
(2010) 03 AHC CK 0211
In the Allahabad High Court

R.D. Cements Industries Pvt. Ltd.

APPELLANT

Vs

Collector/D.M. and Others
U.P. Cement Ltd. Vs State of
U.P. and Others

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Registration Act, 1908 — Section 89
Transfer of Property Act, 1882 — Section 52

Citation : (2011) 37 VST 125

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—The brief facts giving rise to the present writ petitions filed under Article 226 of the Constitution of India, relate to repayment of loan by the borrower to the Pradeshia Industrial and Investment Corporation, Uttar Pradesh (in short the PICUP), as well as auction and sale of the industry on account of default of payment of loan.

2. Originally, M/s. U.P. Asbestos Limited (in short the UPAL) was engaged in manufacture and sale of asbestos sheets and cement from its industry situate at Mohanlalganj, Lucknow. It was enjoying the benefit of trade tax exemption u/s 4A of Trade Tax Act, 1948 for a period of 8 years, vide letter dated 23.10.2000. Against the said exemption, u/s 8(2-A) Tax Deferment Liability was granted and against that, the PICUP granted "interest free trade tax deferment loan" to UPAL for the period 1996-97 to 1999-2000. The properties were mortgaged and the second charge was created by the UPAL on all their movable and immovable assets, like assets of asbestos and cement unit.

3. UPAL sold its cement unit situate at Mohanlalganj, Luckow to M/s. U.P. Cement Limited (in short UPCL) after obtaining due permission from PICUP with the rider that second charge on the property of UPAL shall continue with PICUP and the

UPCL shall not claim benefit of the deferment loan for the period subsequent to the sale of cement unit to UPCL in terms of original agreement between the UPAL and the PICUP.

4. Subject to the above condition, a Memorandum of Understanding (in short MOU) was executed between the UPAL and UPCL. The cement unit of UPAL was sold to UPCL for Rs. 400 lakhs. Out of the sale consideration, Rs. 275 lakhs of balance amount of the term loan along with interest from the date of transfer of loan, was agreed to be paid by the UPCL to Industrial Development Bank of India (in short IDBI). The balance of amount of Rs. 125 lakhs was agreed to be paid to UPAL in instalments by 26.11.1999. Under the MOU dated 27.7.1999, the UPCL was to get possession of the cement unit after payment of sale consideration including expenses regarding compliance of formalities.

5. However, UPCL applied to PICUP, vide letter dated 23.8.2000 and then to the Principal Secretary, Tax and Registration, Government of U.P., vide another letter dated 3.10.2000 for transfer of interest free trade tax deferment loan which was already availed by UPAL. The request was rejected by PICUP, vide letter dated 9.10.2000. The PICUP sent another letter dated 12.10.2000 to the Principal Secretary, Tax and Registration (in short PST & R) against transfer of loan already availed by UPAL. The PST & R, vide letter dated 18.10.2000 advised the PICUP that there is no difficulty in transferring the loan already availed by UPAL in favour of UPCL subject to rider that UPCL should provide necessary security.

6. Keeping in view the advice of the State Government (letter dated 18.10.2000), the PICUP by means of the letter dated 23.10.2000, agreed for transfer of interest free trade tax deferment loan which was already availed by UPAL before transferring the unit to UPCL with certain riders mentioned in the letter but the UPCL failed to fulfil the condition imposed by the Government in its letter dated 23.10.2000.

7. Instead of fulfilling the condition as per letter dated 23.10.2000, the UPCL inter alia requested the Principal Secretary, Trade Tax and Registration (hereinafter known as PST & R), vide its letter dated 8.1.2001, to grant relief of adjusting the loan availed by the UPAL towards balance amount paid to UPCL by UPAL and to execute the sale-deed in favour of the UPCL. The PST & R, vide its letter dated 11.1.2001 informed that UPAL has been granted loan by PICUP on its cement unit and since the cement unit has been sold to UPCL, the benefit and liability of cement unit should also be transferred to UPCL. The PST&R also issued certain directions through the said letter.

8. Keeping in view the directions of the State Government, vide its letter dated 11.1.2001, the PICUP vide its letter dated 15.1.2001 inter alia directed the UPAL to adjust the balance amount of sale consideration of cement unit from the availed loan amount in favour of UPCL and also to execute the sale- deed of cement unit and get it registered in favour of UPCL. The PICUP also directed for adjustment of availed loan amount in the balance of sale consideration and also

directed to pay the remaining amount to the PICUP.

9. The Principal Secretary Trade Tax and Registration (PST & R) had granted permission by means of his letter dated 11.1.2001 permitting the transfer of liability of UPAL in favour of the UPCL.

10. In consequence thereof, a sale-deed dated 22.6.2001 was executed by the UPAL in favour of UPCL transferring Khasra Plot No. 1251 Ka (part) and Khasra Plot No. 1252 Ka (part) situate at village Mau Tahsil Mohanlalganj, Lucknow. The total area transferred by the registered sale-deed was 7.00 acres.

11. The Managing Director UPCL vide his letter dated 25.6.2001, affirmed that the sale-deed of land, plant and machinery has been executed and registered in their favour. He also affirmed that the balance amount of sale consideration amounting to Rs. 175.82 lakhs has been adjusted in the sale consideration and the balance amount of Rs. 64.73 lakhs has been received by cheque subject to encashment (total Rs. 240.55 lakhs). It was also affirmed that UPCL has taken actual possession of running unit at Mohanlalganj and also owned the responsibility for repayment of Rs. 240.55 lakhs along with balance and commitments under the loan scheme.

12. On 5.7.2001, the UPCL entered into an agreement with PICUP and under the terms of agreement, it has given undertaking to make repayment of loan amount to the tune of Rs. 240.55 lakhs to PICUP under the deferment scheme on due dates.

Under the agreement UPCL was to comply the terms of agreement and also the terms and condition of loan agreement executed by the original borrower namely, the UPAL. Under the default clause, it has been provided that in the event of default of payment of loan, the UPCL, will be liable to pay interest at the rate of 24% per annum in view of terms and condition under the relevant scheme. The UPCL also created first charge on the property of cement unit purchased by it in favour of PICUP.

13. According to report received from the Trade Tax Department the cement unit of UPCL remained closed from 22.6.2001 to 14.7.2002. No production was made during this period.

14. Under these circumstances, keeping in view the terms and conditions of the agreement entered into between the PICUP and borrower UPCL, the whole of the amount Rs. 240.55 lakhs became due payable in one instalment along with the interest at the rate of 24% per annum from the date of deferment of loan or the date as decided by the PICUP.

15. In the meantime, without having any prior permission from the PICUP, the UPAL executed second sale-deed transferring its another Khasra Plot No. 1251 Ka (part) and Khasra Plot No. 1252 Ka (part) situate in village Mau, Tahsil Mohanlalganj, Lucknow measuring 0.80 acre in favour of UPCL. The UPAL at no stage, informed the PICUP with regard to transfer of land measuring 0.80 acre.

16. Since the borrower UPCL failed to pay the loan in terms of agreement, under the default clause, recovery certificate was issued on 1.8.2002 for recovery of amount to the tune of Rs. 2,40,55,328.02 along with interest at the rate of 24% with effect from 31.5.2002. The Collector Lucknow was requested to realise the aforesaid amount from the UPCL.

17. Feeling aggrieved, the UPCL filed Writ Petition No. 6345 (M/B) of 2002 for quashing of recovery citation dated 3.10.2002 as well as the notice dated 15/17.6.2002. While filing the connected Writ Petition No. 6345 (M/B) of 2002, the UPCL concealed agreement dated 5.7.2001 (supra) entered into between the UPCL and the PICUP.

18. The PICUP filed a short counter affidavit on 24.10.2002 in Writ Petition No. 6345 (M/B) of 2002 along with a copy of agreement dated 5.7.2001 as well as the letter dated 25.6.2001 (supra) written by P. Kumar, the Managing Director by UPCL, admitting liability towards trade tax deferment.

19. The District Administration in pursuance of the recovery certificate dated 1.8.2002 took over the possession of cement factory and gave it in the supurdgi of Sri P. Kumar who happens to be the Managing Director of UPCL.

