioner No. 1 and accordingly a demand of Rs. 99,95,000/-

was raised against the petitioner No. 1 and also directed to submit an undertaking to the effect that there is no stay of any court in the matter of land of Poultry Farm and in case of any contempt, the petitioners would be responsible for all the consequences. Incompliance to the letter dated 6.10.2005, the petitioner No. 1 deposited interest amount of Rs. 99,95,000/- and also filed an undertaking.

8. In the writ petition, it is stated that asking for such undertaking was unwarranted because the buyer cannot be bound by the whimsical and capricious manner in which the respondent J.D.A. acted. When the petitioners informed in the representation that there was no stay, whatsoever on the auction of the land in question and even if there was any stay order, copy of the same be made available. It is further stated in the writ petition that the JDA was bound to comply with the directions issued by this Court in the judgment dated 26.9.1994 (Anx. 6) in SBCW No. 6773/93. On 17.10.2005, the lease deed was executed between the petitioner No. 1 and the JDA and more than Rs. 16 lacs have been paid towards stamp duty and registration fee at the time of registry on 18.10.2005. Thereafter, the JDA handed over physical possession of the property at site on 30.11.2005 and the petitioners constructed the boundary wall, Chowkidar room, store room, office room and placed a Gate and further obtained electric connection from JWNL and constructed a bore well investing huge amount to the extent of Rs. 20 lacs and applied for loan to the RFC which sanctioned loan of Rs. 7.80 Crores, out of which Rs. 3 Crores have already been drawn by the petitioners have already deposited all the original title documents with the Rajathan Financial Corporation (RFC) and paid interest to the tune of Rs. 1.80 Crore till date.

9. The petitioner No. 1 desirous of making construction on the aforesaid plot submitted the building plans on 22nd November, 2005. The JDA by its communication dated 30.1.2006 (Anx. 26) pointed out certain discrepancies with regard to the measurement. In the late night of Saturday 4th March, 2006 at about 8 p.m. the petitioner No. 1 received information from the Chowkidar that certain officials of the JDA with the aid of police force had come on the spot and despite his protest had broken down the entry gate of the premises and were trying to enter into the premises. Whereupon the Chowkidar physically stopped them from doing so as they had no authority to do so. Shri Gopal Prasad Gupta, Director of the petitioner Company was at some distance away from Jaipur at that time and immediately started for Jaipur after getting the message. In the meantime, on action of obstruct of the Chowkidar and his frequent request the officials of the JDA went back saying that the entire premises should be vacated otherwise they would demolish the construction. By the time Shri Gopal Prasad Gupta, Director of the petitioner No. 1 could reach at the spot the officials of the JDA had (sic) the morning of Sunday - 5th March, 2006, the petitioners were astonished to see a news item (Anx. 27) that the JDA had said to taken back the possession of the land. The petitioners tried to gather information and have found that some question was raised in the Rajasthan Legislative Assembly

alleging that the JDA had made the allotment illegally to the petitioners on which the Minister for Urban Development and Housing Department is alleged to have given an answer to the effect that if illegality has been committed, possession would be taken back. It was in pursuance to the aforesaid answer of the Minister that the action of the JDA has been taken. It is stressed upon in writ petition that no notice whatsoever has ever been served upon the petitioners in writing or orally and the entire action of the JDA taken in the night of the Saturday, 4 March 2006 came as totally unexpected and shocked to the petitioners. At this stage, the petitioners have filed the writ petition and have made initial prayers which have been further extended in the rejoinder, as indicated above and detailed out hereunder while dealing with the rejoinder.

10. There is not much dispute about the dates and the facts. However, in order to complete the narration of facts, it would be proper to mention the facts stated by the JDA in its reply.

11. According to the respondent JDA, there was an order of status quo passed by this Court on 18.12.1992 in Writ Petition No. 7947/1992 Rewa Choudhary v. State of Rajasthan with regard to the same plot in question. Therefore, the auction dated 26.10.1993 conducted by the JDA is illegal. In the reply, it has also been stated that the order dated 21.12.1993 regarding cancellation of the auction attained finality and further acts of the JDA are contrary to the oral stay on the implementation of the decision of the State Level Settlement Committee in Ram Sharan's case, therefore, vide order dated 4.3.2006, the sale/lease deed has been rightly cancelled.

12. The petitioners have filed rejoinder to the reply of the respondents and submitted therein that the order dated 4.3.2006 was not communicated to them and on the same day, the respondents have acted in a high handed manner by breaking the entry gate and made an attempt to dispossess the petitioners. By the order dated 4.3.2006 the sale/lease deed dated 17.10.2005 and corrigendum dated 19.1.2006 have been cancelled without any notice to the petitioners on the ground of concealment of stay in Ram Sharan Singh's case, therefore, the same being violative of principles of nature justice, is void. Apart from above, the same is without jurisdiction being contrary to the provisions of the JDA Act, 1982 Registration Act as well as other provisions of law that a party to the registry has no right to cancel the same for the reason that the property rights vested in the buyer on registration of the sale/lease deed which cannot be divested by other party and that can only be cancelled by the Civil Court by way of a declaratory suit.

13. Submission of counsel for the petitioners is that with the confirmation of the sale, the petitioners became owner of the property in question and thereafter the respondent JDA had no authority to cancel the same and that too, after registration of the sale/lease deed which could only be cancelled by the declaration made by the civil Court. Further submission of the counsel for the petitioners is that there cannot be any oral general stay order and in case of the

petitioners, the dispute before the State Level Settlement Committee was with regard to the payment of interest @ 15% and not with regard to the confirmation of the sale which was already made subject to the payment of 15% interest and once the said interest has been deposited by the petitioners, thereafter, the JDA has no authority to take shelter of the oral observations of the High Court, more particularly for the reason that the decision of the JDA was upheld by the State Level Settlement Committee and the matter stood at par as if no adverse order has been passed by the State Level Settlement Committee and the JDA order is also not against public interest. Therefore, the matter stood where it was; so even if there was an oral observation then also, it can not be said that the subsequent action of the parties are contrary to the stay order. Hence, as a matter of fact, the decision of the JDA was to be implemented and not of the State Level Settlement Committee.

