IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY ,THE TWENTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NOS: 3291 & 3292 OF 2023

CIVIL REVISION PETITION NO: 3291 OF 2023

Petition under Section 115 CPC, aggrieved by the order Dated-20.09.2023in E.A.NO.122/2023 IN E.P.N0.8 of 2017 IN O.S.NO.8/2002, on the file of the Honble IV Additional District and Sessions Judge Kakinada.

Between:

Godithi Veera Prasad, S/o. Venkata Rao, Hindu, Male, Aged 49 years, R/o. D. No.6-661, Venturu Village, Rayavaram Mandal, East Godavari District.

...Petitioner/Auction Purchaser

AND

1. Chundru Srinivasu, S/o. Kondala Rao, Hindu, Aged about 57 years, Male, Resident of Kothuru Samalkota.

...D.Hr/Respondent/Plaintiff

2. Dr. Bethina Ravindranath, S/o. Venkata Raju, Hindu, Male, Aged about 70 years, Resident of Kothuru Samalkota.
3. Payina Ramu, S/o. PayinaAbbai Hindu, Male, Aged about 62 years, Cultivation, R/o. D.No.12-6-135, Chinna Veedi, Samalkota.
4. Vallabhaneni Sujatha, W/o. Satya Rama Prasad, Hindu, Female, Aged about 57 years. Care of V. Krishnaji Rao, Retd. Principal of C.R.Reddy College, Ashok Nagar, Eluru.
5. Vallabhaneni Satya Rama Prasad, S/o. Krishnaji Rao, Hindu, Male, Aged about 63 years. Employee, Care of V. Krishnaji Rao, Retd. Principal of C.R.Reddy College, Ashok Nagar, Eluru.

...J.Dr/Respondents/Defendants

6. The IV Addl District and Sessions Court, Rep by its Presiding Officer, Kakinada.

...Respondent

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings stay of all further proceedings including attachment/sale of house property bearing D.No.6-5 of Venturu Gram Panchayat with assessment No.881, Rayavaram Mandal, Kakinada Mandal(Old East Godavari District) pursuant to the proceedings in EANo. 122 of 2023 in E.P.No.8 of 2017 in O.S.No.8 of 2002 on the file of IV Additional District Judge; Kakinada also proposed initiation of Criminal Proceedings.

CIVIL REVISION PETITION NO: 3292 OF 2023

Petition under Section 115 of C.P.C, aggrieved by the Order dated-20.09.2023in E.A.NO.160/2023 in E.P.N0.8 OF 2017 in O.S.NO.8/2002, on the file of the Hon'ble IV Additional District and Sessions Judge Kakinada,

Between:

Godithi Veera Prasad, S/o. Venkata Rao, Hindu, Male, Aged 49 years, R/O. D.No.6-661, Venturu Village, Rayavaram Mandal, East Godavari District.

...petitioner/Auction Purchaser

AND

1. Chundru Srinivasu, S/o. Kondala Rao, Hindu, Aged about 57 years, Male, Resident of Kothuru Samalkota.

...D.Hr/Respondent/Plaintiff

2. Dr. Bethina Ravindranath, S/o. Venkata Raju, Hindu, Male, Aged about 70 years. Resident of Kothuru Samalkota.
3. Payina Ramu, S/o. PayinaAbbai Hindu, Male, Aged about 62 years. Cultivation, R/o. D. No. 12-6-135, Chinna Veedi, Samalkota.
4. Vallabhaneni Sujatha, W/o. Satya Rama Prasad, Hindu, Female, Aged about 57 years. Care of V. Krishnaji Rao, Retd. Principal of C.R.Reddy College, Ashok Nagar, Eluru.
5. Vallabhaneni Satya Rama Prasad, S/o. Krishnaji Rao, Hindu, Male, Aged about 63 years. Employee, Care of V. Krishnaji Rao, Retd. Principal of C.R.Reddy College, Ashok Nagar, Eluru.

...J.Dr/Respondents/Defendants

6. The IV Additional District and Sessions Court, Rep by its Presiding Officer Kakinada.

...Respondent

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings stay of all further proceedings including attachment/sale of house property bearing D.No.6-5 of Venturu Gram Panchayat with assessment No.881, Rayavaram Mandal, Kakinada Mandal(Old East Godavari District) pursuant to the proceedings in E.A.No. 160 of 2023 in E.P.No.8 of 2017 in O.S.No.8 of 2002 the file of IV Additional District Judge; Kakinada also proposed initiation of Criminal Proceedings.

Counsel for the Petitioner: Sri. Mangena Sree Rama Rao

Counsel for the Respondents: None Appeared

The Court made the following: COMMON JUDGMENT

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION Nos.3291 & 3292 OF 2023

COMMON JUDGMENT:-

Heard Sri Mangena Sree Rama Rao, learned counsel for the petitioner and perused the material on record.

2. The petitioner in both the civil revision petitions is the defaulting auction purchaser in the Court auction in execution of the decree against the judgment debtor No.2. The petitioner is defaulting under Rule 84 of Order XXI of the Code of Civil Procedure (in short, C.P.C) in as much as 25% of the sale price was not deposited.

3. The respondent No.1 is the plaintiff/decree holder. The respondent Nos.2 to 5 are the judgment debtors.

4. Considering the fact situation and for the consideration made herein after, issuance of notice to the decree holder the respondent No.1 is dispensed with. The reason is that the decree holder has a right for execution of his decree but he has no right to insist, that the defaulting auction purchaser under Rule 84, be directed to deposit such amount, except as provided under Order XXI Rule 71, on satisfying the pre-requisites of Rule 71, which is not the case here, as the resale has not taken place. The decree holder has also filed another application for execution against the another judgment debtor.

5. The notices to the respondent Nos.2 to 5 are also dispensed with as any of their rights is not being affected by the impugned order nor if the same is interfered on a case being made out.

6. The respondent No.6 is the IV Additional District Judge and Sessions Court, represented by its Presiding Officer, Kakinada.

7. The respondent No.6 has been impleaded by the petitioner in as much as the impugned order has been passed by him pursuant to the show cause notices dated 14.08.2023 and 01.09.2023 issued by the said Court directing the petitioner to deposit the 1/4th amount along with the pounding charges, failing which further orders, resorting to the coercive measures such as warrant under Order XXI Rule 38 and attachment under Order XXI Rule 54 C.P.C, have also been passed. The petitioner's property has been attached by the Court with further order that the amount under the show cause notices if not deposited, shall be recovered as a decree.

8. The issue as involved in the present petitions is with respect to the property of the auction purchaser for which the Court has passed the orders taking coercive steps and also for direction to deposit the amount under Rule 84. The point for consideration is, if any such direction as has been issued by the

respondent No.6, which is neither on any application of the decree holder or the judgment debtor, could be issued on the show cause notices issued by the Court itself.

9. Though the impugned order is passed on the show cause notices issued by the learned Court/the respondent No.6, the Court is not to be made a party in CRP(s), is settled in law. It is also considered by this Court not proper, to issue notice to the respondent No.6, for judging the legality or otherwise of the impugned orders or asking the respondent No.6, by issue of notice, to justify its order. Therefore notice is not issued to the respondent No.6.

10. The Court proceeds to decide the matter finally on the facts which are undisputed, on record from the show cause notices and as mentioned in the impugned order, though for clarity, the facts are mentioned elaborately hereinafter.

Facts:-

11. O.S.No.8 of 2002 was filed by the respondent No.1/plaintiff against the defendant/respondent Nos.2 to 5 which was decreed for eviction of the defendants; for future profits from the date of his dispossession from the plaint schedule property till possession was recovered vide judgment dated 06.10.2005 passed by the learned Court of IV Additional District Judge, Kakinada and the final decree dated 14.12.2015.

12. On calculation of the amount, the plaintiff/decree holder/respondent No.1 filed E.P.No.8 of 2017 for recovery of amount of Rs.17,19,825/- with subsequent interest. In the said EP, the property of the respondent No.3/the 2nd judgment debtor (JDR) was attached i.e. land to an extent of Ac.2.74 cents in R.S.No.387/1 of Bhimavaram Village, Samalkot Mandal, East Godavari District, and also the house property. The plaintiff/decree holder (DHR) estimated the value of the property as Rs.16,44,000/-. The Court amina valued the property as Rs.50,00,000/-. The Execution Court issued proclamation for an amount of Rs.50,00,000/-. A paper publication was issued fixing the auction date as 07.08.2023. The 2nd item of the auction property i.e the house property was estimated by the amina at Rs.25,00,000/-.

13. Two claim petitions under Order XXI Rule 58 C.P.C were filed by the third parties vide E.A.No.71 of 2017 for house property and E.A.No.72 of 2017 for the landed property, by the wife and daughter of the respondent No.3/2nd Judgment Debtor. Those applications were dismissed for default. The claim petitioners filed petitions to restore E.A.No.71 and 72 of 2017 along with delay condonation petitions. Pending consideration of these petitions, the Execution Court proceeded to hold auction. The claim petitioners filed two revision applications vide

C.R.P.No.1915 of 2003 and C.R.P.No.1937 of 2003, which were disposed of by the Andhra Pradesh High Court on 09.08.2023 and 10.08.2023 respectively, directing the Execution Court to dispose of the two applications for restoration of the claim petitions along with the delay condonation petitions expeditiously with further direction to decide the claim petitions, if they were restored. It was further provided that till the restoration and the delay petitions were disposed of, the auction shall not be confirmed.

14. The operative portion of the judgment in aforesaid CRP(s) is reproduced as under:-

> "**C.R.P.No.1915 of 2023**:-
>
> 7) Resultantly, the Civil Revision Petition is disposed of at the admission stage directing the learned IV Additional District Judge, Kakinada-the Executing Court, to dispose of the two petitions filed by the petitioner for restoration of the claim petition along with the delay condonation petition expeditiously before bringing the property in question to sale. The Executing Court shall also decide the claim petition filed by the petitioner, if it is restored on to its file, expeditiously. Till the said restoration petition and the delay condonation petitions are disposed of, as directed, the auction shall not be confirmed. No costs.

"**C.R.P.No.1937 of 2023**:-

7) Resultantly, the Civil Revision Petition is disposed of at the admission stage directing the learned IV Additional District Judge, Kakinada-the Executing Court, to dispose of the two petitions filed by the petitioner for restoration of the claim petition along with the delay condonation petition expeditiously before bringing the land in question to sale. The Executing Court shall also decide the claim petition filed by the petitioner, if it is restored on to its file, expeditiously. Till the said restoration petition and the delay condonation petitions are disposed of, as directed, the auction shall not be confirmed. No costs."

15. The petitioner's case is that the aforesaid fact regarding pendency of the litigation as aforesaid, was not brought to the notice of the petitioner before participation in the auction conducted on 07.08.2023. It is the further case of the petitioner that he came to know that in the auction, the scheduled property of land was only to an extent of Ac.1.74 cents but not Ac.2.74 cents, which was reflecting in the Encumbrance Certificate. It is his further case that the auction started at 5.30 P.M. Then it was informed that the third parties filed claim petitions and those were dismissed for default and restoration applications were pending for adjudication. The auction was conducted and completed at 5.45 P.M. The

petitioner was the highest bidder for Rs.54,00,000/-. The petitioner contacted the amina and was told that the amount could be paid at 10.00 A.M by the following day. The petitioner's further case is that the measurements of the land were not tallying with the publication and also sale papers (SPs) and Encumbrance Certificates (ECs). There was a shortfall of Ac.1.00 cents of land in the sale proceedings. The Execution Court therefore ought to have stopped the auction but it proceeded with the auction proceedings. On verification of the record the petitioner came to know that SPs and ECs were returned on 06.03.2023 due to not tallying with the E.P schedule and extent. It was further returned on 19.04.2023 with the same objections. However, on 25.04.2023, the decree holder endorsed the return papers that the objections were complied. Further, verification of the Encumbrance Certificate, dated 22.02.2023 in Application No.223767470 and Statement No.68105572, showed that the extent was Ac.1.74 cents.

