(1999) 11 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2384 of 1996

Surinder Kaur APPELLANT

Vs

Union Territory and Others RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 3
Punjab Land Revenue Act, 1887 — Section 158, 16, 91

Citation : (2000) 3 CivCC 254 : (2000) 2 ILR (P&H) 1 : (2000) 124 PLR 809 : (2000) 2 RCR(Civil) 38

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : M.L. Sarin and Sweena Pannu, for the Appellant; Deepak Agnihotri, for Respondent Nos. 1 to 3 and Ajay Tiwari, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The plaintiff-appellant filed the suit for declaration that the order passed by the 1st defendant dated 2.4.1983 passed in Revision Petition No. 149 of 1978 titled as Tara Singh v. Commissioner etc. is illegal, void and not binding on the plaintiff and for permanent injunction restraining the defendants from interfering with her ownership rights and possession of the plaintiff of House No. 2510, Sector 22-C, Chandigarh.

2. One Vidhya Dhar became the owner of the suit property by virtue of Conveyance dated 25.6.1956 executed by the then Estate Officer, Chandigarh in respect of a residential plot bearing R.P. No. 4592, Site No. 546, Sector 22 C, Chandigarh. In the year 1961 the said Vidhya Dhar, sold the said plot to one Ram Piari. The said transfer was duly recognised by the Estate Officer. In the year 1961 Ram Piari applied for House Building Loan and a sum of Rs. 15,700/- was sanctioned as loan. Ram Piari executed a security-cum-mortgage deed dated 11.6.1961 in favour of the Estate Officer, Chandigarh., security for repayment of the loan. The loan was payable by 1976 with interest @ 4% p.a. and in case of

default in repayment of the loan, it was recoverable as arrears of land revenue. With the said loan and some other money raised by Ram Piari, she constructed 2-1/2 storeyed residential building on the said plot. She could not pay instalments of loan regularly and thus became defaulter and thereafter the Collector initiated proceedings u/s 72 of the Punjab Land Revenue Act for the recovery of a sum of Rs. 20,720.85 Ps. and also ordered attachment. Later Ram Piari sold the house in favour of the plaintiff under a regd. Sale Deed dated 27.3.1970 without disclosing attachment of the house effected by the Collector and the plaintiff took over the liability to pay the outstanding amount of Rs. 22,134.20 Ps. of the loan obtained from the Estate Officer by Ram Piari. According to the plaintiff she was a bona fide purchaser u/s 41 of the Transfer of Property Act.

3. It is the further case of the plaintiff that in the year 1970 several transactions of such nature have taken place without obtaining any permission of the Estate Officer. Thus the plaintiff became owner of the house. It is also alleged that the Plaintiff at the time of purchase was put into possession of four rooms since the remaining premises were under the occupation of the tenants. The Executive Magistrate attached the four room by an order passed by him u/s 145 Cr.P.C. and therefore, those four rooms remained under seal from 11.11.1970 to 6.5.1975.

4. It is also averred that the order of attachment passed by the Collector u/s 72 of the Punjab Land Revenue (hereinafter referred to as the ''Act'') Act will be in force only for a period of five years during which the Collector can take over management and control of the attached property and is required to collect the rent from the tenants and adjust the same towards the amount declared as arrears of land revenue. It is further contended that without revoking the attachment order dated 19.6.1969, the Collector passed another order of attachment on 13.7.1973. Thereafter the Collector approached the Commission for according sanction u/s 75 of the Act for recovery of a sum of Rs. 25,262.95 Ps. as arrears of land revenue by auctioning the said house, but the Commissioner accorded sanction on 30.3.1974 and the sale was fixed for 21.5.1974 by an open auction. On the application moved by the husband of the plaintiff on her behalf, the auction was stayed by an order dated 20.5.1974 and thereafter the sale of the house by auction was fixed for 22.4.1975. Aggrieved by the same, the plaintiff preferred an appeal u/s 13(C) of the Act to the Commissioner who allowed the appeal on 9.5.1975 and directed the plaintiff to deposit a sum of Rs. 5,000/- and the balance @ Rs. 1,000/- per month beginning from June, 1975. Thus the auction of the house could not take place as the same was stayed by the Commissioner i.e. the 2nd defendant. The plaintiff deposited a sum of Rs. 5,000/- and Rs. 1,000/- with the Estate Officer as per the orders. The Collector also received a sum of Rs. 1,897/- from some other tenants of the house, but the Collector did not make efforts to recover all the rents due from the tenants. According to the plaintiff, the Collector has no power to add penal interest. According to the plaintiff, the amount of Rs. 7,897/- (i.e Rs. 6,000/- paid by her and Rs. 1,897/- by the tenants) already recovered has to be

