(2007) 01 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition 2653/94 and W.P. 2645/94

Narendra Kumar Makkad APPELLANT

Vs

Tekchand Jain and Another
 Deshraj Vs Arvind Kumar and Others RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:
Madhya Pradesh Sahkari Bhoomi Vikas Bank Adhiniyam, 1966 — Section 21

Citation : (2007) 1 MPJR 345

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant; Rajesh Maindiratta, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

By this Order both the aforesaid writ petitions are being decided as common questions of fact and law involve in both the writ petitions.

The dispute is in respect of auction of lands of respondent Tekchand Jain and Arvind kumar Jain (since died, the legal representatives are Rajesh kumar Jain, Rakesh Kumar Jain and Smt. Rita Singhai), who borrowed loan from respondent Zila Sahakari Bhoomi Vikas Bank Maryadit and mortgaged their lands for the security of loan. The loan could not be repaid so the lands were auctioned on 6.1.1990. Confirmation of the sale was made on 3.3.1990. The lands were purchased by petitioner Narendra kumar Makkad and Deshraj Makkad in respective cases who happens to be son and father.

The facts of W.P. No. 2645/1994 are as under :

Tekchand respondent no. 1 was Bhumiswami of certain land situated at village Ramsaliya, Tahsil Jawera, District Damoh, admeasuring 24.79 acres. He mortgaged these lands with respondent no.3 Zila Sahakari Bhoomi Vikas Bank and borrowed a loan of Rs. 8,450/- on 17.3.1973. The respondent no. 1 could not pay the loan so the Bank respondent no. 3 by resolution no.7 dated 23.8.1975 decided to take action for recovery of loan by auctioning mortgaged land of respondent no. 1. The proceedings commenced and continued for a long period upto 6.1.1990 and on 6.1.1990 the land 24.79 acres auctioned for Rs. 26,000/-. In the auction, the petitioner Narendra kumar put his bid which was finalized. No application within 30 days was filed by respondent no. 1 for setting aside auction proceedings, so on 3.3.1990 Assistant Registrar, Damoh affirmed the auction u/s 21 of the M.P. Sahkari Bhoomi Vikas Adhiniyam, 1966 (hereinafter referred to as ''Bhoomi Vikas Adhiniyam'' for short). On 21.5.1990 when respondent no. 1 became aware about the auction proceedings he moved an application for supply of certified copy of order of Assistant Registrar, Cooperative Societies Damoh, which was supplied to him on 22.11.1990 and on 21.12.1990 the respondent filed a revision before the Joint Registrar, Cooperative Societies, Jabalpur which was registered as revision no.1/91 and by order dated 16.6.1994, the revision petition was allowed.

The facts of W.P. No. 2653/1994 are as under :

Deceased Arvind kumar was owner of lands of village Jawera, District Damoh survey nos. 1/5,1/9, l/5(kha), 1/8,48/2, l/5(Gha) total 24.69 hectares. Respondent no. 1 mortgaged these lands for borrowing loans from Land Development Bank to purchase Diesel pump and Thrasher. For this purpose amount of Rs. 4,270A and Rs. 4,180/- total Rs.8,450/- was borrowed. For the security of loan the land was mortgaged with respondent no.3 and a document of mortgage was executed by respondent no. 1 on 13.3.1973. The loan was not repaid so the Sales Officer of the Bank on 6.1.1990 auctioned the land of respondent no. 1 by public auction for Rs.26,000/- and petitioner Deshraj Makkad purchased the land in the auction. No application was filed for setting aside the sale u/s 20 of Bhoomi Vikas Adhiniyam so the sale was confirmed on 3.3.1990 by the Assistant Registrar, Cooperative Societies, Damoh. Arvind kumar filed revision petition no.80-33/90 before the Joint Registrar, Cooperative Societies challenging the aforesaid auction proceedings.

Both the revision petitions were decided by separate orders by the Joint Registrar, Cooperative Societies on 16.6.1994. The allegations and grounds were common and both the revisions were allowed on following common grounds :

(i) That no notice for repayment of loan was issued by the Bank to the borrower. No notice for auction of land was published in the newspaper, nor the notice for auctioning of lands were served on the borrower. Though the Bank stated that notice of auction was properly served.

