(2013) 03 AHC CK 0143

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37885 of 2001

Chandan Singh and Others — APPELLANT

Vs

State of U.P.and Others — RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 281, 281(2), 282, 282, 283, 283

Citation : (2013) 03 AHC CK 0143

Hon'ble Judges : Sabhajeet Yadav, J

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Heard Sri Ram Niwas Singh assisted by Sri A.P. Singh, learned counsel for the petitioners and Sri Shashi Nandan, learned Senior Counsel assisted by Sri Shyam Sunder Mishra for the respondents no. 5 and learned Standing Counsel state respondent.

2. By this petition, the petitioners have challenged the order dated 15.5.2001, contained in Annexure7 of the writ petition and order dated 27.2.1992, contained in Annexure5 of the writ petition passed by the Commissioner, Allahabad Division, Allahabad and further a writ, order or direction in the nature of writ of certiorari for quashing the entire proceedings including the auction sale dated 25.2.1991 and confirmation of auction sale dated 26.3.1991 and sale certificate dated 26.3.1991 issued by S.D.O. Fatehpurrespondent no.3 have also been sought for. Further a relief in the nature of mandamus directing the Commissioner, Allahabad Division, Allahabad to decide the objection of petitioners in Case no. 8 of 1990 on merits by restoring the same to its original number is also sought for.

3. It is stated in the writ petition that for purchasing a Tractor, Chheda Singh alias Chhedi Lal Singh, Mahipal Singh, Ram Dulare Singh, Ram Prasad, Chhabi Nath and Shri Pal have taken loan of Rs. 63,000/ from the Bank on 12.8.1984.

Due to default in payment of instalments due to the Bank a recovery certificate for a sum of Rs. 1,02,280=60 p. was issued on 22.10.1989 against them. Thereafter a writ petition no. 9085 of 1990 was filed by Chheda Singh alias Chhedi Lal Singh, in which this court has permitted him to pay the loan amount in four instalments. The last instalment was payable on 30.1.1991 and recovery was stayed. It appears that on account of default of payment of instalments on the part of Chheda Singh 25.2.1991 date was fixed for auction of the property in dispute, mentioned in sale certificate dated 26.3.1991 and auction was held on the aforesaid date wherein 38 Bigha land of petitioners was sold to the respondent no.5 for Rs.95,000/. When the petitioners came to know about the aforesaid auction, they filed writ petition challenging the said auction proceeding before this court but the said writ petition was dismissed on 27.3.1991 holding that the same was not maintainable. Thereafter there was holiday and after expiry of said holiday the petitioners have filed objection/wrongly describing as appeal under Rule 285I of U.P.Z.A. & L.R. Act before the Commissioner, Allahabad Division, Allahabad on 1.4.1991 which was registered as Case No. 8 of 1991. The copy of said objection/appeal is on record as Annexure4 to the writ petition.

4. It is stated that several points were raised in the said objection against the auction proceeding but on account of default of their counsel the objection was dismissed in default by Commissioner on 27.2.1992. Copy of which is on record as Annexure5 to the writ petition. It is stated that no information was sent by the counsel to the predecessors of petitioners regarding dismissal of the case in default. The applicants before the Commissioner died in between the period 1993 to 1996. The petitioners had no notice or information about the proceedings pending before the Commissioner, Allahabad Division, Allahabad. The land in dispute continued to be recorded in the names of predecessors of the petitioners and after their death in the name of petitioners and other legal heirs. It is stated that village was under consolidation operation during the period 1991 when the auction was held and confirmed on 26.3.1991 but the petitioners have been allotted chaks over their original holding which was subject matter of auction and different holdings have been allotted in favour of petitioners at different places and final record of C.H. Form 45 was prepared in the names of petitioners and at present the entry of names of petitions is there in the revenue records. True copies of Khatauni are on record as Annexure5/1 to 5/2 to the writ petition. It is also stated that during consolidation operation no objection was filed either under Section 9 or under section 12 of the U.P.C.H. Act by the respondent no.5 auction purchaser (wrongly mentioned in the writ petition as respondent no.4), therefore, his right and title based on sale certificate dated 26.3.1991 have come to an end in view of Section 49 of U.P.C.H. Act. It is also stated that an application was moved by the respondent no.5 (wrongly mentioned as respondent no.4), after closure of the consolidation proceeding, which was dismissed on 4.6.1997 and the names of petitioners continued to be recorded as bhumidhar over the land in dispute, which was allotted to them during the

consolidation operation. True copy of the order dated 4.6.1997 is on record as Annexure6 to the writ petition.

5. It is stated that when the respondent no.5 (wrongly mentioned as respondent no.4) started interference in the possession of the petitioners over the chaks allotted to them in the month of March, 2000, on the basis of auction sale, then petitioner no. 1 proceeded to enquire the matter and came to learn about the dismissal of objection dated 6.4.2000 and an application for restoration of the case was moved by the petitioners on 7.4.2000 through Sri S.K. Mishra, Advocate, who was engaged by the petitioners for the said purpose and to conduct further proceedings before the Commissioner. True copy of the restoration application and affidavit filed in support thereof is on record as Annexure 6A and 6B to the petition. The application for restoration has been dismissed on 15.5.2001 by the Commissioner holding the same to be barred by limitation without considering the merit of the said application though there was sufficient explanation in the affidavit which stood uncontroverted by any counter affidavit.