20. The Writ Petition No. 6345 (M/B) of 2002 was heard by the Division Bench on 19.2.2003. Learned Counsel for the UPCL admitted their liability and assured the payment of amount in instalment. Hence the Division Bench of this Court directed the UPCL to deposit Rs. 30 lakhs within one month and provided that the possession of factory shall be handed over to UPCL immediately after the amount of Rs. 30 lakhs is deposited. It was also provided that the amount of Rs. 30 lakhs is first instalment to be deposited within one month and the UPCL shall further deposit another amount of Rs. 30 lakhs within next two months and shall continue to deposit the balance amount under payment in quarterly instalment of Rs. 30 lakhs each, the first of which was to fall due in first week of July, 2003. The amount deposited in pursuance of the order of this Court was subject to final outcome of the writ petition. The Division Bench further provided that the property shall remain attached but shall not be sold. The petitioner UPCL will have right of carrying on business in the factory with the rider that the UPCL shall not sale or alienate the property in question including its plants, machinery etc. It shall keep it in proper running condition. This Court further put a rider that in the event of default of payment of instalments, the PICUP authorities may proceed to realise the due as arrears of land revenue.

21. Sri P. Kumar, Managing Director of UPCL, was apprehended by the Collection Amin Sri Ashok Kumar Jaiswal on 4.4.2003 red handed having stolen the assets of the factory. The First Information Report bearing Crime No. 172/2003 was lodged against Sri P. Kumar at Police Station Mohanlalganj, Lucknow.

22. Sri P. Kumar filed Writ Petition No. 2368 (M/B) of 2003 in which an interim order on 5.5.2003 was passed by the Division Bench of this Court staying the arrest of Sri P. Kumar. After due inquiry, the investigating officer filed

chargesheet in the criminal case against Sri P. Kumar, and General Manager Sri Arbind Shukla as well as six others.

23. The UPCL instead of complying with the interim order dated 19.2.2003 passed in Writ Petition No. 6345 (M/B) of 2002, filed another Writ Petition No. 2896 (M/B) of 2003 for quashing of the auction notice dated 14.5.2003. However, this Court did not grant any interim relief at the stage of filing writ petition.

24. On failing to obtain the interim order in the second Writ Petition No. 2896 (M/B) of 2003, the UPCL had filed another third Writ Petition No. 3204 (M/B) of 2003, challenging the subsequent auction notice dated 28.5.2003 which was directed to be connected with Writ Petition No. 6345 (M/B) of 2002. This Court declined to grant any interim relief on the ground that interim order dated 19.2.2003 was not complied with.

25. Strangely, the UPCL had filed another 4th Writ Petition No. 3877 (M/B) of 2003 before the division Bench of this Court against the recovery notice dated 14.7.2003. However, the Division Bench, vide order dated 28.7.2003 had dismissed the writ petition on the ground that the interim order passed in earlier pending writ petition, was not complied with.

26. The Court of Additional Chief Judicial Magistrate, Lucknow (Custom), had issued non-bailable warrant on 28.1.2005 against Shri P. Kumar in the criminal case.

27. In the meantime, the Board of Management of UPCL passed a Resolution dated 4.3.2005 authorising Sri P. Kumar Managing Director of the Company, to sell the property on behalf of the Company.

28. Under the authorisation by the Board of the Management, Sri P. Kumar Managing Director of the Company had executed two sale-deeds dated 9.3.2005 in favour of his own wife Smt. Mamta Sinha who also happens to be the Director of UPCL, by concealing her identity in the sale-deed. In the sale-deed, Smt. Mamta Sinha has been shown as daughter of Sri Girish Prasad. The husband's identity has been concealed. No information was communicated to PICUP by Sri P. Kumar with regard to the sale-deed.

29. Smt. Mamta Sinha took a loan by mortgaging the aforesaid property to the Allahabad Bank Zonal Office New Building, Hazratganj, Lucknow, for undisclosed amount. The Khasra No. 1251 Ka (Part) and Khasra No. 1252 Ka (Part) was hypothecated to the Allahabad Bank.

30. The Allahabad Bank fell into the trap of Smt. Mamta Sinha without verification of the title as per revenue records of preceding 12 years and sanctioned loan to Smt. Mamta Sinha.

31. Under these facts and circumstances, when Smt. Mamta Sinha failed to repay the loan, the Allahabad Bank proceeded against the aforesaid plot in

accordance with the provisions contained in Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 2002 Act), on 23.11.2007. However, auction and sale could not be materialised because of the fact that the property was already mortgaged with PICUP and charge was registered with the Registrar of the Companies.

32. In the meantime, M/s. R.D. Cement had participated in the auction sale of immovable property of UPCL fixing 25.9.2007 as date of auction. It was mentioned that the sale shall be conducted in pursuance of the recovery certificate issued by PICUP for the sum of Rs. 2,85,21,351/- plus recovery charges.

The recovery officer had proceeded on leave on 24.9.2007 and the power was delegated to Naib Tahsildar Mohanlalganj, by the Tahsildar, Mohanlalganj, Lucknow.

33. M/s. R.D. Cement participated in the auction held on 25.9.2007 and deposited the security amount to the tune of rupees five lakhs and rupees one lakh respectively for both, movable and immovable property. In the auction, M/s. R.D. Cement was declared highest bidder for Rs. 19.50 lakhs with regard to movable property and Rs. 110 lakhs for immovable property.

34. It has been admitted at bar that the District Authorities had obtained valuation certificate from the approved valuer namely, Sri Yogendra Kumar who in his report, ascertained the price of immovable property to the tune of Rs. 10,62,000 whereas, building and boundary wall were valued at Rs. 6,10,000. The Revenue Inspector and the Lekhpal valued the land measuring 2.85 hectares at Rs. 1,01,95,200. Thus, the movable property was valued at Rs. 1,08,05,200. The total movable property was valued to Rs. 10,62,650. It may be noted that bid of M/s. R.D. Cement for movable property was, Rs. 19,50,000 whereas for immovable property it was Rs. 11,00,00,000. The bid in favour of M/s. R.D. Cement was finalised on 25.9.2007 and entire sale amount was deposited by M/s. R.D. Cement by bankers cheque of Rs. 16,50,000 and in cash to the tune of Rs. 3,10,000, totalling Rs. 19,60,000.

For movable property, the M/s. R.D. Cement deposited 25% of bid amount i.e., Rs. 27,50,000 by means of bankers cheque amounting to Rs. 25,000/- and in cash Rs. 2,50,000.

The District Administration had adjusted security amount deposited by M/s. R.D. Cement on 25.9.2007. M/s. R.D. Cement had deposited remaining 75% amount on 8.10.2007 (within 15 days by means of bankers cheque of Rs. 60 lakhs, Rs. 20 lakhs and in cash Rs. 2,50,000) (total Rs. 82,50,000).

35. However, the revenue authorities have not confirmed the sale under the U.P.Z.A. & L.R. Rules. Instead, by the impugned order dated 28.10.2007, cancelled the auction and sale held in favour of M/s. R.D. Cement on the ground of insufficiency of amount. Hence the M/s. R.D. Cement had filed Writ Petition

No. 9080 (M/B) of 2007.

Liability of Deferred Tax:

36. Sri I.B. Singh who appeared on behalf of the petitioner in Writ Petition No. 6345 (M/B) of 2002, vehemently argued that the petitioner is not liable to pay the deferred loan. Accordingly, the citation of recovery lacks foundation and is not sustainable. He has invited attention to the letter dated 17.1.2000, sent by UPAL to PICUP, letter dated 28.3.1998 with regard to liability and the letter dated 14.2.2000 sent by PICUP to UPAL granting permission to sell the cement unit subject to possessing other liabilities. The PICUP, vide letter dated 23.10.2000 contained in Annexure No. 6 to the writ petition, informed the UPAL permitting to sell the unit subject to withhold the liability with regard to Tax Deferment Scheme. It has been argued that an application was moved with regard to liability of Tax Deferment Scheme to the State Government but the same has been rejected, vide order dated 23.2.2004. While drawing attention towards para-3 of the rejoinder affidavit dated 19.1.2010, Sri I.B. Singh submits that the petitioner has paid entire sale consideration to the tune of Rs. 401.55 lakhs to the UPAL adjusting the liability of UPAL with regard to deferred tax. It has been stated that tax deferment liability was granted u/s 8(2-A) of the U.P. Trade Tax Act, vide order dated 28.3.1998 which could not have been transferred to the vendee UPCL.

