(2006) 09 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1334 of 1996

Jayant Dhole APPELLANT

Vs

Additional Commissioner and Others RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 92, Order 21 Rule 92(2)
Maharashtra Land Revenue Code, 1966 — Section 13, 13(1), 13(4), 2(34), 202

Citation : (2007) 1 ALLMR 265 : (2007) 1 MhLj 850

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; A.R. Taiwade, AGP for respondent Nos. 1 to 4 and 7 and N.R. Saboo, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The petitioner has challenged the orders dated 1-6-1992 passed by the Collector, Amravati, setting aside the auction dated 9-3-1992 where he was the highest bidder and its confirmation in appeal by the Additional Commissioner, Amravati Division, Amravati. This Court has while issuing Rule in the matter, granted interim relief and prohibited the owner i.e. respondent No. 5 from creating any third party interest in the matter.

2. The property admeasuring 14,520 sq. ft. from Land Survey No. 2/2, total area 2 H, 27 R of Mouza Rasulpur was proceeded against by respondent No. 4 -Naib Tahsildar, Morshi, for recovery of arrears of Rs. 81,618/- of State Government towards non-agricultural assessment. The auction sale was conducted on 9-3-1992 and bid of the petitioner at Rs. 3,10,000/- was found to be higher. It was accepted by respondent No. 4 - Naib Tahsildar and the petitioner, as required, immediately deposited l/3rd amount of Rs. 1,04,000/- in cash. The remaining amount was to be paid as per provisions of Section 202 of Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the Code). The

bid of the petitioner was accepted by respondent No. 4 on 9-3-1992 and he placed the papers before respondent No. 3 - Sub-Divisional Officer, Morshi, for confirmation. The petitioner states that on 12-3-1992, he approached respondent No. 4 - Naib Tahsildar for accepting the balance amount but Naib Tahsildar communicated to him that the balance amount could be accepted only after confirmation of sale. When the proceedings were pending before respondent No. 3 - Sub-Divisional Officer, respondent No. 5 - Society preferred Revision Application before respondent No. 2 - Collector, against auction proceedings which came to be registered as Revenue Revision No. RRC-71/ Yerla-1/91-92. The ground of attack in Revision was as the society was under liquidation, in view of provisions of Sections 107 and 163(2) of Maharashtra Co-operative Societies Act, 1960, the property could not have been subjected to auction and that the auction consideration was inadequate.

3. It appears that when these Revision proceedings were pending before respondent No. 2 - Collector, respondent No. 6, another co-operative processing society which claims to run the Ginning and Pressing Factory of respondent No. 5 - Society on lease sought to deposit the government dues to the extent of Rs. 81,618/- and amount of Rs. 15,500/- as Commission and amount of Rs. 1,000/- towards cost of auction proceedings, total amount of Rs. 98,118/- with Tahsildar, Morshi. Accordingly, respondent No. 6 forwarded a letter dated 24-3-1992 to Tahsildar, Morshi. Respondent No. 2 - Collector passed an order on 1-6-1992 and while rejecting the contentions raised by respondent No. 5, it proceeded to accept the payment of Rs. 98,118/- made by respondent No. 6 and hence set aside the auction sale in favour of the petitioner u/s 210(2) read with Section 207 of Maharashtra Land Revenue Code. The petitioner challenged this order by filing appeal u/s 247 of the Code before the Commissioner, Amravati Division, Amravati, and the Commissioner has on 25-3-1996, dismissed said appeal. Thus, the petitioner has challenged both these orders in present writ petition.

4. I have heard Shri Gordey, learned Counsel for the petitioner, Smt. Taiwade, learned AGP for respondents No. 1 to 4 and 7 and Shri Saboo, learned counsel for respondents No. 5 and 6.

5. Shri Gordey, learned Counsel for the petitioner has invited attention to the provisions of Sections 207, 208, 209 and 210 of the Code to contend that the procedure prescribed therein must be followed by the property owner if he wants to have the sale set aside. He contends that no application was made by respondent No. 5 to set aside the sale to the Sub-Divisional Officer, as contemplated by Section 207(1) of the Code. He further states that there was no application also u/s 210 of the Code made by respondent No. 5 for setting aside sale and as such, the sale could not have been set aside at all. He further argues that the powers under these provisions are being exercised by the Sub-Divisional Officer, Morshi, i.e. present respondent No. 3 to whom the Tahsildar had submitted the papers for confirmation of the auction. He argues that in such circumstances, the Collector could not have interfered in the matter at all and

the order of Collector quashing and setting aside sale is, therefore, without jurisdiction. He further states that even if it is presumed that there is application u/s 210 of the Code, said application was not by land owner but by a stranger and a stranger has no locus to interfere in the auction process. According to him, on this ground also, the cognizance by the Collector and interference by him is without jurisdiction.