6. The petitioners have challenged the entire auction proceedings in as much as the orders which were passed against them inter alia on the grounds that the auction sale was void and was in contravention of the various provisions of the U.P.Z.A. & L.R. Act and Rules framed thereunder particularly that entire holding of the petitioners have been sold at through away price and petitioners have become landless only for a loan of Rs. 63,000/ for the purchase of Tractor. The Tractor itself was put to auction and thereafter the entire holdings of 38 bigha and odd of the petitioners have been put to auction sale for a sum of Rs.95000/ only for satisfying the aforesaid loan, that the auction proceeding was held by Nayab Tehsildar who was not Assistant Collector and was not specially appointed by Collector to conduct the auction sale and the S.D.O. was not authorised under law either to confirm the sale or to issue sale certificate, it is only the Collector, who could confirm the auction sale under Rule 285J of U.P.Z.A. & L.R. Rules, if no objection as required under Rules 285H and 285I has been moved before the Collector and Commissioner respectively. Therefore, the order of confirmation is without jurisdiction and is nullity.

7. It is also stated that sale of 38 bigha and odd through said auction in favour of respondent no.5 was wholly illegal in view of the contravention of Section 154 of the U.P.Z.A. & L.R. Act as no transfer of land more than 12.50 acres (20 bigha) could be made in favour of one person and in such situation the Collector had no jurisdiction to confirm the sale, therefore, the confirmation by S.D.O. was illegal on this ground alone. It is also stated that a period of 30 days is prescribed under law for filing objection before the Collector or Commissioner under Rules 285H and 285I respectively. The S.D.O. has confirmed the sale on 26.3.1991 i.e. within 30 days, whereas the auction sale was held on 25.2.1991 and accordingly the sale was confirmed within 28 days, which itself is wholly illegal and contrary to the provisions of Rule 285I of the U.P.Z.A. & L.R. Rules.

8. The State Government as well as private respondent no.5 have filed counter affidavits and supplementary counter affidavits in the writ petition and supported the action taken against the petitioners, reference of which shall be given herein after at relevant places.

9. However, Sri Shashi Nandan, learned Senior Advocate appearing for private respondent no.5 has raised a preliminary objection about the maintainability of objection of petitioners filed before the Commissioner under Rule 285I of U.P.Z.A. & L.R. Act by placing reliance upon Rule 285K of U.P.Z.A. & L.R. Rules and contended that by virtue of said rule, if no application under Rule 285I is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred and only remedy would be available to the petitioners to institute a suit in civil court for the purpose of setting aside a sale only on the ground of fraud.

10. In reply to it, learned counsel for the petitioners has contended that it is no doubt true that under Rule 285I of U.P.Z.A. & L.R. Rules an application may be made to the Commissioner for setting aside the sale on the ground of some material irregularity or mistake in publishing or conducting the sale within a period of 30 days from the date of sale, but the petitioners have earlier filed a writ petition before this court challenging the auction proceeding within 30 days of auction sale and the said writ petition was dismissed on 27.3.1991 holding that the same is not maintainable. Thereafter there was holiday and after expiry of said holiday the petitioners have filed objection under Rule 285I of U.P.Z.A. & L.R. Act before the Commissioner, Allahabad Division, Allahabad on 1.4.1991 which was registered as Case No.8 of 1991, therefore, in view of provisions of Section 12 of Limitation Act the time taken in obtaining certified copy of auction sale and sale certificate for challenging before the High Court was liable to be excluded from the period of 30 days prescribed for filing objection and further time taken by this court during the filing and disposal of earlier writ petition is also liable to be excluded under Section 14 of Limitation Act from 30 days period prescribed for filing said objection, therefore, it cannot be said that no application under Rule 285I was made by the petitioners within time allowed therefor. He further submits that the illegalities committed in confirmation of auction sale are not covered within the meaning of the phrase "some material irregularity or mistake in publishing or conducting the sale" therefore, the writ petition can be filed straightway challenging the confirmation of sale and provisions of Rule 285K of the U.P.Z.A. & L.R. Rules will not come in the way. In support of his aforesaid submission learned counsel for the petitioner has placed reliance upon the decision of Apex Court rendered in Smt. Shanti Devi Vs. State of U.P. & others, A.I.R. 1997 S.C. 3541. But before dealing with rival contentions of parties, it would be useful to refer the relevant provisions of law and the aforesaid decisions of the Apex Court.