deducted from the amount of Rs. 25,626.95 Ps. as on 13.7.1973, but the Collector added the penal interest on the balance of the amount on the ground that there was default in payment of the instalments as ordered by the Commissioner. The Collector once again put the house to auction on 30.3.1976 for recovery of Rs. 20,770.85 Ps. In the said auction" held on 30.3.1976, the 4th defendant became the highest bidder for Rs. 50,200/- and he deposited a sum of Rs. 3,000/- at the time of auction and the auction in favour of the 4th defendant was subject to confirmation by the Commissioner u/s 91 of the Act. The plaintiff submitted an objection petition u/s 91 of the Act and filed an application for stay. The confirmation of the order was stayed by the Commissioner and the Commissioner by his order dated 22.11.1976 allowed the objection petition and set aside the sale by way of auction in favour of the 4th respondent subject to certain conditions which are as follows:-

(i) That the amount deposited by the auction purchaser Tara Singh be refunded forthwith.

(ii) The Collector should re-assess the recovery by taking into account the following:-

(a) He should assess the mesne profits realisable from the house (and not actually realised because the mismanagement) inclusive of rent which could be realised for the portion which remained attached u/s 145 Cr.P.C. and give credit of the mesne profits against the recovery.

(b) From the date of first attachment of the house declaring the total amount of default only simple interest be calculated and penal interest be not charged.

(c) The Bank draft for Rs. 8,000/- which the plaintiff has rendered be accepted and the amount due, if any be intimated to the plaintiff and the same be realised according to law in reasonable instalments to be determined by the Collector.

5. According to the plaintiff, the said order has become final and the 4th defendant withdrew the amount deposited by him at the time of auction and the Collector also released the house from attachment by an order dated 7.2.1977. Thereafter, the 4th defendant filed a review application 24.3.1977 before the Commissioner i.e. the 2nd defendant. The said review application was dismissed by the 2nd defendant by an order dated 22.5.1978 on the ground that it was barred by time. Thereafter, the 4th defendant preferred a revision petition on 16.11.1978 before the 1st defendant who allowed the same on 2.4.1983 and directed the 4th defendant to deposit the sale consideration. The plaintiff is challenging this order in the present suit. According to the plaintiff she has paid a sum of Rs. 20,411.55 Ps. as detailed in the plaint. Since most of the amount due was paid, the impugned order passed by the 1st defendant is illegal and without jurisdiction as the order of the Commissioner, the 2nd defendant has become final and the revision petition filed against the order of the Commissioner to the 1st defendant is also barred by time.

6. The defendants 1 and 3 in their written statement contended that the suit is not maintainable u/s 158 of the Act and the Civil Court has no jurisdiction to entertain the suit and Ram Piari is a necessary party to the suit and that the suit is barred by res judicata. According to them, the earlier suit between the same parties was dismissed as withdrawn on 18.1.1984 and in regard to other allegations they are not seriously controverted by the defendants 1 to 3 except saying that the 1st defendant has jurisdiction and there is no limitation and the powers of the 1st defendants are wide under Section''16 of the Act and no notice u/s 80 C.P.C. was issued. Therefore, the suit is liable to be dismissed.

