

(2006) 03 AHC CK 0072

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 76863 of 2005

Pravesh Kumar Sachdeva

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 17, Order 21 Rule 17(4), Order 21 Rule 2, Order 21 Rule 4, Order 21 Rule 5
Constitution of India, 1950 — Article 14, 226, 32
Revenue Recovery Act, 1890 — Section 3
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 276(d), 279, 284, 289
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 235, 236, 241, 242, 243

Citation : (2006) 03 AHC CK 0072

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : U.N. Sharma and A.K. Bajpai, for the Appellant; Sandeep Chaterji and Kushal Kant and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Pravesh Kumar Sachdeva auction purchaser in auction proceedings dated 17.11.2004 has approached this Court questioning the validity of the order dated passed by the Divisional Commissioner Allahabad dated 21.11.2005 setting aside the order of conformation of the sale of the aforesaid auction proceedings and further directing the District Magistrate, Allahabad to proceed in accordance with law. Further prayer has been made that writ in the nature of mandamus be issued directing the respondents not to interfere in the peaceful possession of the petitioner on Plot No. 4-A/4(1A/A) Hashimpur Road, Allahabad, measuring area 1877.6 Sq. yard.

2. Brief background of the case as mentioned in the writ petition is that private respondent had failed to discharge their liabilities of payment of statutory Labour

dues and hence the District Magistrate, Allahabad issued citation under the provisions of U.P. Z.A. & L.R. Act. pursuant to recovery certificate issued by the Labour Tribunal Allahabad and Jaipur (Rajsthan) for a sum of Rs. 41,61,351.00+ 10% collection charges. It has been contended that as said statutory dues at no point of time had been paid even after issuance of recovery certificate and citation, the property/ vacant land of the private respondents was attached by the order of the District Magistrate, Allahabad dated 13.08.2004 qua property situated at 4-A Hashimpur Road, Allahabad. It has been contended that even after attachment when the statutory dues was not paid then auction has been held as contemplated under the relevant provisions of U.P. Z.A. & L.R. Rules pertaining to sale of immovable property. Petitioner has contended that auction proceedings took place on 17.11.2004 wherein he was highest bidder as his bid was to the tune of Rs. 70,00,000/-. Petitioner has contended that respondents filed writ petition before this Court challenging the auction dated 17.11.2004 on various grounds being writ petition No. 51297 of 2004 and said respondents were relegated by this Court for pursuing alternative remedy by preferring objection under Rule 285(I) of the U.P.Z.A & L.R. Act, 1952. Thereafter it has been contended that objection has been filed on 16.12.2004 and it has also been contended that though the aforementioned objection has been filed on behalf of Alok Mitra and Ashok Mitra, Dipak Mitra, Manmohan Mitra and Smt. Madhurima Ghosh but non of the persons except Alok Mitra signed the vakalatnama. Petitioner has contended that no such intimation of filing objection was ever intimated to the District Magistrate and the District Magistrate under this impression that no objection has been filed confirmed the sale on 21.12.2004 and sale deed was executed in favour of the petitioner. It has been contended that Alok Mitra filed application and affidavit for withdrawal of aforesaid objection and pursuant thereto Divisional Commissioner on 04.01.2005 dismissed the said objection filed u/s 285(I) of U.P. Z.A. & L.R. Act 1952 as withdrawn. Petitioner has contended that in the meantime on 01.04.2005 he moved an application for getting the said property converted into free-hold. Petitioner has contended that subsequently same was converted into free-hold in favour of the petitioner. Petitioner has also given detail of selling the said property to various other persons. Further petitioner has also contended that while process of execution of sale deed from one person to another person was going on application were filed by the private respondents for refund of amount in excess to the realization of the amount as mentioned in the citation on following dates. (1) 11.01.2005-Alok Mitra and Dipak Mitra (2) 28.01.2005-Manmohan Mitra and Alok Mitra (3) 07.03.2005-Dipak Mitra (4) 26.05.2005 Dipak Mitra Manmohan Mitra and Ashok Mitra and it has also been contended that based on said application moved by the private respondents 1/4th share of late Alok Mitra and Dipak Mitra was handed over to them and rest 1/4th share of Manmohan Mitra and Ashok Mitra was retained by the Tehsil authorities for adjusting the same against the other recoveries of UPFC. It has been contended that concealing this fact Dipak Mitra, Ashok Mitra, Manmohan Mitra and Madhurima Mitra moved application on 19.05.2005 before the Divisional Commissioner for recalling of the order dated

24.01.2005 on the ground that they have never instructed either late Alok Mitra or his counsel to withdraw the objection. Said application was objected to by the petitioner. Thereafter said application has been allowed by the Commissioner, Allahabad Division Allahabad and confirmation order dated 21.12.2004 has been set aside by mentioning that while objection was pending before the Commissioner, confirmation of sale was void ab-initio. Commissioner has also mentioned that private respondents have averred that the land is worth Rs. 1.50 Crores whereas property is put to auction for consideration of Rs. 70 lacs and the total due against the private respondent was 50,73,851/- and hence auctioned amount is 39% excess to the actual recovery as such same is bad in the eyes of law. Details have also been given that property has rightly been valued and rightful valuation has been made. It has also been contended that subsequent purchaser has deposited the amount for sanctioning of Map and Map has been sanctioned. It has also been contended that constructions have been raised. In this background it has been contended that order passed by the Commissioner is unsustainable and private respondents are stopped in questioning the validity of the auction. At this juncture present writ petition has been filed.

3. Counter affidavit has been filed on behalf of respondent No. 5, Deepak Mitra and it has been contended that there are two companies M/s. Mitra Prakashan Ltd. and M/s. Maya Press Ltd. both companies incorporated under the Indian Companies Act 1956. It has been contended that companies were facing financial hardship on account of which same were closed on 23.12.2000 as a result of which there was spate of labour litigation, claiming wages, closure compensation, Gratuity etc. Respondent No. 5 has contended that two award were passed against M/s. Mitra Prakashan Ltd. and M/s. Maya Press Ltd. on 27.02.2002 and 11.02.2002 respectively and labour Court awarded Rs. 36,69,927.00 and Rs. 20,03,927 against the said two companies towards the closure compensation amounts and on the basis of said two award the Deputy Labour Commissioner forwarded the Recovery Certificate to the District Magistrate, Allahabad for the recovery of the amounts from the above-named two companies. Respondent No. 5 has contended that substantial amount of Rs. 48,99,393.00 towards workers dues and it has also been contended that Deputy Labour Commissioner disbursed Rs. 22 lacs plus one lac and ten thousand towards closure compensation to 110 workers. Respondent No. 5 has further contended that for realization of Gratuity dues proceedings were also initiated by the workers and in this respect also award was passed in case No. 1 of 2002 and 2 of 2002. Respondent No. 5 has contended that said two companies had approached the Divisional Level Udhog Bandhu for being declared sick and in the meeting held on 26.06.2004 the Divisional Level Udhog Bandhu prepared a rehabilitation plan. It has been contended that Divisional Commissioner Allahabad and Deputy Labour Commissioner Allahabad are the members of the Divisional Level Udhog Bandhu and on account of resolution dated 26.06.2004 as Rehabilitation had been worked out as such recovery against two companies stood stayed/ deferred. Respondent No. 5 has contended that neither he nor his brother and sisters are

borrowers or guarantors and it has also been contended that house situated at Hashimpur Road, is their ancestral property inherited from their father late K.M. Mitra and said property has no concern with the companies in question and said two companies have sufficient assets and by the auction sale of the same workers dues could have been paid. Respondent No. 5 has contended that auction proceedings were being initiated against the companies and sale proclamation was issued on 13.07.2004 alongwith the details of plant and machinery which were to be put to auction on 27.07.2004 and thereafter auction was abandoned and proposal was made to proceed against the personal property of respondent No. 5 and his brother and sister. It has been contended by the respondent No. 5 that assets and the printing press of two companies is worth more than Rs. 10 crores today that and it has been described that the amount in question many times over to cover the dues. It has also been contended that Madhurima Ghosh sister of respondent No. 5 is neither a Director nor any office bearer nor borrower nor employee of the said two companies, even then her share in the property too has been auctioned vide auction dated 17.11.2004. It has been contended that objection had been filed to the attachment order dated 03.08.2004 on 11.08.2004. It has also been categorically mentioned that the order of attachment has never been served upon the respondent No. 5 or his brothers and sisters and the same was pasted on the boundary wall of the House 4/1 Hashimpur Road, Tagore Town, Allahabad and it has also been categorically mentioned that order of attachment was never tendered to respondent nor had the deponent ever refused to accept the said order of attachment. It has further been contended that Deputy Labour Commissioner sent the certificate for Recovery to the District Administration/ authorities for the recovery of the amounts due under the award passed in case No. 1 of 2002 and 2 of 2002 and citation respectively dated 11.08.2003 28.08.2003, 30.10.2003 (two in number) were issued in the name of company for recovery of the amount under the award and in pursuance to the same respondents has contended that press of the companies had been locked and sealed by the district authorities and sale proclamation was made fixing 27.07.2004 for auction sale of the same. Respondent No. 5 has mentioned that in the morning of 16.11.2004 when he came out of his house, he found one Notice affixed on the boundary wall informing of the date 17.11.2004 when the auction of 1,877.88 sq. yds. of open land of the House No. 4/1 Hashimpur Road Tagore Town, Allahabad would take place. It has been specially contended that said sale proclamation was neither advertised in any newspaper nor circulated in public nor was there any beat of drums. Petitioner has acquired knowledge of the same when the same has been affixed on the boundary wall of his house and it has been contended that entire proceedings are manipulated for grabbing the property in question. Respondent No. 5 has further contended that he filed his objection on 16.11.2004 against the intended auction but no orders were passed on the same and on 17.11.2004 auction has been shown. It has been contended that as per sale proclamation, open land was to be sold built up area comprising but Guest House and servant quarter etc. has also been sold for paltry sum of Rs. 67 lacs. It has been

contended that said auction sale was questioned before this Court and respondents were asked to file objection u/s 285(1) of U.P.Z.A. & LR. Rules and objection had been filed on 16.11.2004 and during the pendency of the aforesaid objection before Commissioner/ District Magistrate/Collector, Allahabad confirmed the auction sale. Respondent has contended that Alok Mitra without any authority withdrew the objection, as such recall application was moved before the Commissioner and the same has rightly been allowed. It has been contended that fraud has been practiced, in manipulating auction proceeding as such present writ petition warrants no interference by this Court and same is liable to be dismissed by this Court.