14. Last submission of counsel for the petitioners is that the JDA was bound to comply with the High Court order dated 26.9.1994 (An. 6) and there was no stay for implementation of the same. The interim order passed in Reba Choudhary's case also came to an end when the said writ petition was dismissed on 10.1.1995 which resulted in the revival of the auction held by the JDA on 26.10.1993, therefore, the lease deed was rightly executed and registered on 18.10.2005 between the parties and the petitioners are entitled to all the benefits of the same. Further, the actions of the JDA are contrary to the provisions of the JDA Act, Registration Act and other enactments.

15. On 11.7.2008, information was summoned from the respondents on five issues, which are as follows:

1. How the auction was ordered despite stay order dated 18.12.1992 in Rewa Choudhary's case (SBCWP No. 7947/1992).
2. The final order/judgment in Rewa Chaudhari's case SBCWP No. 7947/1992,
3. Copy of application by the petitioner to the Settlement Committee and order passed by Settlement Committee.
4. Order dated 21.4.2003 passed by Division Bench in DBCWP No. 2658/2003 Ram Sharan Singh v. State of Rajasthan.
5. Present position of Rewa Chaudhari's case (SBCWP No. 7947/1992).

The matter was ordered to be listed on 16.7.2008. On 16.7.2008, counsel for the respondents submitted that the information required by the Court vide order dated 11.7.2008 except the record of the Settlement Committee has been received, therefore, two days' time was prayed for giving the information except record of the Settlement Committee and the matter was fixed for 18.7.2008 with the direction that in case the respondents did not comply with the order dated 11.7.2008, then adverse inference will be drawn. On 18.7.2008, the judgment was reserved with the further opportunity to place on record the available information on the same day i.e. 18.7.2008. Subsequently, additional affidavit

and its reply was filed on 22.7.2008. Thereafter, on 25.7.2008 it was thought proper to fix the case in the category of "To be Mentioned" on 29.7.2008. On 29.7.2008, detailed order was passed whereby both the affidavits have been taken on record and the judgment was again reserved to complete the chain of facts and left out relevant documents to be taken on record as the complete record was not available with the JDA. The said facts and documents are being considered hereunder in the light of the submissions made by them.

16. Counsel for the petitioners placed reliance on the following judgments:

1. Municipal Board Vs. R.R. Solanki,
2. Jai Bhawani Timber Vs. State of Madhya Pradesh,
3. Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another,
4. State of Madhya Pradesh and Others Vs. G.L. Patel and Company and Others,
5. ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,
6. Lamba Industries Vs. Union of India (UOI) and Others,

17. Counsel for the respondents has also touched the preliminary objection of availability of alternative remedy u/s 83 of the JDA Act, 1982, of filing a reference application/appeal before the JDA Appellate Tribunal against the order dated 4.3.2006 and has further submitted that the writ petition is not maintainable on the ground of availability of alternative remedy. On the issue of alternative remedy, counsel for the respondent JDA has placed reliance on the following judgments:

- (i) K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.,
- (ii) Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya,
- (iii) K.S. Venkataraman and Co. Vs. State of Madras,
- (iv) Siliguri Municipality and Others Vs. Amalendu Das and Others,
- (v) Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others,
- (vi) L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others,
- (vii) Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others,
- (viii) Pratap Singh Vs. State of Haryana and Others and Shri Bhajan Lal and Others,
- (ix) Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,
- (x) State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. (2005) 6 SCC 499.

18. On the issue of alternative remedy, counsel for the JDA has further submitted that the principles of natural justice have been followed and therefore, the second exception of Gujarat Ambuja case (supra) will not apply. He has placed reliance on Gujarat Ambuja as well as earlier judgment of this Court and the Supreme Court which are as under:

1. Puran Chand v. State of Rajasthan 1974 RLW 526.
2. Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others,
3. Jagdish Kumar Sinha v. The State of Rajasthan and Ors. 1980 WLN 1.

19. Submission of Mr. Bharat Vyas, Addl. AG on merit is that the auction dated 26.9.1994 after passing of the stay order dated 18.12.1992 passed in Rewa Choudhary is void and therefore, the JDA has rightly cancelled the same on 21.12.1993 and the said other attained finality.

20. Mr. Bharat Vyas further submits that the cancellation of the lease deed vide order dated 4.3.2006 is strictly in conformity with the provisions of law as it is the settled principle of law that all actions done during the pendency of status quo order are void ab initio. He also submits that during the pendency of the continuance of the oral observations of the High Court for non implementation of the decision of the State Level Settlement Committee in Ram Sharan v. State DBCWP. 2658/2003, further actions of the respondent JDA are not in conformity with the stay order. Lastly Mr. Vyas submits that the illegality cannot be revived by Court of law and this Court under article 226 of the Constitution of India has no jurisdiction to pass an order to restore an illegality. On the aforesaid issues, Mr. Bharat Vyas, Addl. AG has cited the following judgments:

1. Mulraj Vs. Murti Raghonathji Maharaj,
2. Sri Ram Charan Das Vs. Pyare Lal,
3. Abdul Gafoor Vs. Regional Transport Authority and Others,
4. Ganesh Mal Surana and Others Vs. State of Rajasthan and Others,
5. Anil Kumar and Others Vs. State of Rajasthan and Others,
6. A.M. Allison Vs. B.L. Sen,
7. Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,
8. Gani Mohd. v. State 1976 WLN 174 Dharmendra Kumar Jain v. State of Rajasthan v. State of Rajasthan and 35 connected matters SBCWP No. 2800/2002.
9. Rajasthan Housing Board and Another Vs. G.S. Investments and Another,

21. On the basis of the pleadings of the parties, the following core questions arise for adjudication in the present writ petition:

Question No. 1

Whether alternative remedy is a bar in case where the principles of nature justice have been violated and where the dispute is hanging fire for more than a decade and that too when this Court directed to decide the representation in earlier writ petition and compliance was made by executing Registry of the sale/lease deed dated 17.10.2005, registered on 18.10.2005, as corrected on 19.1.2006, and thereafter JDA passed order dated 4.3.2006 of cancellation of Registry of the sale/lease deed?