16. It is the further case of the petitioner that the remaining bidders who participated in the auction informed the petitioner about the discrepancy in the measurement of the schedule property and also informed that when the scheduled property was less than the publication covered schedule, the value of the property sold in auction ought to have been

reduced. The petitioner on taking legal advice relating to the shortfall of the scheduled property, considered that the deposit should be made in consultation with the Court staff regarding auctioned land of Ac.1.74 cents only but not the total amount, as the auction involved various irregularities.

17. The petitioner did not deposit 25% (i.e. 1/4th) of the bid amount on the date of auction or on the next date i.e. following the auction day.

18. The learned Execution Court issued show cause notice dated 14.08.2023 thereby asking the petitioner to submit explanation for not depositing 1/4th of the bid amount and also poundage charges of Rs.1,61,750/- in total Rs.15,11,775/- with the court officer inspite of having agreed to pay but leaving the Court without permission and without making deposit. The notice mentioned that it amounted to intentionally insulting the Court and interfering with the administration of justice. The petitioner was directed to pay poundage charges of Rs.1,61,750/- and to appear before the Court on 24.08.2023 to offer explanation. He was directed to submit detailed explanation with further direction to furnish copy of his Bank Account.

19. The show cause notice dated 14.08.2023 is as under:-

"SHOW CAUSE NOTICE

(E.P.No. 8/2017 in O.S. 8/2002)

That you, **Mr. G. Veera Prasad**, S/o Venkata Rao, R/o 6-661, Chinnaveedhi, Venturu, Rayavaram Mandal, East Godavari District having participated in the auction conducted by the Court on 07.08.2023 became the highest bidder having offered price of Rs.54 Lakhs. Even before auction was conducted, all the bidders including you were apprised about the conditions and also about pendency of petitions filed by the 3rd parties in respect of the suit schedule property. Having understood the conditions to be Honoured by the highest bidder, you participated in the auction and offered price of Rs.54 Lakhs and as you offered highest price, the same was knocked in your favour.

After the sale was knocked in your favour, you were asked to pay 1/4th of bid amount and also poundage charges which comes to Rs.15,11,775/- with the Court Officer and having agreed to pay the amount, you left the Court. In the meanwhile you also contacted our Court Officer to wait for 10 minutes as you are coming with money from your cell number 9247280122 to our Court Officer Cell number 9849666392 and thereafter, you left the Court without paying the said amount and without permission from our Court Officer. Thus, it amounts that you intentionally insulted the Court and interfered with the Administration of Justice.

Therefore, you are directed to pay poundage Charges of Rs.1,61,750/- on or before **24.08.2023** and also directed to appear before this Court on 24.08.2023 to offer your explanation in this regard, failing which necessary action will be initiated against you. You are further directed to furnish copy of your bank account.

IV Addl. District Court,
Kakinada, Dt. 14.08.2023.

IV ADDL. DISTRICT JUDGE
KAKINADA

To

Mr. G. Veera Prasad, S/o Venkata Rao,

R/o 6-661, Chinnaveedhi,
Venturu, Rayavaram Mandal, East Godavari District,
Andhra Pradesh - 533 255. (Ph. No.9247280122)

D.No.446.
14/8/23

To

The superintendent,
Nazarath Section,
Junior Civil Judge's Court,
Anaparthi."

20. The petitioner submitted detailed explanation to the show cause notice dated 14.08.2023; and also engaged counsel but could not be personally present due to ill health. The petitioner's explanation dated 01.09.2023 is reproduced as under:-

"**EXPLANATION FILED ON BEHALF OF THE BIDDER**

Reference: 1.Show cause notice (E.P.No.8/2017 in O.S.No.8/2002), dt.14-08-2023.

1. I submit that I am the bidder in the above matter.
2. I submit that on 24-08-2023, the docket order in the above matter reads as follows, "E.A.No. 122/2023. E.A.No. 122/23-A. Show cause notice was issued to the auction purchaser as he failed to deposit 1/4th of the bid amount and also failed to deposit poundage and other charges. Office is directed to issue separate E.A. number to the said show cause notice. Today, when the matter is called Sri D. Rama Rao, Advocate, Kakinada, filed Vakalat for the auction purchaser and also filed petition requesting to grant 25 days time to offer explanation on the ground that the auction purchaser has been suffering from conjunctivitis. To prove the same, the photograph of the auction purchaser is filed which indicates that he has been suffering from conjunctivitis. Considering the above circumstances, time is granted till 01.09.2023 to offer

explanation. The auction purchaser is also directed to furnish his bank account details on that day without fail and if he fails to furnish the same, necessary Civil and Criminal action would be initiated. Call on 01.09.2023."

3. I submit that on 07-08-2023, I reached the Honible Court of.IV Additional District Judge, Kakinada, at 10.00 am. I enquired with the Court staff as to when the auction will he commenced. They informed me that the auction would be conducted in the Court Hall, in the presence of the presiding officer. I waited till 4.00 pm in the premises of the court. At that time, the Court Amin came and collected Aadhar Cards from only four (04) of the bidders. However, he refused to take Aadhar Cards offered by me and the rest of the bidders present there.When we confronted the Court Amin as to why he refused to take our Aadhar Cards, he retorted that he need not tell us the answer. Thereafter, I and the other bidders waited for more than one hour. As we were not aware what course of action to take, we enquired with the Court staff as to what we should do. The court Staff also refrained from giving us any answer.

4. Subsequently, the presiding officer came into the Court Hall for conducting the auction. Immediately, we approached the presiding officer and informed him that we had come to participate in the auction and that the Court Amin had not collected our Aadhar Cards. Thereupon, the presiding officer directed the Court Amin to collect our Aadhar Cards, and provide us an opportunity to participate in the auction. The Court Amin he collected my Aadhar Card along with Aadhar Cards of some other bidders. However, he failed to collect Aadhar Cards from some of the other bidders present there, who were unfortunately left standing out, not knowing what to do.

5.Subsequently, the auction was started at 05.30 pm. I also participated in the auction. The presiding officer informed all the bidders that some 3rd parties filed claim petitions and the same were dismissed for default, against which the claim petitioners filed petitions to restore the same, along with delay condonation, and they also filed stay petitions seeking stay of further proceedings in the E.P, and that those petitions are pending. The Hon'ble presiding officer also enquired with the bidders as to whether they had seen the land under auction. Only one of the bidders from among the bidders present informed the Hon'ble presiding officer that he had seen the land under auction,and that the said land admeasured Ac.01.74 cents. Thereupon, the Hon'ble presiding officer asked the said bidder that when the

auction was being conducted for Ac.02.74 cents, where was the remaining one acre of land. The said bidder told the Hon'ble presiding officer that he was not aware of the same. The said bidder realized that the measurements of the land under auction were not tallying with the actual measurements on ground, the difference being one acre. The said bidder communicated to the Hon'ble presiding officer about the discrepancy in the land measurements. Having decided not to participate in the auction, started walking out of the Court Hall. Thereupon, the Hon'ble presiding officer asked the said bidder to remain till the auction was completed. Accordingly, the said bidder remained till the auction was completed.

6 The schedule property was shown as follows, in the paper publication given in Eenadu newspaper on 29-06-2023, in respect of auction of the schedule property:

Item No.1, admeasuring Ac.02.74 cents, in survey no.387/1.

Item No.2 — house property with D.No.12-6-135, admeasuring 150 square yards.

However, the Hon'ble presiding officer conducted auction for an extent of Ac.01.74 cents on 07-08-2023.

7. I participated in the Court auction, under the impression that the auction was being conducted by the Hon'ble presiding officer in a precise, correct and unerring manner, in accordance with law. However, I have utmost faith in the legal system. The auction was completed at 05.45 pm. I was the highest bidder in the auction. I contacted the Court Amin for the purpose of depositing the amount. The Court Amin told me that I could pay the said amount by 10.00 am the next day.

8. At that time, the remaining bidders who participated in the auction came to me and told me about the discrepancy in the measurements of the schedule property. They also told me that when the measurement of the land under auction was less, the Amin value should also be correspondingly less. Consequently, I would suffer a great loss if I buy the schedule property. They also told me that stay applications were filed in the High Court against the above EP, and that the said fact was filed in the form a memo by the advocate for the claim petitioner on 07-08-2023, at 11.00 am in the call work. I was shocked on hearing this and I enquired with the Court Amin about the same. The Court Amin disregarded my enquiries and told me to deposit the amount the next day. I checked the online case status of the Hon'ble High Court of Andhra Pradesh through the help of an advocate on 08-08-2023. I came to know that two Civil Revision Petitions (CRP Nos.1915/2023 and

1937/2023) were filed in the High Court against the above EP. While checking the online status on 09-08-2023 and 10-08-2023, I came to know that the Hon'ble High Court of Andhra' Pradesh had passed orders in the above said two CRPs.

9. After coming to know of the above said facts, I was in a state of extreme turmoil, fear and confusion. Consequently, I contacted a lawyer. I discussed the above mentioned issues related to the schedule property with the said lawyer. The said lawyer apprised me of the facts that there was a discrepancy of one acre in the measurements of the land under auction with the actual measurements on ground; and that claim petitions against the above EP were filed in High Court. The said lawyer advised me to deposit the amount after verifying all the above facts and after enquiring with the Court Staff, as otherwise, I will suffer a loss. On hearing this I grew anxious, and consulted some other persons. All of them advised me that there are many legal issues, which are contradictory in the above EP, and I may buy the scheduled property at my own risk.

10. I checked the online case status of the above E.P in district courts e-court online, through the help of an advocate on 14-08-2023. I came to know that the Hon'ble High Court had given orders in the two Civil Revision Petitions (CRP Nos.1915/2023 and 1937/2023) which were filed in the High Court against the above EP, by reading the step written in the district courts e-courts online.

11. Thereafter, I received a show cause notice on 19-08-2023, from the , Hon'ble Court of IV Additional District Judge, Kakinada. The said show cause was posted on 14-08-2023 and was handed over to me by Anaparthi Court Staff on 19-08-2023. Accordingly, I engaged a lawyer, D. Rama Rao, and he filed Vakalat and adjournment petition, in the above Court on my behalf on 24-08-2023. On that, he requested time from the Court on my behalf, for the purpose of giving detailed explanation. The Hon'ble Court was pleased to adjourn the matter to 01-09-2023. Thereafter,. I filed application for certified copies through my counsel for necessary documents in the above matter.

12. It is pertinent to mention here that none of the claim petitioners is a party to the suit, O.S.No.8/2002. The schedule property was nowhere mentioned in the said suit. In fact, the said suit was filed for recovery of amount. Thus, the claim petitioners are no way related to the suit and have no manner of right in the schedule property.

13. In the above E.P., the attachment of the schedule property was done in Samarlakota Sub-Registrar Office, due to the erroneous report filed by the Court Amin. The Court Amin never bothered to properly measure the schedule property or enquire the survey numbers in which the schedule property is situated. As a result of this the Samarlakota Sub-Registrar irresponsibly and wrongly attached the schedule property without proper enquiry. The counsel for the decree holder, the decree holder, the Court Amin and the Samarlakota Sub-Registrar never bothered to bring the above mentioned issues and discrepancies relating to the Schedule property to the attention of the Hon'ble Court. The above mentioned discrepancy in the measurement of the schedule property is an unpardonable blunder. As a result of the negligence of the above mentioned persons, I am being put to irreparable loss and hardship.

14. Due to the above mentioned incidents, I am being subject to extreme mental agony, anxiety and anguish, and am affected by bodily sickness. I had arranged money on interest in for the purpose of buying the schedule property will be put to much financial hardship if I buy the schedule property which is subject to so many discrepancies and legal issues. I would not have participated in the said auction of the schedule property, if I had previous knowledge of the discrepancies in measurement of land and legal issues, CRPs, claim petitions regarding schedule property. I participated in the said auction with the strong faith that there would not be any legal issue with regard to the schedule property, as the auction was being conducted through Court. But, all my expectations were proved wrong. If the claim petitioners succeed, then I will lose the schedule property and will be thrust into financial crises which will spread its tentacles over the whole of my family, and me and my family will be thrown on the roads and suffer severe starvation.