37. While inviting attention to the letter dated 10.2.1001 Annexure No. 19 and the letter of the Government dated 15.2.2001, the Principal Secretary, Tax and Registration, and the notice contained in Annexure No. 25 sent by the PICUP to UPAL followed by notice of U.P. Trade Tax Department to UPAL, Annexure No. 28 to the writ petition, it has been vehemently argued by Sri I.B. Singh that the petitioner cannot be held responsible to pay the deferred loan. He has invited attention to para-11 of the short counter affidavit filed by the O.P. No. 7 UPAL, that the UPAL admits his liability and while doing so, it has paid Rs. 64 lakhs.

38. It has also been stated that PICUP has got no right to defer the tax and in consequence thereof, to send a reference to the Revenue authorities to recover the same as land revenue. It is for the U.P. Trade Tax Department to recover the same from the person to whom the benefit of tax deferment scheme has been provided while issuing an order u/s 8(2-A) of the Trade Tax Act.

39. On the other hand, Sri V.R. Singh learned Counsel for the PICUP, invited attention to the letter dated 25.6.2001 of the petitioner sent to the PICUP, which reveals that the petitioner has accepted the transfer of full loan of Rs. 240.55 lakhs from UPAL to itself and held responsible for its repayment along with its compliance and commitment as per scheme.

40. Parties have signed an agreement dated 5.7.2001 for transfer of interest free loan in lieu of tax deferment scheme. The agreement has been signed by UPAL, and the UPCL.

41. A perusal of para-8 of the agreement shows that the UPCL owes liability to pay the deferred tax. A perusal of sale-deed dated 2.6.2002 executed by UPAL in favour of the petitioner UPCL also reveals that the purchaser owes the liability of deferred tax. In view of subsequent events which include the agreement (supra), it appears that the petitioner UPCL owes the liability to pay the deferred tax.

42. The statement given on behalf of the petitioner along with affidavit to pay the balance dues of deferred tax, establishes the fact that the petitioner UPCL owes liability to pay the deferred tax which at the moment, is Rs. 240 lakhs and odd. The argument advanced by the learned Counsel for the petitioner seems to be not sustainable. In spite of the interim order passed by this Court and pendency of writ petition, Sri P. Kumar Managing Director of the petitioner UPCL, has transferred the properties through sale-deed.

UPZA & LR Act and Rules:

43. Section 284 of the U.P.Z.A. & L.R. Act (in short the Act), empowers the Collector of the district to proceed with the attachment and sale of holdings with regard to arrears which is due. Section 286 of the Act empowers the Collector to recover the arrears of land revenue by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter. Sub-section (4) of Section 3 of the Act, defines the Collector which is reproduced as under:

3.(4) "Collector" means an officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901, and includes an Assistant Collector of the first class empowered by the State Government by a notification in the Gazette to discharge all or any of the functions of Collector under this Act.

44. The U.P. Zamindari Abolition and Land Reforms Rules, 1952 (in short the Rules), contains the procedure with regard to sale of immovable property. Rule 281 of the Rules provides that process for sale of holding u/s 284 and other immovable property u/s 286, shall be issued by the Collector. The Collector shall auction the holding in lots on the basis of estimated value. Under Rule 282 of the Rules, the proclamation is to be issued in Z.A. Form 74. Under Rule 283 of the Rules, the estimated value of the property should be calculated in accordance with Chapter XV of the Revenue Manual.

45. Rule 284 of the Rules, deals with the procedure for sale. Rule 285-A of the Rules provides that every sale shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. The auction and sale shall not be done on gazetted holidays and before expiry of 30 days from the date of proclamation under Rule 282 of the Rules. Under Rule 285-D of the Rules, a person declared to be the purchaser shall be required to deposit 25% of the amount of his bid immediately. Under Rule 285-E of the Rules, rest of the amount is to be paid within fifteen days from the date of sale. Rule 285-F provides that sale proceeds are less than the price bid by such defaulting purchaser, the difference shall be recoverable from him as if it were an arrears of the land revenue. Rule 285-G provides that no sale after postponement under

Rules 285-A, 285-D or 285-E in default of payment of the purchase money shall be made until a fresh proclamation is issued as prescribed for the original sale. Rule 285-H empowers the borrower to deposit the entire amount under auction and sale before expiry of 30 days from the date of sale and on deposit of such amount, the Collector shall pass an order setting aside the sale. Under Rule 285-I, against the auction and sale so taken, to recover the arrears of land revenue, the aggrieved party has right to file objection before the Commissioner who may set aside the auction and sale on finding the material irregularity. For convenience, Rule 285-A, 285-B, 285-C, 285-C, 285-D, 285-E, 285-F, 285-G, 285-H and 285-I, are reproduced as under:

285-A. Every sale u/s 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday, or until after the expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued.

The Collector may from time to time postpone the sale.

285-B. No officer having any duty to perform in connection with any such sale, and no person employed by, or subordinate to, such officer shall, either directly or indirectly, bid for, acquire or attempt to acquire the property sold or any interest therein:

Provided that where at any auction u/s 284 no bid is offered up to the amount of the arrear, for which the sale has been ordered, the Collector may bid up to the amount of such arrear.

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 authorised to collect the amount in arrears or to the person appointed under Rule 285A to conduct the sale, the sale officer, on being satisfied of the payment, shall stay the sale.

285-D. The person declared to be the purchaser shall be required to deposit immediately twenty- five per cent of the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold and such person shall be liable for the expenses attending the first sale and any deficiency of price which may occur on the resale which may be recovered from him by the Collector as if same were an arrear of land revenue.

285-E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any sub-treasury and in case of default the deposit, after the expenses of the sale has been defrayed therefrom, shall be forfeited to Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

285-F. If the proceeds of the sale which is eventually made are less than the

price bid by such defaulting purchaser, the difference shall be recoverable from him as if it were an arrears of the land revenue.

285-G. No sale after postponement under Rules 285-A, 28-D or 285-E in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale.

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

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

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

(c) the costs of the sale.

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

Provided that if a person applies under Rule 285-I to set aside such sale he shall not be entitled to make an application under this rule.

285-I. (i) Any any time within thirty days from the date of the sale, application may be made to the Commission to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained injury by reason of such irregularity or mistake.

(ii) ***

(iii) The order of the Commission passed under this rule shall be final.

46. Rule 285-J provides that after expiry of 30 days from the date of the sale, in case no order has been passed on such application as mentioned under Rule 285-H or Rule 285-I, and Collector is satisfied with the auction and sale, may confirm the bid and thereafter proceeding may be taken under Rule 285-M to issue certificate of sale which includes transfer of property. For convenience, Rule 285-J and 285-M are reproduced as under:

285-J. On the expiration of thirty days from the date of the sale if on such application as is mentioned on Rule 285-H or Rule 285-I, has been made or if such application has been made and rejected by the Collector or the Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions Section 154. Every order passed under this

rule shall be final.

285-M. (i) After a sale of holding or other immovable property under the Act has been confirmed in the manner aforesaid, the Collector shall put the person declared to be purchaser into possession of such property, and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers and such certificate shall be deemed to be a valid transfer of such property, but need not be registered as a conveyance except as provided by Section 89 of the Registration Act, 1908.

(ii) The certificate shall state the name of the person declared at the time of sale to be actual purchaser, any suit brought or application made in a Civil or Revenue Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used shall be dismissed with costs.

47. In a case reported in 2006 (24) LCD 1 Swadeshi Polytex Limited v. Board of Revenue, U.P. and Ors., decided by one of us (Hon"ble Devi Prasad Singh, J.), it has been held that the provisions contained in U.P.Z.A. & L.R. Act and Rules, have got statutory force. It shall be obligatory for the authorities to publish the proclamation of sale in two widely circulated newspapers along with estimated cost of the property and only after confirmation of sale, the purchaser will hold the rights over the property. The appeal preferred against the aforesaid judgment of this Court, was dismissed by Hon"ble Supreme Court in the case reported in (2008) 12 SCC 596 State of Uttar Pradesh and Ors. v. Swadeshi Polytex Limited and Ors. Hon"ble Supreme Court while upholding the judgment of this Court, held that valuation of property is of utmost importance and it is designed to ensure the best price of the property and it is essential in these circumstances that wide publication and notice of the proposed sale, should be given. It has also been held that the auction purchaser shall deposit 25% of the bid immediately in cash. Payment by cheque or pay order shall make the auction and sale invalid.