6. In order to demonstrate that the Collector could not have exercised powers in the matter, he has invited attention to provisions of Section 2(34) of the Code which defines the word Sub-Divisional Officer and also to provisions of Section 7(3) and 13(4) of the Code. He states that insofar as powers of Sub-Divisional Officer are concerned, the only provision which is relevant is Sub-section (4) of Section 13 and in view of said sub-section, Sub-Divisional Officer alone can exercise the powers under Sections 207 or 210. According to him, the said exercise is subject to provisions of Chapter XIII of the Code which deals with filing of appeals, revisions and review. He, therefore, contends that the original jurisdiction exercised by the Collector in this respect is totally unwarranted, arbitrary and unsustainable.

7. In order to demonstrate the rights of the petitioner in the matter, he invites attention to the judgment of the Hon''ble Apex Court in the case of Janak Raj Vs. Gurdial Singh and Another, , to contend that when within time limit is prescribed by Sections 207 or 210 and there was no application by respondent No. 5 - owner, the sale must be deemed to have been confirmed and in any case after expiry of that time, the sale cannot be held to be vitiated, that too at the instance of the stranger. He also relies upon the judgment of the Division Bench of this Court in the case of Baoji Baburao v. Bansilal reported at AIR 1919 Bom. 130, to state that even if it is presumed that respondent No. 6 has deposited the amount at the instance of respondent No. 5, still in the absence of appropriate application by respondent No. 5 for that purpose, the sale could not have been set aside. He has also pointed out the judgment of the Hon''ble Apex Court in the case of Roop Chand Vs. State of Punjab, , to contend that the entire auction proceedings conducted by the Sub-Divisional Officer and orders if any passed by him under Sections 207 or 210 of the Code are in fact the orders of the Collector himself and therefore there could be no challenge to those orders before the Collector. He, therefore, contends that in such circumstances, the petitioner has deposited more than l/3rd of the amount and since he has been attempting to deposit balance amount, the impugned orders are liable to be quashed and set aside and writ petition needs to be allowed.

8. As against this, Shri Saboo, learned Counsel appearing for respondents No. 5 and 6 has contended that as respondent No. 5 found that there were certain irregularities in the auction conducted, immediately on 10-3-1992 itself, an application was moved by respondent No. 5 before the Collector, Amravati and the Collector was requested to set aside the auction proceedings. He further states that these proceedings have been registered by the Collector as Revision

and order dated 1-6-1992 has been passed in it. He argues that grievance made by respondent No. 5 has not been gone into in detailed in said order because of voluntary payment made by respondent No. 6 with Tahsildar. He argues that respondent No. 6 has deposited that payment on behalf of and for respondent No. 5 only and hence the requirement of Section 210 of the Code has been satisfied. According to him, when requirement has been satisfied, the other issues being raised by the petitioner pale into insignificance and writ petition deserves to be dismissed. He contends that in view of concurrent orders operating in the field, writ petition is liable to be dismissed.

9. In order to point out that the grievance in relation to auction proceedings could have been made before respondent No. 2 - Collector, he invites attention to provisions of Section 13(1) to state that as per provision of Section 13(1), the Collector has concurrent jurisdiction and authority to pass appropriate orders even in relation to auction proceedings. He also contends that both provisos of Sub-section (4) of Section 13 provides that the Collector retains with himself the authority and jurisdiction to pass appropriate orders even though powers are being exercised by the Sub-Divisional Officer. He further contends that in such circumstances, when the Collector has authority and power, the orders impugned cannot be set aside.

10. Mrs. Taiwade, learned Assistant Government Pleader appearing for respondents No. 1 to 4 adopted the arguments of Shri Saboo, learned Counsel for respondents No. 5 and 6 and has contended that the Collector has taken cognizance of the matter in Revision u/s 257 of Maharashtra Land Revenue Code and hence has passed appropriate orders which are perfectly legal. The learned AGP further contends that as both the lower authorities have taken identical view of the matter, no interference in writ petition is possible.

11. The first question which arises for consideration, therefore, in the present matter is whether the cognizance of dispute taken by the Collector is proper or not and the second question which is incidental thereto is about the nature of said challenge.