15. In view of the above, I pray the Hon'ble Court to give permission to me to deposit the amount after the above mentioned discrepancies and the legal issues relating to the schedule property are sorted out and settled by the Hon'ble Court, and thus, save me from getting embroiled in deep financial crisis; and treat the non-payment of the amount by me in a lenient manner, in light of the legal issues involved in the schedule property.

Bidder

Kakinada
Date: 01-09-2023"

Advocate for the Bidder

21. The Execution Court issued second show cause notice dated 01.09.2023 directing the petitioner to pay Rs.15,11,750/-, and also to give explanation to the second show cause notice as well and to furnish copy of the Bank Account.

22. The second show cause notice dated 01.09.2023 reads as under:-

"**SHOW CAUSE NOTICE NO.II**
(E.P.No. 8/2017 in O.S. 8/2002)

Ref: Show cause notice dated 14.08.2023 in Dis.No.446, Dt. 14.08.2023.

***

That you, **Mr. G. Veera Prasad**, S/o Venkata Rao, R/o 6-661, Chinnaveedhi, Venturu, Rayavaram Mandal, East Godavari District having participated in the auction conducted by the Court on 07.08.2023 became the highest bidder having offered price of Rs.54 Lakhs. Even before auction was conducted, all the bidders including you were apprised about the conditions and also about pendency of petitions filed by the 3rd parties in respect of the suit schedule property. Having understood the conditions to be Honoured by the highest bidder, you participated in the auction and offered price of Rs.54 Lakhs and as you offered highest price, the same was knocked in your favour.

After the sale was knocked in your favour, you were asked to pay 1/4th of bid amount and also poundage charges which comes to Rs.15,11,775/- with the Court Officer and having agreed to pay the amount, you left the Court. In the meanwhile you also contact our Court Officer to wait for 10 minutes as you are coming with money from your cell number 9247280122 to our Court Officer Cell number 9849666392 and thereafter, you left the Court without paying the said amount and without permission from our Court Officer. Thus, it amounts that you intentionally insulted the Court and interfered with the Administration of Justice.

In the 1st show cause notice in the reference cited, you are directed to pay poundage Charges of Rs.1,61,750/ on or before 24.08.2023 and also directed to appear before this Court to offer your explanation. Thereafter, on the ground of your ill health, you failed to appear before this Court and your absence was condoned as a petition was filed in that regard by the learned counsel appearing for you.

As per Order 21 R.84 of CPC, the person who declared to be the purchaser of the property shall deposit 25% on the bid amount on the same day of auction and the remaining amount shall be paid on the 15th day from the sale of the property as per Or. 21 Rule 85 of CPC. If there is an default, the amount so deposited under Or. 21 R.84 of CPC shall be forfeited to the government by defraying the expenses. It means that the amount that was paid U/Or. 21 R. 84 of CPC shall be forfeited to the government. Therefore, you are liable to pay the 1/4th of the bid of Rs.54,00,000/- i.e., **Rs. 13,50,000/-** in addition to poundage charges of Rs.1,61,750/- which was directed to be paid in the 1st show cause notice.

Therefore, you are directed to pay an amount of **Rs.13,50,000/-** in addition to poundage charges of **Rs.1,61,750/-** which comes to **Rs.15,11,750/-** on or before **12.09.2023**, failing which necessary action will be initiated against you. You are further directed to furnish copy of your bank account.

IV Addl. District Court,
Kakinada, Dt. 01.09.2023.

IV ADDL. DISTRICT JUDGE
KAKINADA

To
Mr. G. Veera Prasad, S/o Venkata Rao, R/o 6-661, Chinnaveedhi,
Venturu, Rayavaram Mandal, East Godavari District,
Andhra Pradesh- 533 255. (Ph. No.9247280122).

D.No.482
1/9/23

B. 1947
5/9/2023

23. The second show cause notice mentions the provisions of Order XXI Rules 84 and 85 C.P.C and the view of the learned IV Additional District Judge, Kakinada, expressed therein, that the 1/4th amount that is required to be paid under Order XXI Rule 84 shall be forfeited, in case of default in payment of the requisite amount under Order XXI Rule 85 and therefore the petitioner was liable to pay 1/4th amount.

24. The petitioner submitted reply dated 12.09.2023 to the second show cause notice on the same lines as his previous reply but adding that in view of the legal provisions under Order XXI Rules 84, 85 & 86, in case of non-compliance with Rule 84, only re-sale could be done and not the forfeiture of any amount.

25. The first show cause notice was numbered as E.A.No.122 of 2023 and the second show cause notice as E.A.No.160 of 2023 in E.P.No.8 of 2017 in O.S.No.8 of 2002.

26. The learned IV Additional District Judge framed the point for consideration as under:-

> "Whether any auction purchaser can be directed to pay the 1/4th of the bid amount and also poundage charges as specified in the show cause notices or not ?".

27. The learned IV Additional District Judge held in Para 20 that a conjoint reading of Order XXI Rule 84 of CPC and

Rule 86 of C.P.C would indicate that there is no prohibition to direct the auction purchaser to deposit the amount in terms of Order XXI Rule 84 of C.P.C. Further, in the view of the learned IV Additional District Judge, if the contention of the petitioner was accepted that the only option open to the Court was to conduct resale on failure of the auction purchaser to deposit the 1/4th amount of the bid in terms of Order XXI Rule 84 C.P.C, then no property could be brought to sale inasmuch as every purchaser will leave the Court with impunity without depositing the amount. If the said contention was accepted that would lead to unimaginable repercussions.

28. The learned IV Additional District Judge further recorded in Para 21 of its order, that all the factors clearly indicated that the auction purchaser intentionally participated in the auction with a view to facilitate either the judgment debtor or the claim petitioner and also with a view to defeat the rights of the decree holder.

29. The petitioner's explanations/E.A.Nos.122 and 160 of 2023 were rejected by the learned IV Additional District Judge, Kakinada by the impugned common order dated 20.09.2023.

30. The learned IV Additional District Judge, Kakinada in its order rejected the explanations of the petitioner to the

show cause notices 1 and 2 as not satisfactory to exempt the petitioner to deposit the amount under the show cause notices. After it was so recorded, the learned Court directed the petitioner to deposit an amount of Rs.15,11,750/- (i.e.13,50,000/- towards 1/4th of bid amount plus poundage charges of Rs.1,61,750/-) on or before 04.10.2023, failing which, it was provided that, the said amount would be recovered in accordance with law, as if it was a decree and the non-payment of the amount being a loss to the State Exchequer.

31. The learned IV Additional District Judge, Kakinada also directed the petitioner to file the notarized affidavit, if he failed to deposit the amount, with the details of all his bank accounts, amount available in the bank and also the details of all his immovable properties along with supportive title deeds, to take appropriate action.

32. The learned IV Additional District Judge provided in its order that in addition to the recovery of the amount indicated, the Court would also decide whether the action of the petitioner in not depositing the amount and leaving the Court without any leave of the Court having become highest bidder would amount to intentionally causing interruption in

discharging the judicial functions within the ambit of Section 228 of the Indian Penal Code or not ?

33. Relevant part of the impugned order in Paras 19 to 24 is reproduced as follows:-

> "**19**. As per Order 21 Rule 84 of CPC, on every sale of immovable property, the highest bidder shall deposit twenty five percent on the amount to the officer or other person conducting the sale and **in default of such deposit, the property shall forthwith be re-sold**. In this case, the respondent dragged the matter till 7.30 p.m. promising the Amin by making phone calls from his cell phone that he would be coming to his office to deposit the amount and as such he facilitated all the bidders to leave the Court by creating an impression that he would deposit the amount. After all the bidders left the Court, the respondent stealthily did not turn up and as such this Court could not go for re-sale as no bidders were present by then. The respondent having created hurdles to this Court to conduct re-sale cannot plead immunity that he is not liable to deposit the amount as specified in the show cause notices.
>
> **20**. Apart from that a conjoint reading of Order 21 Rule 84 of CPC and Rule 86 of CPC would indicate that there is no prohibition to direct the auction purchaser to deposit the amount in terms of Order 21 Rule 84 of CPC. If the contention of the respondent is accepted that this Court is left with only option to conduct re-sale if the purchaser fails to deposit the amount in terms of Or.21 Rule 84 of CPC, **no property could be brought to sale inasmuch as every purchaser will leave the court with immunity without depositing the amount. If the said contention is accepted it would lead to unimaginable repercussions and that no property could be brought for sale.**
>
> **21. The learned counsel for the D.Hr vehemently submitted, soon after conclusion of the auction, that the auction purchaser is a henchmen of JDr and claim petitioner and that he would not deposit any amount but this court did not believe the said submission. It is recognized that the perception of the Court proves to be incorrect. On the other hand, all the factors indicated above clearly indicate that the auction purchaser/respondent intentionally participated in the auction with a view to facilitate**

either the JDR or to the claim petitioner and also with a view to defeat the rights of the DHr.

22. As the explanation offered by the auction purchaser to the show cause notices 1 and 2 is not satisfactory which warrants to exempt the respondent to deposit the amount, **this Court directs the respondent to deposit an amount of Rs.15,11,750/- (ie., Rs.13,50,000/- towards 1/4th of bid amount plus poundage charges of Rs.1,61,750/-) on or before 04.10.2023 failing which the said amount would be recovered in accordance with law, as if it is a decree, inasmuch as non payment of amount is a loss to the State exchequer.**

23. The respondent is also directed to file a notarized affidavit, if he fails to deposit the amount, with the details of all his bank accounts, amount available in the bank and also the details of all his immovable properties along with supportive title deeds to take appropriate action.

24. In addition to the recovery of the amount indicated above, this court would also consider/decide whether the action of the respondent in not depositing the amount and leaving the Court without any leave of the Court having become highest bidder would amount to intentionally causes interruption in discharging the judicial functions within the ambit of Section 228 of IPC or not."

34. On 04.10.2023, the learned Additional District Judge passed the order for recovery of ¼th of the bid amount, as if it was a decree. It also issued Order XXI Rule 38 C.P.C. warrant on payment of process by the Decree Holder. The Court also directed to address a letter to the Mandal Revenue Officer (MRO) of the Rayavaram Mandal, directing to furnish the details of the properties owned by the petitioner/auction purchaser. It also directed the officer to furnish the details of Aadhar Card of the petitioner to the Mandal Revenue Officer (MRO) so as to enable him to furnish the properties owned by the petitioner.

35. The order dated 04.10.2023 further provided that the Court will consider about lodging of complaint to the Police on the next date of adjournment.

36. The order dated 04.10.2023 reads as under:-

"**04.10.2023:-**

No representation for the auction purchaser.

The auction purchaser is called absent. This Court by order dated 20.09.2023 directed the auction purchaser to file an affidavit duly mentioning the properties owned by him along with title deeds and that this Court also observed that the amount mentioned in the show cause notices would be recovered as if it is a decree. **Hence, issue R.38 warrant on the payment of process by the D.Hr.**

Address letter to M.R.O. of Rayavaram Mandal with a direction to furnish the details of the properties owned by Mr. G. Veera Prasad (Ph.No.9247280122). Office is directed to furnish the details of the Aadhar card of the said Veera Prasad to the M.R.O. so as to enable him to furnish the properties owned by him. **This court will consider bout lodging of complaint to the police on the next date of adjournment. Call on 16.10.2023.**"

37. Further, the learned IV Additional District Judge vide order dated 17.11.2023, attached the petitioner's house R.C.C. Building with D.No.6-5 of Venturu Grama Panchayat with Assessment No.881 under Order XXI Rule 54 C.P.C in addition to the warrant issued under Order XXI Rule 38 C.P.C.

38. The order dated 17.11.2023 is reproduced as under:-

"**17.11.2023:-**

20.10.2023 but the Field Assistant made attempt to execute the warrant only on 06.11.2023. When the warrant was issued on 20.10.2023 and 07.10.2023 were returned without execution, the Field Assistant ought to have taken the details of the hospital where the auction purchaser was admitted in Vijayawada from the farther and brother of the auction purchaser and without doing so, the same were returned. It is placed on record that R.38 warrant was issued against Auction Purchaser in the suo- moto action initiated by this Court against the auction purchaser Therefore, the presence of D.Hr. at the time of execution of warrant is not required and it is duty of the Court to get the warrant executed. Therefore, the learned Junior Civil Judge, Anaparthi is requested to call for the explanation of the Superintendent of Nazarath Section about the steps that were taken from the date of receiving the warrant. If, the Superintendent would unable to execute the same, the said fact has to be intimated to this Court by way of an affidavit so that this Court will proceed further. Issue R.38 warrant against the auction purchaser.