4. Supplementary counter affidavit has also been by Deepak Mitra and therein it has been sought to contended that excess amount was created in his account on 15.06.2005 i.e. after the filing of the application for recall of the order dated 24.01.2005.

5. Counter affidavit has been filed on behalf of respondent No. 4, 6, 7 & 8 also and in pith and substance each one of the respondents has contended that personal property could not have been auctioned. Details of share of each one of family member has also been spelled out and in the said objection it has been contended that entire sale is void.

6. Counter affidavit has also been filed by respondent No. 9 contending that sale is void and assuming but no admitting that the District Administration could have recovered from the share of brothers, same could not have gone beyond the share of four brothers, as such sale is void. Details of shares of each brother and his family members have been spelled out.

7. Rejoinder affidavit has been filed to the counter affidavit filed on behalf of respondent No. 5 and it has been contended that impugned order is unsustainable and it has also been contended that nobody has filed objection before the District Magistrate Allahabad rather all four brothers moved application on different dates and two of them namely Dipak Mitra and Alok Mitra were paid Rs. 4,12,104.75/- through cheque drawn at State Bank of India, Main Branch, Allahabad respectively and qua Manmohan Mitra and Ashok Mitra amount was adjusted against other recovery. It has also been contended that objection which has been raised in fact had not been raised. Other property of the respondents are under attachment vide order dated 07.01.2005 passed by the Debt Recovery Tribunal Allahabad. It has been asserted that labour dues has not been deposited. It has also been contended that the issue as to Madhurima Ghosh is also co-sharer or not has not been raised before the Divisional Commissioner and Divisional Commissioner has not recorded any finding and further attempt is being made to escape from statutory liabilities. It has been contended that petitioner is highest bidder and he paid Rs. 70,00,000/- and the circle rate of the residential area of Hashimpur Road is Rs. 3500 to 4000 per sq. meter. In this background it has been contended that sale proceeding are adequate, as such in this background it has been contended that writ petition is

liable to be allowed.

8. After pleadings mentioned above, have been exchanged, present writ petition is being taken up for final hearing and disposal with the consent of the parties.

9. Much hue and cry has been raised by the private respondents that entire sale proceedings are sham proceedings, as such original record in question on the basis of which auction proceeding has been undertaken be summoned. Consequently this Court has summoned the aforementioned record on the basis of which auction proceedings has been undertaken and each one of the parties has perused the record and advanced arguments on the basis of said record.

10. Sri U.N. Sharma, Senior Advocate assisted by Sri Anil Kumar Bajpai, Advocate contended with vehemence that in the present case Commissioner, Allahabad Division Allahabad has transgressed and exceeded his jurisdiction while passing the order dated 21.12.2005 as Commissioner, Allahabad Division Allahabad has totally ignored this aspect of the matter that there is no infirmity or irregularity in the auction sale proceedings and further objection which has been preferred, qua the said auction sale same had been withdrawn and further private respondents had accepted the balance amount by withdrawing the same as such they were estopped in law in questioning validity of auction and as such on this score writ petition deserves to be allowed.

11. Sri Kushal Kant, Advocate representing the private respondents on the other hand contended that entire auction proceedings are sham auction proceedings and record of auction proceedings will speak for itself. Further private respondents inherited the property in question through their father and for liabilities of the companies their personal assets could not have been auctioned especially when by selling the assets of the companies, said dues could have been satisfied and further it has been contended that at no point of time order of attachment had ever been served, and sale proclamation had been finalized exparte and at no point of time any advertisement has been made and further property has been sold at a paltry sum, as such order passed by the Commissioner warrants no interference by this Court and as such writ petition is liable to be dismissed.

12. After respective arguments have been advanced, the provisions which cover the filed are being looked into. this Court in the case of Sawadeshi Polytex Ltd. v. Board of Revenue reported in 2006 (24) LCD 8 has noted down each and every provision which covers the filed of auction sale, and whether such provisions contain statutory force and whether non compliance of the same would vitiate the entire proceedings or not. For ready reference relevant extract of said judgment quoting relevant provisions is being quoted below,

U.P.Z.A and L.R Act 1950 (in short hereinafter referred as the Act) have received presidential assent on 24-1-1951 and notified in the Gazzet on 26-1-1951. UPZA and LR Rules, 1952 (in short hereinafter referred as the Rule) was notified in the official gazzet on 30-6-1952 and published in the official gazette on 30-6-1952. u/

s 294 of the Act the State Government has got power to frame Rules for the purpose of carrying into effect the various provision as contained in the Act. Chapter X of the Act deals with the recovery of dues as arrears of land revenue and Section 279 provides the procedure for recovery/ of arrears of land revenue and Section 280 contemplates issuance of the writ of demand and citation to appear. Section 282 provides the procedure for attachment and sale of movable property. u/s 284 procedure has been provided for attachment lease and sale of holdings Section 284(A) empowers the collector to take appropriate steps for ejectment of persons who attach the land without title. u/s 286 Collector has been vested with power to recover the arrears of land revenue by attachment and sale of the interest of defaulter in immovable property. u/s 287A of the Act the persons against whom the recovery proceedings has been initiated will have right to deposit the amount under protest. u/s 293 the provision contained in Land Revenue Act (Act No. 3 of 1901) has been made applicable, so far as they are not inconsistent with the provisions of the Act. The provisions contained in Section 279, 280, 284, 286 and 287A and Section 327 of the U.P.Z.A. and L.R. Act are relevant for the purpose of present dispute, hence reproduced as under:

279. Procedure for recovery of an arrears of land revenue- (1) An arrears of land revenue may be recovered by any one or more of the following process:

- by serving a writ of demand or a citation to appear on any defaulter;
- by arrest and detention of his person;
- by attachment and sale of his movable property including produce;
- by attachment of the holding in respect of which the arrears is due;
- by lease or sale of the holding in respect of which the arrears is due;
- by attachment and sale of other immovable property of the defaulter; and
- by app appointing a receiver of any property, movable or immovable of the defaulter.

(2) The costs of any of the processes mentioned in Sub-section (1) shall be added to and be recoverable in the same manner as the arrears of land revenue.

280. Writ of demand and citation to appear- (1) As soon as an arrears of land revenue has become due a writ of demand may be Issued by the Tehsildar on the defaulter calling upon him to pay the amount within a time to be specified.

(2) In addition to or in lieu of a writ of demand the Tehsildar may issue a citation against the defaulter to appear and deposit arrears due on a date to be specified.

284. Attachment, lease and sale of holding - (1) The Collector may in addition to or instead of any of the other processes herein before specified either of his own motion or on the application of the Land Management Committee, attach the holding in respect of which an arrears is due.

(2) Where any holding is so attached the Collector may, notwithstanding anything contained in this Act, but subject to such conditions as may be prescribed, let out the holding, for such period not exceeding ten years commencing from the first day of July next following as he deems fit, to any person, other than the defaulter, who pays the whole of the arrears due on the holding and agrees to pay the same amount of land revenue during this period of the lease as has been payable by the defaulter in respect of the holding immediately preceding its attachment.

(3) If during the period of lease, the lessee commits defaults in payment of the land revenue due under lease, the arrears may be recovered from him by any one or more of the processes mentioned in Clauses (a) to (e), (f) and (g) of Sub-section (1) of Section 279 and his lease shall also be liable to be determined.

(4) Upon the expiry of the period of lease the holding shall be restored to the tenure-holder concerned free of any claim on the part of the State Government for any arrears of revenue in respect thereof.

(5) If the Collector is satisfied that no suitable person is forthcoming to take the land on lease under Sub-section (2) then notwithstanding anything contained in this Act he may sell the holding free from all encumbrances in such manner as may be prescribed and appropriate the proceeds in satisfaction of the arrears, and refund the excess, if any, to the defaulter.

(6) The Collector shall report to the Board of Revenue any sale made under Sub-section (5).

286. Power to proceed against interest of defaulter in other immovable property-

(1) If any arrears of land revenue cannot be recovered by any of the processes mentioned in Clauses (a) to (e) of Section 279, the Collector may realise the same by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter,

(2) Sums of money recoverable as arrears of land revenue but not due in respect of any specified land, may be recovered by process under this section from any immovable property of the defaulter including any holding of which he is a bhumidhar.

287-A. Payment under protest and suit for recovery- (1) Whenever proceedings are taken under this Chapter against any person for the recovery of any arrears of land revenue, or for the recovery of any sum of money recoverable as arrears of land revenue he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such proceedings were taken may sue the State Government in the Civil Court for the amount so paid, and in such suit the plaintiff may, notwithstanding anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue

in the Civil Court, unless it is made at the time of payment in writing and signed by such person or by an agent duly authorized in this behalf.