7. The 4th defendant filed a separate written statement contending inter alia that the plaintiff neither being shown as owner nor a transferee in the record of the Estate Officer has no locus standi to file the suit and when the sale is confirmed, it becomes final and it cannot be challenged in a Civil Court. Therefore, the suit is liable to be dismissed and also the suit filed by the plaintiff in Civil Suit No. 56 dated 18.5.1983 bars the present suit on the principle of res judicata and therefore, the present suit is not maintainable. Ram Piari was not made a party to the present suit and, therefore, the suit is also bad for non-joinder of necessary parties. He also took the plea that the reliefs prayed in the writ petition filed in the High Court and in the present suit are the same and no notice was issued u/s 80 C.P.C. However, the 4th defendant admitted the ownership of Ram Piari and that Ram Piari mortgaged the property in favour of the Estate Officer, Chandigarh and Ram Piari was neither seen nor heard since 1969. Therefore, the alleged Sale Deed dated 27.3.1970 appears to be bogus one and the Chief Commissioner held in order dated 2.4.1983 that: the Sale Deed was not a genuine transaction and it is further contended that the Sale Deed dated 27.3.1970 in favour of Surinder Kaur by Ram Piari is a sham transaction and, therefore, it is nullity. He further alleged that the plaintiff was not a bona fide purchaser and the Sale Deed was executed in favour of the plaintiff without obtaining prior permission from the Estate Officer. Since this property was under mortgage in favour of the Estate Officer, the Collector was within his right to add penal interest according to rules. He also contended that he was the highest bidder in the auction held and he also deposited 25% as earnest money with the Estate Officer and the Commissioner wrongly decided the objection filed by the plaintiff in view of Section 84 of the Punjab Land Revenue Act and the Commissioner acted without jurisdiction which was not vested in him and he withdrew the amount only under protest reserving his right in view of the order of the Commissioner dated 17.11.1976. Therefore, the revision petition filed by him before the Chief Commissioner was valid and the order passed by the Chief Commissioner thereon is final and the same was challenged in Civil Writ Petition No. 2405 of 1983 in which all the points that have been taken in the suit were also taken and after considering all the points the said writ petition was dismissed and the revision petition filed by the plaintiff in the High Court was also dismissed on 7.12.1983.

8. On the basis of the above pleadings, the learned Sub Judge 1st Class,

Chandigarh framed, the following issues:-

1. Whether the order dated 2.4.1983 passed in revision petition by the Financial Commissioner is illegal, if so, its effect? OPP

2. Whether this Court has got no jurisdiction to try this suit? OPD

3. Whether the plaintiff has locus standi to file the present suit? OPD

4. Whether the suit is barred on account of res judicata? OPD

5. Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD

6. Whether the suit is barred in view of provisions of Order XXIII Rule-3 of the Code of Civil Procedure? OPD

7. Whether the suit is maintainable in the present form? OPP

7-A. Whether Smt. Ram Piari sold the said house vide registered sale deed dated 27.3.1970? If so, its effect? OPP

7-B Whether the sale deed executed in favour of the plaintiff by Smt. Ram Piari is invalid? OPD

8. Relief.

9. The Plaintiff examined four witnesses and marked 25 documents in support of his claim while the defendants examined five witnesses and filed 30 documents.

10. On a consideration of the evidence on record, the learned Sub Judge 1st Class, Chandigarh dismissed the suit on 16.9.1995. The plaintiff preferred an appeal before the Additional District Judge, Chandigarh which was also distressed on 31.5.1996. Aggrieved by the same, the plaintiff filed the present appeal.

11. There is not much controversy on the facts. The suit property which is a residential plot bearing No. 546 in Sector 22-C, Chandigarh was originally conveyed to one Vidhya Dhar by virtue of the Conveyance Deed dated 25.6.1956 by the Estate officer. There is also no dispute of the fact that the said Vidhya Dhar- sold the plot to one Ram Piari on the year 1961. The said transfer in favour of Ram Piari was also duly recognised by the Estate officers and Ram Piari obtained a House Building Loan of Rs. 15,700/- and executed a Mortgage Deed in favour of the Estate Officer as security for the repayment of the House Building Loan. According to the terms of the Mortgage Deed, the loan was to be repaid with interest at 4% P.A. by 1976. It is also an admitted fact that Ram Piari constructed 2-1/2 storeyed building on the said plot, but failed to pay instalments of the loan regularly. Thus she became defaulter and the Collector initiated proceedings for recovery of the same and ordered attachment. While the property was under attachment Ram Piari sold the house to the plaintiff under a Regd. Sale Deed dated 27.3.1970 without disclosing the attachment of the house effected by the Collector. However under the Sale Deed the plaintiff took over the