48. In the present case, the power to auction the property has been given to Collector or Assistant Collector of first class. The Sub-Divisional Magistrate, who is Assistant Collector of first class, authorised the Naib Tahsildar Mohanlalganj, to auction the property. On the date of auction, the Naib Tahsildar Mohanlalganj proceeded on leave and in the present case, the property was auctioned by another Naib Tahsildar who was not authorised by the Collector. Thus, the impugned auction and sale of property seems to have been done by a person who was neither Collector nor Assistant Collector. Moreover, under Rule 285-A; only Collector may appoint an Assistant Collector to conduct the auction and sale of property. Sub-Divisional Magistrate is not competent to nominate or appoint a person/Naib Tahsildar to hold auction. Accordingly, auction and sale of the property has been done in violation of Rules by a person who was not competent to do so.

49. As discussed hereinabove, the difference between the proclamation of auction and sale as well as the actual auction, should be, 30 days and the property should be properly valued and the minimum price as well as estimated price should be indicated in the newspaper. In the present case, the Z. A. Form No. 72 is dated 27.8.2007 and Z.A. Form No. 24 is also of the same date i.e., 27.8.2007. The schedule date fixed, was 25.9.2007. The 30 days clear notice required for the purpose, was not given. Hence auction suffers from substantial illegality.

50. No material or pleading on record has been pointed out to establish that keeping in view the judgment of this Court and Hon"ble Supreme Court, in the case of Swadeshi Polytex (supra), estimated cost of property and the reserve price, were published in two widely circulated newspaper. In a local news paper "Lucknow Chetna only the date of auction was published. Thus, the auction and sale was held in violation of statutory provisions, Rules as well as judgment of this Court and Hon"ble Supreme Court in the case of Swadeshi Polytex (supra). In absence of publication of estimated value in two widely circulated newspaper, the auction and sale in favour of M/s. R.D. Cement Industries, seems to have not been done in accordance with statutory provisions and suffers from substantial illegality.

51. It has been submitted by Sri H.P. Srivastava, learned Additional Chief Standing Counsel that Naib Tahsildar who auctioned the property in question, was not competent. Other submission is that the S.D.M. has not confirmed the sale because of insufficient bid as well auction being held in violation of statutory Rules. Unless the sale is confirmed, no right accrues to the purchaser. Condition No. 6 of the tender notice provided for confirmation of auction. In absence of confirmation of sale in terms of condition No. 6 and also in absence of any malice and mala fide on the part of the respondents, it is not a fit case where this Court may exercise power of extraordinary judicial review. Sub-Divisional Magistrate delegated power to Naib Tahsildar Mohanlalganj but auction was taken place under the supervision of Naib Tahsildar Gosainganj on 25.9.2007 to whom, the power was not delegated by the Sub-Divisional Magistrate. The Naib Tahsildar Gosainganj, was the only link officer.

52. Submission made by the learned Additional Chief Standing Counsel seems to have got weight. However, appointment of an Officer of the rank of Assistant Collector should have been done by the Collector of the District under Rule 285-A, not by Sub-Divisional Magistrate.

53. The Latin phrase, "Delegatus non potest delegare, means a delegate cannot delegate. In Huth v. Clarke (1890) 25 Q.B.D. 391, it was held that person to whom an Office or duty is delegated, cannot lawfully devolve the duty upon another unless he be expressly authorised to do so. In the present case, the Naib Tahsildar, Mohanlalganj was delegated by the Sub- Divisional Magistrate to proceed with the auction and sale. Accordingly Naib Tahsildar Gosainganj was not authorised to discharge the duty cast upon him. But as held hereinabove, even

Naib-Tahsildar, Mohanlalganj was not authorised to hold the auction, keeping in view the mandate of Rule 285-A.

54. One of the arguments advanced by the learned Counsel for the petitioner is that in absence of any order passed under Rule 285-H and 285-I of the Rules, there was no option to the Collector except to confirm the sale. The argument advanced by the learned Counsel for the petitioner, seems to be not correct. The Collector has got ample power either to confirm or accept the bid. Rule 285-H or 285-I, deal with different sphere. It do not preclude the Collector to apply his mind suo motu to ascertain the sufficiency of bid and procedural irregularity if any committed during the course of auction and sale. There may be a case, where both sides may be having hands in gloves and auction or sale may have been done for extraneous reasons or consideration. In case, no one approached the Commissioner to point out the irregularities in pursuance of power conferred by Rule 285-I of the Rules, then it does not mean that the Collector will be powerless to take action and pass appropriate order in the event of substantial irregularity or illegality committed during the course of auction and sale of property as arrears of land revenue. The conferment of power to record satisfaction, is wide enough to set aside the auction and sale on just and reasonable ground by the Collector under the inherent power of superintendence and control of subordinate authority. In the case reported in 1987 R.D. 376 Raghunandan Prasad. v. Board of Revenue and Ors., while interpreting the provisions contained in Rule 285-D of U.P. Zamindari Abolition and Land Reforms Rules, Hon''ble Supreme Court held that the auction and sale shall be deemed to be complete only after an order conferring the sale is passed by the Collector.

In another case reported in 2008 (72) ALR 384 Bimal Kumar Sharma. v. District Magistrate/Collector G.B. Nagar and Ors., a Division Bench of this Court at Allahabad, held that the property sold for a meagre amount, shall not extend any right to highest bidder and the Collector has jurisdiction to accept or reject it. Same principle has been reiterated in the case reported in Sheo Kumar Vs. State of U.P. and Others,

55. Moreover in the present case, the auction and sale seems to have not been done in accordance with the judgment of this Court and the Hon''ble Supreme Court in the case of Swadeshi Polytext (supra). The auction and sale could have been done only by the Collector or the Assistant Collector appointed by him. Accordingly, the cancellation of auction and sale to proceed afresh, seems to be based on substantial illegality.

56. Though the order passed by the Sub-Divisional Magistrate dated 22.10.2007, is not much happily worded but while interfering with the matter under Article 226 of the Constitution of India for judicial interpretation, this Court is not precluded to consider and take into account the material on record while adjudicating the controversy particularly, when there is jurisdictional error.

57. Chapter II of the U.P. Land Revenue Act, 1901, defines the Collector,

Assistant Collector and Tahsildar. Section 14 provides that there shall be Collector of the district who shall exercise all such powers and discharge all duties conferred and imposed on Collector by this Act or any other law for the time being in force. Section 14 is reproduced as under:

14. Collector of the district.--The State Government shall appoint in each district an officer who shall be the Collector of the district, and who shall, throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by this Act or any other law for the time being in force.

58. Section 14-A of the U.P. Land Revenue Act, 1901, provides for appointment of Additional Collector to exercise delegated power of the Collector or other duties assigned by the State Government. Section 15 deals with the appointment of Assistant Collector. Section 17 is with regard to Tahsildars and Naib Tahsildars. Section 18 provides for appointment of Sub- Divisional Officers and Additional Sub-Divisional Officers whereas, Section 19 provides that every Revenue Officer of a Sub-division of a district shall be subordinate to the Assistant Collector (if any). For convenience, Section 15, 17, 18 and 19 of the U.P. Land Revenue Act, 1901, are reproduced as under:

15. Assistant Collectors.--(1) The State Government may appoint to each district as many other persons as it thinks fit to be Assistant Collector of the first or second class.

(2) All such Assistant Collectors, and all other Revenue Officers in the district, shall be sub ordinate to the Collector.

17. Tahsildars and Naib-Tahsildars.--The State Government may appoint to each district as many persons as it may think fit to be Tahsildars and Naib-Tahsildars.

18. Sub-Divisional Officers and Additional Sub- Divisional Officers.--(1) The State Government may place any Assistant Collector of the first class incharge of one or more Sub-divisions of a district, and may remove his therefrom.

(2) Such Assistant Collector shall be called an Assistant Collector-in-charge of sub-division of a district or Sub-Divisional Officer and shall exercise all the powers and discharge all the duties conferred and imposed upon him by this Act or by any other law for the time being in force, subject to the control of the Collector.

(3) The State Government may designate any Assistant Collector of the first class appointed to a district to be Additional Sub-Divisional Officer in one or more Sub-divisions or the district.

(4) The Additional Sub-Divisional Officer shall exercise such powers and perform such duties of an Assistant Collector-in-charge of a sub-division of a district in such cases or classes of cases as the State Government may direct.