Question No. 2

Whether a person/authority who/which held auction in violation of the interim order maintaining status quo passed in the case of third party has a right to contend that the auction was an illegality being contrary to the interim order and confer no right on the subsequent purchaser (Petitioners-who were not party in the earlier litigation wherein interim order was passed) although subsequently the interim order remained no more in force on account of the dismissal of the writ petition?

Question No. 3

Whether a party to the registry has a right to cancel the same after execution thereof and delivery of possession of the said party or is to file the civil suit for cancellation of the sale/lease deed on the ground that some illegality was committed by it?

Question No. 4

Whether revival of the auction in the aforesaid facts and circumstances of the case would be restoration of the illegality?

22. I have gone through the record of the writ petition and further considered the affidavits filed by the parties as well as rival submissions made by counsel for the parties.

23. Before proceeding further, I would like to refer interim order dated 18.12.1992 (Anx. R.2/6), order dated 26.9.1994 (Anx. 6) of this Court wherein there is no reference of cancellation of the auction dated 21.12.1993 and order of dismissal in Rewa Choudhary, dated 10.1.1995. The aforesaid orders read as under:

Interim order dated 18.12.1992. 18.12.1992 Hon"ble M.B. Sharma, J. Mr. N.K. Joshi, for the petitioner

Issue notice of stay application returnable within four weeks.

In the meanwhile, the petitioner shall not be dispossessed from the entire area of 10 Bighas of Khasra No. 35/1 of Village Madrampura, Ajmer Road, Jaipur. Status quo as it exists today shall be maintained.

Sd/- (emphasis supplied) Order dated 26.9.1994 26.9,94 Hon''ble V.K. Singhal

Mr. G.S. Bafna Mr. R.S. Mehta for the petitioner Mr. R.D. Rastogi for the respondent

The present writ petition has been filed in respect of plot of land measuring about 7000 Sq. Mtr. Which was auctioned on 26.10.93 and the petitioner claim himself to be the highest bidder. It is submitted that a sum of Rs. 13.65 lacs has already been deposited, therefore, the bid of the petitioner was accepted. After a letter was issued to the petitioner that because of the stay of the court the possession of the land cannot be given and hence the amount of Rs. 13.65 lacs which was deposited by the petitioner was intended to be refunded to him. The petitioner has submitted that the amount be kept with JDA till the final decision is taken on the stay application. It is stated that no decision has so far been taken. The petitioner has also submitted a representation to the respondent on 24.8.94 but no action has so far been taken and the respondent wanted to re-auction on 18.11.93.

Arguments of both the learned Counsel have been heard.

Looking to the facts and circumstances of the case it is directed that the Commissioner of the JDA shall take a decision with regard to the bid submitted by the petitioner within a period of 15 days from the date a certified copy of this order is produced before him. The writ petition stands disposed of in accordance with the direction given above.

Relevant portion of the Order of dismissal dated 10.1.1995 of Rewa Choudhary's writ petition

...Admittedly after the expiry of 10 years the lease granted in favour of the petitioner's husband automatically came to an end in 1973. No fresh lease was granted thereafter. The petitioner did not have any subsisting right. It is the discretion of the government to grant or not to grant any fresh lease. The petitioner did not have any right to get a fresh lease.

Since she did not have any subsisting lessee-right to the land, the initiation of proceedings for. cancellation of the same was wholly uncalled for. The proceedings would not confer any right on her. Looking to the fact that the petitioner was a widow of a freedom fighter, the Chief Minister by showing a good gesture in all magnanimity has recommended for grant of a fresh lease in her favour for an area of 2 bighas and 6 biswas which is good enough for the petitioner to have a poultry or dairy farm to maintain herself. After giving my thoughtful consideration to the matter, I am of the view that the petitioner has no legal right to the land as there was no violation of any statutory or fundamental right. The writ petition has no merit.

Consequently, the writ petition fails in hereby dismissed without any order as to costs.

24. The said core questions which arises in the present controversy are to be answered as per the said judgment of earlier writ petition, the terms and conditions of the auction, settled provisions of law and citations in the matter of cancellation of the sale/lease deed by the seller after its registration and delivery of possession but none of the parties have referred any specific provision of the JDA Act, Registration Act or any other enactment but have raised the dispute which has been indicated in the foregoing paras.

Question No. 1

Whether alternative remedy is a bar in case where the principles of nature justice have been violated and where the dispute is hanging fire for more than a decade and that too when this Court directed to decide the representation in earlier writ petition and compliance was made by executing Registry of the sale/lease dated 17.10.2005, registered on 18.10.2005 as corrected on 19.1.2006, and thereafter JDA passed dated 4.3.2006 of cancellation of Registry of the sale/lease deed.