liability to pay the outstanding amount of Rs. 22,134.20 Ps. due to the Estate Officer from Ram Piari. Thus the plaintiff is claiming the property as bonafide purchaser. But since the instalments have not been paid and the order of attachment already stood passed u/s 72 of the Punjab Land Revenue Act could not continue for a period of more than five years, the commissioner took over the management and control of the attachment property. Though the revenue authorities were expected to collect the rent from the tenants of the house and appropriate the same towards the loan amount, nothing of that sort was done. In 1978 the Collector approached the Commissioner for according sanction u/s 75 of the Punjab Land Revenue Act for recovery of the loan amount of Rs. 25,262.95 Ps. as arrears of land revenue by auctioning the said house. Sanction was accorded and the Collector fixed the date of sale by auction on 21.5.1974. Meanwhile the husband of the plaintiff on her behalf moved an application and the auction was stayed on 23.5.1974. Thereafter the auction of house was fixed to be held on 22.4.1975. Against the said order, the plaintiff preferred an appeal u/s 13(c) of the Punjab Land Revenue Act to the Commissioner who allowed the same on 9.5.1975 and directed the plaintiff to deposit a sum of Rs. 5,000/- and the balance at the rate of Rs. 1,000/- per month beginning from June, 1975. Thus the auction of the house could not take place because of the order of the Commissioner namely the 2nd. defendant. The plaintiff also deposited a sum of Rs. 5,000/- and also a sum of Rs. 1,000/- in pursuance of the said order of the Commissioner and the Collector also received a sum of Rs. 1,897/-from some other tenants of the house and it is apparent that the collector did not make any effort to collect the rent from the other tenants. Thereafter the house was put to auction on 30.3.1976 in which the 4th defendant (4th respondent herein) became the highest bidder for a sum of Rs. 50,200/-.

12. There is no dispute of the fact that the sale in favour of 4th defendant was subject to the confirmation of the auction by the Commissioner. Before the confirmation of the auction, the plaintiff submitted an application u/s 91 of the Act and also filed an application for stay. The confirmation of the sale was stayed by the Commissioner by his order dated 22.11.1976 and allowed the petition filed by the plaintiff and set aside the sale subject to certain conditions enumerated in the order. Thereafter the 4th defendant also withdrew the deposit of 25% of the auction money.

13. It is also evident from the record that the attachment was released on 7.2.1977. Thereafter the 4th defendant filed a review application on 25.5.1977 i.e. nearly six months after the order was passed by the commissioner setting aside the sale. That review application was dismissed by the Commissioner on 25.5.1978 on the ground that it was barred by time. Thereafter the 4th defendant preferred a Revision Petition on 16.11.1978 which was allowed by the Chief Commissioner, Chandigarh on 2.4.1983 and in that revision petition the 4th defendant was directed to deposit the sale consideration. Thereafter the plaintiff filed the suit on 11.1.1984.

14. It is no doubt true that before filing of the present suit, some other proceedings by way of writ and civil proceedings were initiated by the plaintiff which were also dismissed.

15. In view of the above facts, the following questions of law arises in this appeal :-

(i) Whether the sale Deed executed by Ram Piari in favour of the plaintiff conveys a valid title ?

(ii) What is the effect of the order of attachment made by the Collector on the Sale Deed executed by Ram Piari in favour of the plaintiff?

(iii) Whether the Chief Commissioner can entertain a Review Application after a long delay and what is the effect of the said order ?

(iv) What is the effect of the proceedings initiated by the plaintiff in the Civil Court and also in the High Court in exercise of its writ jurisdiction and the revision petition?

(v) Whether the Chief Commissioner has got the power to entertain the review petition to review his own order?

(vi) Whether the 4th defendant who withdrew the amount which he deposited at the time of auction and has not deposited any further amount, has got any right, equitable or otherwise to claim property and whether his revision petition to the chief Commissioner is maintainable.