(ii) During the auction proceedings on 24.6.1984 a close relation of borrower J.K. Unwala, Jabalpur and one reputed citizen Suraj Prasad Tiwari made a prayer to Auction Officer for extending one opportunity to the borrower and at their instance the auction proceedings were postponed. On 24.6.1984 the Bank in note sheet recorded that a relation of agriculturist J.K. Unwala, Jabalpur and one reputed citizen Suraj Prasad Tiwari made a request for extending one opportunity to the borrower and on their instance by extending one opportunity, auction was cancelled. Notice of auction on Form No.8 reflects that on 19.6.1984, a note was written on the back side of notice by the notice server that he had gone to serve notice, but it was refused so served notice by affixture, but in the notice there is no mention about affixture of notice nor any evidence is available about affixture of notice. On the basis of this it was found that notice was not served.

(iii) Subsequently, again Form no.8 was issued on 18.10.1989 and the date of auction was fixed as 6.1.1990. In the note sheet dated 2.1.1990 it is noted that the notice was sent to borrower but as usually returned back which was enclosed in the file. The Joint Registrar after perusal of file found that the notice which was sent to the borrower in respect of auction proceedings was dispatched on 22.12.1989 and was returned on 29.12.1989 with endorsement that ''incomplete address so addressee is not found''. On the envelope the address which was mentioned was Tekchand Jain, C/o Laxmi Chand Jain, J.K. Unwala, Kamaniya Gate, Jabalpur''. In another notice address was written as ''Arvind Kumar, S/o Chhogalal Jain, J.K. Unwala, Kamaniya Gate, Jabalpur''. The post office seal of Jawera Post Office dated 22.12.1989 is affixed but no seal of Jabalpur Post Office was found on the envelope. The Joint Registrar found that when this envelope was to be served at Jabalpur then it was necessary that a seal of Jabalpur Post Office must occure on the envelope, so that it may be ascertained when the envelope reached to Jabalpur that on 29.12.1989 when the notice was returned unserved, but no seal of dated 29.12.1989 was found on the envelope.

The Joint Registrar found that notice of auction by which auction date was fixed as 6.1.1990, was not served on the borrower and on the basis of this the Joint Registrar repelled the contention of the Bank that the provisions of section 18 and 19 of the Bhoomi Vikas Adhiniyam were followed.

(iv) The Joint Registrar also perused the auction proceedings dated 6.1.1990 to ascertain whether the provisions of Bhoomi Vikas Adhiniyam were followed or not. The Joint Registrar found that u/s 19(2) there is provision that auction will be by public auction in the village where the mortgage property is situated, or at a nearby public place, if in the opinion of the Sales Officer at the place property may fetch a maximum auction price. The auction took place at village Singrampur on 6.1.1990 and auction proceedings commenced at the office of Gram Panchayat, Sigrampur by announcing auction on loudspeaker. Highest bid was by Narendra Kumar Makkad for Rs. 26,000/- and Deshraj Makkad for Rs. 26,000/- and the auction was knocked down in their favour.

(v) In the auction proceedings all first two figures are corrected by overwriting and the actual amount of auction is suspicious. During auction proceedings villagers were present and their signatures were obtained on note sheet. Out of these one Prem Singh and Kallu Sonkar, Sarpanch submitted their affidavit that on 6.1.1990 Bank Manager, J. Khare obtained their signatures on the pretext that auction is going to be cancelled. Both have stated that on 6.1.1990 no auction took place. The Sales Officer has also made overwriting in first two figures of auction amount which also creates suspicion.

(vi) That about the auction proceedings dated 6.1.1990 whether any notice was issued to the borrower or not, the Joint Registrar found that in the copy of notice it finds place that the land of borrower was auctioned on 6.1.1989 by public auction for Rs.26,000/- and if the borrower intends to get the auction set aside, then he may deposit the amount alongwith 5% commission within 30days. This notice was sent by registered post and acknowledgment of it is available in the record, but the postal stamp is not clear. So it is not clear why the Sales Officer has stated 6.1.1989 the date of sale, while the correct date was 6.1.1990 so a due notice to the borrower was not sent.