25. The law on the issue of alternative remedy was settled way back in the year 1971 in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, wherein it was held that in case the writ petition is admitted, remained pending and heard on merit, then it would not be just and proper to throw the writ petition on the ground of alternative remedy. Further, in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, three contingencies have been mentioned, in para 15, on the basis of which it has been held that the self imposed restriction of alternative remedy would not be a bar in the said three contingencies. The aforesaid three contingencies read as follows:

(i) where the writ petition has been filed for the enforcement of any of the Fundamental Rights, or

(ii) where there has been a violation of the principle of natural justice; or

(iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

26. Although many judgments cited by the counsel for the petitioners have been considered in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, but still, I would like to refer the latest judgment in *State of H.P. and Ors. v. Gujarat Ambuja Cement Ltd. and Anr.* (2005) 6 SCC 499 wherein *Whirlpool Corporation v. Registrar of Trade Marks* has been considered and followed; Paras 17, 18, 19, 20, 21 and 22 of the judgment in *Gujarat Ambuja Cement Ltd. (supra)* are as follows:

17. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. despite the existence of an alternative remedy it is within the jurisdiction of

discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

18. Constitution Benches of this Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, ; *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, ; *Union of India (UOI) Vs. T.R. Varma, State of U.P. and Ors. v. Mohammad Nooh* AIR (1958) SC 86 and *K.S. Venkataraman and Co. Vs. State of Madras*, held that Article 226 of the Constitution confers on all the High Court a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

19. Another Constitution Bench of this Court in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reintegrated in *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, ; *Siliguri Municipality and Others Vs. Amalendu Das and Others*, *S.T. Muthusami Vs. K. Natarajan and Others, Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, ; *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, *A. Venkatasubhiah Naidu v. S. Chellappan and Ors.* (2000) 7 SCC 795 ; and *L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, Pratap Singh Vs. State of Haryana and Others and Shri Bhajan Lal and Others, and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors.* (2003) 1 SCC 72.

20. In *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, this Court held that the rule of exclusive of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of. principles of natural justice or

where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

21. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, ; *Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others*, ; *Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others*, ; *C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, ; *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, *H.B. Gandhi v. Gopinath and Sons* (1992) Supp. 2 SCC 313 ; *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, *Tin Plate Co. of India Ltd. Vs. State of Bihar and Others*, ; *Sheela Devi Vs. Jaspal Singh*, and *Punjab National Bank Vs. O.C. Krishnan and Others*, , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

22. If, as was noted in *Ram and Shyam Company Vs. State of Haryana and Others*, the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in *First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd.*, and *State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd.*, . That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

27. In the present case, no notice before cancellation of sale/lease deed has been given, therefore, it is covered by Exception (ii) of the violation of the principles of natural justice, as laid down in *Gujarat Ambuja Cement Ltd.* (supra),

and the availability of the alternative remedy is no bar.

Question No. 2

Whether a person/authority who/which held auction in violation of the interim order maintaining status quo passed in the case of third party has a right to contend that the auction was an illegality being contrary to the interim order and confer no right on the subsequent purchaser (petitions- who were not party in the earlier litigation wherein interim order was passed) although subsequently the interim order remained no more in force on account of the dismissal of the writ petition?

28. On the second question, submission of counsel for the petitioners is that the present petitioners were not party in Rewa Choudhary's writ petition as they had nothing to do with the dispute raised in the said writ petition and were also not aware of the interim order/dismissal thereof. The JDA, which was fully aware of the said interim order, has put the land in question to auction, cannot be permitted to say that the JDA is not even bound by the terms and conditions of the auction even after dismissal of the writ petition filed by Rewa Choudhary.

29. Submission of counsel for the JDA is right to the extent that they were bound by the order of status quo passed in the writ petition filed by Rewa Choudhary during continuance of same but still, a lame excuse has been given for auction of land in ignorance of same on account of the transfer of the zone whereas the land was put to auction by approval of the JDA Commissioner who has further approved the highest bid of the petitioner No. 1. Therefore, the JDA might be justified in not proceeding further during continuation of the said interim order passed in Rewa Choudhary but this Court in Rewa Choudhary has not declared any action of the JDA after passing of the interim order to be illegal; rather the writ petition filed by Rewa Choudhary was dismissed on 10.1.1995 on the ground that she was not having any subsisting right of renewal of lease after 1973. Therefore, the position emerging out is that as if there was no interim order. Had this Court declared the action of the JDA to be illegal in Rewa Choudhary, then the position would have been different but since the writ petition has been dismissed, therefore, the judgment cited by the counsel for the respondent JDA in *Mulraj Vs. Murti Raghonathji Maharaj*, wherein it has been held that the executing court can declare the proceedings of execution during continuation of the stay of execution passed by the High Court in higher Court illegal is not applicable. Para 8 of the said judgment is as under:

8. We are of opinion that the view taken in *Bessesswari Chowdhuany's* case (1896-97) 1 C W.N. 226 is the correct one. An order of stay in an execution matter is in our opinion in the nature of a prohibitory order and is addressed to the court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing execution proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the court executing the decree as there is nothing left to execute thereafter.

But a mere order of stay of execution does not take away the jurisdiction of the court. All that it does is to prohibit the court from proceeding with the execution further, and the court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be a prohibitory order directing the executing court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the court is there all along. The only effect of the stay order is to prohibit the executing court from proceeding further and that can only take effect when the executing court has knowledge of the order. The executing court may have knowledge of the order on the order being communicated to it by the court passing the stay order or the executing court may be informed of the order by one party or the other with an affidavit in support of the information or in any other way. As soon therefore as the executing court has come to know of the order either by communication from the court passing the stay order or by an affidavit from one party or the other or in any other way the executing court cannot proceed further and if it does so its acts illegally. There can be no doubt that no action for contempt can be taken against an executing court, if it carries on execution in ignorance of the order of stay and this shows the necessity of the knowledge of the executing court before its jurisdiction can be affected by the order. In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well-settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further it is equally well-settled that the injunction order not being addressed to the court, if the court proceedings in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between, an order of injunction to a party and an order of stay to a court. In both cases knowledge of the party concerned or of the court is necessary before the prohibition takes effect. Take the case where a stay order has been passed but it is never brought to the notice of the court, and the court carries on proceedings in ignorance thereof. It can hardly be said that the court has lost jurisdiction because of some order of which it has no knowledge. This to our mind clearly follows from the words of Order XLI Rule 5 of the CPC which clearly lays down that mere filing of an appeal does not operate as stay of proceedings in execution, but the appellate court has the power stay of execution. Obviously when the appellate Court orders the stay of execution the order can have effect only when it is made known to the executing court. We cannot agree that an order staying execution is similar to an order