16. Points (i) and (ii)

The plaintiff purchased the disputed property alongwith the house under a Regd. Sale Deed dated 27.3.1970 which was under mortgage. It is also in evidence that an amount of Rs. 22,134.20 was outstanding towards the loan amount which the plaintiff undertook to repay. The 4th defendant has taken a plea that on the date when the Sale Deed was executed in the year 1970 the whereabouts of Ram Piari were not known and therefore, it is not a genuine document. Exhibit P-13 is the sale Deed executed by Ram Piari. It is a Regd. Sale Deed and it was attested by the two witnesses. There is no evidence on behalf of the defendant to show that Ram Piari has not executed the sale Deed. In fact, there is no serious dispute in regard to the execution of the Sale Deed. But according to the learned Counsel for respondent No. 4 the Sale Deed does not convey any title to the plaintiff since the property was under attachment. Simply the property was under mortgage, it does not mean that it cannot be sold.

17. The learned Counsel for the 4th respondent further contended that since the property was under mortgage and also under attachment, the sale in favour of the plaintiff does not convey any title. I am unable to agree with this contention of the learned Counsel for the 4th respondent that simply the disputed property was under mortgage, no sale of the same can be effected. The purchaser stepped into the shoes of mortgagor and is liable to pay the mortgage amount.

In fact in the Sale Deed it is clearly mentioned that the property was under mortgage and the purchaser undertook the liability to discharge the mortgage. There is no provision in law that a property under mortgage] cannot be sold.

It is also contended by the learned counsel for the plaintiff that the property was under attachment even before the sale. The attachment will not nullify the sale. The attachment does not prevent an owner from selling the property. The sale of the property is subject to the rights of the decree-holder and if the property under attachment is subject matter of sale, the sale will be subject to the rights of the decree-holder. The attachment of the property was made only for securing the amount due. When the property was already under mortgage, the attachment becomes superfluous. It does not create any further right on the creditor and does not debar the owner of the property from selling it, of course, subject to rights of the mortgagee. I am, therefore, unable to agree with the contention of the learned counsel for the 4th respondent that simply because the property was under mortgage and also was under attachment at the time of the sale, the sale Deed executed by Ram Piari in favour of the plaintiff does not convey any valid title. These points are answered in favour of the plaintiff. Therefore, the plaintiff has got locus standi to file the suit.

18. The next contention of the learned counsel for the 4th respondent is that the permission was not granted to Ram Piari for sale of the land and the sale is, therefore, invalid. I do not agree with this contention of the learned Counsel for the 4th respondent. Simply because the permission was not granted to Ram Piari for sale of the property, it can be said that the sale is invalid. In fact the property was originally allotted to Vidhya Dhar, who in his turn, sold the property to Ram Piari. The original order of allotment has not been placed on record to show that there is any condition that the property cannot be sold without obtaining prior permission of the authority. Further Vidya Dhar became the full owner of the property after becoming the owner under the Conveyance Deed. He sold it to Ram Piari. Simply because Ram Piari mortgaged the property in favour of the Chandigarh Administration, it does not mean that she has to obtain permission from the Administration before selling the property. The property was allotted u/s 3 of the Capital of Punjab (Development and Regulation) Act 1952. There is no provision in the Act or in the rules made thereunder prohibiting the sale of the property allotted without obtaining the prior permission of the Administration.

19. Point No. (iii)

It is next to be seen whether the Chief Commissioner can entertain a review application after a long delay and what is the effect of the said order. There is no dispute of the fact that originally the property was put to auction but on an application of the plaintiff it was postponed. Thereafter it was again put to auction in which the 4th respondent became the highest bidder. It is a fact that he deposited 25% of the bid amount. Before the; confirmation of the sale and against the auction the plaintiff filed an appeal for setting aside the sale. Exhibit P-7 is the application for setting aside the sale. u/s 90 of the Punjab Land

Revenue Act the sale of immovable property under Chapter VI shall be reported by the Collector to the Commissioner and Section 91 of the Act provides for an application to set aside the sale to be made to the Commissioner. There is no dispute of the fact that the Commissioner by his order dated 17.11.1976 set aside the sale.