11. Section 284 of the U.P.Z.A. & L.R. Act deals with the attachment, lease and sale of holding of defaulter, which provides that Collector may in addition to or

instead of any other processes hereinbefore specified, either of his own motion or on the application of the Land Management Committee, attach the holding in respect of which an arrear is due. Section 286 of the Act provides procedure and power to proceed against the interest of defaulter in other immovable property, which provides that if any arrears of land revenue cannot be recovered by any of the process mentioned in clauses (a) to (e) of Section 279, the Collector may realize the same by attachment and sale of interest of defaulter in any other immovable property of the defaulter.

12. Rule 281 of U.P.Z.A. & L.R. Rules, 1952 deals with procedure and power of sale of immovable property which inter alia provides that process for sale of holding under section 284 and other immovable property under section 286 shall be issued by the Collector. Rule 281 (2A) of the said Rules provides that in the case of sale of a holding the Collector shall auction the holding in lots of 1.26 Hectares (3.125 acres) to 5.04 Hectares (12.50 acres) after working out and announcing the land revenue and the estimated value of each lot. It should also be made clear that only those persons would bid in the auction, acquisition of land by whom would not contravene the provisions of Section 154.

13. For ready reference Rule 281 of the U.P.Z.A. &.L.R. Rules is quoted as under:

"281. Section 284. {((1) Recourse can only be had to the sale of the holding under Section 284 when the process specified in clause (a), (b), (c) and (d) of Section 279 would be insufficient for the recovery of the arrear.

{(2) Process for sale of holding under Section 284 and of other immovable property under Section 286 shall be issued by the Collector.

(2A)In the case of sale of a holding the Collector shall auction the holding in lots of 1.26 hectares (3.125 acres) to 5.04 hectares (12.50 acres) after working out and announcing the land revenue and the estimated value of each lot.

It should also be made clear that only those persons would bid in the auction, acquisition of land by whom would not contravene the provisions of Section 154.}

{(3) * * *}"

14. Rule 282 of said Rules provides that proclamation for sale shall be in Z.A. Form 74. Rule 283 provides that in proclamation for sale under section 286, the Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual. For ready reference the provisions of Rules 282 and 283 are quoted as under:

"282. Section 286. The proclamation for sale shall be in Z.A. Form 74.

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

15. Rule 285A provides the officer authorised and time frame for holding auction sale as under:

"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 that sale."

16. Rules 285H, 285I, 285J and 285K of U.P.Z.A. & L.R. Rules deal with the grounds and procedure for setting aside the sale and confirmation of sale, as under:

"285H. (1) Any person whose holding or other immovable property has been sold under the Act may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector''s office

(a) for payment to the purchaser, a sum equal to 5 per cent of the purchaser money; and

(b) for payment on account of the arrear, the amount specified in the proclamation in Z.A. Form 74 as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account; and

(c) the costs of the sale.

On the making of such deposit, the Collector shall pass an order setting aside the sale:

Provided that if a person applied under Rule 258I to set aside such sale he shall not be entitled to make an application under this rule.

(2) {* * * *}.

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.

285J. On the expiration of thirty days from the date of the sale if no such application as is mentioned in Rule 285H or Rule 285I, has been made or if such application has been made and rejected by the Collector or the Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154. Every order passed under this rule shall be final."

285K. If no application under Rule 285I is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred:

Provided 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."

17. So far as maintainability of objection of the petitioners under Rule 285I of U.P.Z.A. & L.R. Rules challenging the confirmation of auction sale before the Commissioner, Allahabad Division, Allahabad is concerned, learned counsel for the petitioners has submitted that immediately when they came to know about the auction sale of property in dispute, they have challenged the said auction proceeding by filing a writ petition before this court. The aforesaid writ petition was dismissed on 27.3.1991 as not maintainable. Thereafter there was holiday and after expiry of holiday the petitioners took advice from the counsel and without causing any delay, they filed aforesaid objection under Rule 285I of U.P.Z.A. & L.R. Rules challenging the auction sale dated 25.2.1991. The aforesaid facts had been stated by the petitioners in para9 of their objection filed before Commissioner, Allahabad Division, Allahabad under Rule 285I of U.P.Z.A. & L.R. Rules, which was registered as Appeal No. 8 of 1991 (Mahipal & others Vs. State of U.P. & others) contained in Annexure3 of the writ petition, therefore, in my opinion, as submitted by the learned counsel for the petitioners, the time taken for obtaining certified copy of the relevant records for challenging the auction sale before this court is liable to be excluded under section 12 of Limitation Act and further time taken in presenting and disposal of earlier writ petition of the petitioners is liable to be excluded under section 14 of Limitation Act from 30 days period of limitation prescribed for filing objections under Rule 285I of the U.P.Z.A. & L.R Rules. Therefore, in my opinion, it cannot be said that the petitioners did not file objection under Rule 285I, within the time allowed therefor and their objection is barred by Rule 285K of said Rules.