allowing an appeal and quashing execution proceedings. In the case where the execution Proceeding is quashed, the order takes effect immediately and there is nothing left to execute. But where a stay order is passed, execution still stands and can go on unless the court executing the decree has knowledge of the stay order. It is only when the executing court has knowledge of the stay order that the Court must stay its hands and anything it does thereafter would be a nullity so long as the stay order is in force.

30. The other judgment in Sri Ram Charan Das Vs. Pyare Lal, cited by Mr. Vyas, Addl. AG supports the contention of the petitioners wherein it has been held that the stay order merges in the final order. Paras 6 and 8 of the said judgment are as follows:

6. The question involved in the instant case is as to the effect of the final order passed in revision upholding the permission, on the suit already instituted. In Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, a Bench of this Court has held that orders of stay or injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est. in the eye of law if final order grants no relief. In this view of the matter it seems to us that the interim stay became non est. and lost all the efficacy, the Commissioner having upheld the permission which became effective from the date it was passed.

8. In the instant case the Commissioner as well as the State Government having upheld the permission during the proceedings of the suit, a valid permission was in existence at the time the decree for abetment was passed the stay order merged in the final order passed in the revision and became non est. The order of permission took effect from the date it was passed. The decree for abetment was accordingly valid in law.

31. Mr. Visa, Addl. AG has also placed reliance on Abdul Gafoor Vs. Regional Transport Authority and Others, wherein the permit granted in spite of the stay order of the High Court has been held to be wholly illegal but here in the instant case, no final order was passed by the respondents during the continuance of the interim order. The final order which resulted in the shape of execution of the Registry was passed on 17.10.2005 and the writ petition of Reba Chuddar was dismissed on 10.1.1995. Para 5 of the aforesaid judgment reads as under:

5. So far as the question of alternative remedy is concerned, suffice it to say that in view of the specific stay orders, passed by this Court, restraining the respondents not to grant or issue temporary or non-temporary permits, they granted permit in favor of the respondents No. 2 Calash Chan, which was wholly without jurisdiction and, therefore, the availability of the alternative remedy is no bar for quashing the order, passed by the Regional Transport Authority and the order deserved to be quashed and set aside.

The aforesaid case of this Court is of final order passed by respondent and not of initiation of proceedings which could have been set aside by the Court in the

proceedings wherein the interim order was passed.

32. Mr. Visa, Addl. AG has also placed reliance on Anil Kumar and Others Vs. State of Rajasthan and Others, wherein it has been held that the proceedings continued in ignorance of the High Court order are nullity. Para 18, 19 and 20 of the same read as under:

18. Thus, it is not permissible under the law that a person may blow hot and cold in the same breath. If the interim order was there and the respondents were aware of it, they were not supposed to proceed with acquisition proceedings at all and if by ignoring the same, respondents proceeded with acquisition they cannot be permitted to take any advantage of the said interim order. Therefore, contention raised by the respondents has no substance.

19. There is another aspect of the matter. In Mulraj Vs. Murti Raghonathji Maharaj, the Hon'ble Apex Court has held that any action taken by an authority/ Court in contravention of the interim order passed by a Court of Law, is not only illegal but tantamounts to a nullity as the Apex Court has observed as under (at page 1388):

But a mere order of stay of execution does not take away the jurisdiction of the Court. All that it does is to prohibit the Court from proceeding with the execution further.... As soon as the Court has the knowledge of the order, it is bound to obey it and if it does not, it acts illegally and all proceedings taken after the knowledge of the order would be a nullity.

20. The respondents have taken a specific plea to save the acquisition proceedings that they could not proceed further because of the interim order passed by this Court on 20.5.91. The said stay order was vacated on 28.10.94. They had chosen to ignore the stay order and proceed with the acquisition, thus, they cannot take benefit of this plea and even otherwise if they had proceeded in spite of the stay order, the proceedings are rendered a nullity being in flagrant violation of the said interim order and in that event Section 6 declaration published on 24.5.94, also, was a nullity and as the respondents did not issue any other notification after the vacation of the said interim order dated 28.10.94, there was nothing on the basis of which the respondents could have completed the acquisition proceedings. Submissions made by the respondents are preposterous.

Here, in the instant case, after 21.12.1993 i.e. the alleged date of first cancellation of the auction, on account of status quo order dated 18.12.1992, no proceedings were held even after the dismissal of the writ petition of Rewa Choudhary on 10.1.1995 when the interim order dated 18.12.1992 came to an end but the same have been further continued on account of direction dated 26.9.1994 of this Court in the earlier writ petition filed by the petitioner No. 1.

33. The judgment in Ganesh Mal Surana and Others Vs. State of Rajasthan and Others, is between the same parties but here in the instant case, third party

right is involved and the petitioners are not bound by the interim order therefore, the said judgment is not applicable.

Question No. 3

Whether a party to the registry has a right to cancel the same after execution thereof and delivery of possession of the said party or is to file the civil suit for cancellation of the sale/lease deed on the ground that some illegality was committed by it?