20. It is also pertinent to note that the 4th respondent who deposited 25% of the bid amount withdrew the same. Thus the sale was not confirmed in view of the order of Commissioner and the 4th respondent by withdrawing the amount, acquiesced with the order of the Commissioner in setting aside the sale. The 4th respondent filed a Revision Petition before the Commissioner after a lapse of 6 months. u/s 92(2), the order passed u/s 91 is final. Therefore, in my view no review petition shall lie. Even otherwise Section 15 of the Punjab Land Revenue Act, the review application has to be filed within 90 days. Admittedly the application for review has been filed long after expiry of the period of 90 days. Therefore, in my view the Commissioner rightly rejected the application for review. Further the 4th respondent is also debarred from filing the review application because his own action in withdrawing the amount he deposited as it amounts to acquiescence. The review application was rejected by the Commissioner on 22.5.1978. Thereafter the 4th respondent filed a revision petition u/s 16 of the Punjab Land Revenue Act against the orders of the Commissioner, Chandigarh dated 22.5.1978 rejecting the review application, inter alia he also challenged the order of the Commissioner dated 17.11.11976 setting aside the auction sale. That revision petition was allowed by the Chief Commissioner on 2.4.1978 vide Exhibit P-9 which is under challenge in the present suit. It has been clearly mentioned in Exhibit P-9 dated 2nd April, 1983 that the sale of house by way of auction in favour of the 4th respondent was set aside on 17.11.1976 and the petitioner filed a review application before the Commissioner which was dismissed on 22.5.1978. The learned Chief Commissioner also noticed that u/s 92 of the Punjab Land Revenue Act the order passed u/s 92(2) shall be final, but according to him, it does not take away the. powers of Financial Commissioner u/s 16 of the Act. Thus the Chief Commissioner in exercise of the powers conferred u/s 16 of the Act while allowing the revision petition observed that obtaining the No Objection Certificate was statutory requirement under the Capital Project Bye Laws. But he has not referred to any provision either in the Act or in the rules which requires a No Objection Certificate. As already observed when Vidhya Dhar who was the original owner sold the property, no ''No Objection Certificate'' was taken that the sale in favour of Ram Piari was not recognised, but also she was granted a loan for construction of a house by the Administration. Once Ram Piari executed the Sale Deed and the plaintiff undertook the liability of Ram Piari to repay the loan and the authorities while putting the property to sale gave notice to the plaintiff and also granted stay of auction on her application, it clearly amounts to recognition of title of the plaintiff and also acquiescence on the part of the administration in the title of the plaintiff. It is, therefore, not open to the 4th

defendant to challenge the title of the plaintiff on the ground that ''No Objection Certificate'' was obtained by Ram Piari before executing the Sale Deed in favour of the Plaintiff. Thus this ground on which the Chief Commissioner based his order holds no water and the impugned order, therefore, cannot be sustained. Further the revision petition was filed before the Chief Commissioner in the year 1978 though the order setting aside the auction was passed on 17.11.1976. Thus is clear that the revision petition before the Chief Commissioner was filed after delay of nearly two years.

21. It is to be seen whether Section 16 of the Punjab Land Revenue Act confers re-visional powers upon the Chief Commissioners even in respect of the matters dealt u/s 92 of the said Act. Sub section (2) of Section 92 of the Act provides for a revision by the Financial Commissioner whose powers are being exercised by the Chief Commissioner in the Union Territory, Chandigarh. Section 16 is a part of Chapter II which provides appeal, review and revision in regard to certain matters. In my view the provisions of Chapter II are not subject to the provisions of Chapter VI. Chapter VI is a self-contained Code. When Section 92 shows that the order of the Commissioner is final, there is no question for the Chief Commissioner to exercise the powers u/s 16 of the Act. In my view the revisional powers of the Commissioner are only confined to the provisions of the Act other than Chapter VI. When the provisions of Section 79 to 96 contain a self-contained Code and are a kin to the provisions of Orders 21 of the Code of Civil Procedure, there is no question of the Financial Commissioner or the Chief Commissioner exercising his revisional powers u/s 16 of the Act.