(5) The provisions of this Act and of every other law for the time being applicable to a Sub-Divisional Officer shall apply to every Additional Sub- Divisional Officer

when exercising any powers or discharging any duties under Sub-section (4) as if he were a Sub-Divisional Officer.

(6) The State Government may delegate powers under this section to the Collector of the district and may revoke such delegation.

19. Subordination of Revenue Officers.--Every Revenue Officer of a Sub-division of a district shall be subordinate to the Assistant Collector (if any) incharge of such subdivision, subject to the general control of the Collector.

59. In view of the above, the posts of Assistant Collector, Tahsildar and Naib-Tahsildar, are different posts with different duties and every revenue officer of the sub-division, shall be subordinate to Assistant Collector who happens to be the Incharge of the Sub-division. The Rules (supra) empower the Collector to supervise the auction and sale of property while proceeding to recover the dues as arrears of land revenue and in absence of Collector, the power has been conferred on the Assistant Collectors who has been duly nominated by the Collector. The Naib Tahsildar lacks jurisdiction to proceed with the auction and sale of a property while proceeding to recover the arrears as land revenue under the U.P.Z.A. & L.R. Act and Rules framed thereunder.

60. Learned Counsel has given much emphasis to the fact that the State Government by the Notification dated 6.6.1953, had appointed all Tahsildars as Ex-Officio Assistant Collectors of First Class. Further, by another Notification of the same date i.e., 6.6.1953, the State Government had appointed all Naib Tahsildars as Ex-Officio Assistant Collectors of Second Class. Accordingly, submission is that the Naib Tahsildar was having power to hold auction. The submission of petitioner's counsel does not seem to be correct. The power conferred on the Naib Tahsildar is of Ex-Officio Assistant Collector of Second Class for the purpose of duties enshrined in the Land Revenue Act. The duties of Revenue authorities enshrined in the Land Revenue Act, does not cover the jurisdiction with regard to auction and sale provided in the Rules. A person holding Ex- Officio Office, may discharge only those obligation which has been specifically assigned to him.

61. According to Black's Law Dictionary, 6th Edition, page 597, Ex- Officio means, "by virtue or because of an office; "by virtue of the authority implied by office". It means, the Naib Tahsildars because of their Office, will have powers to work as Ex-Officio Assistant Collector Second Class. The ex officio obligation means to discharge all additional duties of other Office apart from regular one. The natural consequence to it is that the additional duty must be delegated in accordance with law. In absence of any provisions within the four corners of the statutes, the Naib Tahsildars will have no right to conduct auction and sale proceeding.

62. As discussed above, Sub-section (4) of Section 3 of the U.P.Z.A. & L.R. Act, defines the word, "Collector", which means, an officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901, and includes an

Assistant Collector of the first class empowered by the State Government by a notification in the Gazette to discharge all or any of the functions of Collector under the Act.

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

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

65. The aforesaid proposition with regard to delegation of power is fortified by the Division Bench judgment of this Hon'ble Court reported in 1965 RD 379 State of U.P. v. Paraspati Gram Samaj, where, an analogy has been drawn while interpreting the provision u/s 122-B of U.P.Z.A. & L.R. Rules, read with Rule 115-C. The Division Bench of this Court held that the Collector includes the Assistant Collector of First Class and not an Assistant Collector of Second Class. It has further been held that u/s 221 of the U.P. Land Revenue Act, 1901, the power of Assistant Collector of First Class could be conferred only on Tahsildar. In the case reported in 1967 RD page 60 Smt. Chhowari v. Om Prakash, the Board of Revenue, the highest court on revenue side, also held that u/s 221 of the U.P. Land Revenue Act, 1901, the Government may confer on any Tahsildar all or any of the powers of an Assistant Collector of the First Class and on any Naib Tahsildar all powers of Assistant Collector of Second Class. It further held that by Notification of the State cannot confer the Naib Tahsildar, the powers wider in their amplitude than the enabling section conferring the powers by the State Government. In case delegation is not provided by the statute, it cannot be conferred by Notification. The submission made before the Board of Revenue that the State Government may confer the power first on a Tahsildar and then by a

notification, confer the powers of an Assistant Collector of the First Class or second class on any Naib Tahsildar, shall not be lawful.

66. Otherwise also, a plain reading of Section 221 of U.P. Land Revenue Act, indicates that the State Government has got jurisdiction to confer power under the Act empowering persons by name or class or office and may vary or cancel such order. In view of the finding of the Board of Revenue, the Assistant Collector of Second Class either he or she, may discharge only those duties which have been assigned to him under the Act or Rules, and in absence of any provisions contained in the Rules, such person will have no right to discharge such duty. The Collector or Assistant Collector cannot delegate power to Naib Tahsildar to hold the auction and sale proceeding under Rule 285-A of the U.P.Z.A. & L.R. Rules.

67. The power vesting in the Collector or Assistant Collector under the Act or the Rules framed thereunder, cannot be delegated to other authorities or Naib Tahsildars in the absence of specific provisions with regard to it.

68. While assailing the impugned citation of recovery, learned Counsel for the auction purchaser stated that since no objection was filed under Rule 285-I of U.P. Z.A.&L.R. Rules, the sale shall be deemed to be confirmed.

69. Learned Counsel relied upon the judgment reported in Janak Raj Vs. Gurdial Singh and Another, (2006) 2 SCC 386 Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, (2008) 12 SCC 582 Janatha Textiles v. Tax Recovery Officer and Anr. In none of these cases referred by the learned Counsel, Sri Dhruv Mathur for the auction purchaser, the provisions contained in U.P. Z.A.&L.R. Act and the Rules framed thereunder, have been considered and interpreted. On the other hand, in the case of Swadeshi Polytex Limited reported in [2006 (24) LCD 1], while affirming the judgment of this Court, the provisions contained in U.P.Z.A. & L.R. Act and Rules framed thereunder, have been considered.

70. In the Case of Janak Raj (supra), the provisions contained in Order 21 CPC, have been interpreted. It has been held that once sale is confirmed, the judgment debtor is not entitled to get back property even if he succeeds thereafter in having the decree against him reversed. It has been further held that the CPC of 1908 has got detailed provisions which have to be followed in the case of sales of property in execution of a decree. The CPC lays down as to how and in what manner such sale may be set aside. Ordinarily, no application is made in the provision or Rule 89 to Rule 91 of Order 21, and in case any application is made and is disallowed, then the court has no choice in the matter of confirming the sale and the sale must be made absolute. It has also been held that so far as the title of purchaser is concerned, it relates back to date of sale and not from the date of confirmation. Thus, the present case relied upon by the counsel for the auction purchaser, seems to be not applicable under the facts and circumstances of the present case.

71. The case of Ashwin S. Mehta (supra), relates to proceeding under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and seems to be not applicable in the present controversy.

72. The Case of Bombay Dyeing and MFG Co. Limited (supra), broadly relates to public interest in town planning and it has been held that right of bona fide purchasers in duly concluded sale proceeding, is absolute. Hon'ble Supreme Court held that the case where the process of auction and sale are complete, and the applicants are bona fide purchasers in duly concluded sales, stands on different panorama. The bona fide purchaser in an auction and sale for certain purposes is like a decree holder who came to purchase under his own decree and bona fide purchaser who came in and got at the sale in execution of a decree, to which he was not a party. Where a third party is a bona fide auction purchaser, even if a decree is set aside, his interest in auction is saved. (para-329). The ratio of the judgment seems to be not applicable in the present case as the provisions contained in U.P.Z.A. & L.R. Act and Rules framed thereunder, have not been considered.

73. In the case of Janatha Textiles (supra) the controversy relates to auction and sale during the execution proceedings. The judgment seems to be not applicable under the facts and circumstances of the present case.

74. While relying upon the judgment reported in Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, Shri Radhey Shyam Vs. Shyam Behari Singh, 1989 (2) UPLBEC 199 Abdul Wahid v. Additional Commissioner, Meerut Division, Meerut and Ors.; 1991 AWC 842 Bachi Ram v. Swami Santosha Nandji; Union Bank of India Vs. Official Liquidator H.C. of Calcutta and Others, Rajender Singh Vs. Ramdhar Singh and Others, NGEF Ltd. Vs. Chandra Developers Pvt. Ltd. and Another, Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, and United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others, learned Counsel for the auction purchaser, submitted that insufficiency of price, shall not make out a case to defer or set aside the auction and sale. However, in the present case, the question is not only of insufficiency of price but also the right of Naib Tahsildar to conduct the auction and sale proceeding as well as notice and publication of estimated value in pursuance of provisions contained in U.P.Z.A. & L.R. Act and Rules framed thereunder. Thus, the cases relied upon by the learned Counsel for the auction purchaser, do not seem to extend any help.