34. Submission of counsel for the petitioners on the third question is that with the confirmation of sale, the petitioner No. 1 had become owner. Counsel has placed reliance on *Municipal Board Vs. R.R. Solanki*, of the judgment read as under:

21. With the confirmation of the sale the respondent had become owner of the plot in question. If the scheme was cancelled and the Board wanted to utilise the land for any other purpose the cancellation of the allotment was not proper way to get back the auctioned land. The learned Single Judge had justly made it clear that the order passed by him would not preclude the Board to acquire the plot if needed, in accordance with law.

22. Mr. Mardia could not point any provision under which the allotment once made by way of auction and the sale having been confirmed, could have been cancelled by any resolution of the Board. The resolution Annexure-9 has therefore no validity.

27. From the above discussion, it is clear that the appellant Board has not come with true facts before the Court. Apart from it, as observed above, the learned Counsel for the appellant could not convince the Court as to under what provision the Board had retained the right to cancel the allotment of the plot purchased by the respondent petitioner in auction and the sale having been confirmed.

35. Counsel for the petitioners also placed reliance on *Jai Bhawani Timber Vs. State of Madhya Pradesh*, wherein it has been held that once bid was knocked down, the auction was announced as closed and bid-sheets were signed by the successful bidders, the sales were completed and subsequent repudiating the sale by D.F.O. was without jurisdiction. Para 12 of the judgment reads as under:

12. The above interpretation placed by us on conditions Nos. 10 and 11 accords fully with the one placed on the same condition in the Division Bench case of this Court in *Darshan Singh (supra)*. In our opinion, the sales were completed soon after announcement of completion of auction and by the act of DFO in permitting the bidders, in whose favour the bids were knocked down, to sign the bid sheets, he clearly signified his acceptance of the bids. Non signing of the bid sheets, in the above circumstances, by the DFO was inconsequential in law and, therefore, did not permit the DFO to repudiate the sales on his second thought. Even if as contended by the respondents, the facts pleaded by them are accepted as true

that the DFO found that the petitioners had formed a "ring" in mutual benefit to avoid competition, the stage to withdraw the lots from sale or to reject the bids, was before making formal announcement of closure of auction and permitting signing of bid sheets by the successful bidders. Once the bid was knocked down, the auction was announced as closed and bid sheets were signed by the successful bidders, the sales were completed. The DFO was thereafter powerless to retrace his step and repudiate the sale for good or bad reason....

36. Counsel for the petitioners has also placed reliance on the judgment of the Supreme Court in *Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another*, wherein it has been held that having acted and held out assurances to the appellant/petitioner, the respondents cannot be allowed to allege the issue jurisdiction and violation of its rules or regulations. Paras 22 and 23 of the judgment read as under:

22. On the legal question, it is quite obvious, that having acted and held out assurances to the appellants which caused the appellants to alter their position to their prejudice it was not open to CIDCO to take a unilateral decision to cancel the allotment on the ground that it had acted without jurisdiction and/or in excess of jurisdiction and in violation of its rules and regulations. Even on that score, the argument advanced on behalf of CIDCO is unacceptable having regard to Regulation 4 of the New Bombay Disposal of Land Regulations, 1975 extracted hereinabove which empowered CIDCO to dispose of plots of land even on the basis of individual applications. The said aspect of the matter has been dealt with in detail in Civil Appeal Nos. 408/07 and 410/07 referred to hereinabove.

23. On the question of the allotment being opposed to public policy, we failed to see how CIDCO can raise such an issue. On the other hand, the stand taken by CIDCO is, in our view, opposed to public policy since CIDCO was not entitled to take a unilateral decision to cancel the allotment after the appellants had acted on the basis thereof and had expended large sums of money towards the construction which has progressed to some extent. The Regulations allowed CIDCO to entertain individual applications for allotment, as has been done in the instant case. Merely by indicating that the law declared by this Court was universally binding under Article 141 of the Constitution, it could not contend that such allotment was contrary to public policy on a fresh consideration made by the Board of Directors of the Corporation upon considering the recommendations made by Dr. D.K. Shanakran, the then Addl. Secretary (Planning) of the State of Maharashtra. It may be mentioned that Dr. Shankaran had been appointed by the State Government in January 2005 to conduct a discreet inquiry into allotments of certain plots of land made by the Corporation during the tenure of Shri V.M. Lal, the then Vice-Chairman and Managing Director allegedly in contravention of the establishment Rules, Regulations and Conventions.

37. Counsel for the petitioners has also placed reliance on an unreported judgment dated 24.9.1584 in SBCWP No. 684/1984.

38. He has also placed reliance on State of State of Madhya Pradesh and Others Vs. G.L. Patel and Company and Others, Further discussion of the same would multiply the judgments but the issue stands concluded that in case of auction, the same is finalised as soon as it is knocked down but here in the instant case, further steps have been taken after dismissal of the writ petition of Rewa Choudhary and direction of this Court in the earlier writ petition filed by the petitioner dated 26.9.1994. Therefore, the present case is on much better footing as the law on the issue of registry is further well settled that it can only be cancelled by a declaration made by the civil court. In the instant case, the JDA cannot be allowed to take advantage of its own wrong and allowed to make the party suffer which complied with all the terms and conditions of the auction and has further invested huge amount. Reallowing the JDA to reauction the land in this case will put premium on the wrong cancellation of the registry by the JDA.

Question No. 4.

Whether revival of the auction in the aforesaid facts and circumstances of the case would be restoration of the illegality?

39. Before discussing Question No. 4, it is pertinent to take the dictionary meaning of the term "void" and "voidable". Black's Law Dictionary gives meaning of the word "void" as having different nuances in different connotations. One of them is of course "null, or having no legal force or binding effect." And the other is "unable in law, to support the purpose for which it was intended." After referring to the nuances between void and voidable the lexicographer pointed out the following:

That word "void" in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of "voidable."