22. u/s 85 of the Punjab Land Revenue Act the highest bidder shall deposit twenty five percent of the bid. There is no dispute of the act that the 4th respondent offered highest bid of Rs. 50,200/-. Twenty five percent of it comes to Rs. 12,550/-But the 4th respondent deposited only a sum of Rs. 3,000/- on 30.3.1979 i.e. the date of auction. Thus he failed to deposit twenty five percent of the amount as required u/s 85 of the Act. There is also no dispute of the fact that u/s 88 of the Punjab Land Revenue Act, the full amount of purchase money shall be paid by the purchaser before the close of fifteenth day from that on which the purchaser was declared. There is no dispute of the fact that the 4th respondent who was the highest bidder had not deposited any amount apart from the initial deposit. Thus there is a clear violation of the provisions of Sections 85 and 88 of the Punjab Land Revenue Act. It has been held in Sardara Gurdit Singh and Others Vs. Sardara Dharam Singh and Others, that where in the case of an auction sale 75% of the amount was not deposited within the period- prescribed by Section 88. the sale is a nullity. The Apex Court also held in Gangabai Gopaldas Mohata Vs. Fulchand and others, that where an auction purchasers of a property had failed to pay within stipulated period the balance 75% of the sale was a non-est. It has been held in Mohinder Singh v. Additional District Judge Sangrur and Ors. (1991)100 P.L.R. 334 that the Court has no power to extend the time to deposit the amount.

23. Thus it is clear the auction sale in favour of the 4th respondent is non-est in law and is a nullity. Therefore there is no question of the conversation of such a sale. The order of the Financial Commissioner-cum Chief Commissioner is liable to be set aside on this ground.

24. In this view of the matter the argument of the learned counsel for the 4th respondent that the suit filed by the appellant is not maintainable in view of Section 158 of Punjab Land Revenue Act cannot be accepted. When the auction sale itself is non-est in the eye of law, there is nothing to be confirmed. Therefore, the order of the Financial Commissioner-cum-Chief Commissioner is without jurisdiction and void. The Financial Commissioner-cum-Chief Commissioner exercised a power which is not vested in him. Thus the impugned order is passed without jurisdiction. Therefore, section 158 of the Punjab Land Revenue Act is no bar to the filing of the present suit seeking a declaration that the order of the Chief Commissioner is void and non-est in the eye of law.

25. Even otherwise after going through the order of the Chief Commissioner Exhibit P-9, I am of the opinion that it is liable to be set aside. The order of the Chief Commissioner does not give any cogent reason for setting aside the order of the Commissioner confirming the sale. Further the Chief Commissioner entertained the revision petition after lapse of two years. He has not exercised his powers within a reasonable time. The period of two years cannot be said to be reasonable period when the rights of the parties have already been crystallised. Further the 4th respondent has withdrawn the amount deposited by him immediately and he did not even deposit the sale consideration either at the time of filing the revision petition before the Chief Commissioner or immediately after passing the order by the Chief Commissioner. Exercising discretionary power of revision in favour of a party who has not even paid a single penny and confirming the sale in his favour is totally unjustified. Even though the revision petition was filed before the Chief Commissioner in 1978, he took long period of five years to dispose of the same thereby causing a loss to the Chandigarh Administration. As already observed, after going through the order of Chief Commissioner, it is difficult to substantiate the same. I am, therefore, of the opinion that the order of the Chief Commissioner dated 2.4.1983 Exhibit P-9 is liable to be set aside.

26. In fact in the order dated 2nd April, 1983 the Chief Commissioner specifically directed the confirmation of the sale of the house in favour of the 4th defendant subject to his depositing the auction money within a period of one month failing which the revision petition will be deemed to have been dismissed. There is no evidence on record that the 4th defendant deposited the auction money as directed by the Chief Commissioner within the stipulated period of one month from 2nd April, 1983 though the learned Counsel for the 4th respondent stated that he has deposited the amount. This statement of the learned counsel for the 4th respondent cannot be taken as proof of payment. The suit came to be filed only in May, 1983 after the expiry of the period stipulated by the Chief

Commissioner for depositing the auction money. Since the order of the Chief Commissioner was conditional one and since the condition has not been fulfilled by the 4th defendant the order worked out itself and the revision petition stood dismissed because of non-deposit of auction money within a period of one month as directed by the Chief Commissioner. The filing of the suit will not operate as a stay of the order and the suit has been filed on 18.5.1983 and that itself shows that the 4th defendant did not abide by the condition imposed by the Chief Commissioner. Therefore, there is no equity in favour of the 4th defendant and the 4th defendant cannot derive any benefit of the order of the Chief Commissioner since he failed to comply with the conditions imposed by the said order. On this ground also, no relief can be granted to the 4th defendant.