18. That apart further submission of learned counsel for the petitioners is that even if the confirmation of auction sale has been done by an officer, who is not empowered to confirm the auction sale and the confirmation of auction sale was done within 30 days in contravention of Rule 285J of U.P. Z.A. & L.R. Rules and in contravention of the provisions of Section 154 of U.P.Z.A. & L.R. Act, in that situation, it cannot be said that the auction proceeding has been challenged merely on the ground of some irregularity or mistake in publishing and conducting the auction sale, accordingly challenge to the illegalities committed in confirmation of auction sale cannot be barred bys Rule 285K of said Rules and this court can correct such illegality or mistake straightway under Article 226 of the Constitution of India. In support of his submissions, he has placed reliance upon a decision of Apex Court rendered in Smt. Shanti Devi Vs. State of U.P. &

others, A.I.R. 1997 S.C. 3541.

19. In Smt. Shanti Devi (Supra) case while dealing with the issue with reference to Rule 285K of U.P.Z.A. & L.R. Rules it was held that the objection that sale was confirmed in violation of Section 154 of U.P.Z.A. & L.R. Act is not related to "irregularity or mistake in publishing or in conducting the sale", therefore, such objection is not barred by Rule 285K of U.P.Z.A. & L.R. Rules and such objection can be raised and corrected even in the writ jurisdiction under Article 226 and 32 of the Constitution of India and Apex Court has further held that the failure of authority to satisfy itself as to compliance of Section 154 of U.P.Z.A. & L.R. Act vitiates the confirmation of sale.

20. The pertinent observations made by Apex Court in aforesaid case in paras 15, 16, 17, 18, 19, 23 and 24 of the aforesaid decision are quoted as under:

" 15. It is clear that a statutory duty is cast on the Collector to keep Section 154 in mind at the stage of confirmation of sale. If it is an objection as to non application of mind to a provision statutorily relevant at the stage of confirmation, the objection cannot be treated as an objection relating to the irregularity or mistake at or before the stage of sale. That is why Rule 285K will not come in the way.

16. The question also arises that if no objection was filed within 30 days of sale under Rule 285I or J, then no other application could have been filed before the Commissioner after the confirmation. Assuming it to be so, we are of the view that the writ petition filed by the appellant can be treated as a challenge to the order of the Assistant Collector''s order that he did not apply relevant factors which he was bound to take into account while confirming the order. The point raised under Section 154 (1) does not refer to ''fraud'' and therefore, remedy of suit mentioned in proviso to Rule 285K is not attached.

17. Once the above hurdle is crossed, the next question is whether such an issue relevant to Section 154 can be raised in relation to execution sales. Section 154 of the Act deals with restrictions on transfer by a bhumidar. It reads as follows:

" Section 154. Restrictions on transfer by a bhumidar : (1) Save as provided in subsection (2), no bhumidar shall have a right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, '' exceed 5.0586 hectares. (12.50 acres) in Uttar Pradesh."

18. No doubt, there is not definition of sale in Section 3 of the Act which deals with the meaning of several words. But, it has to be noticed that Rule 285I requires the Collector to ''satisfy'' himself whether the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154. Obviously, it is intended that those who purchase in revenue sale should not have a greater advantage over those who obtain property by transfers intervivos.

19. In our view, therefore, the High Court was wrong in thinking that the provisions of Section 154 were not applicable to court sales. If the ruling in Gaon Sabha v. Dy. Director of Consolidation, Lucknow 1968 Rev. Dec. 168 relied upon by the High Court expressed such a view, then it must be held to be not correct in law in view of the express reference to Section 154 in Rule 285J. Obviously, the attention of the High Court in the present case was not drawn to Rule 285J.

23. The question then is whether the Assistant Collector was ''satisfied'' on the material before him that the purchaser did not contravene Section 154 (1). In our view, the statement in the confirmation order by the Collector that the affidavit of the purchaser that she will not, after purchase, exceed Ac. 12.50 is "attached" to the confirmation order, does not amount to ''satisfaction'' of the officer, which was to be arrived at, on an examination of the relevant revenue records of the area or village concerned. The mere statement of fact by the purchaser by an affidavit before the Collector that the purchaser did not exceed AC. 12.50 does not held. The word ''satisfied'' means that there must be evidence of application of mind by the authority concerned. Merely attaching the affidavit of the purchaser, in our view, does not amount to application of mind but on the other hand, amounts to nonapplication of mind. As already stated, the Commissioner merely referred to the contention of purchaser that her holding, after purchase, did not exceed Ac. 12.50. The Commissioner, also referred to the appellant''s contention to the contrary. He did not give any finding on this behalf. The High Court''s attention, as already stated, was not drawn to the express language of Rule 285J which refers to Section 154. The High Court therefore proceeded on the assumption that Section 154 did not apply to involuntary sales and it also though that it was for the Gaon Sabha to intervene. It did not enter any finding regarding the ''satisfaction'' of the Assistant Collector as required by Rule 285J. As stated earlier, even if the appellant''s application before the Commissioner is to be treated as not maintainable, it is open to the appellant to challenge the order of Confirmation dated 2.8.82 on the ground of violation of the requirement of Section 154 and we can read the said order and quash it inasmuch as we are not dealing with irregularity or mistake in the proclamation or conduct of sale or with fraud in the conduct of sale. We are only dealing with an illegality arising out of the confirmation order passed under Section 285J in not noticing Section 154(1) and this can be corrected directly in writ jurisdiction.