12. The provisions of Section 207 of the Code permit filing of an application for setting aside the sale of immovable property. The application is required to be filed within 30 days from the date of sale and sale can be set aside if it is vitiated on account of some material irregularity or mistake or fraud in publishing or conducting it. The said section further states that except as is otherwise provided in Sections 208, 209 and 210 of the Code, no sale can be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. Section 208 of the Code deals with confirmation of sale after expiry of period of 30 days if no application as mentioned in Section 207 has been made or if application is rejected. It authorises the Collector to confirm the sale. Section 209 permits purchaser to move application for setting aside sale under certain circumstances. In the facts of present case, this Court is not concerned

with Section 209 of the Code. Section 210 permits the person owning such immovable property or holding any interest therein by virtue of a title acquired before such sale, to apply to Collector to have sale set aside within 30 days of the sale. Such person has to deposit a sum equal to 5% of the purchase money for payment to purchaser, amount specified in proclamation of sale and also the cost of sale. Sub-section (2) of Section 210 stipulates that if such deposit is made within 30 days from the date of sale, the Collector has to pass an order setting aside the sale. In this background, when the application moved by respondent No. 5 before the Collector is looked into, the application does not specify any provision under which it has been made. However, as respondent No. 5 has not deputed amount as required by Section 210 of the Code as mentioned above, it is apparent that it is an application u/s 207 of the Code. The only reason mentioned in said application is that the society is under liquidation and hence as per provisions of Sections 107 and 163(2) of the Maharashtra Co-operative Societies Act, 1960, no legal proceedings can lie or proceeded with against the society under liquidation. The application only mentions the size of land and particulars of field but it does not contain any grievance in relation to price fetched. This application was filed before the Collector and not before Sub-Divisional Officer. The Collector has taken cognizance of this application as revenue revision and it has been registered accordingly. The application has been moved on 10-3-1992 i.e. immediately on next date after the sale was held.

13. On 24-3-1992, respondent No. 6 - Society has filed application before the Tahsildar mentioning that it is depositing the amount of Rs. 81,618/- on behalf of respondent No. 5 as per letter dated 24-3-1992 of Assistant Registrar of Co-operative Societies, Morshi, camp at Amravati. It has further mentioned that the amount of 5% as commission totalling to Rs. 15,500/- is being deposited under protest by it and the expenses of Rs. 1,000/- were also deposited under protest. They have accordingly, handed over a cheque for Rs. 98,118/ to the Tahsildar along with that letter. The letter also mentions that hearing in this respect would be held before the Collector on 7-4-1992.

14. The Collector, Amravati, has passed impugned order thereafter on 1-6-1992. The impugned order mentions the objection raised by respondent No. 5 in paragraph 7 and rejects the argument that the immovable property of respondent No. 5 ?- Society under liquidation could not have been auctioned. Thereafter it considers the provisions of Section 207(1) of the Code and proceeds to mention provisions of Section 210(1) thereafter. In paragraph 8, it is mentioned that from record it is apparent that respondent No. 5 had not deposited the amount as contemplated by Section 210(1) on the date of presentation of the application but it has been deposited on 24-3-1992. It is obvious that reference to first application in paragraph 8 is to the application dated 10-3-1992 moved by respondent No. 5. The payment has been made on 24-3-1992 by respondent No. 6 on behalf of respondent No. 5. It appears that Assistant Registrar, Co-operative Societies, Morshi, was heard by the Collector and the said officer argued that as amount has been deposited by respondent

No. 5 - Society/ liquidator, the sale deserved to be set aside u/s 210 of the Code. In view of these developments and after considering these events, the Collector has set aside the sale u/s 210(1) of the Code.

15. As is apparent, the Tahsildar had not accepted the balance payment from the petitioner and after accepting l/3rd payment on 9-3-1992, he had placed the file before respondent No. 3 - Sub-Divisional Officer for confirmation of auction. The reply given by respondent No. 4 to the petitioner on 12-3-1992 also reveals that he communicated to the petitioner that after the auction is confirmed by Sub-Divisional Officer, balance payment can be accepted from the petitioner. It is, therefore, clear that the powers of confirmation of auction which can be exercised by the Collector as mentioned in Section 208 of the Code were being exercised by respondent No. 3 - Sub-Divisional Officer. It is, therefore, also clear that all powers in relation to said auction conferred by Section 207 or Section 210 upon the Collector were also being exercised by respondent No. 3 - Sub-Divisional Officer.