27. The learned counsel for the 4th respondent also argued that the proceeding taken in the High Court in writ jurisdiction and the remedy sought by the plaintiff debar the plaintiff as they operate as res judicata. it is no doubt true that the plaintiff filed CWP No. 1655 of 1976 wherein the plaintiff sought for a direction to the Chief Commissioner and the Estate Officer to furnish her upto-date statement of account showing realisation of the amount realised from the tenants of the property from 19.6.1969 onwards. That writ petition was simply ''dismissed'' without giving any reasons. That order cannot be taken as a bar. The plaintiff also filed Civil Writ Petition No. 2405 of 1983 for quashing the impugned order passed by the Chief Commissioner dated 2.4.1983. The order dated May 12, 1983 passed in that writ petition reads as follows:-

"The Counsel seeks to withdraw the petition in order to restore to his ordinary remedy in Civil court, if any. Dismissed as withdrawn."

28. It is thus clear that the writ petition No. 2405 of 1983 has not been decided on merits and it was dismissed because the learned counsel for the petitioner (plaintiff) sought to avail the remedy in Civil Court. Therefore the order in Civil Writ Petition No. 2405 of 1983 will not come in the way of the plaintiff in filing the suit. Therefore, the orders of this Court in these two writ petitions will not operate as res judicata and the suit cannot be held to be unmaintainable.

29. The further plea of the learned Counsel for the 4th respondent is that he did not deposit the auction as the suit has been filed by the plaintiff. In fact the suit has been filed on 18.5.1983 and it is also pertinent to note that by an order dated 15;6.1983 the learned Additional Senior Sub Judge, Chandigarh has not granted any stay against the order of the Chief Commissioner. Therefore, nothing prevented the 4th defendant from making the deposit as ordered by the Chief Commissioner. Since the defendant No. 4 failed to deposit the auction money as ordered, the revision petition before the Chief Commissioner in which the impugned order was passed stood automatically dismissed.

30. In view of my foregoing discussion, I allow the appeal, set aside the decree and judgments of the Courts below and also set aside the order of the Chief Commissioner dated 2.4.1983 confirming the sale in favour of the 4th

respondent and also the auction held on 30.3.1976 in favour of the 4th respondent.

31. However, admittedly, the plaintiff has undertaken the liability of Ram Piari to discharge her liability to the Chandigarh Administration. It is on record that Ram Piari took a House Building Loan of Rs. 15,700/-. According to the plaintiff, Ram Piari paid a sum of Rs. 4,514/- before executing the Sale Deed in favour of the plaintiff on 27.3.1970 and the plaintiff paid an amount of Rs. 6,000/- in pursuance of the order dated 9.5.1975 and that the Collector recovered a sum of Rs. 1,897/- as rent from the tenants of the suit premises. It is also averred that the plaintiff paid by bank draft a sum of Rs. 8,000/-. Thus a total amount of Rs. 40,411.55 Ps. has been paid towards the House Building Loan sanctioned in favour of Smt. Ram Piari. Thus there is no dispute of the fact that the entire principal amount has already been paid to the Chandigarh Administration. Still the Chandigarh Administration has to recover some more amount from Smt. Ram Piari towards the loan granted to her including interest.

32. In these circumstances, I direct respondents 1 to 3 to calculate the amount due with interest upto the date of filing of the suit from Rs. Piari on the basis of the Mortgage Deed executed by her after giving credit to the amounts already recovered and issue a notice within 15 days from the date of receipt of this order to the plaintiff to pay the said amount and the plaintiff-appellant is directed to pay the said amount with principal interest at the rate of 12% per annum from the date of the suit till payment within three months from the date of the receipt of notice from the Chandigarh Administration demanding the payment of the amount with interest upto date. If the plaintiff fails to pay the demanded amount within the aforesaid period, it is open to the Chandigarh Administration to put the disputed property to auction within three months thereafter. It is always open to the 4th respondent to recover the amount, if any, paid to the Chandigarh Administration in appropriate proceedings.

33. The Regular Second Appeal is accordingly allowed. No order as to costs.