The Superintendent, Nazarath of III Addl. District Court, Kakinada is instructed to issue warrant even if no process will paid as the warrant is ordered to be issued basing on the suo-moto action initiated by this Court.

A report was received from the Tahsildar, Rayavaram pursuant to the directions of this Court wherein it was intimated that the auction purchaser owns an R.C.C. Building with D.No.6-5 of Venturu Grama Panchayati with assessment No.881. **The said house is ordered to be attached under Order 21 rule 54 of CPC in addition to the warrant issued under order 21 rule 38 of C.P.C. Intimate the same to the S.R.O concerned. Call on 08.12.2023.**"

39. Challenging the common order dated 20.09.2023 in E.A.No.122 of 2023 C.R.P.No.3291 of 2023 and in E.A.No.160 of 2023 C.R.P.No.3292 of 2023 have been filed.

Submission of learned counsel for the petitioner:-

40. Learned counsel for the petitioner submitted that in view of the facts as narrated above, the 1/4th amount could not be deposited by the petitioner. He further submitted that if the auction purchaser failed to deposit 1/4th of the bid amount immediately, the property is to be resold forthwith. In his submission, the auction purchaser cannot be compelled to deposit 1/4th of the sale amount on his bid being accepted. The notices could not be issued to the petitioner compelling to deposit 1/4th amount and also the poundage charges. He submitted that there is no such provision or the procedure prescribed in C.P.C. The Execution Court ought to have proceeded only as per the settled procedure in Order XXI C.P.C.

41. Learned counsel for the petitioner further submitted that the auction took place on 07.08.2023. The E.A.Nos.71 and 72 of 2017 filed in the execution case by the third parties have ultimately been directed to be decided vide C.R.P.Nos.1915 and 1937 of 2023 decided on 09.08.2023 and 10.08.2023 respectively. Those EAs have been restored, in terms of the order of this Court in the CRP(s). The auction therefore shall not be confirmed, though the auction had taken place two (02) days prior to the judgment in CRP(s). The learned IV Additional

District Judge therefore ought not to have passed the impugned order, keeping in view the judgments of this Court in CRP(s).

42. Learned counsel for the petitioner submitted that the entire procedure adopted by the learned IV Additional District Judge is contrary to the settled principles of law. The suo moto action initiated by the Court by issuing the show cause notices and numbering them as EAs on each show cause notice and passing the impugned order is contrary to all the principles of law, besides being alien to the procedure prescribed under the C.P.C. for conducting the Court auction.

43. Learned counsel for the petitioner submitted that the further orders of issuing warrant under Order 21 Rule 38 C.P.C, order of attachment of petitioner's property and direction for recovery as decree of Court cannot be sustained against the auction purchaser being contrary to the provisions of C.P.C.

44. Learned counsel for the petitioner placed reliance in the cases of ***Manilal Mohanlal Shah and Others vs Sardar Sayed Ahmed Sayed Mahmad and another***[1], ***Gas Point Petroleum India Limited vs Rajendra Marothi and others***[2]

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[1] 1954 (1) SCC 724
[2] 2023 (6) SCC 391

and ***Gopal Krishan Das vs Sailendra Nath Biswas and another***[3] in support of his contentions.

45. Learned counsel for the petitioner further submitted that the decree holder/the respondent No.1 herein, has filed another Execution Application E.P.No.25 of 2003 for realization of the decretal amount against the other judgment debtor.

46. I have considered the submissions advanced by the learned counsel for the petitioner and perused the material on record.

Point for consideration:-

47. The main question, as already noted, that arises for consideration is as under:-

> If in a Court auction, the auction purchaser does not deposit 1/4th of the bid amount in terms of Order XXI Rule 84 CPC, what course of action is open to the Execution Court? Whether the Court has to proceed for resale forthwith? Or the Court can adopt other course of action, such as, as adopted in the present case, to compel the auction purchaser to deposit 1/4th amount, failing which, to proceed to issue warrant of attachment, to attach the 'property of the auction purchaser' with direction to furnish the Bank accounts for further action

[3] AIR 1975 SC 1290

against him as also to proceed to take other coercive steps?

Analysis:-

A. **Right to property**:-

48. The matter requires consideration keeping in view the constitutional right of a person to property not to be deprived, save by authority of law, under Article 300-A of the Constitution of India and the provisions of the Code of Civil Procedure relating to Court auction, in execution of a decree.

49. Article 300-A of the Constitution of India provides as under:-

> **"300-A. Persons not to be deprived of property save by authority of law**:-
> No person shall be deprived of his property save by authority of law."

50. In ***S. R. Ejaz vs The Tamil Nadu Handloom***[4], the appellant therein was forcibly and illegally dispossessed from the tenanted premises by his landlord. It was found apparent in the case that the respondent landlord had filed the suit for eviction of the tenant and during its pendency he took forcible possession of the tenanted premises. The Hon'ble Apex Court observed that if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor

[4] 2002 (3) SCC 137

the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given a go-bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'.

51. Para 8 of ***S. R. Ejaz (supra)*** is reproduced as under:-

> "**8.** In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go-by either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others [(1989) 2 SCC 505] dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property

> can be resumed by the Government only in a manner known to or recognized by law."

52. In ***B. K. Ravichandra and others vs. Union of India and others***[5], the Hon'ble Apex Court reiterated that although the right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right. The Hon'ble Apex Court observed that though its pre-eminence (Right to Property of Article 300-A) as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. It is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the state: whether the Union or any state government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) whatever be the pretext, is no less than condoning lawlessness.

53. In ***B. K. Ravichandra (supra)***, the importance of the right under Article 300-A, in the context of regulatory laws and enactments, which do not directly result in expropriation or acquisition, but rather, in an oblique and indirect fashion, block

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[5] 2021 (14) SCC 703

the right to enjoyment of properties, was also highlighted. Underlining that the essential theme of Article 300-A is unauthorized deprivation, which would result in an indefinite suspension of the right to property, the Court stressed that the law of development or town planning or any other such enactment should be explicit about the nature and effect of the deprivation, expressing the intention to do so.

54. Most importantly, in ***B. K. Ravichandra (supra)***, the Hon'ble Apex Court further observed that the courts' role is to act as the guarantor and jealous protector of the people's liberties: be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior which it then can justify its conduct on the anvil of some loftier purpose, at any future time.

55. It is apt to refer Paras 27 to 30 and 35 of ***B. K. Ravichandra (supra)*** which reads as under:-

> "**27**. Although the right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right. The importance of this right has been emphasized and iterated several times by this court. In Delhi Airtech Services (P) Ltd. v. State of U.P. for instance, this Court underlined the issue as follows:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. 'Property must be secured, else liberty cannot subsist' was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

28. Earlier, in State of Rajasthan v. Basant Nahata, this court highlighted that a property owner's rights cannot be deprived, stating that: (SCC p. 102, para 59)

"59. ...In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

(emphasis supplied)

29. The decision in K.T. Plantation (P) Ltd. v. State of Karnataka interpreted Article 300-A and held that: (SCC p. 51, para 168)

"168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law.

169. This Court in State of W.B. v. Vishnunarayan & Associates (P) Ltd., while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights."

30. Other judgments of this court have also highlighted the importance of the right under Article 300-A, in the context of regulatory laws and enactments, which do not directly result in expropriation or acquisition, but rather, in an

oblique and indirect fashion, block the right to enjoyment of properties, underlining that the essential theme of Article 300-A is unauthorized deprivation, which would result in an indefinite suspension of the right to property. The court stressed that the law (of development or town planning, of any other such enactment) should be explicit about the nature and effect of the deprivation, expressing the intention to do so. Therefore, in T. Vijayalakshmi v. Town Planning Member, this court observed that: (SCC pp. 505-506, paras 13 & 15)

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefore. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away."

(emphasis supplied)

> This court has also recognized that regulatory laws, which have the effect of impacting the right to property, should be strictly construed.
>
> **35.** It is, therefore, no longer open to the state: in any of its forms (executive, state agencies, or legislature) to claim that the law – or the constitution can be ignored, or complied at its convenience. The decisions of this court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State: whether the Union or any state government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) – whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior which it then can justify its conduct on the anvil of some loftier purpose, at any future time- aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need"."

56. In ***M. C. Mehta and another vs. Union of India***[6], the Hon'ble Apex Court held that the power of scaling of property carries civil consequences. A person can be deprived of the property by following a procedure in accordance with law. The Monitoring Committee was not authorized to take action

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[6] 2021 (20) SCC 405

concerning the residential premises situated in the private land. The Apex Court observed that if there was un-authorized construction or in case of deviation, the requisite provisions were under the Delhi Municipal Corporation Act. The mode of action and the adjudication under the Act was provided including the appellate provisions and that of the Tribunal. It was held that it would not be appropriate to the Monitoring Committee to usurp the statutory powers and act beyond authority conferred upon it by the Court.

57. In ***M. C. Mehta (supra)***, the Hon'ble Apex Court reiterated that Article 300-A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes. It was further held that an action could have been taken in no other manner except in accordance with the procedure prescribed by law.

58. It is apt to refer Paras 94 and 95 with its sub-paras on the aforesaid point in ***M. C. Mehta (supra)*** as under:-

> "**94**. The power of sealing of property carries civil consequences. A person can be deprived of the property by following a procedure in accordance with law. The Monitoring Committee is not authorised to take action concerning the residential premises situated on the private land. If there is unauthorised construction or in case of deviation, the requisite provisions are under the

DMC Act, such as Sections 343, 345, 347-A and 347-B. The mode of action and adjudication under the Act is provided including appellate provisions and that of the Tribunal. It would not be appropriate to the Monitoring Committee to usurp statutory powers and act beyond authority conferred upon it by the Court. The Monitoring Committee could not have sealed the residential premises, which were not misused for the commercial purpose as done vide Report No. 149, nor it could have directed the demolition of those residential properties.

95. Article 300-A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorise the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:

95.1.*State of Rajasthan* v. *Basant Nahata* [*State of Rajasthan* v. *Basant Nahata*, (2005) 12 SCC 77] , wherein this Court observed : (SCC p. 102, para 59)

"*59.* ... In absence of any substantive provisions contained in a *parliamentary or legislative act*, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

(emphasis supplied)

95.2.*K.T. Plantation (P) Ltd.* v. *State of Karnataka* [*K.T. Plantation (P) Ltd.* v. *State of Karnataka*, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414] in which it was opined : (SCC p. 51, paras 168-69)

"*168.* Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, *without any specific legal authority or without the support of law made by a competent legislature*. The expression "property" in Article 300-A confined not to land alone, it includes intangibles

like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in *State of W.B.* v. *Vishnunarayan & Associates (P) Ltd.* [*State of W.B.* v. *Vishnunarayan & Associates (P) Ltd.*, (2002) 4 SCC 134] , while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, *held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.*"

(emphasis supplied)

95.3. In *T. Vijayalakshmi* v. *Town Planning Member* [*T. Vijayalakshmi* v. *Town Planning Member*, (2006) 8 SCC 502] , the Court observed : (SCC pp. 505-506, paras 13 & 15)

"*13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation.* In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. *Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.*

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15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away."

(emphasis supplied)

95.4. In *State of U.P.* v. *Manohar* [*State of U.P.* v. *Manohar*, (2005) 2 SCC 126] , this Court observed : (SCC p. 129, paras 7-8)

"*7.* Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(*f*) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

'**300-A.** ***Persons not to be deprived of property save by authority of law.***—No person shall be deprived of his property save by authority of law.'

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities."

95.5. In *Delhi Airtech Services (P) Ltd.* v. *State of U.P.* [*Delhi Airtech Services (P) Ltd.* v. *State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] , this Court held : (SCC p. 391, para 83)

"*83.* The expression "law" which figures both in Article 21 and Article 300-A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Articles 14 and 21 as explained in *Maneka Gandhi* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] . This is especially so, as "law" in both Articles 21 and 300-A is meant to prevent deprivation of rights. Insofar as Article 21 is concerned, it is a fundamental right whereas in Article 300-A it is a constitutional right which has been given a status of a basic human right."