24. In the result, we hold that the confirmation of sale order dated 2.8.1982 passed by the Assistant Collector and the order of the Commissioner dated 26.9.1983 rejecting the objections of the appellant are vitiated. The judgment of the High Court, for the reasons given above, is also set aside."

21. In view of aforesaid legal position stated by Apex Court, in my opinion, while deciding the objection of the petitioners the Commissioner was required to be satisfied about the violation of provisions of Section 154 of U.P.Z.A. & L.R. Act as to whether after adding the purchased land through auction sale in the land earlier held by the auction purchaser there would be contravention of the

provisions of Section 154 of U.P.Z.A. & L.R. Act or not. In other words after adding the land purchased through auction sale in the land earlier held by the auction purchaser as to whether his land would not exceed the area of 12.50 acres. In instant case there is no dispute that an area of 38 bigha land of petitioners which is more than 12.50 acres of agricultural land has been sold in the auction proceeding to a single person namely auction purchaser respondent no.5, therefore, such auction sale, in my considered opinion, in view of law laid down by Apex Court in Smt. Shanti Devi''s case (supra) is contrary to the provisions of Section 154 of U.P.Z.A. & L.R. Act and held to be illegal and nullity, thus cannot be sustained.

22. Secondly, there is no dispute that auction sale was confirmed by Sub Divisional Officer, Fatehpur within 30 days from the date of auction sale whereas under Rule 285J of U.P.Z.A. & L.R. Rules, it is only Collector who is empowered to confirm the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of provisions of Section 154 of U.P.Z.A. & L.R. Act and that too on expiry of 30 days from the date of the sale, if no application under Rules 285H and 285I has been made or if such application is made and rejected by the Collector or Commissioner but in instant case, since the auction was admittedly held on 25.2.1991 and sale was confirmed on 26.3.1991 by the Sub Divisional Officer, Fatehpur, who is not competent to confirm said auction sale and that too within 29 days from the date of auction sale, therefore, in my opinion, the confirmation of auction sale in question and issue of sale certificate by the Sub Divisional Officer, Fatehpur is contrary to the mandatory provisions of Rule 285J of U.P.Z.A. & L.R. Rules, thus cannot be sustained.

23. Although the writ petition can be decided merely for the reasons stated herein before but as abundant caution it would be useful to deal with other questions involved in the writ petitioner herein after.

24. Thus, next question arises for consideration as to whether the auction sale in question could be held by Naib Tehsildar or not? In this connection, it is to be noted that this question has directly come for consideration before a Division Bench of this court in R.D. Cements Industries Pvt. Ltd., Lucknow Vs. Collector/ D.M., Lucknow 2010 A.D.J. (3) 263 and after analysing the relevant provisions of U.P. Land Revenue Act, U.P.Z.A. & L.R. Act and Rules in para 63 and 64 of the said decision, this court has held that Rule 285A of the U.P.Z.A. & L.R. Rules empowers the Collector in person or Asstt. Collector specially appointed by him in this behalf to hold the auction and sale proceeding. It was further held that Naib Tahsildar is not Assistant Collector, First Class, therefore, he can not be authorised to hold auction sale under said Rules. The pertinent observations made in para 63 and 64 of the decision are quoted as under:

"(63). Rule 285A of the U.P.Z.A. & L.R. Rules, empowers the Collector in person or Assistant Collector specifically appointed by him in this behalf, to hold auction and sale proceeding. A plain reading of Rule 285A provides that only those

Assistant Collector shall be empowered to hold auction and sale proceeding, who has been authorised by the Collector. The purpose of delegation of power conferred by Rule 285A is to delegate the power to an Officer who is occupying the status of an Assistant Collector. A combined reading of definition of "Collector" provided in U.P.Z.A. & L.R. Act read with Rule 285A, seems to delegation of the power to Assistant Collector of First Class. It shall not cover the Assistant Collector Second Class i.e., Naib Tahsildar. Subsection (4) of Section 3 of the U.P.Z.A. and L.R. Act specifically provides that the Collector shall include an Assistant Collector of First Class empowered by the State Government by notification in the Gazette.

(64). Admittedly, the State Government by notification (supra), empowers the Tahsildars to work as Assistant Collector of First Class and not the Naib Tahsildars. The power conferred on Collector, to appoint an Assistant Collector for auction and sale, cannot travel beyond the definition provided under SubSection (4) of Section 3 of the U.P.Z.A. & L.R. Act. Accordingly, giving harmonious construction to provisions contained in SubSection (4) of Section 3 read with Rule 285A of the U.P.Z.A. & L.R. Rules, the auction and sale proceeding may be conducted either by the Collector himself or the Assistant Collector of First Class duly appointed by the Collector and no other authority."