(vii) The objection of the Bank that u/s 20 the borrower had not filed any application for setting aside sale, the Joint Registrar found that no notice in respect of auction dated 6.1.1990 was sent to the borrower. Though the Bank raised an objection that the auction proceedings has been finalised u/s 21 of the Bhoomi Vikas Adhiniyam and the borrower had not taken any steps under section20 of the Bhoomi Vikas Adhiniyam, so even if there is some loss to the borrower then he may claim damages from the Bank u/s 27 of the Adhiniyam and title of the purchaser is not impeachable for the alleged irregularity. The Joint Registrar found that no proper notice was published as per section 19 before the auction, though auction proceedings states that it was made public by beat of drum on 3rd, 4th and 5th January, 1990, but no evidence was found in this regard on the record. Though the notice dated 18.12.1989 was issued to the borrower, but it was not served.

The Joint Registrar found that in absence of proper notice the borrower could not get proper opportunity to move u/s 20 of the Adhiniyam. Apart from this no opportunity was extended to the borrower before confirmation of sale. The Joint Registrar also found that no record is available in respect of compliance of section 21 of the Adhiniyam. So the entire proceedings were found suspicious.

(viii) The Joint Registrar considered the factum that on 24.6.1984 a close relation of the borrower J.K. Unwala and Suraj Prasad Tiwari approached to the respondent and auction was cancelled so it may be treated as proper notice to the borrower that the auction proceedings were commenced. The borrower after borrowing loan on 17.3.1973 mortgaged the property, but for a period of 15 years he took no steps for repayment of loan. It is found that infact there is no service of notice to the borrower himself and in absence of it the auction proceedings cannot be sustained. The Joint Registrar after considering the entire material set aside the auction proceedings and issued following directions :

(a) That in the presence of borrower the improvement and development made by the purchaser be valued by the Bank.

(b) After this valuation the auction purchaser shall be entitled for refund of auction amount, alongwith 5% commission and amount of additional expenses and improvement after valuation within 1 months from borrower, who will deposit it in the Bank and the same amount be paid to the auction purchaser and on deposit of these amount the borrower shall be redeemed from loan.

(c) The title of land be reconveyed to the borrower.

(d) For flouting the provisions of Bhoomi Vikas Adhiniyam, during auction proceedings and for overwriting in the auction amount, a proper disciplinary proceedings be initiated against the Sales Officer. With the aforesaid direction the revision filed by respondents were allowed. Both the orders were passed. on similar grounds which are under challenge in these petitions.

Learned counsel appearing for petitioner raised following contentions:

(i) That a proper notice was served on the borrower and after service of notice the auction took place.

(ii) That at the instance of borrower even in the year 1984 when the proceedings were going on close relations of respondents namely J.K. Unwala and Suraj Prasad Tiwari made a prayer on behalf of borrower for the postponement of auction proceedings. The Bank on 24.6.1984 at the behest of borrower cancelled the auction proceedings and granted time to the respondents to clear the dues, but it was not done, thereafter after a long period of nearabout 6 years auction took place in which the petitioner has duly purchased the property by participation in the auction and highest bid of petitioner was knocked down.

(iii) The respondent who borrowed the loan long back in the year 1973 had not paid a single penny to the Bank. The Bank after continuous pursuation decided to auction the mortgaged property. The respondent cannot take advantage of their own wrong.

(iv) That on technical grounds the auction proceedings cannot be set aside, and title of petitioner cannot be impeached for irregularities as provided u/s 27 of the Act.

(v) The petitioner who purchased the property after payment of substantial amount long back in the year 1990 has made substantial improvement in the property by investing huge money, and now after a period of nearabout 16 years the petitioner cannot be deprived with the property.

(vi) To meet out the aforesaid situation a provision u/s 27 in the Adhiniyam has been made which provides that for technicalities the sale cannot be set aside and if the borrower is aggrieved by the auction proceedings may claim damages against the Bank but the sale cannot be set aside. Reliance is placed to a Single Bench judgment of this court in Rameshwar Dayal vs. Sahkari Bhumi Vikas Bank and Others (1996 RevNir 205). The petitioner also submitted that infact the entire process of auction is in accordance with law and need not be interfered. In any case the sale cannot be set aside as has been set aside by the Joint Registrar, Cooperative Societies.

