

(2003) 09 GUJ CK 0044
In the Gujarat High Court

Case No : Special Civil Application No's. 1448 and 1462 of 2003

Sameer Engineering Works	Vs	APPELLANT
District Collector		RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 152, 172, 178, 179, 181
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 90
Constitution of India, 1950 — Article 226, 227

Citation : AIR 2004 Guj 54 : (2003) 3 GLR 2638

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Mihir Joshi and Amrita M. Thakore, Special Civil application No. 1448 of 2003, Mihir Joshi and Vimal M. Patel, Special Civil application No. 1462 of 2003, for the Appellant; D.S Pandit, AGP for Respondent No. 1, A. J. Patel and Roopal R. Patel for Respondent No. 2-3, Utpal M. Panchal, Special Civil Application Nos. 1448 and 1462 of 2003, for the Respondent

Judgement

K.A. Puj, J.

1. Special Civil Application No. 1448 of 2003 was filed by one M/s. Sameer Engineering Works, a Partnership Firm engaged in the activity of manufacturing machines like power looms and spare parts and for that purpose, the petitioner Firm has constructed a factory in area admeasuring 1511 Sq. Mtr. and 755.50 Sq. Mtr. of built up area on Final Plot No. 145/1 situated at Naroda, which is known as Old Malay Rubber Factory Compound.

2. The petitioner firm has challenged in the present petition, the high-handed action of respondent No.2 i.e. The Special Recovery Officer of the Vijay Co-Operative Bank Limited in giving possession of the premises to

respondent No.4, namely, Mr. Pravinchandra Naranbhai Patel, Karta of Naranbhai N. Patel, H.U.F. and Pravinchandra N. Patel, H.U.F., Vice-Chairman of the respondent No.3 Bank, on 01.02.2003 despite the fact that on the said date, the sale was not confirmed as required to be confirmed u/s 179 of the Bombay Land Revenue Code and, therefore, the action taken by the respondent No.2 in giving possession to respondent No.4 is in gross violation of Section 181 of the Bombay Land Revenue Code. The challenge made against the said action of the respondent No.2 on the ground that the premises worth Rs.1,44,00,000/= has been sold at a very low price of Rs. 68,00,000/= and that too to the Vice Chairman of the respondent No.3 Bank which itself shows that the respondent Nos.2,3 and 4 have met their hands in glove with a malafide intention to benefit respondent No.4. It was also challenged on the ground that the respondent No.2 in high-handed action gave possession of the premises to respondent No.4 on 01.02.2003 despite the fact that the sale of the premises is not confirmed by the Collector u/s 179 of the Bombay Land Revenue Code and, therefore, it is in gross violation of Section 181 of the Code. It is further challenged on the ground that the procedure followed by respondent No.2 in auctioning the premises is in violation of the provisions of Bombay Land Revenue Code and the action of the respondent No.2 itself suffers from material irregularity and fraud.

3. Special Civil Application No. 1462/03 is filed by M/s. Karma Fabrics, M/s. Dhaval Corporation, M/s. Suraj Engineering Works and M/s. Shri Ram Engineering Works against the action of the respondent No.2, namely, The Special Recovery Officer of the Vijay Co-Operative Bank Limited i.e. respondent No.3 herein, in selling the rented premises of the petitioners in public auction to respondent No.4 as arrears of land revenue of respondent No.3 without adjudicating the fact that the present petitioners have tenancy rights in the premises which were sought to be sold. The said action of the respondent No.2 was challenged on the ground that no procedure as laid down in Bombay Land Revenue Code has been followed by the respondent No.2 before evicting the petitioners from the rented premises. It is also challenged on the ground that the said action is in breach of the principles of natural justice as no notice or opportunity of hearing was given to the petitioners to point out that the premises sought

to be sold are rented to the present petitioners. It was further challenged on the ground that respondent No.2 was aware that Civil Suit

Nos.3768/02, 3769/02 and 3427/02 filed by the petitioners No.1,2 and 3 respectively, interalia praying for permanent injunction from

dispossessing the petitioners from the premises by respondent No.2 were pending before the City Civil Court at Ahmedabad. The auction was

also challenged on the ground that the respondent No.2 has acted in high-handed manner by evicting the petitioners from the premises on

01.02.2003 and handing over the possession to respondent No.4 without confirmation of sale which is in gross violation of Section 181 of the

Code. It was further challenged on the ground that the order dtd. 07.02.2003 passed by the respondent No.2 approving the sale of the premises

in favour of respondent No.4 suffers from the vice of non-application of mind, breach of principles of natural justice and abuse of powers under the

Bombay Land Revenue Code and, therefore, the said order deserves to be quashed and set aside.

4. Since in both the petitions, the challenge is against the order dtd. 07.02.2003 passed by the respondent No.2 approving the sale of the premises

in favour of respondent No.4, though on different grounds, the same are to be disposed of by this Common judgment.

5. The facts giving rise to S.C.A. No. 1448/03 is that in order to increase its working capital, the petitioner had made an application for cash credit

facility with the respondent No.3 Bank in the Month of August, 1995. The respondent No.3 has granted cash credit facility for a sum of

Rs.28,00,000/= against an equitable mortgage dtd. 21.10.1995 and subsequently for additional loan, another equitable mortgage dtd.21.11.1995

was executed in favour of the respondent No.3 Bank in respect of the above referred premises. Since the petitioner was unable to pay the cash

credit facility, the respondent No.3 Bank had instituted Summary Lavad Suit No. 1266 of 1999 before the Board of Nominees Court at

Ahmedabad, directing the petitioners, his partners and guarantors therein to pay a sum of Rs.41,15,078=50 and interest thereon at the rate of 23%

p.a. with effect from 06.10.1999.

6. Similarly, respondent No.3 Bank had also instituted Summary Lavad Suit No. 1267 of 1999 and 1268 of 1999 before the Board of Nominees

at Ahmedabad on 06.10.1999 against Sameer Remedies Pvt. Ltd. wherein one of the partners Mr. Laljibhai Arjanbhai Patel of the present

petitioner is the Director. The said Suits were filed inter alia praying for an order directing the defendants therein to pay a sum of Rs.8,68,169/= and

Rs.5,69,435/= respectively and interest thereon at the rate of 23% p.a. with effect from 06.10.1999.