25. Thus, instant case, admittedly the auction sale was held by the Naib Tahsildar of concerned Tahsil, who was not Assistant Collector First Class. Therefore, in view of the law laid down by this court, he had no authority under law to hold said auction as such, in my opinion, the auction sale held by the Naib Tahsildar on 25.2.1991 in respect of property in dispute cannot be sustained.

26. Now before deciding other issues involved in the case, it would be useful to refer some decisions of Apex Court having material bearing with the questions in controversy involved in the case, herein after.

27. In the case of Union Bank of India Vs. Official Liquidator, 2000 (5) SCC 274, the Apex Court has observed as under:

"In auctionsale of the property of the company which is ordered to be wound up, the Company Court acts as a custodian for the interest of the Company and its creditors. It is the duty of the Company Court to satisfy itself as to reasonableness of price by disclosing valuation report to secured creditors of the company and other interested persons. It was further held that the Court should exercise judicial discretion to ensure that sale of property should fetch adequate price. For deciding what would be reasonable price, valuation report of an expert is essential. The Company Judge himself must apply his mind to the valuation report. The Court observed that the High Court did not interfere with the auctionsale on the ground of sympathy for the workers which was not proper. The auctionsale was, therefore, set aside by this Court and the Official Liquidator was directed to resell the property after obtaining fresh valuation report and after furnishing copy of such report to secured creditors."

28. In Divya Manufacturing Company (P) Ltd. and another Vs. Union of India and others, AIR 2000 SC 2346, the Apex Court held that in appropriate cases, even the confirmed sale can be set aside.

29. In Gajraj Jain v. State of Bihar and others, (2004) 7 SCC 151, the Apex Court held that in absence of valuation report and reserve price, the auction sale becomes only a pretence and if there is no proper mechanism and if the intending purchasers are not able to know the details of the assets or intemised valuation, the auctionsale cannot be said to be in accordance with law. If publicity and maximum participation is to be attained, all bidders must know the details of the assets and the valuation thereof.

30. In State of Uttar Pradesh and others Vs. Swadeshi Polytex Limited and others (2008) 12 SCC 596 the sale proclamation had been issued on 1.4.2005 without any valuation of properties and only the area of vacant land had been specified therein and it was this notice that had been served on the chowkidar on 21.4.2005 and publication had been made in newspaper on 22.4.2005.The auction was held on 2.5.2005. In backdrop of this case, it was found that there was clear violation of Rules 282 and 283 of U.P.Z.A. & L.R. Rules. The Apex Court further held that the question of valuation is of the utmost importance as it is designed to ensure the best price for the property and it is essential in this circumstance that wide publication and notice of the proposed sale should be given as per Rule 285A of the Rules. The pertinent observations made by Apex Court in paras 31 and 37 of the aforesaid decision are quoted as under:

31. Rule 283 provides for the estimated value of the property to be determined under the provisions contained in Chapter XV of the Revenue Manual. The said Chapter specifies the procedure for valuation of the property in terms of other similar properties. It is, however, clear from the record that the figure Rs.27 crores, the value of the property which is mentioned in the advertisement in Amar Ujala, appears to have picked up without any basis as it is not the case of UPSIDC that the property had been valued in accordance with the provisions of the Revenue Manual or by a valuer or expert in the field.

37. The question of valuation is to our mind of the utmost importance as it is designed to ensure the best price for the property and it is essential in this circumstance that wide publication and notice of the proposed sale should be given as per Rule 285A which postulates a notice of 30 days between the date of issuance of the sale proclamation and the date of auction. It can hardly be overemphasised that the proper valuation of the property and wide publicity of the proposed auction is intimately linked with the price that the auction fetches. As already mentioned above, the auction had been held on 2.5.2005. The sale proclamation had been issued on 1.4.2005, and served on the chowkidar on 21.4.2005, the publication made in Amar Ujala on 22.4.2005 whereas Rule 285A itself postulates a notice period of 30 days to be counted from the date of issuance of the sale proclamation. While dealing with a similar situation, this is what this Court had to say in S.J.S. Business Enterprises (P) Ltd. Vs. State of

Bihar 2004 (7) SCC 166 (SCC 17576, paras 1718)

" 17. We are of the view that the sale effected in favour of Respondent 6 cannot be sustained. It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabilise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. (See Pannalal Binjraj Vs. Union of India, AIR a p. 409) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in Mahesh Chandra Vs. U.P. Financial Corpn. are no longer in place in view of the subsequent decision in Haryana Financial Corpn. Vs. Jagdamba Oil Mills. However, in overruling the decision in Mahesh Chandra this Court has affirmed the view taken in SIPCOT v. Contromix (P) Ltd.1995 (4) SCC 595 and said that in the matter of sale under Section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

'' 12....... This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.'' (SIPCOT case, SCC p. 601, para 12)

18. Adequate publicity to ensure maximum participation of bidders in turn requires that fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subjectmatter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on ''asiswhereis basis'' to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required."

We must, therefore, repel Mr Dwidedi''s argument that as SPL had suffered not prejudice in the auction proceedings, the sale should not be interfered with.