Shri Rajesh Maindiretta, learned counsel for respondent supported the order and submitted that the Joint Registrar, Cooperative Societies has found serious irregularities in the auction proceedings and in view of serious irregularities as found in the impugned order the Joint Registrar has rightly set aside the sale. It is also submitted by him that for a meagre amount of loan the entire property ought not to have been sold by the Bank, but only a part of the property which could have satisfied the loan amount ought to have been sold. It was obligatory on the part of the Bank to sale only part of the land, but for a meagre amount of loan which was borrowed by the respondents for the improvement of the land, the entire land has been sold and the respondents who were willing to improve the land by loan has virtually lost their lands. That in the present case the confirmation of sale order itself was challenged, and the authorities must satisfy themselves that the price fetched was reasonable and in absence of this the sale ought to have been set aside. Reliance is placed to Navalkha and Sons Vs. Ramanuja Das and Others, , Ambati Narasayya Vs. M. Subba Rao and another, and Full Bench judgment of Liyakat Ali Vs. Board of Revenue M.P. Gwalior & Others (1984 Rev Nir 377) and submitted that these petitions may be dismissed.

In this case the crucial question is whether before auction of the property by respondents on 6.1.1990 whether the procedure envisaged under M.P. Sahkari Bhumi Vikas Niyam, 1966 which was in force at the relevant time was followed or not. The Joint Registrar while considering the sale proceedings found that no notice u/s 18 was issued to the borrower nor any notice as required under sub-section (1) of section 19 of the Adhiniyam was issued by the Sales Officer. Apart from this the sale proceedings were also found suspicious by the Joint Registrar. For ready reference section 18, 19,20 & 21 may be referred which are relevant for the decision of this case :

18. Power of sale when and how to be exercised - (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882), or the Trustees and Mortgages Powers Act, 1886 (XXVIII of 1866) the committee of the bank or any person authorized by such committee in this behalf shall, in case of default of payment of mortgage money or any part thereof, have power, in addition to any other remedy available to the bank, to bring the mortgaged property to sale without the intervention of the court. (2) No such power shall be exercised unless and until: (a) the Board has previously authorised the exercise thereof after hearing the objections, if any, of the mortgagor or mortgagors: [Provided that the Board shall be deemed to have authorised the exercise of such power if no reply is received from the Board within thirty days of making a reference by the committee of the bank or any person authorised by the committee for the purpose].

(b) notice in writing requiring payment of such mortgage money or part thereof has been served upon-

(i) the mortgagor or each of the mortgagors;

(ii) any persons who has any interest or charge upon the mortgaged property or in or upon the right to redeem the same so far as known to the committee;

(iii) any surety for the payment of the mortgage debt or any part thereof; and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(c) default has been made in payment of such mortgaged money or part thereof for three months after service of the notice.

Application for sale and manner of sale - (1) In exercise of the power conferred by sub-section (1) of section 18 the committee in this behalf may apply to the sale officer appointed for the purpose u/s 28 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in sub-section(2) of section 18 sell such property in the manner prescribed.

(2) Such sale shall be by public auction and shall be held in the village in which the mortgaged property is situated or at the nearest place of public resort if the sale officer is of opinion that the property is likely to be sold to better advantage there.

Application to set aside sale - (1) when any mortgaged property has been sold u/ s 19, the mortgagor or any person having a right or interest therein affected by the sale may at any time within thirty days from the date of sale, apply to the sale officer to have the sale set aside on his depositing at the office or such officer-

(a) for payment to the committee of the development bank the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the committee in bringing the property to sale; and

(b) for payment to the purchaser, a sum equal to five per cent of the purchase money.

(2) If such deposit is made, a sale officer shall make an order setting aside the sale.