95.6. It was further argued that planning laws are expropriatory and should be strictly construed, and any ambiguity is to be construed in favour of the property owner as laid down in *Delhi Airtech Services (P) Ltd.* v.

State of U.P. [*Delhi Airtech Services (P) Ltd.* v. *State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] thus : (SCC p. 405, paras 129-30)

"*129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See Maxwell on The Interpretation of Statutes, 12th Edn. by P. St. J. Langan.)*

130. This Court in *Devinder Singh* [*Devinder Singh* v. *State of Punjab*, (2008) 1 SCC 728 : (2008) 1 SCC (Civ) 401] held that the Land Acquisition Act is an expropriatory legislation and followed the case of *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai* [*Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*, (2005) 7 SCC 627] . *Therefore, it should be construed strictly.* The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary."

(emphasis supplied)

95.7. In *Ravindra Ramchandra Waghmare* v. *Indore Municipal Corpn.* [*Ravindra Ramchandra Waghmare* v. *Indore Municipal Corpn.*, (2017) 1 SCC 667] , it was opined : (SCC p. 710, para 67)

"*67.* It was also submitted that town planning and municipal institutes are regulating and restricting the use of private property under the aforesaid Acts. They are "expropriatory legislation". Thus they are liable to be construed strictly as laid down in *Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.* [*Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705] "

95.8. In *Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.* [*Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705] , it was held : (SCC p. 732, paras 57-58)

"*57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction.* An

owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See *Balram Kumawat* v. *Union of India* [*Balram Kumawat* v. *Union of India*, (2003) 7 SCC 628] ; *Krishi Utpadan Mandi Samiti* v. *Pilibhit Pantnagar Beej Ltd.* [*Krishi Utpadan Mandi Samiti* v. *Pilibhit Pantnagar Beej Ltd.*, (2004) 1 SCC 391] and *Union of India* v. *West Coast Paper Mills Ltd.* [*Union of India* v. *West Coast Paper Mills Ltd.*, (2004) 2 SCC 747]) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction."

(emphasis supplied)

95.9. In *State of Gujarat* v. *Shantilal Mangaldas* [*State of Gujarat* v. *Shantilal Mangaldas*, (1969) 1 SCC 509] , it was held : (SCC p. 534, para 55)

"*55.* ... Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, *for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all.*"

(emphasis supplied)

95.10. In *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.* [*Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111] , it was opined : (SCC p. 125, para 40)

"*40.* The statutory interdict of use and enjoyment of the property must be strictly construed. *It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.*"

(emphasis supplied)

95.11. In *Shrirampur Municipal Council* v. *Satyabhamabai Bhimaji Dawkher* [*Shrirampur Municipal Council* v. *Satyabhamabai Bhimaji Dawkher*, (2013) 5 SCC 627 : (2013) 3 SCC (Civ) 204] it was held : (SCC p. 650, para 43)

"*43.* ... This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. *That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.*"

(emphasis supplied)"

59. In ***M. C. Mehta (supra)***, the Hon'ble Apex Court referred to the case of ***State of Rajasthan and others vs. Basant Nahata***[7], in which it was observed that in absence of any substantive provisions contained in a parliamentary or legislative Act, he cannot be refrained from dealing with his property in any manner he likes. Such a statutory interdict

[7] 2005 (12) SCC 77

would be opposed to one's right of property as envisaged under Section 300-A of the Constitution of India. The case of ***K. T. Plantation Pvt. Ltd. and another vs. State of Karnataka***[8], was also referred in which the Hon'ble Apex Court had opined that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. It was further observed that in the context of Article 300-A the State or Executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorizes their rights.

60. In ***M. C. Mehta (supra), M/s. Delhi Airtech Services Pvt. Ltd. and another vs State of Uttar Pradesh and another***[9], was also referred. The Hon'ble Apex Court held that the statutes which encroached upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. ***Ravindra Ramchandra Waghmare vs. Indore Municipal***

[8] 2011 (9) SCC 1
[9] 2011 (9) SCC 354

Corporation and others[10], was also referred in which it was held that the town planning and Municipal Institutes are regulating and restricting the use of private property under the relevant Acts. They are "expropriatory legislation". Thus they are liable to be construed strictly. Chairman, ***Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chemical Ltd., and others***[11], was also referred. It was held that the act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. The regulations in a statute must be incorporated in such a manner so as to least interfere with the right of property of the owner of such land. Expropriatory legislation, as is well-known, must be given a strict construction.

61. In ***Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. And others***[12], it was observed that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The authorities must act within the four-corners of the statute.

62. The right to property thus is a valuable constitutional right and its deprivation has to be in accordance

[10] 2017 (1) SCC 667
[11] 2007 (8) SCC 705
[12] 2003 (2) SCC 111

with law i.e. by authority of law and by following the procedure prescribed. Otherwise that would infringe the constitutional right to property which initially was a fundamental right but, still, though not the fundamental right is a right recognized by the constitution and also held to be a human right. The persons have protection of their properties. The deprivation can be only by authority of law. Also, by following the procedure established, and the actions by the mighty or powerful or influential or by executive, aimed to deprive any person of his property, otherwise than by following due process of law, are not to be condoned.

63. Further, even the regulatory legislations which tend to deprive the property or to regulate its u e are to be interpreted strictly, so as to least deprive the person of the constitutional right to property under Article 300-A. Those rights are guaranteed against the executive as also the legislature. Even the legislature while framing a statute will have to keep in view that such deprivation of property is only by authority of law and such statutes also conform to the other provisions of the constitution viz. Article 14 of the Constitution.

64. This Court is of the view that, even the actions of the Court, as in the present case, which result or may result in deprivation of one's property, should also be in conformity with

such constitutional protection, and when challenged in superior Court, such actions are to be judged keeping in view the constitutional mandate under Article 300-A i.e. if such actions are as per law, following the due process of law, or contrary thereto. The law would frown upon the actions of any authority which are not taken in accordance with law or have no sanction of law for their authority, for depriving the citizens or persons of their fundamental right and the constitutional right to property as the case may be. The guaranteed fundamental rights or even the constitutional rights, other than the fundamental, cannot be given go bye by any authority in their action. The dispossession of any person in possession or an attempt or threat of such dispossession contrary to law as also without following the due procedure, or even by interpreting the law so as to violate the constitutional mandate under Article 300-A, cannot be sustained. If the same is accepted, it may result in according legitimacy and legality to an action which is not taken, in due course of law. That would also amount to give a go bye to the fundamental rights or the legal rights of the citizen or persons.

B. **Court Auctions**:-

65. In the matters of Court auctions also, in ***Laxmikant Chhotelal Gupta and others vs. State of***

Maharashtra and others[13], the Hon'ble Apex Court in clear terms observed that even when an auction takes place under orders of the competent civil court, the procedures laid down in the Code of Civil Procedure are required to be complied with.

66. Paras 14 and 15 of ***Laxmikant Chhotelal Gupta (supra)*** read as under:-

> "**14. Even when an auction takes place under orders of the competent civil court, the procedures laid down in the Code of Civil Procedure are required to be complied with.** Objections to the validity of sale at the instance of one party or the other are required to be considered and determined. Even an appeal lies against such an Order in terms of Order 43 Rule 1(u) of the Code of Civil Procedure.
>
> **15.** Provisions of a statute whether directory or mandatory necessitating strict or substantial compliance are questions which must be determined by the courts. This Court thought that the High Court would do so. Presumably the effect and purport of this Court's Order having not been brought to its notice, we, therefore, are of the opinion that the matter should be directed to be considered afresh by the competent authority. We are informed at the bar that Respondent No.4 being Assistant Commissioner of Sales Tax is the competent authority therefor. We, therefore, while setting aside the Order of the High Court would direct the said authority to consider the contentions raised by the appellants herein on their own merits."

67. In the present case, the auction is conducted by the Court. For conducting the auction proceedings in execution of a decree of a Court, the procedure has been prescribed by C.P.C. Such procedure cannot be given a go-by. The auction is to be conducted only as per the procedure prescribed.

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[13] 2007 (5) SCC 713

Order XXI, Rules 84, 85 and 86 C.P.C:-

68. The Court proceeds to consider those legal provisions under C.P.C. relevant for the present purposes. Order XXI, Rules 84, 85 and 86 are reproduced as under:-

> "**Order XXI Rule 84:- Deposit by purchaser and re-sale on default**:- (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.
>
> (2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under Rule 72, the Court may dispense with the requirements of this rule.
>
> **Order XXI Rule 85:- Time for payment in full of purchase-money:-** The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:
>
> Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72.
>
> **Order XXI Rule 86:- Procedure in default of payment:-** In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold."

69. In ***Manilal Mohanlal Shah and Others vs Sardar Sayed Ahmed Sayed Mahmad and another***[14], the principal question which fell for consideration was whether the failure to make the deposit under Order XXI, Rules 84 and 85 C.P.C was only a material irregularity in the sale which could only be set aside under Rule 90 or whether it was wholly void.

70. The Hon'ble Apex Court held that the moment a person is declared to be the purchaser, he is bound to deposit 25 percent of the purchase-money unless he happens to be the decree-holder, in which case the Court may not require him to do so. It was further held that the provision regarding the deposit of 25 percent by the purchaser other than the decree-holder is mandatory. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree holder is entitled to the advantage of a set off. The Hon'ble Apex court held that the provision for payment is mandatory, if the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property.

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[14] 1954 (1) SCC 724

71. In **Manilal Mohanlal Shah** (supra), the Hon'ble Apex Court held that both the deposit of 25% and the payment of the purchase-money are mandatory. The Hon'ble Apex Court held that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there was no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrued to him. The Hon'ble Apex Court held further that the application under rule 90 was barred by limitation but it being a case of void sale and not of mere material irregularity, the court was bound to re-sell the property irrespective of any application being made by the judgment debtor.

72. It is apt to refer paragraphs 8, 9, 10 and 13 of **Manilal Mohanlal Shah** (supra) as under:-

> "**8.** The scheme of the Rules quoted above may be shortly stated. A decree-holder cannot purchase property at the court-auction in execution of his own decree without the express permission of the court and that when he does so with such permission, he is entitled to a set-off, but if he does so without such permission, then the court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other person whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory — See *Rai Radha Krishna* v. *Bisheshar Sahay* [*Rai Radha Krishna* v. *Bisheshar Sahay*, 1922 SCC OnLine PC 30 : (1921-22) 49 IA 312 : (1922) 16 LW 190] . The moment a person is declared to be the purchaser, he is bound to deposit 25% of the purchase money unless he happens to be the decree-holder, in which case the court may not require him to do so (Rule 84).

9. The provision regarding the deposit of 25% by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is, however, mandatory.... (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property.... (Rule 86).

10. It is not denied that the purchasers had not obtained any decree on foot of their mortgage and the claim of Rs 1,20,000 which they put forward before the execution court had not been adjudicated upon or determined. The mortgagees, one of whom is a pleader, applied on the day of the sale claiming a set-off on foot of the mortgage. The Court without applying its mind to the question immediately passed the order allowing the set-off. This claim was obviously not admissible under the provisions of Rule 84 which applies only to the decree-holder. The court had clearly no jurisdiction to allow a set-off. The appellants misled the court into passing a wrong order and obtaining the advantage of a set-off while they knew perfectly well that they had got no decree on foot of the mortgage and their claim was undetermined. There was default in depositing 25% of the purchase money and further there was no payment of the full amount of the purchase money within fifteen days from the date of the sale. Both the deposit and the payment of the purchase money being mandatory under the combined effect of Rules 84 and 85, the court has the discretion to forfeit the deposit but it was bound to re-sell the property with the result that on default the purchaser forfeited all claim to the property. These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there is no sale in the eye of the law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.

13. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25% of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these

> provisions there is no sale at all. The Rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25% of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of the law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all."