75. It has been vehemently argued that in view of the case reported in Zila Parishad, Muzaffarnagar and Another Vs. Udai Veer Singh, the contract becomes complete with the fall of hammer. The judgment in the case of Udai Veer Singh (supra), seems to be diluted by the subsequent judgments discussed hereinafter and no right shall accrue unless the sale is confirmed by the Collector in accordance with the provisions contained in U.P.Z.A. & L.R. Rules. The case of Udai Veer Singh (supra), is not applicable in the present case.

76. There appears to be no dispute that a thing should be done in the manner as provided in the Acts and statutes as has been held in the case reported in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and also there is no dispute that the correctness of the order should be judged for the reasons stated, as has been held in the case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

77. Sri Prashant Chandra learned Senior Counsel, while appearing on behalf of M/s. R.D. Cements, submits that though, notice for auction was issued on 27.8.2007 and auction was held only on 25.9.2007, before expiry of 30 days, it shall not be fatal and the auction shall not be invalid. It is a minor error and it will not affect the auction proceeding. However, the submission of Sri Prashant Chandra, seems to be not sustainable in view of settled proposition of law that provisions contained in U.P.Z.A. & L.R. Rules, have got mandatory force, (vide Swadeshi Polytex (supra)).

78. It has further been argued that the petitioner deposited the entire dues lastly, on 23.10.2007 and since no objection was filed, the same shall be deemed to be confirmed under Rule 285-K. Though, no objection was filed by any person against the impugned auction and sale, but it shall not preclude the competent authority/Collector to ensure the compliance of statutory provisions while taking decision with regard to confirmation of sale. Rule 285-I, empowers the affected or aggrieved party to file objection before the Divisional Commissioner. The Rule does not contain or define the power of confirming authority. The authority possessing power to pass order under Rule 285-A, appointing an Assistant Collector to hold the auction and sale proceedings, has got implied power to scrutinise the validity of proceedings whenever a report is submitted.

79. Sri Prashant Chandra, learned Senior Counsel relied upon the judgment reported in Gurjoginder Singh Vs. Jaswant Kaur (Smt) and Another, and Anr.; Padanathil Rugmini Amma Vs. P.K. Abdulla, He submits that the petitioner M/s. R.D. Cement, is stranger and his rights should be protected by the Court. He emphasised that being bona fide purchaser, rights of M/s. R.D. Cement, should be protected and, auction and sale may not be turned down for any reason whatsoever.

80. There appears to be no dispute over the proposition of law that ordinarily, a bona fide purchaser for value in an auction and sale, is treated differently than a decree holder, purchasing such property. In the former event, even if a decree is set aside, the interest of bona fide purchaser in an auction and sale proceeding, is saved. The reason as observed by Hon'ble Supreme Court in the case of P.K. Abdulla (supra), is that the honest outside purchasers should be protected who participate in a sale held in the execution of its decree since such purchasers are not party to the suit. But for such protection, the property which is sold in court auction, would not fetch a proper price when the decree holder himself is purchaser and the decree in his favour, is set aside.

81. However, the present controversy does not relate to execution of a decree. The dispute should be decided in accordance with statutory provisions contained in U.P.Z.A. & L.R. Act and Rules and not otherwise. Admittedly, in view of the settled proposition of law laid down by Hon''ble Supreme Court in the case of Swadeshi Polytex (supra), the Rules have got statutory force. Accordingly, the judgment relied upon by Sri Prashant Chandra, seems to have got no bearing with the present controversy.

82. Since the auction was held without 30 days clear notice, the valuation of property was not published in two newspapers having wide circulation in the locality and the Naib Tahsildar seems to have got no jurisdiction to hold the auction and sale, the submission of Sri Prashant Chandra, seems to not sustainable.

83. Moreover, the Constitution Bench of Hon''ble Supreme Court in the case reported in Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, held that the declaration with regard to higher bidder at the auction, does not amount to complete sale and transfer of property. It requires approval by the competent authority. To quote relevant portion:

(10) It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place.

84. In the case reported in Purxotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others, Hon''ble Supreme Court upheld a clause contained in the tender for the lease of distillery entitling the Government to reject the highest tender without any reason. Hon''ble Supreme Court observed that where sale is subject to confirmation by the Government, then it shall be open to the Government either to accept or reject any bid without assigning any reason with exception to the charge of mala fide (para-11 and 19). It has further been held that auction and sale was held contrary to Rules.

85. In the case reported in Excise Commissioner of U.P. and Others Vs. Manminder Singh and Others, where the controversy relates to auction of liquor shop, their Lordships at Hon''ble Supreme Court held that Excise Commissioner

was empowered to order re-auction in the interest of revenues of the State. The Excise Commissioner had not confirmed the auction in the interest of revenue of State. Hon''ble Supreme Court held that High Court should not interfere under Article 226 of the Constitution of India, with the decision taken by the Excise Commissioner.

86. In the case reported in (1994) 6 SCC 651 *Tata Cellular. v. Union of India*, while considering the power of judicial review in the Government contracts/tenders, their lordships at Hon''ble Supreme Court held that only the decision making process and not the merit of decision itself is reviewable as the Court does not sit as appellate authority while exercising the power of judicial review. Though, the Court ordinarily may not interfere with the Government's contracts, invitation or refusal of tender which pertains to policy matter but whether the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality or Wednesbury unreasonableness, may be looked into, while exercising power of judicial review. Under the Wednesbury unreasonableness, when decision is such as no reasonable person on proper application of mind could take or procedural impropriety, can be looked into by the Court. The test is whether wrong is of such a nature as to require intervention by the Court. In *Tata Cellular's* case (supra), while considering the power of judicial review, Hon''ble Supreme Court observed as under:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

87. While summarising the courts'' power (supra), Hon''ble Supreme Court held that courts should confine itself to the illegality committed by the authorities and proceeded to observe as under:

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesday unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesday unreasonableness? Is it a magical formula? In *R. v. Askew*, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike.

88. Their lordships further proceeded to observe (*supra*) as under:

80. At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849-850, may be quoted:

4. Wednesbury principle.-A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, per Lord Greene, M.R.)

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment*, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Bernet London Borough Council, ex p Johnson* the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

89. In the case reported in *Subhash Projects and Marketing Ltd. Vs. West Bengal Power Development Corporation Ltd. and Others*, Hon''ble Supreme Court affirmed the High Court's judgment on the ground that contract was signed under the influence of Minister of State for Power in the Union Government.

90. In *Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others*, it has been held by Hon''ble Supreme Court that where statutory authority entered into a contractual transaction and invites tenders but later on keeping in view the change in policy decision, cancels the bid, Court should exercise judicial restraint and would not interfere unless the decision is mala fide.

However, if the Court in a given situation is not in a position to allow a bid to take place before, it may not still venture to strike down an Act in the name of public interest, although, no such public interest exists. (paras 66 and 67).

91. In the case reported in *Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others*, Hon''ble Supreme Court discussed the two modes of auction; viz., where auction is not subject to subsequent confirmation and where auction is subject to confirmation of authority after the auction is held. It has been held that auction shall not be

complete unless sale is confirmed. No right accrues unless sale is confirmed by the competent authority. However, once sale is confirmed, some right may accrue which ordinarily may not extinguish except in exceptional case like fraud or collusion etc.

92. Hon''ble Supreme Court in the case reported in FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, observed that auction and sale of a property should be done in such a manner to get highest price so as to satisfy the maximum claims against the Company under liquidation.

93. In Ganpati RV-Talleres Alegria Track Pvt. Ltd. Vs. Union of India (UOI) and Another, Hon''ble Supreme Court had reiterated the law laid down in earlier judgment of the case reported in New Horizons Limited and Another Vs. Union of India (UOI) and Others, and observed that decision taken by the evaluation committee which is expert body, should not ordinarily be interfered by the High Court.

94. In Meerut Development Authority Vs. Association of Management Studies and Another, their Lordships of Hon''ble Supreme Court held that bidders participating in tender process, have no right except the right to equality and fair treatment. The Government has got power to reject highest or lowest bid. It shall be appropriate to reproduce relevant portion of the said judgment:

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism.