7. The Suit filed against the petitioner was decreed vide order dtd. 13.01.2000 and the Suits filed against Sameer Remedies Pvt. Ltd. were

decreed on 07.01.2000 and 24.01.2000. Against the order dtd. 13.01.2000, the petitioner filed Appeal No. 132 of 2000 before the Gujarat Co-

operative Revenue Tribunal on 22.03.2000. Similarly, appeal being Appeal Nos. 130 of 2000 and 131 of 2000 were filed on 22.03.2000 by

Sameer Remedies Pvt. Ltd. against the order dtd. 07.01.2000 and 24.01.2000 respectively. The Tribunal vide its order dtd. 16.10.2000

dismissed all the three Appeals for default with no order as to costs.

8. Since the Appeals were dismissed for default, restoration Application No. 4/2000 in Appeal No. 130/2000 was filed by the petitioner and

Restoration Application No. 5/2000 in Appeal No. 131 of 2000 and 6/2000 in Appeal No. 132/2000 was preferred by Sameer Remedies Pvt.

Ltd. The said restoration applications were allowed by the Tribunal on 17.03.2003 and Appeals are now pending for disposal on merits before the

Tribunal.

9. During the pendency of the Restoration Application before the Tribunal, the District Registrar, Co-operative Society issued Recovery Certificate

dtd. 23.01.2001 for recovery of Rs.41,15,078=50 with interest in view of the decree passed in Summary Lavad Suit No. 1266 of 1999.

Similarly, Recovery Certificates for Rs.8,68,169/= and for Rs.5,69,435/= with interest were also issued by the District Registrar, Cooperative

Society against Sameer Remedies Pvt. Ltd. in view of the decree passed in Summary Lavad Suits No.1268/99 and 1267/99 respectively. The

said Recovery Certificates were sent to the Special Recovery Officer for recovery of the said dues, as arrears of land revenue under the Provisions

of Bombay Land Revenue Code. The notices u/s 152 as well as u/s 200 were issued on the petitioner on different dates and ultimately, the

respondent No.3 passed an order dtd. 5.10.2001 attaching the right, title and

interest of the premises on the ground of non-payment of the amount of Rs.41,15,078=50/- and also on the ground of non-payment of the amount of Rs.14,37,604/= by Sameer Remedies Pvt. Ltd. A valuation of the premises was carried out and a valuation report was given by Mr. Amrut H. Patel, Chartered Engineer and Registered valuer, wherein the premises along with the structure thereon is valued at Rs.92,69,000/-. The petitioner has also obtained the valuation report from Mr. P.S. Rangwala, a Govt. Registered and approved valuer on 13.10.2001, valuing the said premises at Rs.1,44,00,000/-. A Proclamation dtd. 21.04.2002 was issued by the respondent No.2 u/s 165(5) for effecting the sale of the premises by auction on 08.03.2002. In the said Proclamation, the upset price was fixed at Rs.92,70,000/-. Pursuant to the said Proclamation, a public notice in daily newspaper ""Sandesh"" dtd. 05.02.2002 and in ""Gujarat Samachar"" dtd. 06.02.2002 were given for auction of the premises. However, the auction could not take place on 08.03.2002. Hence, another proclamation dtd. 20.08.2002 was issued by the Special Recovery Officer for auctioning the premises on 27.09.2002 wherein the upset price of the premises was fixed at Rs.67,54,182/= instead of Rs.92,70,000/=. Pursuant to this price proclamation, a public notice was published in the newspaper ""Loksatta"" dtd. 3.09.2002 wherein no upset price was stated. Pursuant to the second proclamation as well as the advertisement, auction was held on 27.09.2002 and the premises was sold for a sum of Rs.68,00,000/- to respondent No.4, the Vice Chairman of the respondent No.3 Bank and the possession was given to the respondent No.4 on 01.02.2003 as per the impugned order dtd. 07.02.2003. It is this order passed on 07.02.2003 which is under challenge in S.C.A. No. 1448/2003.

10. As far as S.C.A. No. 1462/2003 is concerned, it is the case of the petitioners that the petitioner No.1 has taken on rent the premises

admeasuring 19 X 42 Sq. Feet from the landlord situated at Final Plot No. 145/1 of T.P. Scheme No. 12, Mauje Naroda vide agreement dtd.

27.12.1990 with effect from 01.12.1990 on a rent of Rs.2000/= per month. Similarly, petitioner No.2 had taken on rent the premises being Shed

No. 2 admeasuring 15 X 70 Sq. Feet from the landlord, situated at Survey No. 01091/2 paiki Final Plot No. 145/1 of T.P. Scheme No. 12,

Mauje Naroda, vide agreement dtd. 31.08.1994 with effect from 01.05.1994 for a period of 15 years on a monthly rent of Rs.1500/=. Similarly,

petitioner No.3 has taken on rent the premises situated at Revenue Survey No. 01091/2 paiki Final Plot No. 145/1 of T.P. Scheme No. 12,

Mauje Naroda from the landlord, on rent as per the agreement executed on 27.12.2001, with effect from 01.08.2001 on a monthly rent of

Rs.3,000/=. Likewise, the petitioner No.4 has also taken the premises on rent admeasuring 70 X 35 Sq. Feet from the landlord vide Agreement

dtd. 23.04.1998 on a monthly rent of Rs.7,000/=. Thus, the petitioners were legally having the possession of the rented premises. On 17.09.2002,

a notice was affixed by the respondent No.2 on the rented premises of the petitioners interalia stating that the auction of the premises were held on

27.09.2002 pursuant to the proclamation dtd. 20.08.2002. Since the petitioners apprehended that under the guise to recover the dues from the

landlord by auctioning the premises, the petitioners would be dispossessed, they have filed Civil Suits No. 3768/02, 3769/02 and 3427/02 before

the City Civil Court at Ahmedabad on 16.10.2002. In Civil Suits No. 3768/02 and 3769/02, Court Commissioner was appointed and the