Section 327. Mode of service of notice-Any notice or other document required or authorised to be served under this Act may be served either-

- (a) by delivering it to the person on whom it is to be served, or
- (b) by leaving it at the usual or last known place of abode of that person, or
- (c) by sending it in a registered letter addressed to that person at his usual or last known place of abode, or
- (d) in case of any incorporated company or body, by delivering it or sending it in a registered letter addressed to the secretary or other principal functionary of the company or body as its principal officer, or
- (e) in such other manner as may be laid down in the Code of Civil Procedure, 1908 (V of 1908)

26. Section F of Chapter X of the rule deals with the coercive method which can be adopted by the Tahsil Authorities to recover the amount as arrears of land revenue. Rules 235 and 236 empowers the Tehsildar to issue relevant forms relating to citation, writs, warrant of arrest and warrant of attachment. Rules 239 and 240 provides that the citation to appear or a warrant must be issued separately. Rules 241 to 245 provides how the writ of demand and citation should be issued and may be served on the person concerned. For convenience Rules 235, 236, 239, 240, 241, 242, 243, 245 and 246 are reproduced hereunder: -

235. Section 294- (1) Process against a defaulter being or having property in a district other than that in which the arrears fell due, can be issued against him or against such property only upon a certificate u/s 3 of the Revenue Recovery Act, 1890.

(2) Land Revenue realized upon such a certificate shall not, if the district of issue of the certificate and the district of realization are both within Uttar Pradesh be remitted to the treasury of the district in which it is realized and an intimation to the effect that the amount has been realized, shall be sent to the officer who issued the certificate. The latter shall then have the fact of realization noted in the accounts of his district, while in the district in which the amount was realized, the amount shall be credited as realized on behalf of the demand of the district from which the certificate was issued.

(3) When the district of issue of the certificate is not within Uttar Pradesh, the amount so recovered shall in the first instance be paid into the treasury of the district in which it is realized. At the end of the month, all sums so credited shall be withdrawn and remitted to the District Officer by whom the certificate was issued. Sums exceeding Rs. 15 shall be remitted by remittance transfer receipt and sums of Rs. 15 or less by postal money order, the money order commission

being debited to the contract contingencies of the District Officer making the remittance.

(4) A register in A. Form 67 shall be maintained by District Officers for the record of certificates of recovery of land revenue issued to and received from other districts.

236. Writs, citations warrants of arrest and warrants of attachment of movable property shall be in the A. Forms 68. 69. 70 and 71. They shall be signed by the issuing officer and sealed with his official seal.

237. The wasil baqi navis shall be responsible for the correctness of the entries of the demand in all processes in which such demand is required to be entered and shall sign every such process in token of its correctness in that respect.

238. At the first issue of process for the recovery of an arrear, the statement of account prescribed by Section 278 shall be drawn up by the wasil baqi navis and signed by him, and shall be certified by the Tahsildar, But if the first process issued is a writ or citation, certificate of the Tahsildar shall be recorded on the counterfoil,

239. A single writ of demand or a single writ for attachment and sale of movable property, may be issued against any one, or against some or all of number of defaulters who are jointly responsible for the payment of the arrears but a citation to appear or a warrant of arrest must be issued separately in respect of each defaulter required to attend or to be arrested.

240. Subject to the provisions of the Act, process shall ordinarily be issued in respect of the whole of the arrears due from the defaulter, whether such arrears are due in respect of one or more Khata Khataunis.

241. Section 280- Process u/s 280 (writ of demand or citation to appear) shall be issued by the Tahsildar of the Tahsil in which the arrear fell due, or by the order of the Collector or the Assistant Collector incharge of the sub-division. If the Tahsildar issues such process against a defaulter residing in another Tahsil within the district he may do so either or through the Tahsildar of such other Tahsil.

242. Process u/s 280 is not required by law to proceed process u/s 282 (attachment of immovable property) but ordinarily a writ in Z.A. Form 68, or citation to appear in Z.A. Form 69 should issue before any other process is resorted to.

243. The fee charged for the issue of a writ or citation to appear shall be rupees two. This fee shall be added to the arrears to which the writ or citation is issued, and shall be included in the amount specified therein.

245. Not more than one writ shall be issued in respect of the same arrear to any defaulter, except under the express orders of the Collector. If the arrears are, not paid within 15 days from the date of service, more severe measure should promptly be taken,

246. (1) Service of the writ or citation shall, if possible be made on the defaulter, personally, but if service cannot be made on the defaulter it may be made on his agent. If the defaulter or his agent cannot be found or if there is more than one defaulter against whom a writ or citation has been issued a copy of the writ, or citation may be fixed at a prominent place on or adjacent to the defaulter's residence.

(2) Personal Service shall be made by delivery to the defaulter or his agent of the foil of the writ or citation. The other portion shall be brought back to the Tahsil by the process-server shall report to the officer whom the Tahsildar may appoint for the purpose, the date of service, the manner in which the writ or citation was served, and if it was not served on the defaulter personally, the reason why it was not served. The official receiving the report shall note the particulars on the process, if this has not been done already.

(3) With the sanction of the Collector, writs of demand may also be served by registered post. In such cases the post office receipt shall be attached to the counter-foil.

Rule 247-A and 247 -B deals with the process of arrest and detention and for convenience are reproduced hereunder;-

247-A. The warrant of arrest may be executed by any one of the process-servers referred to in Rule 244 or an Amin or any other officer whose name is entered in the warrant of arrest. Where the person authorized to execute the warrant is a process-server who has not furnished any security to Government, an Amin shall be deputed to accompany such process server.

247-B. (1) Where a defaulter at the time of his arrest pays the entire amount of arrears specified in the warrant of arrest along with the process fee referred to in Rule 248 to the process-server, the Amin or the officer, as the case may be, empowered in the said warrant to receive such arrears and process- fee he shall not be arrested, and if arrested shall be released, and a receipt for the amount so paid shall be issued to him on the spot in Z.A. Form 64 by the process server, Amin or officer, as the case may be.

(2) The amount of arrears and the process fee paid by the defaulter shall immediately be deposited in the tahsil in the same manner as a land revenue collection is deposited. The fact of payment of the aforesaid amounts as also the reference of the Receipt No. and Book no of the receipt issued to the defaulter shall also be noted down on the warrant which shall then be put up before the officer issuing the warrant of arrest who shall ensure that the amounts noted on the warrant have been duly deposited in the tahsil.

27. The procedure for the attachment of lease of land have been provided under Rules 272, 272-A, 272-B, 273, 273-A, 278 and 285(c) for convenience which are reproduced hereunder: -

272. Sections 279, 284, 289 and 291- (1) Process for attachment of a holding

under Clause (d) of Section 279 or for lease of a holding u/s 291 may be issued only by the Collector.

(2) Process for attachment of a village or any area therein u/s 289 may be issued by the Collector with the previous sanction of the Board of Revenue. While submitting his proposal for attachment to the Board of Revenue, the Collector shall report how he proposes to manage the land during the period of attachment, and the period for which the attachment is proposed.

(3) Where a holding is attached under Clause (d) of Section 279, the Collector shall forthwith make necessary arrangements for the cultivation of land either by grant of a lease u/s 291 or in such other manner as he considers desirable.

272-A. Before proposing attachment u/s 289, the Collector should satisfy himself by reference to the Pargana Book and other sources of information available to him, that there is a reasonable probability of the arrears being recorded by this process within the period of three years allowed by the Act. If the Collector or the Board of Revenue is not satisfied the attachment shall not be made except as a preliminary measure to some more severe process.

273-B. The direction contained in paragraphs 713 to 716 of the Revenue Manual as to provision for the cost of collecting establishment and local management, shall apply mutatis mutandis to land under management after attachment for arrears of revenue.

273. Where any land is attached, In pursuance of the provisions of Clause (d) or (f) of Section 277 or Sub-section (1) of Section 284, or of Section 286 or is let out under Sub-section (2) of Section 284, a proclamation in Z.A. Form 73 shall be affixed at a conspicuous place in the village in which the land is situate, and it shall also be notification by beat of drum.

273-A. The attachment of holding or other immovable property under Clause (d) or (f) of Section 276 or u/s 284 or Section 286, shall be effected in the manner prescribed in Order XXI, 54 of the Code of Civil Procedure, 1908 and the order to the defaulter shall be issued in Z.A. Form 83-D.

278. Section 284(2)- As soon as may be, after the holding is attached under Sub-section (1) of Section 284, the Collector shall proceed to let out the holding to any person other than the defaulter, whom he thinks fit, and who pays the whole of the arrears due on the holding before a lease is given to them in respect of that holding.

285(c). If the defaulter pays the arrears in respect of which the land for other immovable property is to be sold, at any time before the day fixed for the sale, the person authorized to collect the amount in arrears or to the person appointed under Rule 285-A to conduct the sale, the sale officer, on being satisfied of the payment, shall stay the sale.

28. Under Rule 281 procedure has been given for the sale of immovable

property. For convenience Rules 281, 282 and 283 are reproduced hereunder: -

281. (1) Recourse can only be had to the sale of the holding u/s 284 when the processes specified in Clauses (a), (b), (c) or (d) of Section 279 would be insufficient for the recovery of the arrear.

(2) Process for sale of holding u/s 284 and other immovable property u/s 286 shall be issued by the Collector.

(2-A) 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 an 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.

282. Section 286- The proclamation of sale shall be in Z.A. Form 74.

283. In the proclamation for sale u/s 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.

29. All the aforementioned provisions contained in the Act and Rules are in affirmative, and command the revenue authorities to fulfil requirements while proceeding to recover the dues as the arrears of land revenue. The various ZA forms provided under the Rule should be effectively served on the defaulter before proceeding ahead with the auction and sale of the property. The provision of the Act as well as Rule stated hereinabove have got statutory force and are mandatory in nature. The violation of Rules may vitiate the entire recovery proceedings.