73. In ***Sardara Singh and another vs. Sardara Singh and others***[15], 25% of the bid amount was deposited and the declaration was made. The purchasers had to pay the balance money before the close of 15th day i.e. by 2nd February, 1965 but the balance amount was deposited on 2nd March, 1965 after the expiry of 15 days. The High Court therein had taken the view that this default in payment of the balance amount rendered the sale void and the same could not be cured by the deposit of the balance money on 2nd March, 1965. The Hon'ble Apex Court referred to its earlier pronouncement in ***Manilal Mohanlal Shah (supra)***, and reiterated that the provisions of Order XXI, Rules 84 and 85 of the Civil Procedure Code i.e initial deposit and the subsequent payment of the purchase money within the time allowed are mandatory and

[15] 1990 (4) SCC 90

failure to comply with either of them renders the sale non-existent. Once the effect of non-payment of the amount is to render the sale non-existent, it becomes impartial duty of the court to resell the property as the purchaser forfeits all claims to the property for default of payment. Where there is no sale in the eyes of law, there can be no question of applying for setting aside the sale on the ground of material irregularity. Non-payment of the balance amount has the effect of rendering the entire sale null & void. Agreeing with the judgment in ***Manilal Mohanlal Shah (3JJ) (supra)***, the Coordinate Bench in ***Sardara Singh (3JJ) (supra)***, did not find any infirmity in the view taken by the High Court that the sale was void.

74. To the same effect is the judgment in the case of ***Balram vs. Ilam Singh***[16]. In this case, the auction purchaser made the deposit of the sale price after expiry of the period prescribed. The Executing Court accepted the deposit taking the view that the shortage in deposit was due to the mistake of the Court Officer in calculating the amount and the Court had the inherent power to correct its own mistake.

75. In ***Balram (supra)***, the Hon'ble Apex Court reiterated that the non-compliance is not, only a material irregularity in the sale to attract Rule 90 instead of Rule 85.

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[16] 1996 (5) SCC 705

Rule 85 being mandatory its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale.

76. Referring to ***Manilal Mohanlal Shah (supra)***, the Hon'ble Apex Court in **Balram *(supra)*** further reiterated that the inherent powers of the Court could not be invoked by the Executing Court to extend time to circumvent the mandatory provisions of the Code of Civil Procedure and to relieve the purchasers of their obligation to make the deposit.

77. The Hon'ble Apex Court in ***Balram (supra)***, further held that the duty to pay the full amount of purchase money within the prescribed period of 15 days from the date of sale of the property is cast on the purchaser by virtue of Rule 85 of Order XXI and therefore the entire responsibility to make the full compliance of mandatory provision is, his. It was held that there is no distinction between a decree holder purchaser entitled to claim set-off under Rule 72 and any other purchaser for the purpose of strict compliance with the requirement under Rule 85.

78. Paragraph 7 of **Balaram** (supra) is reproduced as under:-

> "**7.** It is to be noted that the argument that it is only a material irregularity in the sale to attract Rule 90 instead of Rule 85 was expressly rejected; and it was clearly held that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. **The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected**. In our opinion the contentions of the learned counsel for the appellant are fully negatived by this decision of the Court."

79. In ***Ram Karan Gupta vs. J. S. Exim Limited and others***[17], which also deserves mention, the auction purchaser had deposited 25% of the bid amount by way of 27 demand drafts amounting to Rs.2.40 crores. He also deposited remaining 75% of the sale price/bid amount on the application being allowed on 23.10.2010. The auction purchaser, later, moved an application under Order 21 Rule 94 of C.P.C for confirmation of sale. The judgment debtor sought for cancellation of the auction stating that the auction purchaser failed to deposit 25% of the bid amount on completion of the auction sale proceedings. The plea was taken that there was violation of the mandatory provisions of Order XXI Rules 84 and 85 C.P.C. The Executing Court took the view that the auction purchaser had deposited 25% of the bid amount as mandated by Order 21 Rule 84 C.P.C and remaining amount was also deposited in terms of Order 21

[17] AIR 2013 SC 24

Rule 85 C.P.C. The objection of the judgment debtor was rejected and the auction was confirmed. The High Court in appeal concurred with the view taken by the Executing Court. The matter reached Hon'ble the Apex Court. The appeal was dismissed. The Apex Court held that when the auction is for such a large amount running in crores of rupees, nobody can expect the auction purchaser to pay the amount in cash on the fall of hammer. The auction purchaser had paid 2.40 crores, may not be in cash, but by way of drafts and the balance amount of 75% within time, he had complied with Rules 84 and 85 of Order XXI C.P.C.

80. It is apt to refer Para 14 of ***Ram Karan Gupta (supra)*** as under:-

> **14.** We are in full agreement with the order passed by the executing court as well as the High Court that the auction-purchaser had deposited 25% of the amount on 8-10-2010. When the auction is for such a large amount, running in crores of rupees, nobody can expect the auction-purchaser to pay the amount in cash on the fall of the hammer. So far as the instant case is concerned, facts would reveal that the auction-purchaser had paid Rs 2.40 crores, may not be in cash, but by way of drafts on 8-10-2010 and the balance amount i.e. 75 % of the bid amount was also paid on 23-10-2010, consequently, in our view, the auction-purchaser had complied with the provisions of Order 21 Rules 84 and 85 CPC.

81. In ***Ram Karan Gupta (supra)***, the Hon'ble Apex Court also considered the expression "immediately" in Order XXI Rule 84 CPC. It referred to ***Rosali V. vs. Talco Bank and***

others[18], in which it was held that the term 'immediately' must be construed having regard to certain principles. The term has two meanings. One, indicating the relation of cause, effect and the absence of time between two events. In the former sense, it means proximately, without intervention of anything, as opposed to "immediately". In the latter sense, it means instantaneously. The term "immediately" is thus, required to be construed as meaning with all reasonable speed, considering the circumstances of the case.

82. Paras 31 and 32 of ***Rosali (supra)*** are reproduced as under:-

> **31.** The term "immediately", therefore, must be construed having regard to the aforementioned principles. The term has two meanings. One, indicating the relation of cause and effect and the other, the absence of time between two events. In the former sense, it means proximately, without intervention of anything, as opposed to "mediately". In the latter sense, it means instantaneously. The term "immediately", is, thus, required to be construed as meaning with all reasonable speed, considering the circumstances of the case. (See *Halsbury's Laws of England*, 4th Edn., Vol. 23, Para 1618, p. 1178.
>
> **32.** In a given situation, the term "immediately" may mean "within reasonable time". Where an act is to be done within reasonable time, it must be done immediately. (See *Gangavishan Heeralal* v. *Gopal Digambar Jain* [AIR 1980 MP 119 : 1980 MPLJ 246] , AIR at p. 123, *Keshava S. Jamkhandi* v. *Ramachandra S. Jamkhandi* [AIR 1981 Kant 97 : (1980) 2 Kant LJ 432 (FB)] , AIR at p. 101, *Ramnarayan Triyoginarayan Trivedi* v. *State of M.P.* [AIR 1962 MP 93 (FB)] , AIR at p. 98, *R.* v. *HM Inspector of Taxes, ex p Clarke* [(1971) 2 QB 640 : (1971) 3 WLR 425 : (1971) 3 All ER 394] , All ER at p.

[18] 2009 (17) SCC 690

398 and *R.* v. *HM Inspector of Taxes, ex p Clarke* [(1973) 3 WLR 673 : (1972) 1 All ER 545 (CA)] , All ER at p. 555.)

83. Recently, in ***Gas Point Petroleum India Limited vs Rajendra Marothi and others***[19], where the auction purchaser deposited 25% of sale amount late on 03.11.2011 and the balance of the sale price (75%) was deposited on 04.11.2011 after the period of fifteen (15) days from the date of auction and therefore, there was violation of Order XXI Rules 84 and 85, the Hon'ble Apex Court held that there was non-compliance of mandatory provisions of Order XXI Rules 84 and 85 and therefore the sale was vitiated.

84. Order XXI Rule 84 CPC uses the word 'forthwith' in the expression 'the property shall forthwith be re-sold'.

85. In **Bidya Deb Barma etc., vs District Magistrate, Tripura, Agartala**[20], where, the question was with respect to the detention becoming illegal and the expression 'forthwith' in Sub Section (3) of Section 3, of the Preventive Detention Act (4 of 1950) came to be considered, the Hon'ble Apex Court held as under in Para No.4:

> "4. .....The question is whether the detention became illegal because 4 days were allowed to pass from the order of detention and 2 days from the date of arrest. The third sub-section quoted above uses

[19] 2023 (6) SCC 391
[20] 1968 SCC OnLine SC 82

the word 'forthwith'., Explaining this word Maxwell in Interpretation of Statutes (Eleventh Edn.) at p. 341 observes as follows:

"When a statute requires that 'something shall be done "forthwith", or "immediately"

or even "instantly", it should probably be understood as allowing a reasonable time for doing it."

The word 'forthwith' in section 3 (3) and the phrase 'as soon as may be' used in the fourth sub-section were considered in Keshav Nilkanth Joglekar v. The Commissioner of Police, Greater Bombay(1). In that case the delay was of 8 days.. Giving proper meaning to the expression it was observed:

"We agree that "forthwith" in section 3 (3) cannot mean the same thing as "as soon as may be" in section 7, and that the former is more preemptory than the latter. The difference between the two expressions lies, in our opinion, in this that while under section 7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under section 3 (3) what is allowed is only the period during which he could not, without any fault of his own, send the report."

86. In **Keshave Nilkanth Joglekar v. The Commissioner of Police, Greater Bombay**[21], the Hon'ble Apex Court observed that in the context of the preventive detention, the expression 'forthwith' demands a liberal or reasonable consideration. But, that is not the consideration which has to be adopted when 'forthwith' is used for determining the time

[21] (1975) SCR 653

and mode of payment of the principal and interest. The expression has to be understood in the context of the statute.

87. In **Raymond Synthetics Ltd and others vs. Unionof India and others**[22], the Hon'ble Apex court held that the expression 'forthwith' does not necessarily and always mean instantaneous. The expression has to be understood in the context of the statute. Where, however, the statute prescribes the payment of money and the accrual of interest thereon at certain points of time, the expression 'forthwith' must necessarily be understood to be immediate or instantaneous, so as to avoid any ambiguity or uncertainty. The right accrues or liability arises exactly as prescribed by the statute.

88. In **Gopal Mondal vs. State of West Bengal**[23], the Hon'ble Apex Court held that the expression 'forthwith' has been interpreted to mean "as soon as possible; without any delay". If there is some delay which is reasonably explained, then there is no violation of the mandatory requirement of law.

89. In **Navalshankar Ishwarlal Dave and another vs. State of Gujarat and others**[24], the Hon'ble Apex Court held that the expression 'forthwith' would mean 'as soon as may be', that the action should be performed by the authority with

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[22] (1992) 2 SCC 255
[23] (1975) 2 SCC 590
[24] 1993 Supp(3) SCC

reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule can be laid nor a particular period is prescribed.

90. Consequently, understanding, in the context of Rule 84 of Order 21 C.P.C, expression 'forthwith' would mean "as soon as possible, without any delay". If there is some delay which is reasonably explained, there would be no violation of the action being taken 'forthwith' which is the requirement of law. The re-sale under Rule 84 has to be performed with reasonable speed and expedition with a sense of urgency without any unavoidable delay. Though, it may not necessarily and always be instantaneously but if it is so possible re-sale can be held instantaneously as well on default of the auction purchaser in complying with Order XXI Rule 84 C.P.C deposit.

91. Order XXI Rule 86 provides that in default of payment within the period mentioned in the last preceding rule, (i.e. Rule 85 which is the last proceeding rule) the deposit may if the Court thinks fit after defraying the expenses of the sale, be forfeited to the Government and the property shall be re-sold and the defaulting purchaser would forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

92. Rule 86 would come into play in default of payment of 75% of the sale price within the period of 15 days from the date of sale. Such default may be with respect to any part of the balance 75%. In other words if the full balance amount is not deposited in time. Two consequences have been mentioned. One is forfeiture of the deposit after defraying the expenses of the sale. This is in the discretion of the Court if it thinks fit. The amount which may be forfeited under Rule 86, would thus be the amount deposited under Rule 84 i.e. 25% on the date of auction immediately and may also be the part of the balance of 75% required to be deposited under Rule 85 and if so deposited. The forfeiture may be of both the amounts i.e. 25% initial deposit and some deposit out of 75% if full balance not paid, within 15 days. But, where the auction purchaser has not deposited initial 25% of the amount immediately, on the date of the auction, there would be no question of his depositing other amount under Rule 85. Consequently there would also be no question of the applicability of Rule 86, which applies when there is default in complying with the 'last preceding rule' i.e. Rule 85. In such cases, in the view of this Court, where there is no deposit made under Rule 84 i.e. initial 25%, the property has to be re-sold, forthwith as that is the only consequence provided by Rule 84.