Panchnama was drawn from which it was evident that the petitioner Nos.1 and 2 are in possession of the rented premises. In the said proceedings,

reply was filed by the respondent No.2 denying that the petitioners are in possession of the premises as tenants. However, it was nowhere

mentioned in the said reply that the premises has been auctioned on 27.09.2002. Thereafter, on 01.02.2003, the respondent No.2 tried to

dispossess the petitioners from the premises. The petitioners No.1 and 2, therefore, filed an application before the respondent No.2 on

01.02.2003, interalia, requesting him not to take any action on the ground that Civil Suits No. 3768/02 and 3769/02 are pending before the City

Civil Court, Ahmedabad. It was also pointed out in the said application that the premises of the petitioners are the rented premises and they have

tenancy rights and, therefore, respondent No.2 has no right to dispossess the petitioners from the premises for recovery of the dues of the landlord.

Despite this fact, possession was taken and the same was handed over to the respondent No.4 on 01.02.2003. The petitioners thereafter filed an

application on 04.02.2003 before the Collector interalia complaining that the possession of the premises was forcefully taken from the petitioners.

However, without taking into consideration the said application, straightway an order dtd. 07.02.2003 was passed by the respondent No.2

approving the sale of the premises in favour of the respondent No.4 who is the Vice Chairman of the respondent No.3 Bank and it is this order

which is under challenge in S.C.A. No. 1462/2003.

11. Mr. Mihir Joshi and Ms. Amrita Thakore, learned advocates appearing for the petitioners in S.C.A. No. 1448 of 2003 and Mr. Mihir Joshi

and Mr. Vimal Patel, learned advocates appearing for the petitioners in S.C.A. No. 1462 of 2003 have submitted that the impugned order dtd.

07.02.2003 passed by respondent No.2 is absolutely illegal, unjust, arbitrary, contrary to the provisions of the Bombay Land Revenue Code and,

therefore, deserves to be quashed and set aside. Mr. Mihir Joshi has submitted that respondent No.4 in whose favour the sale was approved, is

the Vice-Chairman of respondent No.3 Bank. He has further submitted that on one hand, respondent No.3 has invoked the machinery under the

Bombay Land Revenue Code to recover the dues as arrears of land revenue from the petitioners and on the other hand, the premises were sold by

respondent No.2 to the Vice Chairman of the respondent No.3 Bank. He has, therefore, submitted that this fact itself demonstrates that the

respondent Nos.2 to 4 have met hand in glove only with a view to see that the subject premises are sold at a very low price benefiting the

respondent No.4 and at the same time, the dues of the respondent No.3 Bank are recovered. Mr. Joshi has further submitted that the premises in

question were never mortgaged by Sameer Remedies Pvt. Ltd. and the said premises do not belong to the said Sameer Remedies Pvt. Ltd. and

hence, the dues of Sameer Remedies Pvt. Ltd. cannot be recovered by the respondent No.2 from the land of the petitioners. Mr. Joshi has further

submitted that at the time when the first proclamation dtd. 24.01.2002 was issued, the upset price of the premises were fixed at Rs.92,70,000/=.

Even from the Valuation Report dtd. 16.10.2001, it is evident that the property was worth Rs.92,69,000/=. Further, from the Valuation Report

dtd. 13.10.2001 given by Mr. P.S. Rangwala, the premises were valued at Rs.1,44,00,000/=. However, for the reasons best known to the

respondent No.2, in the subsequent proclamation dtd. 20.08.2002, the upset price of the premises was fixed at Rs.67,54,182/- without calling for

fresh valuation of the property as on 20.08.2002. Mr. Joshi has further submitted that the upset value of the premises was reduced only with a

view to see that the premises were sold at a very low price in order to benefit the respondent No.4, the Vice Chairman of the respondent No.3

Bank. The respondent No.2 has, therefore, committed material irregularity and fraud on the petitioner in conducting the said public auction. Mr.

Joshi has further submitted that the respondent No.2 has violated the Provisions of Bombay Land Revenue Code by conducting the auction of the

premises of the petitioners. u/s 179 of the Bombay Land Revenue Code, the Collector is required to confirm the sale on expiry of 30 days from

the date of the sale. Admittedly, when the possession was given to respondent No.4 on 01.02.2003, the sale was not confirmed by the Collector

u/s 179 of the Bombay Land Revenue Code and hence, the possession given was in gross violation of Section 181 of the Bombay Land Revenue

Code.

12. He has further submitted that the objections raised dtd. 04.02.2003 were not taken into consideration and the respondent No.2 has approved

the sale vide order dtd. 07.02.2003. Mr. Joshi has lastly submitted that even otherwise part of the said premises was given on rent to Karma

Fabrics and Dhaval Corporation vide agreement dtd. 31.08.1994 and 27.12.1990, on a monthly rent of Rs.1,500/= and Rs.2000/= respectively.

The tenants were in fact in possession of the premises and they are regularly paying the rent to the petitioners. The said tenants were forcefully

removed by the respondent No.2 on 01.02.2003 only with a view to give vacant possession of the premises to respondent No.4. This also amply

demonstrates that respondent No.2 has committed fraud and material irregularity in conducting the public auction only with a view to help and

benefit respondent No.4. Mr. Joshi has further submitted that the action of the respondent No.2 to auction the premises and to confirm the sale is

itself illegal and is not in accordance with law and provisions contained in Bombay Land Revenue Code. It is further submitted that the order dtd.

07.02.2003 is an order of confirmation which is beyond the authority since the respondent No.2 himself cannot confirm the same as he has

conducted the proceedings of sale. The confirmation of sale should be made by the person who has not conducted the proceedings of sale.