13. In the present case as original record has been produced as such this Court proceeds to examine the record of auction proceedings to ensure as to whether the mandatory provisions as provided for has been complied with or not and whether transaction in question is free, fair and transparent transaction or it is merely a sham transaction. Record in question reveals collusion and conspiracy of State Authorities with the petitioner to the deprive the private respondents of their rights in relation to property in question. Auction proceeding is nothing but colourable transaction in the grab of recovery proceedings. Following are the glaring circumstances for making aforementioned observations, (i) In all total eighteen recovery certificates had been issued for sum of Rs. 31,31,971/- and Rs. 27,77,259/- respectively for which property of the both establishment had been attached and recovery proceedings were going on and the date fixed for auction was 25.03.2004. Thereafter said recovery had been stayed on 18.03.2004. Civil Misc. Writ Petition No. 19624 of 2004 had been filed wherein this Court on 27.05.2004, issued notice and observed that there is no legal impediment in proceeding with recovery, Collector may take steps in pursuance of recovery certificate. Pursuant to the directive issued on 15.06.2004 record was placed before Tehsildar and on 24.06.2004 for auctioning movable property Z.A.

Form 72 was presented for approval. In the order sheet maintained below 24.06.2004, there is endorsement by Neeraj Mishra of receiving Z.A Form 72. Said endorsement contains cutting on the date front and said cutting in date does not lead anywhere as date mentioned is 20.06.2004, and Z.A Form 72 has been prepared as per order sheet dated 24.06.2004 on the same date. On 09.07.2004, order sheet indicates that no one turned up for auction as such directives were issued for wide publicity of auction. On 12.07.2004, Z.A Form 72 for sale of movable property was prepared and same was accorded approval on 13.07.2004. On 27.07.2004 no one turned up to participate in auction proceeding, then again order was passed for preparing Z.A. Form 72, and collection Amin was asked to take steps for wide publicity of sale. Thereafter on 28.07.2004 Z.A. Form 72 was again prepared and 11.08.2004 was fixed for sale. On 11.08.2004 no one turned up for sale, again directives were issued for preparation of Z.A. Form 72. On 12.08.2004 for sale of movable property, proclamation was again drawn and for ensuring wide publicity for sale. On 13.08.2004, for the first time for attachment of immovable property request was made and accorded. Record reveals that State authorities had their eye on the property in question inasmuch as, as Tehsildar on 20.02.2004 had written letter to Tax Superintendent Nagar Nigam, Allahabad with copy of same endorsement to Lekpal in respect of residential house and the land attached to the same. On 06.08.2004 report has been submitted qua open land and house in question and on 12.08.2004 mention has been made that United Bank of India has put its seal as such no one is turning up to participate in auction proceeding and sale is being hampered in this background recovery be initiated from the personal property of Directors, and in their name property is situated at 4/4-A (1A/A) Hashimpur Road, Allahabad and as such permission be accorded for attachment, and pursuant thereto attachment has been made.

(ii) On 06.07.2004 Debt Recovery Tribunal passed order in O.A. No. 109/2002 restraining transfer and alienation of the machineries and further appointing one S.D. Mishra Advocate as Receiver with directions to take possession, and adverties and sale the above mentioned hypothetted property. Information in this respect was given by the Bank to Collector Allahabad by letter dated 26.08.2004 requesting for postponing auction dated 26.08.2004 pursuant to citation dated 12.08.2004 and in the same letter mentioned had been made that symbolic possession has been taken on 24.07.2004 and 31.07.2004 by Receiver as such no auction be carried and further request was made for opening of lock on the master gate.

(iii) At this stage it would also be relevant to note that for rehabilitating the unit in question treating the same as sick unit on 29.06.2004 meeting of Divisional Udyog Bandhu with Commissioner of Division, as its Chairman took place, wherein resolution No. 7 was passed for treating unit in question as sick unit w.e.f. 01.07.2004 to 30.09.2004 and during the said period eighty percent of old employees were to be reinstated and further entire property of the establishment was to be kept intact, and further recovery proceedings were to be kept in

abeyance.

(iv) Ignoring the said resolution as auction proceedings were being pressed and 26.08.2004 was the date of auction application was moved in Civil Misc. Writ Petition No. 19624 of 2004 and this Court in order to ensure that rehabilitation package was effective and not made redundant on 26.08.2004 directed that order of attachment pursuant to recovery as mentioned in writ petition and in case auction proceedings has taken place then no further action shall be taken and same shall be kept in abeyance and directives were also given to make deposit Rs. 4.75 lacs within one month, which was to be equally distributed among workmen, and qua the property which has been kept under attachment directives were to keep the same intact and not to alienate/transfer the same in any manner whatsoever.

(v) The facts mentioned above have been narrated to show that there had been anxiety to rehabilitate the unit in question and up till 30.09.2004 as per decision of Division Udoyg Bandhu no coercive action was to be taken. On 04.08.2004, Sub Divisional Magistrate giving reference of the decision of Divisional Udoyg bandhu, sought directives from the Commissioner for re-opening of the lock.

(vi) On one hand letter was written by the concerned Sub-Divisional Magistrate on 04.08.2004 for reopening of the lock, on the other hand without recording any finding that the assets of the two companies were not sufficient to satisfy the recovery proceedings on 06.08.2004 details of personal property was furnished on which report was submitted on 12.08.2004 and thereafter, order of attachment of personal property was passed by same Sub-Divisional Magistrate dated 13.08.2004 and therein details of property was also mentioned qua open land, area 1877.6 square. Yards whereas as per order sheet on 12.08.2004 orders have been passed for preparation of Z.A. Form 72 for sale of movable property.

(vii) Proceedings have taken place in the manner as the authorities have desired at their end. On 28.09.2004 report has been submitted that desired amount has not been deposited, and further action be taken accordingly, On 16.10.2004 sale proclamation has been got prepared. Order sheet reflects that on 10.11.2004 sale proclamation was served and said file be placed on 17.11.2004. Copy of sale proclamation forms part of the record. At the back of the said sale proclamation, endorsement has been made by Neeraj Mishra, mentioning that he has visited many time but no one was available and on 10.11.2004, Deepak Mitra met and he accepted copy of sale proclamation. Date of auction of said property has been mentioned to be on 17.11.2004. Deepak Mitra has disputed his signature and as far as other persons named in the citation, undisputed position is that they have not been served. At this juncture the validity of sale proclamation is being looked into. Undisputed position is that before proceeding to finalize sale proclamation at no point of time owners of the property is question were ever consulted. Map alongwith report dated 06,08.2004 reveals property to be big house with open land in front, in the back and in the side with other constructed area in the back.

Without consulting the owners of the property the authorities concerned identified the land to be put up for auction. Sale proclamation has been finalised without there being any application of mind and without affording any opportunity to owners, while settling the sale proclamation.

14. Hon''ble Apex Court in the case of *Desh Bandhu Gupta v. N.L. Anand & Rajendra Singh* reported in 1994 (1) SCC has clearly held that estimate of the value of the property is a material fact to enable the purchaser to know its value. Estimated value must be mentioned in sale proclamation and judgment debtor must be provided an opportunity to give his version of valuation Extent of property to be sold in auction should be such to satisfy the decree. Provisions of C.P.C. are applicable in proceedings under U.P. Z.A. & L.R. Act as per Section 341. Consequently, as per the judgment of Hon''ble Apex Court, entire proceedings are void Relevant extract of said judgment is being quoted below.

9. However, there is considerable force in the contention of the appellant that the procedure prescribed under Order 21, Rule 66 was flagrantly violated by the Executing Court. We have already noted the order of the court to conduct the sale. For judging its legality and validity, it would be desirable to have a bird''s eye view of the procedure for sale of immovable property in execution. On an application for execution filed under Order 21, Rule 5 the Court shall ascertain the compliance of the prerequisites contemplated under Rule 17 and on finding the application in order, it should be admitted and so to make an order, thereon to issue notice under Rule 22 subject to the conditions specified therein, It a notice was served on the judgment-debtor as enjoined under Order 5 but he did not appear or had not shown cause to the satisfaction of the court under Rule 23 the Court "shall order the decree to be executed." If an objection is raised to the execution of the decree by operation of Sub-rule (2) thereof, " the Court shall consider such objections and make such order as it thinks fit". Thereafter in the case of a decree for execution against immovable property an attachment under Rule 54 should be made by an order prohibiting the judgment debtor from transferring or creating encumbrances on the property. Under Rule 64 the Court may order sale of the said property. Under Rule 66(2) proclamation of sale by public auction shall be drawn up in the language of the court and it should be done after notice to the decree holder and the judgment debtor and should state "the time and place of sale" and "specify as fairly and accurately as possible" the details specified in Clauses (a) to (d) of Sub-rule (2) thereof. The Civil Rules of Practice in Part L in the Chapter 12 framed by the High Court of Delhi "Sale of Property and Delivery to the Purchaser" Rule 2 provides that whenever a court makes an order for the sale of any attached property under Order 21, Rule 64 it shall fix a convenient date not being distant more than 15 days for ascertaining the particulars specified in Order 21, Rule 66(2) and settling the proclamation of sale. Notice of the date so fixed shall be given to the parties or their pleaders. In Rule 4 captioned Settlement of Proclamation of sale, Estimate of Value" it is stated that on the day so fixed the court shall, after perusing the documents, if any, and the report referred to in the preceding paragraph, after examining the