16. Section 2(34) of Maharashtra Land Revenue Code defines the Sub-Divisional Officer, thus:

Sub-Divisional Officer" means an Assistant or Deputy Collector who is placed in-charge of one or more sub-divisions of a district.

Section 7(3) of the Maharashtra Land Revenue Code, which again has got bearing in this respect reads as under:

Subject to the general orders of the State Government, the Collector may place any Assistant or Deputy Collector in-charge of one or more sub-divisions of a district, or may himself retain charge thereof. Such Assistant or Deputy Collector may also be called a Sub-Divisional Officer.

Thus, when Section 2(34) and Section 7(3) are read together, it is apparent that the Collector can place any Assistant or Deputy Collector as in-charge of one or more sub-divisions of a district and when such Assistant or Deputy Collector is so placed, he becomes a Sub-Divisional Officer. Section 7(3) also permits the Collector to retain charge of such sub-division. However, exercise of powers by the Collector u/s 7(3) are subject to general orders of State Government. The position becomes more clear when Section 13 is read. Its Sub-section (4) with its both proviso read as under:

(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge : Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector; Provided further that, to such Assistant or Deputy Collector who is not placed in-charge of a sub-

division, the Collector shall, under the general orders of the State Government, assign such particular duties and powers as he may from time to time deem fit.

The perusal of Sub-section (4), therefore, clearly reveals that the Sub-Divisional Officer performs and exercise all powers conferred upon the Collector by Maharashtra Land Revenue Code. If the Collector wants such Sub-Divisional Officer not to perform certain duties or not to exercise such powers, the Collector can reserve to himself those powers or assign them to any other Assistant or Deputy Collector subordinate to himself. It is, therefore, clear that as per first proviso to Sub-section (4), if the Collector wants Sub-Divisional Officer not to exercise particular duties or powers, the Collector has been authorised to reserve these powers either to himself or to any other Assistant or Deputy Collector subordinate to him. It is further apparent from the use of words "Sub-Divisional Officer" and words "Assistant or Deputy Collector" in this sub-section that Assistant or Deputy Collector subordinate to the Collector are the officers to whom certain duties or powers are assigned to be performed on his behalf but they are not Sub-Divisional Officers. Second proviso to Sub-section (4) of Section 13 of the Code thereafter speaks of Assistant or Deputy Collector who are not placed in-charge of any sub-division and it enables Collector by General orders of the State Government to assign any particular duties or powers as he may deem fit from time to time to such Assistant or Deputy Collector. It is, therefore, again apparent that said Assistant or Deputy Collector to whom a Collector can assign duty under second proviso is not Sub-Divisional Officer. It is, therefore, clear that in view of substantive part of Sub-section (4), Sub-Divisional Officer has been authorised by the Code to act as Collector and it is not on account of delegation of powers by the Collector to Sub-Divisional Officer. There has to be therefore a direction or order in writing issued by Collector beforehand withdrawing certain powers and duties to himself under first proviso or to confer those powers or duties upon some other Assistant or Deputy Collector subordinate to him as per latter proviso. In this background, when Section 13(1) with its proviso is looked into, it is apparent that it contemplates Sub-Divisional Officer also. The said Section 13(1) of the Code with its proviso reads as under:

13(1). The revenue officers of and above the rank of a Tahsildar (not being an Additional Commissioner, Assistant Commissioner, Additional Collector or Additional Tahsildar), shall exercise the powers and discharge the duties and functions conferred and imposed on them respectively under this Code or under any law for the time being in force, and so far as is consistent therewith all such other powers, duties and functions of appeal, superintendence and control within their respective jurisdiction; and over the Officers subordinate to them as may from time to time be prescribed by the State Government.

Provided that, the Collector may also exercise throughout his district all the powers and discharge all the duties and functions conferred or imposed on an Assistant or Deputy Collector under this Code or under any law for the time being in force and a Tahsildar shall also exercise such powers as may be delegated to him by the Collector under the general or special orders of the State Government.