13. Mr. Joshi has therefore submitted that the person who has conducted the proceedings of sale should not be the same person confirming the

said sale. In the instant case, the proceedings of sale were conducted by the Special Recovery Officer and he is the person who has confirmed the

sale. He has submitted that both the authorities should be different one, as, if there is any irregularity or infirmity in the proceedings conducted by

the person to whom the powers are delegated to conduct the sale, the same can be rectified by his superior while deciding the issue regarding

confirmation of sale. He has, therefore, submitted that u/s 179 of the Bombay Land Revenue Code, wide powers are given to the Collector either

to confirm the sale or to set aside the sale. In this context, he has relied on the decision of this Court in the case of Pathubhai Vashrambhai Rajput

Vs. Government of Gujarat and Others, wherein it is held as under :-

The Collector, when he disposes of any Government property, has to take due care to see that the State fetches adequate consideration or

proper price for the same. If he comes to a conclusion that the price fetched by the State is not adequate, it becomes his bounden duty to see that

the sale is not confirmed. Moreover, no citizen has any legal or fundamental right to purchase Government property at an auction, especially when

the sale is not properly effected or when the State has not received proper price or adequate consideration. In the instant case, the Collector has

come to a definite conclusion that the auction was not duly advertised and there was less participation of bidders and he has also suggested that the

auction proceedings were merely on paper. These facts denote that the auction was not held properly, and therefore, it was not in the interest of

the State to dispose of the land in question in favour of the petitioner and for the said reason, which has been duly recorded in his order, he has not

confirmed the sale in favour of the petitioner. In the instant case, the Collector has exercised his statutory power with due care. He has duly

examined the proceedings of the auction and for justifiable reasons he has not confirmed the sale. No prudent officer, acting in the interest of the

State, would permit the property of the State to be disposed of at a lesser price. He should make an effort to see that policy laid down by the

State is followed and maximum possible price is fetched by the State while disposing of its property. In my opinion, the Collector has rightly not

confirmed the sale and while doing so, he has acted well within the limits prescribed by Section 179 of the Code and has considered only relevant factors.

14. Mr. Mihir Joshi, learned advocate appearing for the petitioner further submits that the respondent No.4 had not paid the entire sale

consideration within 15 days from the date of sale and hence the sale became null and void and ineffective. He further submits that the law laid

down by this Court in the case of LAXMICHAND VARDHAJI V/s. COLLECTOR OF BANASKANTHA & ANOTHER 27 (1) G.L.R. 476

is not a good law. It states that "" The expression used in Sec. 174 did not mean that full amount of the purchase price has to be paid within 15 days

from the date of the bid because the relevant words were 15 days from the date on which the sale of immovable property took place. Sale can be

said to have taken place only when there is final acceptance of the bid and not when provisional acceptance and 1/4th amount is paid. Looking to

the scheme of the Code, full amount of purchase money shall have to be paid before the expiry of the period of 15 days and in case of default, the

effect thereof would take place as envisaged in Section 175 and the liability of the purchaser would arise on account of resale of the property as

contemplated by Section 176 of the Code. Section 177 prescribes that every resale of property in default of payment to purchase money or after

the postponement of the first sale shall be made if the issue of fresh notice in the manner prescribed for original sales. Section 178 talks about the

application to set aside sale and 179 empowers the Collector to pass an order either to confirm the sale or to set aside the sale. Since the

respondent No.4 has not paid the sale consideration within 15 days from the date of the sale, the said sale is required to be set aside and the

properties required to be resold. In support of his submission, Mr. Joshi relied on the decision of the Hon''ble Supreme Court in the case of

Sardara Singh (Dead) by Lrs. and Another Vs. Sardara Singh (Dead) and Others, wherein it is held as under :-

The requirement of deposit contained in Sections 85, 86 and 88 of the Punjab Land Revenue Act, which are substantially the same as Order 21

Rules 84 and 85 of the Civil Procedure Code, are mandatory and failure to comply with either of them renders the entire sale null and void and

non-est. Once the effect of non-payment of the amount is to render the sale non-existent, it becomes the imperative duty of the authority to re-sell the property as the purchaser forfeits all claim to the property for default of payment. Where there is no sale in the eye of law, there can be no question of applying for setting aside the sale on the ground of material irregularity u/s 91 of the Act which is analogous to Order 21 Rule 90 of the Code. No right, title or interest passes to the auction-purchasers under the sale certificate. The owner of the land was, however, required to file a suit to protect his possession as there was an imminent threat to dispossess him on the strength of the sale certificate. During the pendency of his appeal he was dispossessed and, therefore, he was required to amend the plaint and claim possession also. The suit was, therefore, clearly de hors the provisions of the Act and hence ordinarily the civil court was entitled to hear and decide the same.

Once it is held that the sale was rendered null and void on the failure of Land Revenue Act, it was the imperative duty of the authorities to put the property to re-sale for the law did not confer any discretion in the concerned authorities to extend the time for the payment of the balance amount.

The authority, therefore, had no jurisdiction to accept the balance money after the expiry of the period prescribed by Section 88.

15. Mr. A.J. Patel with Ms. Roopal R. Patel, learned advocate appearing on behalf of respondent Nos.2 and 3 have submitted that before

approaching this Court, the petitioner in S.C.A. No. 1448/03 has availed of alternative statutory remedy to ventilate his grievance and preferred a

Revision Application before the learned Special Secretary (Disputes), Revenue Department, Ahmedabad on 10.2.2003 and raised all the

contentions which are raised in the present petition. The petitioner has also prayed for stay against the implementation of the order dtd.