decree holder and judgment-debtor if present, and after making such further enquiry as it may consider necessary settle the proclamation of sale specifying as clearly and accurately as possible the matters required by Order 21, Rule 66(2) of the Code, The specifications have been enumerated in the rule itself. The proclamation for sale is an important part of the proceedings and the details should be ascertained and noted with care. This will remove the basis for many a belated objection to the sale at a later date. It is not necessary to give at proclamation of sale the estimate of the value of the property. The proclamation when settled shall be signed by the Judge and got published in the manner prescribed by Rule 67. The court should authorize its officers to conduct the sale. Under Rule 68 the sale should be conducted at the place and time specified or the time may be modified with the consent in writing of the judgment debtor. The proclamation should include the estimate, if any given by either judgment debtor or decree holder or both the parties. Service of notice on judgment debtor under Order 21, Rule 66(2), unless waived by appearance or remained ex parte, is a fundamental step in the procedure of the court in execution Judgment debtor should have an opportunity to give his estimate of the property. The estimate of the value of property is a material fact to enable the purchaser to know its value. It must be verified as accurately and fairly as possible so that the intending bidders are not misled or to prevent them from offering inadequate price or to enable them to make a decision in offering adequate price. In *Gajadhar Prasad v. Babu Bhakta Ratan* this Court, after noticing the conflict of judicial opinion among the High Court, held that a review of the authorities as well as the amendments to Rule 66(2)(e) make it abundantly clear that the court, when stating the estimated value of the property to be sold, must not accept merely the ipse dixit of one said. It is certainly not necessary for it to state its own estimate. If this was required, it may to be fair, necessitate insertion of something like a summary of a judicially considered order giving its grounds, in the sale proclamation, which may confuse bidders. It may also be quite misleading if the court's estimate is erroneous. Moreover, Rule 66(2)(e) requires the court to state only nature of the property so that the purchaser should be left to judge the value for himself. But, the essential facts which have a bearing on the very material question of value of the property and which could assist the purchaser in forming his own opinion must be state, i.e. the value of the property, that is after all, the whole object of Order 21, Rule 66(2)(e), CPC. The court has only to decide what are all these material particulars in each case. We think that this is an obligation imposed by Rule 66(2)(e). In discharging it, the court should normally state the valuation given by both the decree-holder as well as the judgment-debtor where they both have valued the property, and it dose not appear fantastic. It may usefully state other material facts, such as the area of land, nature of rights in it, municipal assessment, actual rents realized, which could reasonable and usefully be stated succinctly in a sale proclamation has to be determined on the facts of each particular case. Inflexible rules are not desirable on such question. It could also be angulated form another perspective. Sub-rule (1) of Rule 66 enjoins the court that the details enumerated in Sub-rule

(2) shall be specified as fairly and accurately as possible. The duty to comply with it arises only after service of the notice on judgment debtor unless he voluntarily appears and is given opportunity in the settlement of the value of the property. The absence of notice causes irreparable injury to the judgment-debtor. Equally publication of the proclamation of sale under Rule 67 and specifying the date and place of sale of the property under Rule 66(2) are intended that the prospective bidders would know the value so as to make up their mind to offer the price and to attend at sale of the property and to secure competitive bidders and fair price to the property sold. Absence of notice to the judgment-debtor disables him to offer his estimate of the value who better knows its value and to publicise on his part, canvassing and bringing the intending bidders at the time of sale. Absence of notice prevents him to do the above and also disables him to know fraud committed in the publication and conduct of sale or other material irregularities in the conduct of sale. It would be broached from yet another angle. The compulsory sale of immovable property under Order 21 divests right, title and interest of the judgment-debtor and confers those rights in favour of the purchaser. It thereby deals with the rights and disabilities either of the judgment-debtor or the decree- holder. A sale made, therefore, without notice to the judgment-debtor is a nullity since it divests the judgment of his right title and interest in his property without an opportunity. The jurisdiction to sell the property would arise in a court only where the owner is given notice of the execution for attachment and sale of his property. It is very statutory that a person's property cannot be sold without his being told that it is being so sold and given an opportunity to offer his estimate as he is the person who intimately knew the value of his property and prevailing in the locality, exaggeration may at time be possible. In *Rajagopala Ayyar v. Ramachandra Ayyar* the Full Bench held that a sale without notice under Order 21, Rule 22 is a nullity and is void and that it has not got to be set aside. If an application to set aside such a void sale is made it would fall u/s 47.

10. Above discussion indicates a discernible rule that service of notice on the judgment-debtor is a fundamental part of the procedure touching upon the jurisdiction of the Execution Court to take further steps to sell his immovable property. Therefore, notice under Order 21, Rule 66(2), unless proviso is applied (if not already issued under Order 21, Rule 22), and service is mandatory. It is made manifest by Order 21 Rule 54(1-A) brought on statute by 1976 Amendment Act with peremptory language that before settling the terms of the proclamation the judgment-debtor shall be served with a notice before setting the terms of the proclamation of sale. The omission thereof renders the further action and the sale in pursuance thereof void unless the judgment-debtor appears without notice and thereby waives the service of notice,

11. In the case before us, the Execution Court had completely over looked compliance of the mandatory procedure, accepted ipse dixit of the decree holder even without calling Amin's report. The decree holder in a complaint given to the Income Tax Department got the site valued with an approved valuer at Rs. 3,333

but he valued in the E.P. At Rs. 1,00,000/- the Court accepted without indicating grounds for this preference and had given programme of sale. It did not bother even to consider the objections of the judgment-debtor raised at the earliest of the need to proceed with the execution when sufficient amount to meet the decree debt was already in deposit. It is a case of non-application of judicial mind and abdication of judicial duty. Though the insertion of an order judicially passed need not be made in the sale proclamation but the record should indicate that a judicial order has been passed showing that it had applied its mind to the need for determining all the essential particulars, which would reasonable be looked for by an intending purchaser. The relevant and material particulars should be inserted in the sale proclamation as accurately and precisely as possible. The order should show that it considered the objections, if any, of the decree holders or the judgment debtors, as the case may be. It should not merely accept unhesitatingly the ipse dixit of one or either side or both.

12. The contentions of S/Shri Madhava Reddy and Gujral that the appellant had not given his valuation and that, therefore, it is not open to him to raise the objections after the sale is unacceptable. Since the court had not given any notice to the appellant which is mandatory the need to submit his valuation did not arise. Order 21, Rule 54 Sub-rule (1-A) brought in by 1976. Amendment Act mandates that the court should require the judgment debtor to attend the court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale. Form 24 of Appendix "E" second para and the Court Rules also envisage the mandate. It is a reminder to the court that it has a statutory duty to issue notice to the judgment debtor before settlement of the terms of proclamation of sale. Form 24 of Appendix "E" second para and the Court Rules also envisage the mandate. It is a reminder to the court that it has a statutory duty to issue notice to the judgment debtor before settlement of the terms of proclamation of sale. Then only the proviso to Rule 66(2) comes into play dispensing with multiplicity of notices and not dispensation of mandatory compliance of notice to the judgment debtor. Had it been a case where notice was served and the appellant lay by without objecting to the valuation given by the decree holder certainly that would be put against the appellant to impugn the irregularities after the sale or the under valuation settled by the Court in the proclamation of sale. The further contentions of both the counsel that merely because there is no order under Order 21, Rule 66(2), it cannot be construed that the Execution Court had not applied its mind in settling the terms of the proclamation of sale is one on desperation. Except giving a schedule of dates for conducting the sale the Execution Court totally abdicated its duty to scrupulously comply with the mandatory procedure and did not apply its mind to the mandatory duty cast on it by Order 21, Rule 66 to settle the terms to proclamation of sale, and proper publication under Rule 67, after 20, 1979 the court had merely ensured its publication on the court notice board and on the site at the respective dates and no further. this Court in Shalimar Cinema Vs. Bhasin Film Corporation and Another, held that the court has a duty to see that

the requirements of Order 21, Rule 66 are properly complied with. It is incumbent on the court to be scrupulous in the extreme. No action of the court or its Officer should be such as to give rise to the criticism that it was done in a casual way. Therefore, a proclamation of sale drawn casually without compliance of the mandatory requirement and a sale held in furtherance thereof is not a sale in the eye of law. We are of the considered view that the procedure adopted by the court in non-compliance of Order 21, Rules 66 and 67 is in flagrant breach of the mandatory provisions. It is nullity ab initio.

14. Proviso to Sub-rule (4) of Rule 17 of Order 21 provides the procedure to receive the application for execution of the decree. In the case of a decree for payment of money the value of the property attached shall as nearly as may be correspond with the amount due under the decree. Rule 64 of Order 21 charges the Executing Court that it may order attaching of any property to the extent that "such portion thereof as may seem necessary to satisfy the decree would be sold". It is also enjoined under Sub-rule (2) (a) of Rule 66 of Order 21 that where a part of the property would be sufficient to satisfy the decree the same be sold by public auction. Form 27 of Appendix e of the schedule also directs the court auctioneer to sell so much of the same property as shall realise the sum in the said decree and costs. The Code therefore, has taken special care charging the duty on the Executing court and it has statutory duty and a legislative mandate to apply its mind before settling the terms of proclamation and satisfy that if part of such property as seems necessary to satisfy the decree should be sold if the sale proceeds or portion thereof is sufficient for payment to the decree holder or the person entitled under the decree to receive the amount and so much of that property alone should be ordered to be sold in execution. In *Ambati Narasayya Vs. M. Subba Rao and another*, this Court held that it is the duty cast upon the court under Order 21, Rule 64 to sell only such property or a portion thereof as may be necessary to satisfy the decree. It is mandate of the legislature which cannot be ignored. Therein for execution of a decree of sum of Rs. 2,000 and costs the appellant's 10 acres land was brought to sale which was purchased for sum of Rs. 17,000/ subject to discharge of a prior mortgage of Rs. 2,000. this Court held that without the court's examining whether a portion of the property could be sold the sale held was not in conformity with the requirement of Order 21, Rule 64 and it was held to be illegal and without jurisdiction. The sale was set aside and the court was directed to put the judgment debtor in possession of the land to refund the sale amount to the auction-purchaser. Further direction was given to execute the decree in accordance with law. In *Mangal Prasad (dead) by LRs. and another Vs. Krishna Kumar Maheshwari and others*, a shop was sold to realise a decree debt of about Rs. 29,000 and the sale price at the auction was one lakh and odd. this Court finding that it is excessive execution, set aside the sale and directed return of the sale amount of the auction purchaser with interest @ 12%. In *Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma and Others*, to recover the decree debt in two decrees, the properties situated in two different villages were brought to

sale. In the first instance the property in "D" village fetched a sum of Rs. 16,880 which was sufficient to satisfy the decretal amount. The property in "G" village was also sold which fetched a sum of Rs. 12000/- this Court set aside the sale of "G" village. Admittedly the site in sale is to the extent of 550 sq. yards situated in a commercial area around which the petroleum installations are established. Though as contended by Sri Madhava Reddy, that there may be building regulation for division of the property into portions but the court made an attempt to sell a portion of the property may be 100 yards or 150 yards out of it, or whether undivided portion thereof would have satisfied the decree debt. It could be legitimately concluded that the court did not apply its mind at all to this aspect as well.