It has further been held that in public interest or to fetch higher amount, bid of auction may be cancelled. However, in case it is established that terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process or suffers from mala fide, Court may judicially review the decision of the State Government.

95. In the case reported in Gajraj Jain Vs. State of Bihar and Others, Hon''ble Supreme Court held that assets should be sold for obtaining market price and not merely for recovering dues for Corporation. Their lordships of Hon''ble Supreme Court held that before putting the assets for sale, the market value must be ascertained. In absence of wide publication and proper mechanism, the auction and sale becomes only a pretence. For the purpose of publicity and maximum participation, the bidders must know the details of assets or itemised value.

In the present case, in the newspaper, the detail of assets or the estimated value of property was admittedly not published which renders the auction and sale illegal.

Other Grounds raised by the Parties Counsel

96. Sri I.B. Singh, learned Senior Counsel, has vehemently argued that the amount of tax liability cannot be transferred to UPCL. It is the UPAL, from which the tax liability could be recovered and not the UPCL. He submits that all liability prior to agreement shall be shifted to UPAL. Relying upon the clause of the agreement. It has also been stated that the PICUP cannot realise the tax liability. He submits that u/s 33 of the Trade Tax Act only the Trade Tax Department can realise the tax liability. Submission of Sri I.B. Singh learned Senior counsel, does not seem to be sustainable.

97. The number of documents and agreement referred to in the preceding paras and the overwhelming evidence on record establish that the UPCL, has itself owned the tax liability by entering into the agreement. Whether the liability so owned by the UPCL, is valid or not, cannot be looked into at this stage under writ jurisdiction more so when the UPCL, has not approached the appropriate forum challenging the tax liability. Any wrong order/decision may operate unless it is set aside by a competent forum or court, vide *State of Haryana and Others Vs. Ram Kumar Mann*,

98. The UPCL, had approached this Court for the first time by preferring Writ Petition No. 6345 (M/B) of 2002, challenging the notice dated 15.6.2002 sent by PICUP to pay trade tax deferment liability in terms of agreement entered into with PICUP and consequential demand notice dated 3.10.2002 issued under ZA Form-68 and 69 for Rs. 2,50,35,995.00. Even while preferring Writ Petition No. 6345 (M/B) of 2002, the UPCL, has not challenged the agreement entered into with PICUP as well as the permission/order passed by the Principal Secretary of the Government of U.P. Only the consequential notice has been challenged while approaching this Court under Article 226 of the Constitution of India.

99. Now, it is trite in law that in absence of challenge of basic order, the writ petition against consequential order, shall not be maintainable, vide *Government of Maharashtra and Others Vs. Deokar's Distillery*,

100. Hon''ble Supreme Court in the case of *Raj Kumar Soni and Another Vs. State of U.P. and Another*, held that fundamental facts must be pleaded to enable the High Court to scrutinise the nature and content of right alleged to have been violated. In *Union of India (UOI) and Others Vs. Jai Prakash Singh and Another*, Hon''ble Supreme Court held that High Court cannot travel beyond the pleadings and grant a relief.

101. Moreover, Sri I.B. Singh learned Senior Counsel also stated that UPCL, is ready to pay entire dues which shows the shaky mind of UPCL, with regard to shifting of tax liability on UPAL. Once the tax liability has not been challenged at appropriate forum at initial stage, now at this stage, the UPCL, cannot escape from its liability to pay tax in terms of the agreement.

Summary

102. In view of the above, to sum up:

(i) UPCL Owes tax liability in question. Unless at appropriate forum the agreement, order/permission of the State Government is questioned and set aside, the UPCL Shall own the liability to pay the deferred trade tax. UPCL, has not challenged the validity of agreement or the order passed by the Principal Secretary State Government (supra). Since the basic decision and action has not been impugned, the writ petition against the consequential notice and recovery proceeding is not maintainable. UPAL shall not owe the Trade Tax Deferment Liability under the facts and circumstances of the case.

(ii) Under Rule 285-A of U.P.Z.A. & L.R. Rules, only the Collector or Assistant Collector, appointed by him, has right and jurisdiction to hold an auction and sale to recover the dues as arrears of land revenue. In absence of any delegation, the Sub- Divisional Magistrate could not have been delegated the power to Naib Tahsildar. In any case, the Naib Tahsildar is not competent to hold auction and sale proceeding under the statutory provisions. Only the Assistant Collector First Class appointed by the Collector may hold the auction and sale proceeding.

(iii) The provisions of U.P.Z.A. & L.R. Rules have got statutory force in view of the judgment of Hon"ble Supreme Court in Swadeshi Polytex (supra). It is mandatory to publish the estimated cost of property in two widely circulated newspapers and the auction and sale may be held with 30 days clear notice and 25% of the auction money must be deposited in cash in compliance of Rules. None compliance of Rules, makes the auction and sale illegal and void.

In the present case, the auction and sale was not held in accordance with statutory provisions; hence, it suffers from substantial illegality and is liable to be set aside.

(iv) In absence of specific pleading and challenge to original order/decision and the agreement, the UPCL, cannot shirk from its liability to pay tax.

Transfer of Property during pendency of Writ Petition

103. As discussed hereinabove, the interim order dated 19.2.2003 passed by this Court, is still continuing which provides that the property shall remain under attachment and shall not be sold. In utter disregard of the order of this Court, the property has been transferred by Sri P. Kumar in favour of his own wife Smt. Mamta Sinha.

104. Section 52 of Transfer of Property Act, 1882 provides that property cannot be transferred during pendency of writ petition. Under the doctrine of lis pendens, the vendee who is purchasing such property may do so on his own risk as from the outcome of pending case, his right may be affected. For convenience, Section 52 of the Transfer of Property Act, 1882 is reproduced as under:

52. Transfer of property pending suit relating thereto.--During the [pendency] in

any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] of [any] suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation:--For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

105. While considering the doctrine of lis pendens, a case has been decided by one of us (Hon''ble Devi Prasad Singh, J.) reported in 2006 (24) LCD 733: State of U.P. (Nazul) v. VII Additional District Judge, Lucknow and Ors.. This Court has observed as under:

71. So far as the argument advanced by Shri B.K. Saxena, learned Counsel for the intervenor M/S Gomti Construction is concerned, admittedly a portion of land is transferred during the pendency of proceeding. The intervenor being a transferee pendente lite without leave of the Court shall be bound by a final outcome of the present writ petition. As settled by Hon''ble Supreme Court in a case reported in Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, the petitioner who was the respondent in appeal should not have transferred a portion of property during the pendency of present proceeding. The alienation of property shall be hit by doctrine of lis pendens by operation of Section 52 of the Transfer of Property Act. Hon''ble Supreme Court in the case of Bibi Zibaida Khatoon (supra) had relied upon the earlier judgment of Apex Court and proceeded to held as under:

In the case of Dhurandhar Prasad Singh observations relevant for the purpose of these appeals read thus: (SCC pp.541-42, para 7)

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.

106. Apart from the doctrine of lis pendens, the property was transferred in violation of orders of this Court. A decision taken in violation of order passed by this Court, not only amounts to contempt of Court but also action so taken, shall

be void ab initio.

107. It is the duty of the Court to maintain the supremacy and majesty of law and every action taken violating its command, must be negated to maintain the Rule of law in a civilised society. The Court may pass appropriate order negating the action taken in violation of its command and may also impose exemplary costs and punish such persons accordance with law.

108. In view of the above, Smt. Mamta Sinha, who purchased the property during the pendency of writ petitions as well as continuance of interim orders passed by this Court (supra), shall also be bound by the judgment of this Court. She will acquire no right and title over the land which has been transferred in violation of interim order of this Court. In case she has deceived the Allahabad Bank, then Allahabad Bank shall have right to prosecute Smt. Mamta Sinha and recover the amount in accordance with law.