07.02.2003. However, no stay was granted by the Special Secretary. Mr. A.J. Patel has further submitted that despite the decree has been

passed against the petitioners and Appeals filed against the said order and decree having been dismissed by the Tribunal, the respondent Nos.2

and 3 are justified in initiating the recovery proceedings against the petitioners. Mr. Patel has further submitted that while exercising powers u/s 152

of the Bombay Land Revenue Code, respondent No.2 had issued notices to the petitioner by RPAD on 01.02.2001, 30.08.2001, 12.09.2001

and 28.09.2001 and had also affixed the said notices on the premises of the petitioner which is evident from the Panchnama drawn on the spot. It

is only after issuance of such notices, the order of attachment was passed on 05.10.2001 and thereafter an order dtd. 16.01.2002 was passed to

sell the said property which was duly served on the petitioner. Mr. Patel has further submitted that it is true that initially, upset price was fixed at

Rs.92,70,000/=. But since no one has shown any interest to purchase the said property, the City Deputy Collector was contacted on 22.10.2001

and City Deputy Collector vide his order dtd. 25.07.2002 revised the upset price of the property to be Rs.67,54,182/=. The said price was fixed

by the City Deputy Collector on the basis of the Jantri price of the property. On the basis of that revised price, fresh notification dtd. 20.08.2002

was published in ""Jansatta"" and the auction was held on 27.09.2002. Out of the two parties, respondent No.4 had offered Rs.68,00,000/= and

the same being highest offer was accepted by the respondent No.2 and 25% of the said offer i.e. Rs.17,00,000/= was paid by the respondent

No.4 on the very same day as per one of the conditions of the auction. The respondent No.2 thereafter passed an order on 17.01.2003, accepting

the bid of the respondent No.4 who had offered highest amount and informed him to pay the balance amount within 15 days from the date of the

receipt of the said letter. Accordingly, respondent No.4 had paid the balance amount of Rs.51,00,000/= by two cheques dtd. 31.01.2003 drawn

on Vijay Co-operative Bank Limited, Naroda Branch, Ahmedabad each of Rs.25,50,000/=. The respondent No.2 thereafter handed over the

possession to respondent No.4 on 01.02.2003 and the order was passed on 07.02.2003. Pursuant to the said order, Regd. Sale Deed was

executed on 11.02.2003 and thus the sale of the said property has become final. Mr. Patel has, therefore, submitted that the petitioner has no right

to file the present petition and to challenge the auction proceedings taken by the respondent No.2 for recovery of the dues of the respondent No.3

Bank.

16. Mr. Patel has further submitted that there was no irregularity or fraud committed by any one as alleged by the petitioners. With regard to the

petitioners contention about a part of the premises being rented premises, Mr. Patel has submitted that the property was mortgaged with the

respondent No.3 Bank and it was never known to the respondent No.3 about the alleged tenancy of the said property. He has further submitted that the alleged tenants filed Suits before the City Civil Court wherein stay interalia granted was vacated by the City Civil Court. Mr. Patel has further submitted that even if there is some irregularity committed by the respondent No.2, it has not caused any substantial loss to the petitioner. He has further submitted that the petitioner has not offered at any point of time to repay the dues of the respondent No.3 Bank when the possession was taken after following due procedure of law. The petitioner has raised all these technical grounds to restore the possession of the said property, but has never expressed his willingness to repay the outstanding amount. He has, therefore, submitted that there is no equity on the part of the petitioner which entitles him to claim any relief from this Court. Mr. Patel has further submitted that the petitioner has invoked the extraordinary writ jurisdiction of this Court, but looking to the issues involved in the present petition, they require detail probing which cannot be done under Article 226/227 of the Constitution of India. Lastly, Mr. Patel has submitted that the petition being misconceived, vexatious and frivolous, which is required to be dismissed with cost.

17. Similarly, with regard to S.C.A. No. 1462/03, Mr. Patel has submitted that the said petition is also not tenable as the petitioners have already availed alternative remedy and filed Civil Suits before the City Civil Court, Ahmedabad. Moreover, the fact regarding tenancy was not disclosed to the respondent No.3 Bank. Mr. Patel has further submitted that the petitioners were aware about attachment, auction and sale proceedings being initiated by the respondent No.2. Mr. Patel has further submitted that the petitioner No.3 had submitted a pursis withdrawing its right to press for the stay in the Civil Suit filed by the petitioner No.3. It was further submitted that the petitioners have failed to obtain any stay in their favour. He has lastly submitted that the petition filed by the tenants is nothing but the abuse of process of law as the landlord and tenants in any case had joined hands in glove to defeat the legitimate recovery of the dues of the respondent No.3 especially when the possession was already handed over to the respondent No.4, after following due procedure of law and hence, this Court should not entertain the said petition filed by the

petitioners - tenants.

18. The learned AGP appearing for respondent No.1 and Mr. Utpal M. Panchal, learned advocate appearing on behalf of the respondent No.4 in

both the petitions have adopted the arguments canvassed by Mr. A.J. Patel, learned advocate appearing on behalf of respondent Nos.2 and 3.

19. Mr. A.J. Patel, learned advocate appearing on behalf of the respondent Nos.2 and 3, on the other hand, submitted that there was no material

irregularity found in the order of the Special Recovery Officer either conducting and/or confirming the sale. He has further submitted that

inadequacy of price is not the ground for setting aside the sale. In this context, he relied on the decision of the Hon"ble Supreme Court in the case

of Shri Radhey Shyam Vs. Shyam Behari Singh, wherein it is held as under :-

In order to set aside an auction sale mere proof of a material irregularity such as the one under Rule 69 and inadequacy of price realised in such a

sale, in other words injury, is not sufficient. What has to be established is that there was not only inadequacy of the price but that that inadequacy

was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the

material irregularity.

20. Mr. Patel has further submitted that because of the reduction in price, no substantial injury was caused to the petitioner and it was not pointed

out as to how the petitioner was adversely affected because of such reduction in price. In this context, he relied on the decision of the Hon"ble

Supreme Court in the case of Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala and others, wherein it is held as under :-

under O.21, R.90 of C.P.C., it is not sufficient for the appellant to contend that there was an illegality or irregularity in the conduct of the sale, he

must also prove by adducing sufficient facts that some substantial injury has been caused to the petitioner as a result of the order under O.21, R.72

having been passed without such notice.