Confirmation of sale - If no application is made under sub-section (1) of section 20, or if such application is made and disallowed, the principle officer of the Co-operative department in the district shall make an order confirming the sale and on such confirmation the sale shall become absolute."Section 18 provides that in case of default of payment of mortgaged money or any part thereof the Bank shall have power to bring the mortgaged property to sale without the intervention of Court, but sub-section (2) provides that no such power shall be exercised until and unless notice in writing requiring payment of mortgaged money and part thereof has been served on the mortgagor and default has been made in the payment of such mortgaged money or part thereof within 3 months after service of notice. Again Section 19 also provides a service of notice in writing to all the persons referred to under sub-section (2) of Section 18 is the requirement of law. Thereafter the property may be auctioned. Section 20 provides an opportunity to the mortgagor to get set aside sale within 30 days from the date of sale by the sales officer on certain conditions of deposit of sale amount alongwith compensation to the purchaser a sum equal to 5% of the purchase money and in case no application is made under sub-section (1) of section 20 then the sale will be confirmed u/s 21 of the Act.

After confirmation of sale the title of purchaser in not impeachable for any irregularity as provided u/s 27 of the Act which reads thus:

27. Title purchaser not impeachable for irregularities - When a sale has been made in professed exercise of power of sale u/s 19 and has been confirmed u/s 21, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Development Bank.

The main emphasis of learned counsel for petitioner is that after the sale is confirmed u/s 21 the title of purchaser cannot be impeached on the ground that due notice was not given or there were some irregularity in the sale proceedings. It is submitted by Shri Ruprah that even if it found that no notice was served or there were some irregularities, even then the sale cannot be set aside and the respondents may claim damages against the Bank in respect of aforesaid irregularities. He has substantiated his arguments on the ground that the purchaser was not at fault in participating in auction proceedings and being highest bidder he purchased the property. Thereafter no application was filed for seeting aside sale u/s 20 and the sale has been confirmed. Thereafter the petitioner made huge investments over the property which has been found proved by the Joint Registrar, then if at this stage the sale is set aside the petitioner would suffer a lot. Reliance is placed to Rameshwar Dayal (supra) in which a single Bench of this court considering this question held thus

Learned counsel for the petitioner submitted that the respondent has not complied with the provisions of Section 18, 19 and 20 of the Act of 1966. Section 18 requires that before exercising the power of sale, it is necessary that the notice in writing requiring payment of such mortgage money or part thereof is served upon the mortgagor or each of the mortgagors; and if the default has been made in payment of such mortgaged money or part thereof, three months notice should be served. Section 19 says that the application for sale should be resorted to and the Sale officer is appointed to sell the mortgaged property after giving notice in writing to all the persons, i.e. each mortgagor. Section 20 requires that when any mortgaged property should be sold u/s 19, the mortgager or any person having a right or interest therein affected by the sale may at any time within thirty days from the date of sale, apply to the Sale Officer to have the sale set aside on his depositing the sale amount. If such deposit is made, a sale officer shall set aside the sale and if it is not done, then confirmation of sale may be made u/s 21. Learned counsel submitted that notice which was sent, did not contain the amount which is being sought to be recovered from the petitioner and this has been held by the Joint Registrar to be bad notice. It is true that the Joint Registrar has said that the notice did not contain the amount which is being sought to be recovered from the petitioner. This finding has not been accepted by the Board of Revenue. Section 27 envisages that if the sale is made in exercise of power u/s 19 and the same has been confirmed u/s 21, the title of purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised. His remedy will be damages against the Development Bank. In the present case, it is apparent from the reply filed by the respondent-Bank that petitioner has been consistently trying to sabotage the sale by resorting to one method or the other. It is not disputed that the petitioner did not receive the notice. On the contrary, he refused to accept the notice and the notice was pasted at the door of his house. Only illegality is sought to be challenged before me and it was canvassed before the Joint Registrar that notice did not contain the amount, except that there was no irregularity in the auction proceedings so as to render all the proceedings bad. In case, the amount which was sought to be recovered from the petitioner, was not mentioned in the notice, it was open for the petitioner to approach the authority to ascertain the same. This irregularity is not a material irregularity so as to render whole proceedings bad. The non-acceptance of notice shows the adament attitude of the petitioner not to pay the loan amount of the Bank. Therefore, in these circumstances I am of the view that simply because, the sale notice did contain ascertain amount that would nor render the sale proceedings invalid. More so, Section 27 says that such sale shall not render the sale illegal. The only remedy for the petitioner is to file suit for the damages. Therefore, in these circumstances, the view taken by the Joint Registrar is not correct and the Board of Revenue has rightly over-ruled the objection.