93. The other consequence for non-compliance with Rule 85 is, that the property shall subsequently be sold. In this respect the Court has no discretion, subject to the judgment debtor satisfying the decree in the meantime.

94. On consideration of the aforesaid judgments of the Hon'ble Apex Court it is thus settled in law that:-

i. The provision of the Rule 84(1) of Order XXI requiring the deposit of 25 percent of the purchase money immediately on the person, other than the decree holder, being declared as a purchaser in Court auction is mandatory.

ii. If the decree holder purchases the property, with the permission of the Court and he is entitled to set off the purchase money under Rules 72, the Court may dispense with the requirement of Rule 84(1).

iii. The term 'immediately' is construed as meaning, with all reasonable speed considering the circumstances of the case; within a reasonable time.

iv. The payment of the full balance amount of 75% within 15 days of the sale as per Order XXI Rule 85 by purchaser is also mandatory.

v. If the decree holder is the purchaser and he is entitled to claim set off, he shall have the advantage of such set

off. In other words, if the amount payable is less or equal to the decretal amount, the decree holder need not pay anything. But, if the amount to be paid is larger than the amount of decree, under Rule 85, such decree holder-purchaser must have to pay the balance within 15 days.

vi. Where the auction is for large amount, the payment by the auction purchaser, may not be in cash, but by way of drafts in time prescribed by statute, is considered as compliance with Order XXI Rules 84 & 85 C.P.C.

vii. The Rules 84 & 85 do not contemplate that there can be any sale in favour of a purchaser without depositing 25 percent of the purchase-money in the first instance and the full balance of 75% within 15 days of the sale.

viii. Non-payment of the sale price on the part of the defaulting purchaser may be in the first instance or may be of the remaining balance 75% within the prescribed period, renders the sale as a complete nullity. There is no sale in the eyes of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.

ix. In the case of non-deposit of initial 25% of the purchase money the Court has to resale the property forthwith.

x. 'Forthwith' means "as soon as possible; without any delay". If there is some delay which is reasonably explained then there is no violation of the mandatory requirement of the law. It does not necessarily and always mean instantaneously but if it is so possible re-sale can be held instantaneously.

xi. When after deposit of 25% of the initial amount, if the full balance 75% is not paid within 15 days of the sale, the property will have to be resold by following the provisions of Rule 86 of Order XXI C.P.C.

xii. The forfeiture of deposit under Rule 86 would come into play only upon default in terms of Rule 85.

xiii. So far as the initial deposit of 25% is concerned, with failure to deposit full balance 75% in time, such deposit i.e. whatever amount is deposited i.e. 25% initial deposit and if some more deposit out of balance 75% is made, would be liable to be forfeited in the discretion of the Court, if it thinks fit.

xiv. In case of default with Rule 84, the consequence that follows is, to re-sell the property forthwith. No question

of forfeiture of any deposit. However if re-sale takes place the provisions of Order XXI Rule 71 becomes relevant, subject to fulfillment of its requirement.

xv. Even inherent powers of the Court cannot be invoked by taking recourse to Section 151 C.P.C, to circumvent the mandatory provisions of Order XXI Rules 84 & 85 of the Code and relieve the purchaser of his obligation to make the deposits in time.

95. The present is a case, where the auction purchaser/petitioner did not deposit the initial amount of 25% under Rule 84. There was default or non-compliance with Rule 84. It is undisputed that the property was not re-sold. Consequently, in the view of this Court the question of forfeiture of any deposit under Rule 86 does not arise, which rule relates to default in making payment of balance of 75% within 15 days, under Rule 85.

96. In the view of this Court the impugned order could not be passed for recovery of 1/4th amount i.e. 25% not deposited under Rule 84, by compelling the auction purchaser to deposit it and failing which to pass orders to proceed to recover such amount adopting coercive measures.

Order XXI Rules 71 C.P.C:-

97. Order XXI Rule 71 C.P.C. reads as under:-

> **"71. Defaulting purchaser answerable for loss on re-sale:-**
> Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money."

98. A bare reading makes it evident that any deficiency of price which may happen on a re-sale by reason of the purchaser's default and all expenses attending such re-sale, shall be certified to the Court and shall be recoverable from a defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

99. This provision came up for consideration before Hon'ble the Apex Court in the case of ***Gopal Krishna Das vs. Sailendra Nath Biswas & another***[25]. The Hon'ble Apex Court held that the application of Order XXI Rule 71 is limited to cases in which the deficiency of price has occurred by reason of the auction purchaser's default. Property once put to sale in execution proceedings may have to be resold for reasons which may or may not be connected with the default of the auction

[25] AIR 1975 SC 1290

purchaser. A re-sale consequent on the failure of the auction purchaser to deposit 25% of the purchase price immediately after he is declared to be the purchaser of the property or a re-sale consequent upon his failure to deposit the balance of the purchase price within 15 days of the sale are instances when the re-sale is occasioned by the default of the auction purchaser. The Hon'ble Apex Court held that the provisions of Order XXI Rule 71, come into play only if the property is requirc to be resold on account of the default of the auction purchaser. If the re-sale is not due to the auction purchaser's default, there can be no question of mulcting him with the deficiency in the price realized in the re-sale. The Hon'ble Apex Court held that the question of holding the auction purchaser liable to make good the deficiency in price can arise only if the re-sale is occasioned by his default. Though this is necessary, it is not enough to meet the requirements of Rule 71. What is necessary is that the re-sale occasioned by the auction purchaser's default must result in a deficiency of price, which deficiency is attributable to his default. Elaborating further the Hon'ble Apex Court observed that a re-sale may have to be held because the auction purchaser has committed default in paying the deposit of 25% under Order XXI Rule 84 or because of his default in paying the full price within 15 days of the sale as

required by Rule 85 and yet the deficiency of price realized in the re-sale may not be attributable to his default. Giving the example, the Hon'ble Apex Court observed that where the market value of the property is reduced to the discovery or disclosure of the infirmity in the right, title and interest of the judgment-debtor in the property put to sale. An encumbrance existing on the property at the time of the first sale but not disclosed in the proclamation of that sale will have no bearing on the price realized in the auction sale, unless the existence of the encumbrance was otherwise known to the bidders. The disclosure of that encumbrance in the sale proclamation accompanying the re-sale must on normal commercial considerations have a direct impact on the price of the property put to sale. In such a case the deficiency of price realized in the resale will be attributable not necessarily to the default of the auction purchaser but to circumstances extraneous to his default. Order XXI Rule 71, concerns itself not with that class of cases but with those in which the deficiency of price realized in the re-sale is attributable to the default of the auction purchaser.

100. In ***Gopal Krishna Das (supra)***, the Hon'ble Apex Court further held that Order XXI Rule 71 is intended to provide an expeditious remedy to the judgment debtor or the decree

holder who has suffered a detriment due to the default of the auction purchaser. The officer or other person holding the sale has to certify to the Court the deficiency of the price which on the re-sale has happened by reason of the purchaser's default and all expenses attending the re-sale. Upon such certification the amount becomes recoverable from the defaulting purchaser at the instance of the decree-holder or the judgment-debtor under the provisions relating to the execution of a decree for the payment of money.

101. It is apt to refer paragraphs 9, 10 and 13 of ***Gopal Krishna Das (supra)*** as under:-

> "**9.** It is clear on a careful reading of Rule 71 that its application is limited to cases in which the deficiency of price has occurred by reason of the auction-purchaser's default. Property once put to sale in execution proceedings may have to be resold for reasons which may or may not be connected with the default of the auction-purchaser. A resale consequent on the failure of the auction-purchaser to deposit 25% of the purchase price immediately after he is declared to be the purchaser of the property or a resale consequent upon his failure to deposit the balance of the purchase price within 15 days of the sale are instances when the resale is occasioned by the default of the auction-purchaser. On the other hand, resale consequent upon the setting aside of the sale on the ground of material irregularity in publishing or conducting the sale as provided in Order 21 Rule 90, may not be attributable to the default of the purchaser. The provisions of. Order 21 Rule 71, come into play only if the property is required to be resold on account of the default of the auction-purchaser. If the resale is not due to the auction-purchaser's default, there can be no question of mulcting him with the deficiency in the price realised in the resale.

10. The words: "Any deficiency of price which may happen on a resale by reason of the purchaser's default" occurring in Rule 71 therefore mean: "Any deficiency of price which on a resale may happen by reason of the purchaser's default". As stated before, the question of holding the auction-purchaser liable to make good the deficiency in price can arise only if the resale is occasioned by his default. But though this is necessary, it is not enough to meet the requirements of Rule 71. What is necessary is that the resale occasioned by the auction-purchaser's default must result in a deficiency of price, which deficiency is attributable to his default. A resale may have to be held because the auction-purchaser has committed default in paying the deposit of 25% under Order 21, Rule 84, or because of his default in paying the full price within 15 days of the sale as required by Rule 85. And yet the deficiency of price realised in the resale may not be attributable to his default as, for example, where the market value of the property is reduced due to the discovery or disclosure of an infirmity in the right, title and interest of the judgment-debtor in the property put to sale. An encumbrance existing on the property at the time of the first sale but not disclosed in the proclamation of that sale will have no bearing on the price realised in the auction sale, unless the existence of the encumbrance was otherwise known to the bidders. The disclosure of that encumbrance in the sale proclamation accompanying the resale must, on normal commercial considerations, have a direct impact on the price of the property put to sale. In such a case the deficiency of price realised in the resale will be attributable not necessarily to the default of the auction-purchaser but to circumstances extraneous to his default. Order 21 Rule 71, concerns itself not with that class of cases but with those in which the deficiency of price realised in the resale is attributable to the default of the auction-purchaser.

13. Order 21 Rule 71 is intended to provide an expeditious remedy to the judgment-debtor or the decree-holder who has suffered a detriment due to the default of the auction-purchaser. The officer or other person holding the sale has to certify to the Court the deficiency of price which on the resale has happened by reason of the purchaser's default and all expenses attending the resale. Upon such certification the amount becomes recoverable from the defaulting purchaser at the instance of the decree-holder or the judgment-debtor, "under the provisions relating to the execution of a decree for the

payment of money". The Code has not made the certificate conclusive of the facts stated therein and consequently it is permissible to the purchaser who is alleged to have defaulted to challenge the correctness of the certificate in all its particulars. But the object of certification, as evidenced even more clearly by the provision that the proceeding to recover the amount will be governed by provisions relating to the execution of a money decree, is to eschew an elaborate inquiry into the competing causes culminating in the deficiency of price. This object can be achieved only if the property successively put to sale is in material respects identical, that is to say, if the right, title and interest of the judgment-debtor is put to sale under substantially the same description. If that happens, it is easy to predicate that the deficiency of price has resulted on account of the purchaser's default. But if, as here, what was shown as unencumbered in the previous proclamation is expressly described in the later proclamation as being subject to an encumbrance which, on a reasonable assessment, is calculated to affect the market value of the property, the proceeding ceases to be a simple enough matter like the execution of a money-decree and assumes the form of a contentious claim open to diverse defences as in a substantive suit. The speedy remedy intended to be provided by Order 21 Rule 71 will lose its meaning and purpose if the executing court seized of the claim against the alleged defaulting purchaser has to embark upon a comparative evaluation of the causes that led to the deficiency in the price. Such meat is not for the executing court.