Concealment of Facts

109. It has been not disputed that an interim order was passed in W.P. No. 6345 (M/B) of 2002 by the Division Bench of this Court, which is still continuing. While passing the interim order, the Division Bench of this Court had directed to deposit Rs. 30,00,000.00, first of which shall fall due in first seven days of July, 2003. It was further provided that property shall remain under attachment and shall not be sold. To reproduce the relevant portion of the interim order dated 19.2.2003 as under:

We, therefore, provide as an interim measure that in case the petitioner deposits Rs. 30 lacs within a period of one month from today, the property in question shall be delivered possession of, to the petitioner immediately on the deposit of the aforesaid amount of Rs. 30 lacs. The petitioner shall thereafter deposit another amount of Rs. 30 lacs within the next two months and shall continue to deposit the balance of the amount demanded in quarterly instalments of an amount of Rs. 30 lacs, the first of which shall fall within first seven days of July, 03. All such deposits made shall be subject to the decision of the writ petition. It is clarified that the property in question shall remain under attachment but shall not be sold nor the petitioner's right of functioning and carrying on business in the factory shall be obstructed on the ground that the factory is under attachment and the petitioner shall not sell or alienate the property in question including the plant and machinery and shall keep it in proper running condition.

110. In spite of the fact that the interim order is continuing, the Board of the petitioner UPCL, vide its Resolution dated 4.3.2005, authorised its Managing Director Sri P. Kumar to sell the property on behalf of the Company. In consequence of the authority extended by the Board, Sri P. Kumar executed sale-deed on 9.3.2005 in the name of his own wife Smt. Mamta Sinha. Smt. Mamta Sinha happens to be the Director in UPCL. Her identity was concealed and instead of husband's name, her father's name was shown as daughter of Sri Girish Prasad.

111. It has been stated that transaction through sale-deed dated 9.3.2005 not came to the knowledge of PICUP. Rather, Smt. Mamta Sinha taken loan from Allahabad Bank mortgaging the property so acquired though, the property was already mortgaged with PICUP and the charge was registered with the Registrar of the Companies.

112. Apart from the above, the petitioner UPCL had filed a Regular Suit No. 27/2004 before the Civil Judge (Sr. Div.) Mohanlalganj, Lucknow and obtained an ex parte injunction order dated 31.1.2004. However, after receipt of notice and due inquiry, the PICUP found necessary information with regard to pendency of suit filed by the petitioner before the Civil Judge (Sr. Div.), Mohanlalganj, Lucknow. In the R.S. No. 27/2004 the UPCL claimed the following reliefs:

(a) A declaratory decree be passed in favour of the plaintiff against the defendants, declaring that the plaintiff is not liable to pay the interest free Trade Tax Deferment Loan of PICUP and it is the defendant No. 2 who is liable to pay the said loan amount to the defendant No. 1 and as such the recovery certificate issued by the defendant No. 1 is illegal, invalid and not enforceable against the plaintiff. A decree for the auction illegally done by the Tehsil Authorities may please be declared null and void.

(b) A decree for Perpetual injunction be passed in favour of the plaintiff against the defendant No. 1 restraining him, his, officers, agents men, assignees, power of attorney holder not to enforce the illegal, invalid recovery certificate issued by him and not to auction/sale the plaintiff's unit in lieu of the illegal and invalid Recovery Certificate.

(c) Cost of the suit be awarded to the plaintiff against the defendants.

(d) Any other relief or reliefs may further be awarded in favour of the plaintiff and against the defendants, which this Hon''ble Court deems fit and proper in the circumstances of this case.

113. After hearing and considering the objection filed by PICUP, the Civil Judge (Sr. Div.), Mohanlalganj, Lucknow, had vacated the injunction order dated 13.2.2004 with the observation that the petitioner Company has not come with clean hands. Later on, the suit was dismissed in default and no recall application has been filed till date.

114. The Writ Petition No. 3877 (M/B) of 2003 was filed by the UPCL against the auction notice dated 14.7.2003 (ZA Form-72) which was dismissed by the Division Bench of this Court, vide judgment and order dated 28.7.2003.

Writ Petition No. 2896 (M/B) of 2003 was filed by UPCL for quashing the auction notice dated 14.5.2003 but keeping in view the non-compliance of interim order passed in Writ Petition No. 6345 (M/B) of 2002, Hon''ble Single Judge of this Court had declined to grant any interim relief and petition is pending.

Writ Petition No. 3204 (M/B) of 2003 was filed by UPCL for quashing auction

notice dated 28.5.2003. In this case also, the Division Bench had declined to grant relief.

Thus, it is evident that the petitioner UPCL had filed successive writ petitions challenging the auction proceeding and failing to achieve its object, had filed regular suit and obtained ex parte injunction which was later on, vacated. Thus, the petitioner UPCL approached the Civil Court as well as this Court with uncleaned hands concealing the material facts, and has abused the process of law.

115. The repeated filing of writ petitions in this Court against the auction and sale proceeding, the transfer of property in violation of interim order of this Court, the concealment of fact with regard to pending of writ petition while filing the R.S. No. 27/2004 and concealment of fact in this Court with regard to filing of regular suit, shows a clandestine effort on the part of the UPCL, to abuse of process of law and makes out a case for trial of perjury, contempt of this Court as well as imposition of exemplary costs keeping in view the ratio of judgment of Hon"ble Supreme Court reported in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . Filing of false affidavit also makes out a case for ex facie contempt for which Sri P. Kumar and his associates are liable to be tried.

116. Virtually, the petitioner UPCL, had committed fraud deliberately by suppressing material facts. "Fraud" means an intention to deceive. The expression "fraud" involves two elements, deceit and injury to the person deceived. Even if in some cases there is not benefit to the deceiver, in appropriate case, the second condition shall be deemed to be *Dr. Vimla Vs. Delhi Administration*, and *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*,

117. The collusion or conspiracy to deprive the right of others in relation to a property shall render transaction ab initio void. Fraud and deception are synonymous. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (Vide *Ram Chandra Singh Vs. Savitri Devi and Others*, Fraud is proved when it is shown that a false representation has been made knowingly, or in disbelief in its truth, or recklessly and carelessly whether it is true or false. Fraud avoids all judicial acts ecclesiastical or temporal. (Vide *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, In *Lazarus Estate Ltd. v. Besalay* 1956 All. E.R. 349, the Court observed without equivocation that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

118. Their lordships of Hon"ble Supreme Court in the case reported in *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills* and another, and (1994) 2 SCC *State of Maharashtra and Ors. v. Prabhu*, has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. Equity is also known to prevent the law from the crafty evasions

and sub-letties invented to evade law.

119. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, their lordships of Hon''ble Supreme Court observed to quote:

Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

120. In the case reported in Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, Hon''ble Supreme Court observed as under:

Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

121. In a recent judgment of Hon''ble Supreme Court reported in 2010 AIR SCW 50 Dalip Singh. v. State of U.P. and Ors., their lordships after considering earlier judgment, has deprecated the conduct of such litigants who approach the Court by concealing material facts. It shall be appropriate to reproduce the relevant portion of the judgment of Dalip Singh (supra):

9. In K.D. Sharma. v. Steel Authority of India Ltd. and Ors. (2008) 12 SCC 481 : (2008 AIR SCW 6654), the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree and Others Vs. Bhagwandas S. Patel and Others,

122. In the case reported in Afzal and another Vs. State of Haryana and others, and Dhananjay Sharma Vs. State of Haryana and Others, Hon''ble Supreme Court held that concealment of material facts/filing of false affidavit amounts to criminal contempt, since it amounts to an attempt to interfere with the administration of justice.

123. In the present case, apart from the dismissal of writ petition with exemplary costs in view of the judgment of Hon''ble Supreme Court in the case reported in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the officers or authorities concerned of UPCL, may also be liable to be hauled up for commission of criminal contempt of this Court.

ORDER

124. In view of the above, both the writ petitions are liable to be dismissed. However, as observed hereinabove, UPCL, is liable for payment of exemplary costs for the abuse of process of law, concealment of fact and violation of interim order (supra).

Accordingly, the W.P. No. 6345 (M/B) of 2002 is dismissed with exemplary costs which is quantified to Rs. 10,00,000.00 (ten lakhs) which shall be deposited within a period of one month in this Court. In case the costs is not deposited the District Magistrate, Lucknow, shall recover the same as arrears of land revenue and remit the same to this Court within next two months. The costs shall be remitted to Mediation Centre Lucknow. The Registry of this Court, to take follow up action.

Writ Petition No. 9080 (M/B) of 2007 is also dismissed but costs is made easy. The auction money deposited by the petitioner M/s. R.D. Cements Industries Pvt. Ltd., Lucknow, shall be refunded forthwith say, within a period of one month from the date of service of certified copy of this judgment.

The district authorities may proceed with fresh auction in the light of observations made in the present judgment, expeditiously where parties may also participate.

The writ petitions are dismissed accordingly.