15. To get over the difficulty, Sri Madhava Reddy has fallen back on Order 21, Rule (3) of the Code which provides that "no application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date of which the proclamation of sale was drawn up" Undoubtedly this special rule was brought on statute by 1979 Amendment Act. It is like a "caveat emptor" that the judgment debtor be vigilant and watchful to vindicate pre-sale illegalities or material irregularities. He should not stand by to procrastinate the execution proceedings. If he so does Rule 90(3) forewarns him that he pays penalty for obduracy and contumacy. Equally it is a reminder that the court should be strict to comply with the procedural part under Rule 54(1-A) before depriving the judgment-debtor of the remedy under Order 21, Rule 90 CPC. If he had notice from court and acquiesced by taking no action before the date of sale, he would be precluded to assail its legality or correctness thereafter. It is seen that the appellant had not been served with or given notice at the time of drawing up the proclamation of sale and as a fact no proclamation of sale was drawn up by the Executing Court except accepting the ipse dixit of the decree holder. The procedure adopted by the Executing court bristles with several irregularities touching the jurisdiction of the court. They are not only material irregularities causing substantial injustice but are in violation of the mandatory requirements of the rules. In *Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others*, the sale proclamation was settled after notice to the parties and after several adjournments. The respondent adopted dilatory tactics to obstruct the sale. Therefore, the valuation in the report submitted in that behalf was accepted and the properties were sold. this Court held that if there was any material irregularities in the conduct of sale and if it causes sufficient injury to the judgment debtor the same could be set aside, where the court mechanically conducts the sale not bothering to see that the offer is too low and the better price could have obtained. If in fact the price is substantially inadequate there is both material irregularity and injury. At the same time the Court should not go on adjourning the sale till a good price is got as otherwise the decree holder would never get the property of the judgment-debtor sold. this Court further held that there is always considerable difference between the court sale price and the market price. The valuer's report though good as a basis is not as good as an

actual offer and there are bound to be variations within limits between such an estimate, however, careful and the real bids by the seasoned businessman. Mere inadequacy of price cannot demolish a court sale. Further if the court sales are too frequently adjourned with a view to obtaining a still higher price, prospective bidders will lose faith in the actual sale taking place and may not attend the auction. What is expected of the court is to make a realistic appraisal of the factors in a pragmatic way and if satisfied that in the given circumstances the bid is acceptable it should conclude the sale. The Court may consider the fair value of the property the general economic trend, the large sum required to be produced by the bidder the formation of a syndicate the futility of postponements and the possibility of litigation and several other factors depending on facts of each case, if the court has fairly applied its mind to the relevant considerations while accepting the final bid, it is not necessary to give a speaking order nor can its order be examined meticulously. In that case the judgment debtor himself was adopting dilatory tactic and the property was sold after considerable delay and postponements. The sale was upheld.

16. In *Janak Raj Vs. Gurdial Singh and Another*, relied on by Sri Madhava Reddy in execution of ex parte decree was brought to sale and was sold for a sum of Rs. 5,100. Thereafter the judgment-debtor made an application to set aside the ex parte decree. An objection was raised to the sale on the ground that the value of the house was Rs. 25,000 and it was auctioned for a sum of Rs. 5000. The ex parte decree was set aside. On application made by the auction purchaser the sale was confirmed. It was contended that since the ex parte decree was set aside the confirmation of sale need to be set aside, which was negated by all the courts. In that background it was held that confirmation of the sale was not illegal and the inadequacy of the price was not a ground to set aside the sale. The ratio therein has to be considered in the light of its own scenario. The facts in this case are entirely different. The case of *Chinnamal and others Vs. P. Arumugham and another*, also does not help the auction purchaser. Therein it was found that pending appeal the money decree was executed and the properties were brought to sale. The High Court allowed the appeal and set aside the decree. Thereafter the Executing Court was moved to set aside the sale on diverse grounds including the plea of inadequacy of price. The learned Single Judge set aside the sale, but the Division Bench reversed the decision. On appeal, this Court held that the auction purchaser was not a bona fide purchaser. The auction sale in his favour was set aside and the restitution ordered. The court cannot lend assistance to a person to retain the property of the judgment-debtor who has since got rid of the decree. In that context it was held that the stranger auction purchaser who is not a party to the decree is protected against the vicissitudes or fortunes of the litigation and remains unaffected and does not lose title to the property by subsequent reversal or modification of the decree. The rights of bona fide purchaser who purchased the property in ignorance of the litigation should be protected. The ratios in that case would indicate that the purchaser must be a bona fide purchaser for adequate price without knowledge

of the pending litigation. If it is otherwise, it is liable to be set aside. In that context it was held that the true question is whether the stranger auction purchase had knowledge of the pending litigation about the decree under execution. If it is shown by evidence that he was aware of the pending appeal against the decree when he purchased the property the court cannot assume that he was a bona fide purchaser for giving him protection against restitution. His knowledge about the pending litigation would make all the difference in the case. Though he may be stranger to the suit but he must be held to have taken a calculated risk in purchasing the property. Far from helping the auction-purchaser this goes against him. Mr. Gupta contended that Rajinder Singh is not a bona fide purchaser. His brother is the adjacent owner of the site in question. The second respondent and his brother only made the bids and participated in the sale. Rest of the people had no capacity to purchase the property. The sale therefore, is only fraudulent and collusive one. Though we find some substance in what Mr. Gupta contends we need not go into the question on the facts of this case. Suffice to state that all is not well. It is true that there is a distinction between irregularity and material irregularity in conducting the sale and it must be established that by reasons of illegalities or irregularities in conducting the sale the judgment debtor has sustained substantial injury. In *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, this Court held that non-compliance of Section 35 of the Bengal Money Lenders Act does not render the sale void. It is only an irregularity. The judgment debtor having had the knowledge did not file any objection. He did not attend the Court for drawing up of the proclamation of the sale. On those circumstances the sale was held not liable to be set aside.

(viii) For effecting sale on 17.11.2004 undisputed position is that no advertisement whatsoever has been made. At no point of time evaluation of the property was got done by experts of the field nor estimated price was disclosed in the sale proclamation, in compliance with the Rules. Rule 283 provides that estimated value of the property should be calculated in accordance to the provisions contained in chapter XII of Revenue Manual. Revenue Manual provides for specific proceedings for evaluation of properties. Reasonableness of authorities conducting the sale has to be tested qua the dominant consideration, that best price is received for the property sold. This object can be achieved only when there is maximum public participation in the process of sale and every body has an opportunity to make an offer. Public auction after adequate publicity ensures participation of every person who is interested in securing the property and generally secures best price. Hon'ble Supreme Court in a case of *Gajraj Jain Vs. State of Bihar and Others*, held that while proceeding a head with the auction and sale of a property the authorities should obtain valuation report from the experts of the field before proceedings of the auction and sale of the property, so that their action may be justified at the touch-stone of Article 14 of the Constitution of India which provides that every State action should meet out the test of reasonableness and fairness. Relevant portion from the case of *Gajraj Jain*

(supra) is reproduced as under:

In the present case, it has been urged that absence of valuation report and the reserve bid does not vitiate the sale. We do not find merit in this argument. In the case of S.J.S. Business Enterprises (P) Ltd. it has been held that the financial corporation, in the matter of sale u/s 29, must act in accordance with the statute and must not act unreasonably. In this case, the Corporation fails on both the counts. It has neither complied with the provisions of Sub-sections (1) and (4) of Section 29, nor has it acted fairly. The test of reasonableness has been laid down in the above judgment in which it is held that reasonableness is to be tested against the dominant consideration to secure the best price. Value or price is fixed by the market. In the case of a going concern, one has to value the assets shown in the balance sheet (Datta, S. Valuation of Real Property, p. 198). In our view, if the object of Section 29 of the Act is to obtain the best possible price then the Corporation ought to have called for the valuation report. This has not been done. There is no inventory of assets produced before us. The mortgaged assets of the Company could be sold on itemized basis or as a whole, whichever is found on valuation to be more profitable. No particulars in that regard have been produced before us. If publicity and maximum participation is to be attained then the bidders should know the details of the assets (or itemized value). In the absence of the proper mechanism the auction-sale becomes only a pretence.