21. Mr. Patel has further submitted that there is no equity in favour of the petitioner as the petitioner is a defaulting party and has not paid the dues

of the respondent Bank. The petitioner is, therefore, not entitled to claim any equitable relief from this Court while exercising the writ jurisdiction

under Article 226 of the Constitution of India. In this context, Mr. Patel has relied

on the decision of the Hon''ble Supreme Court in the case of

Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, wherein it is held as under :-

There is no equity in favour of a defaulting party which may justify interference by the courts in exercise of its equitable extraordinary jurisdiction

under Article 226 of the Constitution to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate

rights of the Corporation which after advancing the loan takes steps to recover its dues from the defaulting party. A court of equity, when

exercising its equitable jurisdiction under Article 226 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 crafty evasions and new subtleties

invented to evade law. Since, the Legislature enacted Sections 29 and 31 with a view to aid the Corporation to recover its legitimate dues etc.

from the defaulting party, the saving clause in Section 31, preserving the rights u/s 29 by giving up the pursuit u/s 31 at any stage of the proceedings

is available to the Corporation. The two provisions must be so harmonised as to facilitate the Corporation to recover its dues from the defaulting

party. The Act was enacted by Parliament with a view to promote industrialisation and offer assistance by giving financial in the shape of loans and

advances etc. repayable in easy installments. The Corporation has to recover the loans and advances, so as to be able to give financial assistance

to other industries and unless it recovers its dues, the money will not remain in circulation for long. It is with this end in view that Parliament gave

the Corporation the right to proceed u/s 31, preserving at the same time its rights and remedy u/s 29, so that the Corporations are not choked by

the defaulting debtors by adopting frustrating or dilatory tactics in the proceedings in the court initiated u/s 31 of the Act.

22. Mr. Patel has further submitted that while confirming the sale u/s 179 of the Bombay Land Revenue Code, the Collector is supposed to take

into consideration all the relevant aspects of the matter and if something happens during the period between the date of sale and the confirmation of

sale, the same can certainly be taken into consideration by the Collector. In support of this submission, he relied on the decision of the Hon''ble

Supreme Court in the case of Sri Mohan Wahi Vs. Commissioner, Income Tax, Varanasi and Others, wherein it is held as under :-

The combined effect of sub-sec. (3) of S. 225 of the Act and Rule 56 and R.63 of Second Sch. is that if before an order confirming the sale is

actually passed by the Tax Recovery Officer, the demand of tax consequent upon an order made in appeal or other proceedings under the Act has

been reduced to nil, the Tax Recovery Officer is obliged to cancel the certificate and as soon as the Certificate is cancelled, he shall have no power

to make an order confirming the sale. The sale itself being subject to confirmation by the Tax Recovery Officer, would fall to the ground for want

of confirmation. Thus, when between the date of sale and the actual passing of the order confirming the sale if an event happens or a fact comes to

the notice of the Tax Recovery Officer which goes to the root of the matter, the Tax Recovery Officer may refuse to pass an order confirming the

sale. The fact that the sale was being held for an assumed demand which is found to be fictitious or held to have not existed at all, in fact or in the

eye of law, is one such event which would oblige the Tax Recovery Officer not to pass an order confirming the sale and rather annul the same.

23. Mr. Patel has further submitted that petitioners have not filed objections within the period prescribed u/s 178 of the Bombay Land Revenue

Code and hence, the said objections are not required to be taken into consideration while confirming the sale u/s 179 of the Code. In this

connection, he relied on the decision of this Court in the case of Patel Dwarkadas K. and Others Vs. State of Gujarat and Others, wherein it is

held as under :-

It is to be seen that even before the objections were filed on 23.09.1981, the sale was confirmed by the appropriate authority on 01.04.1981. It

is, therefore, clear that the sale was confirmed before the objections were filed. The Code does not envisage any power, function or jurisdiction

with any authority to set aside the sale which has already been confirmed. So, on the one hand, the objection was not filed by respondent No.5

within thirty days from the date of sale of the immovable property in accordance with Sec. 178 of the Code. On the other hand, the objection was

received subsequent to the confirmation of sale. There is no provision providing for entertaining any objection subsequent to the confirmation of

sale. Therefore, on going through the scheme of the Code, it is very clear that the Dy. Collector was not required, authorised or competent to

consider the objection of the objector-respondent No.5 herein after a passage of 30 days from the date of sale and after the confirmation of the

sale in question. In other words, the order of the Dy. Collector, setting aside the sale ignoring the provisions of Sec. 178 is ex-facie illegal.

24. Mr. Patel has further submitted that simply because the sale was confirmed after the expiry of the period of four months, it cannot be said that

any statutory provision is violated by the Special Recovery Officer. The statutory requirement is that the sale can be confirmed next day after

completion of 30 days. No outer time limit is prescribed and hence, no fault can be found from the fact that the sale was confirmed in the instant

case, after the expiry of period of four months. In this connection, he relied on the decision of this Court in the case of GUJARAT STATE CO-

OP. LAND DEVELOPMENT BANK LTD. & ANR. V/s. DY. SECRETARY (APPEALS), REVENUE DEPARTMENT, AHMEDABAD &

ORS. 2002 (3) G.L.R. 2444 wherein it is held as under :-

It is not in dispute that within 30 days from the date of sale of the property, no application was filed on behalf of respondents 2 to 4 for setting

aside the order and after waiting for the aforesaid period, subsequently, the Recovery Officer confirmed the said sale. Since, there was no

application or objections filed by respondents 2 to 4, there was no question of setting aside the said sale or of directing issuance of a fresh sale

proclamation. As per the provisions of Sec. 179, the sale is required to be confirmed after waiting for 30 days from the date of the sale. In the

instant case, after waiting for the aforesaid period of 30 days, subsequently, at a later point of time, the sale was confirmed. What is required by

law is that no such sale can be confirmed within a period of 30 days, but there is no provision that after a period of 30 days, sale cannot be

confirmed. In fact, it has to be confirmed only after waiting for 30 days and not before that. In the instant case, after waiting for the stipulated

period of 30 days, sale was confirmed by the petitioner No.2. It cannot be said that there was any unreasonable delay for the purpose of

confirming the aforesaid sale. It cannot be said that any prejudice is caused to respondents 2 to 4 in any manner in view of the delay in confirmation

of the sale. In any case, if the sale was confirmed within 30 days, naturally, that order was required to be set aside.