Now the factual position in the present case may be seen. The Joint Registrar after considering the entire material has recorded a finding that infact no notice u/s 18(2) or 19 (1) of the Act was served on the mortgagor. Though on previous occasion at the behest of J.K. Unwala and Suraj Prasad Tiwari the auction proceedings were adjourned, but this by itself will not be a ground to presume that a notice of auction for 6.1.1990 was served on the mortgagor and thereafter the sale took place. The joint Registrar after perusal of record of the Bank has recorded a finding that the notice was returned unserved and in the note sheet dated 2.1.1990 it was noted that notice sent to the borrower, but as usual returned back unserved, by itself will not be a ground to presume service of notice u/s 18 or 19(2) on the borrower. When a specific provision is made u/s 19(1) to serve a notice prior to auction proceedings, then it was mandatory requirement of law which ought to have been followed by the Sales Officer. Apart from this, the serious irregularities committed during the auction proceedings has not been explained by the respondents, nor the finding recorded by the Joint Registrar that there is interpolation in the auction bid amount and first two figures of the bid amount has been overwritten, explained or clarified.

Now in the light of Section 27 of the Act whether the auction may be set aside or the respondents borrower may be relegated to claim damages against the Bank in respect of aforesaid irregularities/illegalities in the aforesaid proceedings. In Rameshwar Dayal (supra) the learned Single Judge of this Court has found that if the sale is made in exercise of powers u/s 19 and the same has been confirmed u/s 21, the title of purchaser shall not be impeachable on the ground that no case has arisen to authorise the sale or that due notice was not given or that power was otherwise improperly or irregularly exercised. The learned Single Judge considering the provisions of Section 27 held that the remedy of mortgagor will be to claim damages against the Development Bank. Recently the Apex Court has considered the scope of section 27 of the Kishori Lal Vs. Sales Officer, District Land Development Bank and Others, and considering the scope of Section 27 held that Section 27 provides a due notice and in absence of notice served upon mortgagor such auction cannot be validated u/s 27 of the Adhiniyam. The Apex court considering the law held thus :

9. The Board of Revenue under the M.P. Land Revenue Code is the final Court of fact. Indisputably, holding of auction is governed by the provisions of the 1996 Act. Some notice appear to have been served upon the appellant, but, thereafter, service of notice on the appellant is said to have been effected by affixing a notice on his house when he was not available. A purported notice was also published in a newspaper. The Board of Revenue, in regard to service of notice, has clearly come to the conclusion that the statutory requirements envisaged u/s 18(2) of the 1966 Act and Rule 15 of the Rules have not been complied with, by reason whereof the appellant had not been served with the notice. He had not been given an opportunity of hearing. The Board of Revenue opined that the authorities concerned did not consider these aspects of the matter. In regard to the question of minority, as indicated hereinbefore, the appellant had filed two documents before the Joint Registrar. The respondents may be right in their submissions that they had the right to cross-examine the appellant, but it does not appear from the records that any objection as regards the admissibility thereof had been taken either before the Court of first appeal or before the Board of Revenue. The said plea, at this stage, therefore, is not available to them. The Board of Revenue, having regard to the documents brought on records, opined that the appellant was aged about 15 years in the year 1971. The High Court did not address itself on the question of minority of the appellant on the date of entering into the contract of loan. As regards the question of service of notice, the High Court opined: "The respondent, kishorilal promised to deposit a sum of Rs. 700 on 25-4-1975 and on account of this, the auction-sale was postponed and Kishorilal deposited a sum of Rs. 700 on 22-4-1974 as promised. This fact