102. It is thus settled in law that in order to attract Order XXI Rule 71, the followings must be satisfied:-

i. There should be a re-sale,

ii. Such re-sale happens by reason of the auction purchaser's default,

iii. The purchaser's default may be because of non-compliance in deposit of initial 25% under Rule 84 or

may be because of default in making deposit of full balance amount of 75% under Rule 85,

iv. In such re-sale there is deficiency of price,

v. Such deficiency of price must also happen by reason of the purchaser's default. In other words the deficiency of price realized in the re-sale should also be attributable to the default of the auction purchaser, but, not to the circumstances extraneous to his default.

vi. The officer or the person holding the re-sale shall certify such deficiency and all expenses attending such re-sale.

vii. Upon such certification the amount would be recoverable from the defaulting purchaser either at the instance of the decree-holder or the judgment-debtor and

viii. The procedure would be under the provisions relating to the execution of a decree for the payment of money.

103. In the present case, there was default on the part of the petitioner auction purchaser in not depositing 25% of the sale price on the date of the auction or immediately thereafter (the Court is not making any observation on the default being

wilfull or for justifiable reasons) but the re-sale has not taken place. So, firstly, as of now re-sale has not happened because of the purchaser's default. If the resale had taken place and there was any deficiency of price, there would have been the next question, if such deficiency in price was also attributable to the purchaser's default. But as on today there is no re-sale. There is no question of any deficiency of price nor the question of such deficiency in price attributable to the purchaser's default. Consequently, there is also no certification by the Officer or person holding re-sale. The stage for the decree holder or the judgment debtor to recover the amount from the defaulting purchaser of the deficiency of price, upon certification, is not reached. Consequently, in the view of this Court there is nothing which can be recovered from the petitioner auction purchaser under the provisions relating to execution of a decree for the payment of money. The direction issued by the learned IV Additional District Judge to recover the amount of the 1/4th of the sale price with the pounding charges only because the deposit may be forfeited in favour of the Government, is wholly unjustified. The reason is that it cannot be in case of default in compliance with Rule 84 and there is no re-sale to attract Rule 71. It is when all the requirements of Rule 71 are satisfied that the money under the certification can be recovered

by following the procedure for execution of a decree. The defaulted 1/4th of the sale price under Rule 84 or the pounding charges, by itself cannot be termed as 'decree' to be proceeded under Rule 71.

104. The learned IV Additional District Judge proceeded to pass the impugned order observing that a conjoint reading of Order XXI Rule 84 CPC and Rule 86 of C.P.C, would indicate that there is no prohibition to direct the auction purchaser to deposit the amount in terms of Order XXI Rule 84 C.P.C. The said view does not follow from Rule 84. It is clearly mentioned in Rule 84 that 25% of the amount is to be deposited immediately. If it is not so deposited, as per the law in ***Manilal Mohanlal Shah and Others (supra)***, the provision being mandatory its non-compliance would render the sale null and void; as if there was no sale in the eyes of law. It was also held that the Court cannot extend the time or permit the auction purchaser to deposit such amount afterwards, even in the exercise of the inherent powers under Section 151 C.P.C, contrary to the mandatory provisions of Rule 84 of Order XXI. Therefore, there is clear prohibition in making deposit of initial 25% later on, if not deposited immediately. When the Court cannot permit deposit after the time as under Rule 84, it cannot also pass order to compel such deposit afterwards. The consequence of

non-compliance with Rule 84 has to follow and such consequence having being mentioned 'forthwith re-sale', any other recourse is clearly prohibited and was not open to be taken by the learned Court.

105. The Court of the learned IV Additional District Judge, is legally not justified in issuing the notices calling upon the auction purchaser to deposit 25%, of the sale price and on failure of the auction purchaser to do so, to proceed further to attach his personal properties, the residential house and issue the warrant of attachment and to take other coercive steps.

Order XXI Rule 38 C.P.C:-

106. Order XXI Rule 38 C.P.C reads as under:-

> **"Order XXI Rule 38:- Warrant for arrest to direct judgment-debtor to be brought up:-**
>
> Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid."

107. A bare reading of Order XXI Rule 38 shows that, this provision for warrant of arrest etc. is against the 'judgment debtor'. The petitioner, the defaulting auction purchaser, cannot be said to be the 'judgment debtor'. 'Judgment debtor' is defined under Rule 2 (10) C.P.C as under:-

> "**2. Definitions**:- In this Act, unless there is anything repugnant in the subject or context,-
>
> "(10) Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;

108. There is no decree passed against the auction purchaser/petitioner. There is also no order capable of execution against him. The impugned order dated 20.09.2023 cannot be said to be an order capable of execution, in view of what has been discussed above. It is only when for default of auction purchaser, the re-sale is held, the provisions of Order XXI Rule 71 C.P.C, subject to the fulfillment of the pre-conditions therein, i.e. the certification given etc., would apply and the money under certification can be recovered, by following the provisions for execution of a decree. But, that is not a case here in the absence of any re-sale, at least to this stage.

109. In somewhat different context, the position of an auction purchaser was explained. In ***Sri Pal and another vs. U. P. Rajya Sahkari Vikas Bank and others***[26], the High Court of Allahabad at Lucknow observed that it is true that an auction purchaser derives the title of the judgment debtor, but it could not be possible to say that such a person claims title through the judgment debtor. The auction purchaser gets the

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[26] 1996 SCC Online All 238

title quite independent of the original holder. It is apt to refer paragraph No.26 of ***Sri Pal (supra)*** as under:-

> "26. The position of an auction purchaser would be different. It is true, an auction purchaser derives the title of the judgment debtor, but it would not be possible to say that such a person claims title through the judgment debtor. There is intervention of the legal process under which the auction is held through a public notice, where any member of the public is entitled to bid and participate in the auction and acquire title. There is no volition at any stage, between the auction purchaser and the holder of the title nor there is any consensus between them at any point of time. The auction purchaser gets the title quite independent of the original holder and normally their interest becomes adverse to each other, more particularly where the sale is challenged by the owner, as is the case in hand. Property of the appellants has been sold and title has passed on to the respondents by intervention of act of public auction held by the Bank. The appellants have challenged the validity and legality of sale proceedings on various grounds. Their interest, namely, the interest of the appellant owners and that of the auction purchaser has become adverse to each other. In the above circumstances, it cannot be said that the auction purchaser claims title through the judgment debtor or through the original holder of the property. Neither of the two had any control over auction proceedings."

110. In ***Sri Pal (supra)***, the decision in the case of the ***Dinedranath Sanyal v. Ramcoomar Ghose***[27], was also referred, in which the observation as under were made:

> "There is a great distinction between a private sale in satisfaction of decree and a sale in execution of decree. In the former the price is fixed by the vendor and purchaser alone; in the latter the sale must be made by public auction conducted by a public officer, of which notice must be given as directed by the Act, and at which the public are entitled to bid. Under the former the

[27] (1881) 8 Ind App 65

> purchaser derives title through the vendor, and cannot acquire a better title than that of the vendor. Under the latter the purchaser, notwithstanding he acquires merely the right, title, and interest of the judgment debtor, acquires that title by operation of law adversely to the judgment debtor, and freed from all alienations or incumbrances effected by him subsequently to the attachment of the properly sold in execution."

Order XXI Rule 54 C.P.C:-

111. Order XXI Rule 54 C.P.C under which also the learned Court proceeded reads as under:-

> **"Order XXI Rule 54:- Attachment of immovable property:-**
>
> (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.
> (1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.
>
> (2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village."

112. Order XXI Rule 54 also relates to the property of the judgment debtor. So on the same principle and reasons that the defaulting auction purchaser is not a judgment debtor, the

proceedings could not be taken against the petitioner under Order XXI Rule 54 C.P.C.

C. Power of Superintendence Article 227 of the Constitution of India:-

113. These CRP(s) are filed under Section 115 of the C.P.C. However, considering the issue involved and also the orders as passed by the learned Court, this Court, additionally invokes its power and the jurisdiction under Article 227 of the Constitution of India. It is settled in law in catena of judgments, including ***Radhey Shyam & another vs. Chhabi Nath & Others***[28], that all the courts in the jurisdiction of High Court are sub-ordinate to it and subject to its control and supervision under Article 227, in dealing with their judicial orders which are subject to superintendence. In the exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings judgment or order but it may also make such directions as the facts and circumstances of the case may warrant. Though the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere

[28] (2015) 5 SCC 423

errors, this power may be exercised in cases occasioning a grave injustice or failure of justice such as

i) when the Court assumed a jurisdiction which it does not have or

ii) has failed to exercise a jurisdiction which it does have and such failure occasioned a failure of justice; and

iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of its jurisdiction.

114. So far as the view taken by the learned Court that the petitioner participated in auction intentionally with a view to facilitate either the judgment debtor or to the claim petitioner and with a view to defeat the rights of the decree holder, is concerned, there is nothing mentioned in the impugned order to reach such a conclusion, except that it was so submitted by the counsel for the decree holder soon after the conclusion of the auction. The same appears to be only the assumption and not based on any disclosed material in the order. It's true that, no one can be allowed to interfere with the process of administration of justice. But, for holding that, there should be a concrete supporting material.

115. Therefore, so far as the above aspect is concerned, it can be kept open in the discretion and wisdom of the learned Court to enquire into such issue, in accordance with law in consonance with the principles of natural justice and to take appropriate action if the circumstances so demand.

116. Thus considered, the impugned order and the proceedings of E.A.Nos.122 of 2023 and 160 of 2023, cannot be sustained in the eyes of law being without jurisdiction and in passing the same the learned Court acted illegally and with material irregularity. No such coercive steps could legally be taken against the auction purchaser by the learned Court.

117. In the result:

i. The impugned common order dated 20.09.2023, passed by the IV Additional District and Sessions Judge, Kakinada in E.A.No.122 of 2023 in E.P.No.8 of 2017 in O.S.No.8 of 2002 and in E.A.No.160 of 2023 in E.P.No.8 of 2017 in O.S.No.8 of 2002 are set aside.

ii. The subsequent orders dated 04.10.2023 and 17.11.2023, passed consequent to the impugned common order dated 20.09.2023 can also not stand in the eyes of law, which are also set aside.

iii. It is kept open to the learned court, in its discretion to enquire into the issue of the petitioner intentionally

participating in the auction proceedings with a view to facilitate the judgment debtors or the claim petitioners and trying to interfere with administration of justice in execution of decree in conducting court auction, in accordance with law and with due observance of the principles of natural justice and to take appropriate action if the circumstances so demand.

iv. Both the Civil Revision Petitions are allowed in part, in the aforesaid terms with the observations made above.

v. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

118. Let a copy of this judgment be circulated to all the learned Principal District Judges of all the Districts.

119. A copy of this judgment be also forwarded to the Andhra Pradesh Judicial Academy, Chinakakani, Mangalagiri, Guntur.

SD/- G. HELA NAIDU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Honourable Sri Justice RAVI NATH TILHARI
(For his Lordships Kind Perusal)

To,

1. The IV Additional District and Sessions Judge: Kakinada, East Godavari District.
2. The Principal District and Sessions Judge, Srikakulam District.
3. The Principal District and Sessions Judge, Vizianagaram District.

4. The Principal District and Sessions Judge, Visakhapatnam District.
5. The Principal District and Sessions Judge, East Godavari District.
6. The Principal District and Sessions Judge, West Godavari District.
7. The Principal District and Sessions Judge, Krishna District.
8. The Principal District and Sessions Judge, Prakasam District.
9. The Principal District and Sessions Judge, Kurnool District.
10. The Principal District and Sessions Judge, Nellore District.
11. The Principal District and Sessions Judge, Guntur District.
12. The Principal District and Sessions Judge, Kadapa District.
13. The Principal District and Sessions Judge, Ananthapur District.
14. The Principal District and Sessions Judge, Chittoor District.
15. The Registrar, A.P Judicial Academy, Chinakakani, Mangalagiri.
16. One CC to Sri. Mangena Sree Rama Rao Advocate [OPUC]
17. Two CC's to The Public Prosecutor,High Court of Andhra Pradesh at Amaravati [OUT]
18. Nine (09) L.R. Copies.
19. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
20. The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravathi.
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A.D. Faruqi

HIGH COURT

DATED:20/03/2024

COMMON JUDGMENT

CRP.No.3291 & 3292 of 2023



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PARTLY ALLOWING THE CIVIL REVISION PETITION'S WITHOUT COSTS