25. After recording the rival submissions of the parties hereinabove, what emerges therefrom, for this Court's consideration is : Whether the

petitioners are entitled to the relief prayed for in the petitions and whether there are any justifiable reason to set aside the sale effected by the

Special Recovery Officer, in favour of the respondent No.4, who happened to be the Vice Chairman of the respondent No.3 Bank. Before

dealing with the grievances of the petitioners in both the petitions, in light of the statutory provisions and/or decided cases of this Court as well as

Hon'ble Supreme Court, it is necessary to take note of certain undisputed facts. There is no dispute about the fact that decree is passed against the

petitioners by the Board of Nominees and appeal preferred thereagainst was dismissed for default by the Co-operative Tribunal. During pendency

of restoration application, the recovery proceedings were initiated by the Special Recovery Officer and properties of the petitioners were attached,

put on auction sale and ultimately sold, sale was confirmed, possession was handed over to the auction purchaser and document was executed. It

is also an admitted position that before filing this petition, the petitioners have challenged the order of confirmation of sale in Revision before the

Secretary, Revenue Department, which is still pending and no stay was initially granted. There is no dispute about the fact that after taking recourse

to the alternative remedy, the petitioners have filed the present petition and after the order of status quo was passed by this Court, the Revisional

authority has also granted order of status quo. One more development takes place during the pendency of this petition and that is that the

Restoration application filed by the petitioners were allowed by the Co-operative Tribunal and appeals were restored to file and now pending for

final disposal.

26. In the above backdrop of the matter, the Court now proceeds to examine the rival contentions raised before the Court. As far as statutory

provisions governing these two petitions are concerned, they are in Sections 172 to 181 of Bombay Land Revenue Code. Section 174 of the

Code prescribes the time limit for payment of purchase money. It reads as under :

174. Purchase - money when to be paid :-

The full amount of purchase - money shall, be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immovable property took place, or if the said fifteenth day to be a Sunday or other authorised holiday, then before sunset of the first office day after fifteenth day.

This Section says that the purchaser shall have to make full payment before the sunset of the fifteenth day from the date of sale. However, this

Court in the case of LAXMICHAND V/S. COLLECTOR (SUPRA) held that counting of fifteen date shall be from the date of confirmation and

not from the date of provisional acceptance and deposit of 1/4th amount. Even Section 172 of the Code, while prescribing the mode of payment

for movable property when sale is subject to confirmation, states that the full amount of purchase money shall be paid by the purchaser before

sunset of the day after he is informed of the sale having been confirmed. If the same analogy is applied to the sale of immovable property, the full

amount is to be made within fifteen days from the date of confirmation of sale. The respondent No.4 had paid the balance 75% amount within

fifteen days from the date of confirmation of sale. The case of SARDARA SINGH (SUPRA) relied on by Mr. Mihir Joshi stands on its own

footing as in that case the Hon''ble Supreme Court was concerned with the Provisions of Sections 85, 86 and 88 of the Punjab Land Revenue Act,

and the provisions are not identical with that of the Code. Hence, this contention fails.

27. The second issue which fell for consideration is the reduction in upset price. Originally, the upset price was fixed at Rs.92,70,000/-, which was

subsequently reduced to Rs. 67,54,182/-. The reason given for reduction in upset price was that, in response to earlier proclamation and

advertisement, only two persons have made some inquiry, however, no one had turned up on the day of auction. Thereafter, on the basis of the

city Deputy Collector's report and valuation of property as per Jantri, the upset price was fixed at Rs. 67,54,182/and property was sold at Rs.

68,00,000/-. It is true that the Special Recovery Officer did not have any details with regard to the persons making inquiry pursuant to the earlier

proclamation and that the reduced upset price was not mentioned in the

subsequent advertisement and that the sale was finalised in favour of the respondent No.4, who happened to be the Vice Chairman of the respondent No.3 Bank. This has given rise to the suspicion that entire exercise was undertaken by the respondent No.2 to facilitate the respondent No.4 to purchase the property at the reduced price. Mr. Patel, however, made the statement before the Court that if the petitioners are in a position to procure the buyer of Rs.92,70,000/- as per the original upset price, the respondent No.4 is ready and willing to forgo his claim, on receipt of the amount paid by him and the expenses incurred by him. Even otherwise, the Hon'ble Supreme Court has clearly held in the case of RADHY SHYAM V/s. SHYAM BIHARI SINGH (SUPRA) that not only the inadequacy of price, but material irregularity or fraud are required to be established for setting aside the auction sale. Since this has not been proved, this contention also fails.

28. The third issue which is raised is the delay in confirmation of sale. Section 179 of the Code states that on the expiration of thirty days from the date of the sale, the Collector shall make an order confirming the sale. In the present case, auction was held on 27.09.2002 and the respondent No.4 has purchased the property and paid the deposit of 25% on that day. However, the possession of the property was handed over to him on payment of the balance price on 01.02.2003 and the sale was confirmed on 07.02.2003. It is found from the record that the respondent No.4 has made the balance payment out of the withdrawals made by sister concerns from their overdraft accounts with the respondent No.3 Bank. The Special Recovery Officer was not in a position to explain the delay caused in confirming the sale. But, since there is no outer limit for confirmation of sale, no adverse inference can be drawn merely on these facts. Moreover, this Court in the case of GUJARAT STATE CO-OP. LAND DEVELOPMENT BANK LTD. V/s. DEPUTY SECRETARY (APPEALS) (SUPRA) has held that what is required by law is that no such sale can be confirmed within a period of 30 days, but there is no provision that after a period of 30 days, sale can not be confirmed. No prejudice is caused to the petitioners in any manner because of the delay in confirmation of sale. This contention also, therefore, fails.

29. The fourth issue that arises for court's consideration is that the Special

Recovery Officer has confirmed the sale without taking into consideration the objections raised by the petitioners. The order confirming the sale is, therefore, in violation of the Provisions contained in Sec. 178 of the Code. This Section states that at any time within thirty days from the date of the sale of immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud in publishing or conducting it. In the present case, the sale was taken place on 27.09.2002 and the objections were raised on 04.02.2003 and that too, before the District Collector and not before the Special Recovery Officer. Admittedly, the objections were not raised within thirty days from the date of sale. The formal decision with regard to confirmation of sale was taken and the same was communicated to the respondent No.4 on 17.01.2003 and on receipt of payment of the balance amount, the possession was handed over to him on 01.02.2003. The objection was raised thereafter and hence, there was no question of consideration of the said objection. This Court has held in the case of PATEL DWARKADAS K. & ORS. V/s. STATE OF GUJARAT & ORS. (SUPRA) that since the objection was not filed within thirty days from the date of sale of the immovable property in accordance with Section 178 of the Code and since the objection was received subsequent to the confirmation of sale, the said objection cannot be entertained under any Provision of the Code. This contention also, therefore, fails.