31. Thus, on a close analysis of the aforesaid decisions it is clear that in Union Bank of India Vs. Official Liquidator (supra) the Apex Court has held that in auction sale of property of company which is ordered to be wound up, the Company Court acts as custodian for the interest of company and its creditors. It is the duty of the Company Court to satisfy itself as to reasonableness of price by disclosing valuation report to secured creditors of the company and other interested persons. The Court should exercise judicial discretion to ensure that

sale of property should fetch adequate price. For deciding what would be reasonable price, valuation report of an expert is essential. In Gajraj Jain Vs. State of Bihar and others (supra) it was held that in absence of valuation report and reserved price the auction sale becomes only a pretence and if there is no proper mechanism and if intending purchasers are not able to know the details of the asset or itemised valuation, the auction sale cannot be said to be in accordance with law. If publicity and maximum participation is to be attained, all the bidders must know the details of asset and valuation thereof. In State of Uttar Pradesh and others Vs. Swadeshi Polytex Ltd. (supra) the Apex Court has held that the question of valuation is of utmost importance as it is designed to ensure the best price for the property and it is essential that wide publication and notice of proposed sale should be given as per Rules 285A of the Rules. In SIPCOT vs. Contromix (P) Ltd. 1995 (4) SCC 595 it was held by the Apex Court that reasonableness is to be tested against dominant consideration to secure best price for the property to be sold. The Apex Court further held that this can be achieved only when there is maximum public participation in the process of sale and everybody has opportunity of making offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. It was further observed that adequate publicity to ensure maximum participation of bidders in turn requires that fair and practical period of the time must be given to purchasers to effectively participate in the sale. Unless the subject matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on ''asiswhereis basis'' to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.

32. Now testing the facts of the case on touch stone of aforesated legal position, it is to be noted that in para6 of the Supplementary counter affidavit sworn by Satya Prakash Rai, S.D.M. Sadar, Fatehpur dated 20.11.2012 filed in the writ petition, it is stated that sale proclamation in Z.A. Form No. 74 was issued and published on 16.2.1991 fixing 25.2.1991 for auction sale of the land in dispute and proclamation is enclosed as Annexure4 to said affidavit. A perusal of which indicates that in the sale proclamation only plot numbers with area sought to be sold along with amount of arrears sought to be recovered have been mentioned. The estimated value of land has not been stated in the sale proclamation. The proclamation was issued by S.D.O. and Naib Tahsildar was authorised to hold the auction. Besides this, in the counter affidavit and supplementary counter affidavits nothing has been stated about the service of notice of sale proclamation upon the petitioners and about the manner and mode of its publication. It is also necessary to be noted that while issuing said proclamation for sale neither the lots were prepared nor estimated value of such lots were stated in the sale proclamation, therefore, in my opinion while issuing sale proclamation the provisions of Rule 281 (2A) and Rule 283 of U.P.Z.A. & L.R.

Rules have been violated as such in view of law laid down by the Apex Court referred herein before the said auction sale was merely a pretence and cannot be said to be held in accordance with law.

33. Further under Rule 285A, sale shall not take place until after expiry of atleast 30 days from the date of issuance of sale proclamation but in instant case, the sale proclamation was admittedly issued on 16.2.1991 by Sub Divisional Officer fixing 25th February, 1991 for auction sale. Neither notice of auction sale was served upon the petitioner nor publicity was done and the sale was held within a period of 8 and 9 days from the date of proclamation and it was not held after expiry of period of 30 days from the date of issuance of said proclamation for sale. In my opinion, said auction was held in utter violation of Rule 285A of U.P.Z.A. & L.R. Rules and law laid down by the Apex Court, therefore cannot be sustained.

34. It is also not in dispute that 38 bigha agriculture holding of the petitioners has been sold in the said auction proceeding only for Rs. 95,000/. In the supplementary counter affidavit referred herein before filed by Sub Divisional Officer, it is stated that according to the Circle rate prevailing at that time, the value of land which was subject matter of auction sale would come to Rs. 3,65,970/ as calculated in Annexure3 of said supplementary counter affidavit but the said land has been sold only for Rs. 95,000/. It is to be noted that circle rate is a minimum price of land fixed by the Collector for the purposes of payment of stamp duty on the instruments of saledeed and other conveyance. It is not actual market price of the land such market price would be much more than circle rate fixed by the Collector of the District. In this view of the matter, I am of the considered opinion that since the proper publicity of the auction was not done, therefore, auction sale was merely a pretence, and, auctioned land could not fetch, adequate price in the said auction as such the auction of the land in question cannot be sustained.

35. In view of the foregoing discussion, I am of the considered opinion that entire auction proceedings including the auction sale of the property in dispute held on 25.7.1991 and confirmed on 26.3.1991 and pursuant sale certificate issued to the respondent no. 5, and impugned orders dated 15.5.2001 (Annexure7), 27.2.1992 (Annexure5) of writ petition passed Commissioner Allahabad Division Allahabad are liable to be quashed.