establishes that the proceedings for auction were in vogue since earlier i.e. before 25-4-1975 and the auction-sale was stated on account of the deposit of a sum of Rs.700 by Kishorilal and accordingly, the Board of Revenue found that the notice which were served on Kishorilal were before 22-4-1975 and completed their effect on 22-4-1975. Thereafter on 30-3-1976 in Form 8, a notice was issued and Kishorilal was at Gwalior and as such, the notice was served on the member of his family and the auction took place on 6-5-1978 on which date nobody made any bid and thereafter, according to the order-sheet dated 21-5-1981, Kishorilal was contacted. This order-sheet does not contain anything regarding service of the notice for auction. The process server has reported ''Kishorilal is not found at his house and the members of the family refused to take notice''. The notice was pasted in front of the witnesses on the house, which obtained the thumb impression of Laxmidevi. But who is this Laxmidevi is nowhere mentioned. This is the basis for decision by the Board of Revenue that on the note-sheet dated 2-6-1982 it has been mentioned that Kishorilal was not living in the village and the notice issued earlier in the year 1975 and the purpose of that notice was completed on 22-4-1975. Accordingly, the respondents have failed to comply with the provisions of Section 18(2) of the Act.

From what has been noticed hereinbefore, it is evident that there has been no proper service of notice upon the appellant. The High Court did not arrive at a finding that there was a valid service of notice.

The High Court, however, proceeded on the basis that Section 27 of the 1966 Act validated such auction. It reads as under:

27. Title purchaser not impeachable for irregularities- when a sale has been made in professed exercise of a power of sale u/s 19 and has been confirmed u/s 21, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Development Bank.

Section 27 of the Act does not state that no notice is necessary to be served. It speaks of due notice. Where a service has been effected but not in accordance with the known procedure, the matter may be different. The appellant, in view of the finding of fact arrived at, was not living in the village at all. He was living in Gwalior. Admittedly, no notice was served as one person refused to accept the same. Whether she was a family member at all or not has not been proved. We may notice, the auction-purchaser did not question the findings of fact arrived at by the Board of Revenue.

Before the High Court a writ petition was filed only by the Sales Officer. The auction-purchasers, therefore, cannot question the findings of fact arrived at by the Board of Revenue for the first time before this Court. Section 27 of the 1966 Act does not protect an auction-sale when the initial contract of loan was void ab initio.

The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Articles 226 and 227 of the Constitution of India as was held by this court in Sushilabai Laxminarayan Mudliyar v. Nihalchand waghajibhai Shaha.

However, with a view to do complete justice between the parties, in our considered opinion, the appellant should be directed to deposit the entire auction money with interest thereupon @ 6% per annum. This order is being passed by us under Article 142 of the Constitution of India. Such amount should be deposited within eight weeks from this date before respondent 1 Sales Officer. On such deposit being made, the auction shall stand set aside and the possession of the property shall be restored to the appellant herein. However, in the event the appellant fails and/or neglects to deposit the said amount within the aforementioned period, these appeals shall stand dismissed.

Now in the light of Kishorilal, the factual position in the present case may be seen which is identical :

(A) That no notice of auction was served upon the borrower, before the auction took place.

(B) The statutory requirement of Section 18(2)(b) and 19(1) were not complied with.

(C) Apart from this there are serious illegalities in the auction proceedings including interpolation or correction of auction bid sheet, and the auction was not held where the land was situated and no reason was assigned for auctioning the property at a place other than the place where the land was situated.

In Kishorilal (supra) also the promise was made by the borrower to deposit borrowed sum, on account of this the auction sale was postponed, but notice was not issued in respect of the date on which the auction infact took place and was confirmed. Similar is the position here and this case is squarely covered by the decision of Apex court in Kishorilal (supra). In view of aforesaid position this writ petition has no merit and deserves to be dismissed.

The Apex Court while deciding Kishorilal (supra) with a view to do complete justice between the parties directed the borrower to deposit entire auction money with interest thereupon @ 6% per annum. In the present case also the Joint Registrar considering the fact that auction purchaser has deposited the amount and had made certain improvements/developments on the land directed to assess the aforesaid development/improvement and the aforesaid expenses have been directed to be paid by the borrower to the purchaser. The aforesaid directions are in compliance with the directions issued by the Apex Court in Kishorilal (supra) and the operative part of Order passed by the Joint Registrar deserves to be affirmed.

Consequently, both the writ petitions are dismissed with no order as to costs.