The proviso part of Section 13(1) of the Code nowhere includes Sub-Divisional Officer because by Sub-section (4) of Section 13 of the Code, there is a special confirmation of power upon the Sub-Divisional Officer. The proviso to Section 13(1) again speaks of only Assistant or Deputy Collector and states that the Collector can also exercise throughout his district all powers and discharge all the duties and functions conferred or imposed on an Assistant or Deputy Collector under this Code or under any law for the time being in force. It is, therefore, clear that the officers contemplated by first proviso are Assistant or Deputy Collector and not Sub-Divisional Officer. If the Sub-Divisional Officer is read into this proviso, it would be creating inconsistent situation and the provisions of Sub-section (4) will then be directly in conflict with said proviso to Section 13(1). Such an interpretation therefore cannot be made and the arguments of learned Counsel for respondents No. 5 and 6 that the Collector could have accordingly exercised the powers of Sub-Divisional Officer in the matter cannot be entertained.

17. The perusal of Sub-section (4) of Section 13 also specifically shows that the exercise of powers by Sub-Divisional Officer is subject to provisions of Chapter XIII and hence appeals and revisions against the orders of Sub-Divisional Officer can be entertained by the Collector as mentioned in Schedule "E" read with Section 247 of the Maharashtra Land Revenue Code. Thus, concurrent reading of Section 247 of the Code with Schedule "E" Sub-section (4) of Section 13 and Section 13(1) clearly reveals that there is no question of Collector exercising jurisdiction concurrently with that of Sub-Divisional Officer insofar as exercise of powers or discharge of duties under the Code is concerned.

18. The judgment of the Hon''ble Apex Court in Roop Chand v. State of Punjab (supra) on which the learned Counsel for the petitioner has placed reliance considers the situation in which the powers are delegated by the Government to its subordinate and the subordinate in exercise of those powers passes order. The provisions of Section 41(1) and Section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, are considered by the Hon''ble Apex Court in this light and the findings recorded in paragraphs 11, 12 and 13 are important. It has been held that an order passed by delegate in such circumstances must be held to be an order of original authority which delegated those powers to such delegate and therefore, appeal or revision against the order of delegate cannot be entertained by said authority. Even the subsequent judgment in the case of OCL India Ltd. Vs. State of Orissa and Others, on which reliance has been placed by the petitioners also show the same conclusions. However, the logic applied by the Hon''ble Apex Court in these two rulings will not be applicable to the case at hand because of language of Section 13(4) of the Code. In view of Section 13(4), it is apparent that though the Sub-Divisional Officer exercises the powers of Collector, those powers become the powers of Sub-Divisional Officer and they are subject to provisions of Chapter XIII. Chapter

XIII in turn enables filing of appeal against such order of Sub-Divisional Officer before the Collector. The provisions of Maharashtra Land Revenue Code do not confer upon the Sub-Divisional Officer any other power or duty which can be exercised by him and which can lead to passing of an order against which it can be said that an appeal can be filed. Thus, all powers exercised by the Sub-Divisional Officer are derived by him in view of Section 13(4) of the Code and those orders are therefore in exercise of his jurisdiction against which the appeal can lie before the Collector as mentioned in Section 247 of the Code.

19. In Janak Raj v. Gurdial Singh (supra), the Hon''ble Apex Court was considering the situation in which there was no application moved by the Judgment debtor under Order 21 Rule 89 of CPC for setting aside the sale which was held to execute ex parte money decree. The Judgment debtor only applied for setting aside said ex parte decree. The decree was ultimately reversed and after it was reversed, auction purchaser filed application under Rule 92 for confirmation of sale. The Hon''ble Apex Court has noticed that in view Sub-rule (2) of Rule 92 of Order 21 of Civil Procedure Code, the Court is obliged to make an order setting aside the sale if proper application under Rule 89 is made accompanied by deposit within 30 days from the date of sale. Rule 92 provides that when no such application is made, the Court has to make an order confirming the sale and thereafter the sale becomes absolute. Thus, it is apparent that facts before the Hon''ble Apex Court has no application to the facts of present case as application was submitted and amount was deposited in 30 days. The Court conducting auction had no option but to confirm the sale because of omission to take these steps by judgment debtor and subsequent event of reversal of decree was held to be irrelevant insofar as confirmation of sale is concerned.