36. Now, further question arises for consideration that what would be effect of the quashing of the auction proceeding and Sale certificate and in given facts and circumstances of the case what would be follow up action in the matter. In this connection, it is to be noted that in the writ petition, the petitioners have clearly stated that inspite of said auction sale, the land which was subject matter of auction sale and pursuant sale certificate continued to be recorded in the names of the predecessorsininterest of the petitioners and thereafter during the consolidation operation said land came to be recorded in the names of petitioners and they were given valuation of aforesaid plots and some chaks were allotted at

their aforesaid original plots and some chaks were allotted at different plots in lieu of aforesaid original plots which were sold in auction proceeding. Contrary to the aforesaid statement of fact Respondent no. 5 auction purchaser, in his supplementary counter affidavit filed in November 2012, it has been stated that in pursuance of the said sale, possession of the land in dispute has been given to him and he is paying land revenue to said land. In support of said statement he has also filed revenue receipts of the said village along with the said supplementary counter affidavit, but from the perusal of said revenue receipts it is not clear that said revenue receipts are related to the land which was subject matter of auction sale. However, in any view of the matter once the entire auction proceeding including auction sale and pursuant sale certificate is quashed by this Court, and sale is set aside in such situation in my opinion, any right, title and interest accrued over the land in dispute stand extinguished and auction purchaser shall be entitled to receive back his purchase money plus an amount not exceeding five percent of purchase money, under Rule 285L of U.P.Z.A.&L.R. Rules For ready reference Rule 285L is extracted as under:

"285L. Whenever the sale of any holding or other immovable property is set aside under Rule 285H or Rule 285I, the purchaser shall be entitled to receive back his purchase money plus an amount not exceeding 5% of the purchase money as the Collector or the Commissioner, as the case be may determine."

37. Thus, it is clear that whenever the sale of any holding or other immovable property is set aside under Rule 285H or Rule 285I, the purchaser shall be entitled to receive back his purchase money plus an amount not exceeding %5 of the purchase money as the Collector or the Commissioner, as the case may be may determine.

38. In the instant case, since auction sale has been set aside by this Court as referred hereinbefore, therefore, in given facts and circumstances of the case, I am of the considered opinion that purchaser shall be entitled to receive back his purchase money plus the amount not exceeding 5% of purchase money as indicated under Rule 285L of U.P. Z.A. & L.R. Rules. Therefore, the petitioners are directed to deposit with the collector a sum equal to 5% of the purchase money plus purchase money which was paid by the purchaser for payment of arrears due to the petitioner plus cost of sale as provided under Rule 285H of U.P. Z.A. & L.R. Rules, within two months thereupon, the Collector shall refund the purchase money plus the amount not exceeding 5% of the purchase money to the auction purchaserrespondent no.5 within another period of one month. In given facts and circumstances of the case, I am not inclined to grant any other amount to be refunded to the auction purchaser Respondent no. 5. It is also for the reason that auction purchaser claims to be in possession over the land which was subject matter of auction sale whereas the petitioners have also claimed that they are continuing in possession over the said land. In any view of the matter, in case the auction purchaserrespondent no. 5 is found to be in possession over the land in dispute, which was subject matter of auction sale, the said land is directed to

be restored in possession of the petitioners according to their shares within a period of two months from the date of production of a certified copy of this order before the Collector concerned. In case the petitioners, as stated by them, are still in possession, the Collector concerned need not undertake exercise of restoration of possession over the land in dispute to the petitioners.

39. However, in case the petitioners make default in payment of amount as stated hereinbefore within a period of two months, it shall be open for the Collector to proceed again to recover the amount aforestated in accordance with the relevant provisions of the U.P.Z.A. & L.R. Rules read with following direction:

"(i) Before issuing sale proclamation in case of sale of a holding the Collector shall work out estimated value of land or property ordered for sale by seeking report from valuer and by taking notice of current circle rate of said property fixed by the Collector while working out the estimated value of the property. In case it is found that the valuer''s report is lesser than the circle rate fixed by the Collector of the said land, the estimated value of holding/land sought to be auctioned shall be calculated on the basis of current circle rate of the land fixed by the Collector of the District.

(ii) The estimated value of land sought to be auctioned calculated in aforesaid manner shall be treated to be reserve price of holding/property sought to be auctioned and the property shall not be auctioned below such reserve price.

(iii) The estimated value of the property/reserve price so determined shall be stated in the sale proclamation issued by the Collector. The Collector shall also state full description and details of property including its location and nature in the said proclamation for sale.

(iv) The publication of sale proclamation shall be made besides the mode prescribed under Rule in two daily newspapers having wide circulation in the locality immediately after issuance of sale proclamation in addition to traditional mode of publicity provided under the Rules so that willing purchaser may get reasonable opportunity to participate in the auction proceedings.

(v) In breach of any of the aforesaid directions would give rise cause for; (i) invalidating the auction sale and also (ii) cause of complaint against the erring officers responsible for issuance of proclamation for sale, publishing and conducting the sale for initiating contempt proceeding against them.

40. With the aforesaid directions/observations, the writ petition succeeds and is allowed.