The word "void" is used in statutes in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only.

40. In the Law Lexicon, both the words "void" and "voidable" have been defined as under:

Void and voidable. Void means that an instrument or transaction is so nugatory and ineffectual that nothing can cure it; voidable when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it.

A contract is void which is destitute of all legal effect, while a voidable contract is one which may be affirmed or rejected at the will of one of the parties.

Void means that an instruments or transaction is so nugatory and ineffectual that nothing can cure it. Voidable- when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while, acceptance of rent will make good a voidable lease, it will not affirm a void lease.

41. The term "void" and "voidable" is sometimes used in the statutes and whenever the term "void" is used in the statute, then usually the transaction/order is said to be nugatory and ineffective and the infirmity cannot be cured but in the case of voidable transaction/order, the imperfection or defect can be cured by the act/confirmation. in the instant case, the term has not been used in any of the statutes but the same has been used with reference to the continuance of the interim order in the writ petition filed by Rewa Choudhary where the status quo was ordered to be in force when the auction was held by the JDA.

42. Supreme Court in Smt. Kalawati Vs. Bisheshwar, has made distinction between the term "void" and "not recognised" on account of the declaration made in the statute, wherein it has been held that the non-recognised transfer is valid for all other purposes except the said statute. Para 9 of the judgment reads as under:

9. There is a clear distinction between a transaction being void that is, non-existent from its very inception and a ban against its recognition. Indeed when it is said that such a transaction is not to be recognised for any purpose whatsoever it postulates that the transaction does exist and is valid but is not to be recognised. Recognition means, according to Jowitt's Dictionary of English Law, 1486; an acknowledgment. According to the Shorter Oxford English Dictionary, (3rd ed.) Vol. 11, P. 1673, recognition means: "The action or fact of perceiving that some thing, person, etc., is the same as one previously known; the mental process of identifying what has been known before; the action or fact of apprehending a thing as having a certain character belonging to a certain class." There is thus a clear distinction between a transaction being void and one though valid and existent which is not to be recognised or acknowledged. The legislature also appears to be fully aware of the distinction between a void transaction and one which is not to be recognised. In. Section 24 and 166 the legislature has declared certain transactions therein set out void and of no effect as against Clause (b) of Section 23(1) where it provides only a bar against recognition. That being so it is impossible to say that the bar of recognition in Clause (b) to a transfer made after July 7, 1949 means that such a transfer is void. The sale in favour of the appellant was therefore valid and did have the effect of conveying and vesting the ownership of the property in the appellant.

43. In State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, it has been held that mere use of word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity as to whether it is fundamental or otherwise. In this case, it has also

been held that the transaction may be void between the parties for the reason of the order of the Court but the same may not be binding in other proceedings against other party. Paras 7 and 8 of the same read as under:

7. It is not necessary for us to go into the merits of the case. We are of the view that the order passed inter parties in C.R.P. 3440 of 1977 dated 2.11.1977, has become final, and it concludes the matter. The observations made in the proceedings at the instance of the 1st respondent regarding the validity of the order of the Board, in C.R.P. 3696 of 1977 will not, in any way, effect the legality and validity of the proceedings declining to implead respondents No. 3 and 4 or the order passed in Revision there from C.R.P. 3440 of 1977. It is true that the proceedings dated 28.6.1977 was observed to be void in law in C.R.P. 3696 of 1977, filed by the first respondent. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo moto proceedings by Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.

8. In Halsbury's Laws of England, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:

If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes: and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved.

In the Judicial Review of Administrative Action, De Smith. Woolf and Jowell, 1995 edition. at pages 259-260 the law is stated, thus:

The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen,, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent Jurisdiction.

Similarly, Wade and Forsyth in Administrative Law, Seventh edition-1994, have stated the law thus at pages 341-342:

...every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said:

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court. The necessity of recourse to the Court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects.

The above statement of the law supports our view that the order of the Board dated 28.6.1977, declining to implead respondents No. 3 and 4 (which stood confirmed in Revision) concludes the matter against respondents No. 3 and 4.

44. Supreme Court in Pankaj Mehtra and Anr. v. State of Maharashtra (2002) 2 SCC 756 while interpreting Section 536 (2) of the Companies Act and the term "void" before the words "unless the court otherwise orders" with regard to the sale or disposition of the property during liquidation. The said analogy is applicable in this case to the extent that the interim order in Rewa Choudhary merged in the dismissal of the writ petition and after dismissal of the writ petition, it was not open to the respondents to say that the initial action was illegal against the petitioners as they were not parties in Rewa Choudhary. Paras 14, 15 and 16 of the aforesaid judgment read as under:

14. In the above backdrop alone we can consider the impact of the legislative direction in Section 536(2) that any disposition of the property of the company made after the commencement of the winding up (i.e. After the presentation of a petition for winding up) shall be void. There are two important aspects here. First is the word "void" need not automatically indicate that any disposition should be ab initio void. The legal implication of the word "void" need not necessarily be a stage of nullity in all contingencies. Black's Law Dictionary gives meaning of the word "void" as having different nuances in different connotations. One of them is of course "null, or having no legal force or binding effect." And the other is "unable in law, to support the purpose for which it was intended." After referring to the nuances between void and voidable the lexicographer pointed out the following:

The word "void" in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of "voidable."

The word "void" is used in statutes in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the legislation intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only.

15. For discerning the legislative idea in employing the word "void" in the context set out in Section 536(2) of the Companies Act the second aspect to be noticed is that the provision itself shows that the word void is not employed peremptorily since the court has power to order otherwise. The words "unless the court otherwise orders" are capable of diluting the rigour of the word "void" and to choose the alternative meaning attached to that word.