15. In the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, the Apex Court held that adequate publicity should be given so that maximum bidders may participate in auction and sale proceedings and this should be done providing fair and practical period of time/. For convenience relevant portion from the case of S.J.S. Business Enterprises (supra) is reproduced as under:

Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of 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 "as-is-where-is 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.

16. In this case, the first notice of sale was given on 31.1.2002. A period of about four weeks was given to the purchasers to submit their offers by ordinary norm. But when the second impugned notice of sale was given on 26.3.2002, less than three days were given to the purchasers to inspect the premises, make necessary arrangements and submit their offers to BICICO. Of these three days, two were public holidays when banks would have also been shut. The period of notice was, in the circumstances, entirely inadequate. Besides, we have not been told the reason for this unusual haste. Such precipitate action was not called for unless there were some other considerations weighing with the authorities,

considerations which have not been disclosed to the Court.

(ix) Non publication of sale in newspaper of wide circulation, has clearly shown its effect in the present case. Public auction has been turned into private auction, wherein merely four persons have participated namely (i) Ranjeet Singh (ii) Arun Pathak (iii) Chandra Sekhar Singh (iv) Pravesh Kumar Sachdev. Sale proclamation does not mention that at what point of time auction sale will take place, however these four persons are there at the point of time when auction is alleged to have taken place. Two receipt dated 06.11.2004 and 10.11.2004, have been brought on record. Said two original receipts talks of publicity by loudspeaker on rikshaw but does not disclose the time. Said two receipts, on the face of it are prima facie procured as on the receipt dated 06.11.2004, correction has been made by changing the date on the top to be 06.11.2004 in place of other date. Similarly in receipt dated 10.11.2004 also change has been made as there is overwriting on the same, clearly suggestive of manipulations. Here it would be relevant to note that from the order-sheet maintained for sale of movable property of the company, Form 72 was issued with directives for wide publicity and on the date fixed no one turned up for sale. Similar receipts of publicity by way of loud-speaker on rikshaw is not at all there on the record, clearly indicating that these two receipts are prima facie procured receipts only as an eyewash of giving colour of public auction.

(x) Close examination of the auction proceedings dated 17.11.2004 reveal that person who deposited Rs. One lac was only entitled to participate "in auction and the highest bid is of Rs. 70 lacs in favour of petitioner. Arun Pathak one of the bidders is witness to the possession memo dated 23.12.2004, clearly suggestive that bid in question was collusive one. Both the witness of possession memo, while giving date of possession have changed the date. Apart from this Ranjit Singh S/o Mahendra Singh Nayeer is also one of the bidder and most surprisingly he is the first witness of sale deed executed in favour of petitioner and is also witness of free hold deed. This is also clear cut indication of collusion and clearly discredits the auction proceeding. Prima-facie the last remaining bidder Chandra Sekher Singh s/o Shanker Singh R/o 308 Nai Basti Kydganj also appears to be yesman of petitioner, as identity of second witness to the sale deed has been described as Shekhar Singh Yadav S/o Shanker Lal 305 Chukhandhi, Kydganj, Allahabad and both prima-facie appear to be one and same person.

(xi) Bid sheet and other attending circumstances, clearly speaks of collusion and auction proceedings being mere paper work. Bid sheet shows name of prospective bidders in following order (i) Ranjit Singh (ii) Arun Pathak (iii) Chandra Sekhar Singh (iv) Pravesh Kumar Sachdev. Highest bid has been offered by petitioner to the tune of Rs. 70.00 Lacs. As per the purported terms and conditions of auction immediately after bid was over 1/4th of the amount had to be deposited. Immediately thereafter as per record Bankers Cheque three in number being cheque No. 253645 dated 17.11.2004 of Rs. 9,00,000/-; Cheque No. 253646 dated 17.11.2004 of Rs. 7,50,000/-; Cheque No. 253647 dated

17.11.2004 of Rs. 1,00,000/- has been deposited. All three bankers cheque are in serial. As per the term and condition of sale dated 17.11.2004 every participant was required to submit Rs. One lac by way of security and qua highest bidder at the end of auction amount was to be retained and qua rest of the participants it was to be returned back. As per this condition three other participants have taken back their security money of Rs. One lac. and as far as petitioner is concerned he has not taken the money back. It has not at all been described as to how these other three persons had deposited the amount of Rs. One -lac. Immediately after the auction application has been moved by the petitioner contending that he is prepared to deposit 1/4th of the amount. Immediately thereafter order has been passed for getting said amount deposited. Pursuant thereto the three bankers cheque have been deposited on 17.11.2004. Total amount of three bankers cheque is Rs. 17,50,000/- exactly 1/4th of the bid money. The series in which bankers cheque has been prepared is Cheque No. 253645 dated 17.11.2004 amount of Rs. 9.00 lacs; Cheque No. 253646 dated 17.11.2004 amount of Rs. 7,50,000/- Cheque No. 253647 dated 17.11.2004 amount of Rs. 1,00,000/- Said series clearly indicate that bankers cheque of Rs. 9.00 lacs was prepared first, bankers cheque of Rs. 7.5 lacs was prepared thereafter and at the last bankers cheque of Rs. One lac was prepared. One lac has been deposited by the petitioner of the first hand which was not taken back by petitioner, and said amount of Rs. One lacs has been adjusted with deposit of 1/4th amount. Petitioner was aware of the pre-written script that maximum bid would be at 70 lacs, that is why bankers cheque of 1/4th amount had been got prepared in advance and deposited with authorities. Qua other three bidder it is not clear as to how they had deposited Rs. One lac.

(xii) Hon''ble Apex Court in the case of Rao Mahmood Ahmed Khan through Legal Representatives v. Ranbir Singh and Ors. reported in 1995 RD 240 has taken the view that the provisions contained in Order XXI, Rule 84, 85 & 86 of the CPC are mandatory and since the provisions of Rule 285D & 285E are similar in terms they are also mandatory and in case the provisions contained in Rule 285D is not complied with the auction shall be nullity. It has been further held by Hon''ble Supreme Court that in case 25% of the amount in cash is not deposited on the same day then it shall always be violation of rules.

17. The paramateria provisions contained in CPC shall also be applicable while interpreting the rules. Relevant extract of the aforesaid judgment in case of Rao Mahmood Ahmed Khan (supra) is being quoted below:

Thus, it is settled law that the provisions of Order 21, Rules 84, 85 and 86 of the CPC are mandatory and the provisions of Rules 285-D and 285-E being similar in terms of the aforementioned corresponding provisions of the CPC and in view of the aforesaid discussion there is no escape from declaring the sale a nullity if Rule 285-D is not complied with.

The question now remains to be considered is whether the deposit of 25 percent of the bid amount by the purchaser respondent No. 1 herein by cheque instead

of cash would be a valid deposit within the meaning of Rule 285-D of the Rules. Admittedly the respondent No. 1 was declared purchaser of the property in question on 18.10.1973. According to the learned Counsel for the appellants neither the deposit of 25 per cent of the bid amount was made in cash nor by cheque on 18.10.1973 as the cheque was encashed on 22.10.1973. While accordingly to the learned Counsel appearing for the auction purchaser respondent No. 1 the cheque was tendered on 18.10.1973 itself which was encashed on 22.10.1973 and the amount was deposited in the Government treasury on 22.10.1973. The question is whether such a payment by cheque could be regarded as a valid deposit within the meaning of Rule 285-D. As discussed above Rule 285-D is a mandatory rule according to which if 25 per cent of the bid amount is not deposited immediately the land shall forthwith be again put up and sold. In other words on the failure of the purchaser to deposit 25 per cent of the bid amount immediately the land shall be re-sold immediately after such failure the very same day.... It, therefore, appears to us that Rule 285-D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory Rule 285-D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule. This was also the view taken by a Division Bench of the Allahabad High Court in the case of Hira Lal (supra) and the Learned Single Judge was not right in ignoring the said view by observing that it was obiter. The High Court of Madhya Pradesh in Progressive Industrial Enterprises v. Bank of Baroda also expressed the view that deposit of 25 per cent of the bid amount by cheque which was not encashed on the date on which the person was declared purchaser but on a later date, there was no compliance of Order 21, Rule 84 (C) C.P.C.

18. Here payment of 1/4th amount is by bankers cheque and said bankers cheque has been presented for encashment on 18.11.2004 whereas Hon'ble Apex Court has approved payment by Cash.

(xiii) There is reason for fixing the bid at Rs. 70 lacs. Same has been sought to be justified by contending that it is much more than the circle rate prescribed. Alongwith writ petition Annexure 13 and counter affidavit Annexure CA-14 communication issued by Registrar has been appended which is to be enforced w.e.f. 04.08.2004 for two years. The said document starts with mention that in exercise of power vested under Rule 4 of U.P. Stamp (Valuation of the Property) Rule 1997, minimum value of the property for the purposes of stamp duty is being fixed. The said document clearly mentions that it is the minimum price for the purposes of stamp duty. In part II of the said Rules, Khand A deals with "Nagriya Khestra" Item No. 9 of the same deals with Allenganj ward and therein Allenganj, Fatehpur Bichua, Hasimpur Road, Bund Road, Prayag Station Road, P.C. Banerji Road, Nox Road have been clubbed in one category. For commercial land rate per square meter on road having width of more than 30 ft. has been

fixed Rs. 7000/- and for road having width upto 30 ft. has been fixed Rs. 6000/-. For residential purpose rate per square meter, from road upto 50 meter Rs. 4000/- has been fixed and after 50 meter from road Rs. 3500/- On these standards minimum price for the property in question as per report dated 18.12.2004 is Rs. 62,800,80/-. The authorities were conscious of the fact that they cannot show the value of property below the said amount as such consciously in order to give some semblance of truthfulness auction bid has been shown to be at 70 lacs. Circle rates are merely guidelines, qua minimum value of the property and once market value of the property has to be seen then there are various factors to be taken into account. this Court in the case of Ram Khelawan v. State of U.P. reported in 2005 (98) 511 has taken the view that minimum market value fixed as per 1997 Rules is. relevant only and only for the purposes of referring the document by Registration Officer to Collector before registration and as far as market value is concerned same has to be decided not in accordance with value fixed under Rule 4 of 1997 Rules but in accordance with general principles of determination of market value as applicable in land acquisition cases. Object of auction is to get best price. Here deliberately auction notice has not at all been published and the effect of the same is that there has been minimum participation of bidders, four in number all virtually connected with each other, and the price which has been fetched is slightly more qua the minimum price fixed under 1997 Rules. Here auction sale is merely a pretence a cover up and in fact collusive proceedings to deprive lawful owners of their property by misusing the legal umbrella and the totality of circumstances clearly indicates that such action are put come of extraneous consideration.