30. The fifth issue which arose in the present petition is that the respondent No.2 who has conducted the auction proceedings was the same person who has also confirmed the said sale by auction. It was, therefore, submitted that looking to the scheme of the Act, both the persons should be different one. During the course of argument, order dtd. 01.08.2001 passed by the Additional Collector, Ahmedabad is produced whereby the respondent No.2 was appointed as Special Recovery Officer for Vijay Co-operative Bank Limited, respondent No.3 herein and powers of the Collector for the purpose of recovery of bank's dues by way of recovery of land revenue were delegated to him. Thus, all the powers which are to be exercised by the Collector under Sec. 172 to 181 of the Bombay Land Revenue Code were exercised by the respondent No.2. This Court is therefore of the view that there is no infirmity in the order passed by the

respondent No.2 confirming the sale u/s 179 of the Code, so far as this ground of challenge is concerned.

31. In view of the above discussion, S.C.A. No. 1448 of 2003 is hereby dismissed. Notice discharged. Interim relief granted is vacated.

However, there shall be no order as to costs.

32. As far as S.C.A. No. 1462 of 2003 is concerned, it is found from the record that M/s. Sameer Engineering Works who is the landlord and

debtor of the respondent No.3 Bank, had never made it known to the respondent No.3 about the alleged tenancy of the petitioners, while putting

its property in question under charge by way of equitable mortgage and an extended equitable mortgage. Even the alleged tenancies of the

petitioner Nos. 3 and 4 were created subsequent to the execution of the equitable mortgage and extended equitable mortgage in favour of the

respondent No.3 Bank. The petitioner Nos.1 to 3 have filed Civil Suits before the City Civil Court, Ahmedabad against the action of the

respondent No.2 on the ground that they were dispossessed from the premises in question in high-handed manner. The petitioner No.3 has not

pressed notice of motion and as far as the suits filed by the petitioner Nos.1 and 2 are concerned, interim relief granted earlier was vacated by the

Civil Court. Since the alleged tenancies were created in favour of the petitioner Nos.3 and 4 after the properties were mortgaged with the

respondent No.3 Bank and even the fact regarding creation of tenancies earlier in favour of petitioner Nos.1 and 2 was not disclosed at the time of

execution of the equitable mortgage in favour of the respondent No.3, and even otherwise, the proceedings with regard to them are pending

before the Civil Court, this Court does not think it fit and proper to interfere in the matter. If the petitioners have any grievance against the landlord,

it is open for them to resort to the remedies available to them under the law. But, simply on the basis of the alleged tenancies in their favour, the

action of the respondent No.2 is not held to be unjust, improper or not in accordance with law.

33. Since the other grounds raised by the petitioners in S.C.A. No. 1462/2003 are more or less same to the one which are raised in S.C.A. No.

1448/2003, the reasons given for rejection of the said petition would equally apply to the present petition too.

34. in the above view of the matter, S.C.A. No. 1462 of 2003 is also dismissed. Rule discharged. Interim relief granted earlier is vacated.

However, there shall be no order as to costs.

35. While dismissing the aforesaid two petitions, the Court found that looking to the nature of disputes involved in both the petitions, the Court has

not thought it fit to exercise its extra ordinary and discretionary writ jurisdiction under Article 226 of the Constitution of India. Despite this, the

Court is also of the view that the action of the respondents are also not free from blame worthy. The Court is, therefore, thinks it fit and proper to

observe and direct that if the petitioners are in a position to procure a buyer for the premises under challenge, worth Rs.92,70,000/- within the

period of three months from today and the said buyer is ready and willing to deposit the said amount with the respondent No.2, the sale confirmed

in favour of respondent No.4 would get cancelled and in that eventuality, the respondent No.4 would be entitled to get back his amount of

Rs.68,00,000/- being the sale consideration paid by him along with the expenses incurred by him in connection with the said transaction. The

Court issues this direction on the basis of the statement made by Mr. A.J. Patel, learned advocate appearing on behalf of respondent No.4 during

the course of his submission. The respondent No.4 is, therefore, directed to maintain status quo qua the property in question for the period of three

months from today.

36. As observed earlier, during the pendency of this petition, the Gujarat State Co-operative Tribunal has allowed the restoration application of the

petitioners and the appeals are revived. The Tribunal, is therefore, directed to decide the said appeals as expeditiously as possible, preferably

within the period of three months from today so as to enable the parties to know as to where they stand. It is however made clear that any decision

which is to be rendered by the Tribunal in the said appeals would only affect the quantum of the liability of the petitioners and in no case it would

affect the sale transactions of the properties in question, which are already completed.

37. During the course of arguments, it was also conveyed to the Court that the Revision Application filed against the order confirming the sale,

passed by the respondent No.2 is still pending. The Court has at length dealt

with this point in the present petition and hence, practically, the said Revision Application would not survive. However, the parties to these proceedings are directed to get the said Revision Application decided and when this order is produced before the Revisional Authority, appropriate order may be passed by such Revisional Authority in the pending Revision Application, as expeditiously as possible, preferably within a period of three months from today.

38. On 21.04.2003, this Court has passed an order directing the petitioners to deposit a sum of Rs.5,00,000/- on or before 30.04.2003. The said amount has been deposited and the amount is lying with the Court. If the petitioner procure the buyer within the period of three months from today as directed earlier, this amount may be adjusted at his option against the said sale consideration and if no buyer is procured, in that case, the amount of Rs.5,00,000/- along with interest, if any accrued thereon, shall be refunded to the petitioner, immediately after the expiry of three months.

39. With the above directions, both these petitions are accordingly disposed of.