16. In Chittoor Distt. Coop. Marketing Society Ltd. v. Vegetols Ltd. A two Judge Bench of this Court considered a plea for validation of payments made by a company after presentation of a petition for winding up. One set of payments were made before the passing of the winding up order and the other set of payments were made thereafter. This Court declined to validate such payments on the ground that

there is no evidence to show that these payments were made either under compulsion of circumstances in order to save or protect the property of the company or that there was any commercial compulsion to enable it to run its business. (SCC P. 169, para 4).

The decision only indicates that such payments could have been made valid if evidence was adduced to show that there was compulsion of circumstances. N fact, this decision lends support to the interpretation that the payments which were made after the commencement of winding up proceedings, would not become ab initio void.

45. Even in case of same parties, Allahabad High Court in Sri Ram Charan Das Vs. Pyare Lal, has held that the result brought about by the interim orders become non est in the eye of law, if final order grants no relief. In this case, the final order granted no relief to Rewa Choudhary, therefore, the interim order will not stand in the way of the petitioners. Paras 6 and 7 of the aforesaid judgment read as follows:

6. The question involved in the instant case is as to the effect of the final order passed in revision upholding the permission, on the suit already instituted. In Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, a Bench of this Court has held that orders of stay or injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est in the eye of law if final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the Commissioner having upheld the permission which became effective from the date it was passed.

7. In *Purshottam Das Vs. Smt. Raj Mani Devi*, a suit was instituted by a landlord for ejectment of his tenant on a permission granted by Rent Control and Eviction Officer. The permission was revoked by the Commissioner. That order was set aside by the State Government with the result that the permission granted by the Rent Control and Eviction Officer, revived. Their Lordships of the Supreme Court in these circumstances, held that on the date the suit was decreed there was a valid permission in existence to sustain the decree for ejectment.

46. The auction held in violation of the interim order in *Rewa Choudhary* is voidable so far as the petitioners are concerned and since the interim order dated 18.12.1992 came to an end when this Court passed judgment dated 10.1.1995 the imperfection or infirmity in the auction held by the JDA stand cured and now the JDA cannot be allowed to withdraw the said compliance by raising the aforesaid wholly untenable ground.

47. *Ram Sharan Singh's* general oral stay will not apply in this case because the JDA decision was upheld by the State Level Settlement Committee.

48. Having considered the question in the light of the pleadings of the parties and the law cited by their counsel and settled position of law, my answers to the aforesaid questions are as follows:

(i) Answer to Question No. 1

49. As per the Exception (ii) of *Gujarat Ambuja Cement (supra)*, the alternative remedy is not a bar where the principles of natural justice have been violated,

50. In the instant case, before cancellation of the Registry, no notice was given to the petitioners and further the other important fact of the case is that the Registry of the sale/lease deed was executed as per the directions of this Court in the earlier writ petition to decide the representation, therefore, the objection of alternative remedy in such cases is wholly untenable.

(ii) Answer to Question No. 2

51. An order is void if it is violative of the direction given by the Court by way of interim order between the same parties and the same is upheld while allowing the writ petition. The interim direction is voidable against the subsequent purchaser who was not party to the earlier litigation wherein interim order was passed and further in case the writ petition is dismissed then the interim order came to an end/rendered non est on account of merger in the final order.

In the instant case, the same became non est on dismissal of the writ petition and. the same will have no effect on the subsequent purchaser (petitioner No. 1).

(iii) Answer to Question No. 3

52. A party to the registry of sale/lease deed has no right to cancel the same and the normal course open is to file a civil suit for cancellation. In case the sale is effected in violation of some statutory mandatory provision of law, consequence

given in the statute will be taken into consideration even then show cause notice is necessary as the sale stands complete as soon as the auction is knocked down in favour of the party.

53. In the instant case, the petitioners have complied with all the terms and conditions of the sale and have paid interest also. Thereafter, possession was also delivered. There was no occasion for the JDA to declare the said land free from all encumbrances. It is also not open to a party to sale to defend the impugned order by saying that some illegality was committed order by saying that some illegality was committed by it as the said party is estopped from doing so, as has been held by the Supreme Court in *Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another*,

(iv) Answer to Question No. 4

54. The instant case is not revival of the auction held in favour of the petitioners but the same is removal of the interim bar created by the interim order against the JDA and after dismissal of the writ petition of Rewa Choudhary, the interim bar stands removed, therefore, it cannot be said that in case the present writ petition is allowed, then the same would amount to restoration of illegality.

55. In the instant case, sometimes the JDA acted in accordance with law and the other time, contrary to the well settled position of law. It is a case where the JDA was acting illegally even after dismissal of the writ petition of Rewa Choudhary by delaying the execution of the registration of the sale/lease deed and after execution of the registration of the sale/lease deed in accordance with law again acted illegally by taking steps for cancellation of the registered sale/lease deed without issuing any notice that too in disregard of the direction of this Court passed in the earlier writ petition whereby the JDA had been directed to decide the representation of the concerned petitioner which was decided in favour of the petitioners. The issue before the State Level Settlement Committee was only relating to the rate of interest imposed by the JDA which was upheld by the State Level Settlement Committee. Therefore, even if there was any oral stay in Ram Sharan's case, then also, the same was/is not coming in the way of the petitioners.

56. Accordingly, the writ petition is allowed and the action of the JDA in making attempt to dispossess the petitioner is declared illegal. It is further declared that the sale/lease deed dated 17.10.2005, registered on 18.10.2005, as corrected on 19.1.2006, is still in force and the cancellation order of the sale/lease deed dated 4.3.2006 will have no effect upon the petitioners and they will enjoy all rights flowing from the registration of the sale/lease deed executed on 17.10.2005, registered on 18.10.2005, as corrected on 19.1.2006. No order as to costs.