(xiv) this Court on being approached asked the private respondents to file objection under Rule 285 (I) of U.P.Z.A. & L.R. Rules. Pursuant thereto objections under Rule 285(I) had been filed on 16.12.2004 before Commissioner. Record reveals, that opinion was sought from D.G.C.(Civil) who gave his opinion on 16.12.2004, and thereafter report was submitted on which Collector accorded approval of auction sale on 18.12.2004 Rule 285 (I) gives authority to Collector on the expiration of the thirty days from the date of sale, to confirm the sale, if no such application as mentioned in 285(H) or 285(I) has been made or if such application has been made and rejected by Collector or Commissioner. Collector will assume authority to confirm sale on the expiration of thirty days from the date of sale, in the event no application is moved under Rule 285(H) or Rule 285(I). Application under Rule 285(H) or Rule 285(I) is to be moved at any time within thirty days from the date of sale and order of confirmation under Rule 285 (I) is to be passed on the expiration of thirty days. It within thirty days from the date of sale application is moved either under Rule 285(H) or Rule 285(I) and has not been rejected by the Collector or Commissioner, the Collector has no authority to confirm the sale. Confirmation of sale is not a mechanical act, and it is the confirmation which gives seal of finality to the outcome of auction proceeding. Whenever, authority is to be exercised by the Collector qua confirmation of sale, then duty is cast upon the Collector to inquire as to whether

any application under Rule 285(H) or Rule 285(I) has been moved or not, and in case moved then what is the outcome of the same. Here Collector, miserably failed to discharge the said duty cast upon him while he proceeded to confirm the sale on 18.12.2004 by blindly placing reliance on the report, ignoring the pending objections under Rule 285(I) dated 16.12.2004. Conformation of sale is void, as on the said date objection had been pending and same had not been rejected, (xvi) There are other facets also which discredits the auction sale. Property in question has been ancestral property wherein sister was one of the co-sharers. Smt. Madhurima Ghosh was not at all Director of company. Property in question was joint. At no point of time owners of property were consulted before finalizing sale proclamation, straight away property to be put up for auction was sought to be identified and same is alleged to be put up for auction. Even if recovery was to be made from personal assets of Directors, then categorical finding had to be returned that assets of the companies were falling short to satisfy the recovery and thereafter to have ensured the respective share of each Director and proceeded accordingly. Here no such exercise has been undertaken. Proceedings in the present case are not at all fair and transparent. Here at no point of time sale proclamation was served on all the owners of property. On 10.11.2004 sale proclamation has been shown to have been served on one Deepak Mitra. On 10.11.2004 without verifying the fact that service has been made on each one whose name had been mentioned in sale proclamation same was directed to be taken up on 17.11.2004, the date fixed for sale. Sale proclamation even does not specify the time when auction would take place. Apart from this, arbitrariness and unreasonableness is also fully reflected from the fact and circumstances that as per petitioner recovery was for Rs. 4161351+10% collection charge and property has been sold for Rs. 70 lac. At no point of time any exercise was under taken by auctioning authorities to see as to how much of the property would be adequate to satisfy the recovery. The intention of petitioner in collusion with authorities was clear to grab the property in question by any means fair or foul and in fact petitioner succeeded in his game plan.

19. Serious objection has been raised, that once Alok Mitra had moved application for withdrawal of objection, and said objection was allowed, then thereafter recall application was not at all maintainable. It is undisputed that objection had been filed on behalf of each one of the private respondents and said objection was supported by an affidavit of Alok Mitra and his vakalatnama. Application was moved on behalf of Alok Mitra for withdraw of said objection. Private respondents have made categorical averments to the effect that at no point of time they had ever authorized Alok Mitra or his counsel to withdraw the said objection. Once application had been moved on behalf of each one of private respondents then withdrawal by one cannot effect the right of other co sharer and co sharer had every authority to question by moving the aforementioned action of withdrawing objection by moving application as has been done in the present case. Consent of other co sharers was not at all there in this regard consenting for withdrawal of

objection. Once private respondents had questioned the authority of Alok Mitra and his counsel to withdraw objection and there was no consent and Commissioner had satisfied himself on this score then it was well within the competence of Commissioner to have revoked the order of withdrawal and decide the objection on merit as has been done in the present case.

20. Much emphasis has been laid in the present case on the fact that amount realized in auction has been withdrawn as such Private Respondents are estopped in law in questioning the validity of auction. Hon''ble Apex Court in the case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, has held that "fraud" and collusion vitiated even the most solemn proceedings in any civilised system of jurisprudence. Fraud and justice never dwell together. A collusion or conspiracy with a view to deprive the rights of others in relation to property would render the transaction void-ab-intio. Fraud is anathema to all equitable principal and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine. Here estoppel is being pressed on account acceptance of money. Doctrine of estoppel has been evolved by equity to avoid in justice. There is no estoppel against statute. Merely because circumstances has pushed someone to the wall on account of various recovery proceedings going on and amount in question has been accepted/adjusted that will not prevent the private respondents from questioning the action which is collusive and outcome of fraud and manipulation.

21. It has also been strenuously contended by the petitioner that thereafter he has got the land in question converted into free hold and has also been constructed three storeyed building, as such his interest be protected Fraud and collusion cannot be subscribed. Petitioner is himself responsible for the situation, which has come into existence. Any sympathetic consideration towards the petitioner would be iniquitous and misplaced sympathy as law has been sought to be violated by all means. At this juncture it must not be forgotten that High Court under Article 226 of the Constitution, can refuse to exercise its discretionary jurisdiction where the petitioner claims relief to secure dishonest advantage or perpetuate an unjust gain.

22. Hon''ble Supreme Court in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, has observed:

A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from clefty evasions and new subtleties invented to evade law.

23. Hon''ble Apex Court in the case of M.P. Mittal Vs. State of Haryana and Others, , held as follows:

The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the

Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief.

24. Hon"ble Supreme Court in the case of State of Maharashtra and Others Vs. Prabhu, considered the equity jurisdiction of the High Court under Article 226 of the Constitution and pointed out as follows:

Even assuming that the construction placed by the High Court and vehemently defended by the learned Counsel for respondent is correct should the High Court have interfered with the order of Government in exercise of its equity jurisdiction.... Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is if the quashing of the order results in greater harm to the society then the court may restrain from exercising the power.... Therefore, even if the order of the Government was vitiated either because it omitted to issue a proper show-cause notice or it could not have proceeded against the respondent for his past activities the High Court should have refused to interfere in exercise of its equity jurisdiction as the facts of the case did not warrant interference.... It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

25. The same position was reiterated by the Hon"ble Supreme Court in the case of Chandra Singh Vs. State of Rajasthan and Another, in which it was observed as follows:

Issuance of a writ of Certiorari is a discretionary remedy Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, The High Court and consequently this Court while exercising its extra ordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant.

26. Recently Division Bench of this Court in the Case of Smt. Sunita Bhadooria v. State of U.P. and Ors. reported in 2006(1) ESC 737 has taken the view that for doing justice, injustice shall not be done. Relevant paragraph 38 of the aforesaid judgment is being quoted below:

Justice is the virtue, by which the Society/Court/Tribunal gives to a man what is his due, opposed to injury or wrong. (Wharton's Law Lexicon, 1976 Reprint Edn., p. 552). Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering the justice with mercy, the

Court has to be very conscious that it has to do justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law. In *Delhi Administration Vs. Gurdip Singh Uban and Others*, the Hon"ble Apex Court observed as under:

The words "justice" and "injustice", in our view, are sometimes loosely used and have different meanings to different persons, particularly to those arrayed on opposite sides... Justice Cardozo said, The Web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken. Many hues that seems to be simple, are found, any when analysed, to be complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded." (Selected Writings of Cardozo, pp 223-24; Fallen Publications, 1947).

27. Consequently as auction proceedings is out come of manipulation and maneuvering, as such present writ petition is dismissed with cost of Rs. 20,000/- to be paid to each private Respondents within one month from the date of judgment.

28. Interest of justice further demands action against erring official and employees found indulging in such act for been proceeded with departmental action and for criminal action so that it may be eye opener for others. Courts cannot be mute spectator and it is duty of Court under the Constitution to see that justice system does not become "soft", supine or spineless. Consequently the Registrar General of this Court is directed to keep the records in sealed cover which has been produced before this Court and transmit the same before Chief Secretary U.P. Government, Lucknow for initiation of departmental action against the District Magistrate, Allahabad, concerned Sub-Divisional Magistrate and concerned persons who have conducted the auction proceedings as well as for initiating criminal action against said persons and beneficiaries of the same so that such an act is not repeated in future. The petitioner as well as State-respondents are directed to ensure return back of the property in question to the private respondents forthwith. Recovery can be made of the amount due from private Respondents strictly in accordance with law.