20. The perusal of Division Bench judgment of this Court in Baoji Baburao v. Bansilal (supra) again reveals a somewhat similar situation. There, the Judgment debtor merely deposited the amount but did not make any application for setting aside the sale within 30 days and the Division Bench has held that mere act of depositing the amount within 30 days cannot be regarded as an application made to Court under Order 21 Rule 89 of CPC to set aside the sale. The sale was also confirmed by the Court as there was no application. After confirmation of sale, notice was given by the Court to Judgment debtor to take back his money and thereafter he moved the Court stating that his act of depositing the amount in terms of Order 21, Rule 89 of CPC should be considered as an application to set aside the sale. This argument was rejected by the Court and said rejection has been maintained by the Division Bench. However, the facts of the case at hand are not identical. Here, as already observed above, immediately on next date i.e. on 10-3-1992 itself, the present respondent No. 5 has moved an application for setting aside the auction sale pointing out only one irregularity or illegality and it was registered as Revision Application because it was filed before the higher authority viz., the Collector. The said revision was pending and during its pendency on 24-3-1992, respondent No. 6 has deposited entire amount as

contemplated by Section 210 of the Code with respondent No. 4, who conducted the auction on 24-3-1992. It is to be noticed that this deposit was also within 30 days of sale and during the pendency of revision before the Collector. The Collector has considered this deposit as deposit made by respondent No. 5 itself and therefore has set aside the sale. It is no doubt true that the Collector has taken cognizance of the matter as revision and has passed this order in revision on 1-6-1992. However, as already observed above the orders of Sub-Divisional Officer, if passed, under Sections 207 or 210 of the Code could have been questioned by filing proceedings before the Collector, Amravati, It is therefore apparent that mere cognizance of the matter as revision by the Collector itself will not be sufficient to vitiate the order dated 1-6-1992. Even if it is held that against the action or order of Sub-Divisional Officer, an appeal u/s 247 could have been filed by respondent No. 5, the said proceedings registered as Revision could have been and could be treated as appeal u/s 247 of the Code, The Collector has been approached by respondent No. 5 on 10-3-1992. Not only this, entire amount as contemplated by Section 210 of the Code was also deposited within 30 days of the conduct of sale on 9-3-1992. Hence, it is apparent that the order of the Collector dated 1-6-1992 can also be treated as an order passed by him in appeal in appellate jurisdiction u/s 247 of the Code against the order or action of accepting l/3rd amount from the petitioner.

21. The Hon''ble Apex Court has in the judgment in Janak Raj v. Gurdial Singh (supra) in paragraph 4 has specifically observed that Order 21, Rule 89 of CPC gives Judgment debtor the right to have sale set aside on his depositing in Court the sum as mentioned in that rule. It has been further observed that under Rule 92(2) the Court is obliged to make an order setting aside such sale if a proper application under Rule 89 is made accompanied by a deposit within 30 days from the date of sale. It is therefore clear that if the amount is paid and there is a request to set aside the sale, the authority has no discretion in the matter. The perusal of Section 210 of the Code reveals similar scheme. Here, the application to set aside the sale was moved by respondent No. 5 on 10-3-1992 itself though on different grounds and on 24-3-1992 amount has been deposited on its behalf by respondent No. 6. It is also clear that there was request to set aside the sale and hence the Collector, after taking overall view of the matter, exercised powers u/s 210 of the Code and has set aside the sale. Even if it is presumed that S.D.O. ought to have been approached first, considering the mandate of Section 210 read with Section 13(4) and also considering the scope of the powers available to the Collector under Chapter XIII in the matter, I find that the exercise of power in this respect cannot be faulted with. Here, respondents No. 5 and 6 both wanted to have auction set aside and the important step like depositing entire amount or raising objection was already taken in the matter. The petitioner was aware of the same and he was trying to get auction confirmed. If it is presumed that the Collector could not have taken cognizance of application made by respondent No. 5 or of deposit made on its behalf, the Collector could have placed the papers before the Sub-Divisional Officer. Hence, in such circumstances

when no legal right accrued to the petitioner, I find that no prejudice can be allowed to be suffered by respondent No. 5.

22. The Scheme of Maharashtra Land Revenue Code appears to be that if the payment is made by the Judgment debtor as contemplated by Section 210, the sale must be set aside. Here, respondent No. 5 is a Co-operative Society under liquidation at the relevant time and its immovable property which fetched in auction value of Rs. 3,10,000/- was sought to be sold for recovery of Rs. 81,618/- only. The said amount was towards non-agricultural assessment payable to the State Government. The said amount has been paid on behalf of respondent No. 5 by respondent No. 6. All this was within 30 days when no right had crystallised in favour of the petitioner. Considering the entire facts as mentioned above, I find that no exception can be taken to the findings reached concurrently by the authorities below at the instance of the petitioner.

23. Therefore, no case is made out for interference in writ jurisdiction. Writ Petition is accordingly dismissed. There shall be no order as to costs.

