

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.1178 OF 2007****Sardar Nirmal Singh (Dead) Thr. LRs.****... Appellant****VERSUS****Bhatia Safe Works & Anr.****... Respondents****J U D G M E N T****Dipak Misra, J.**

The present appeal, by special leave, is directed against the judgment and order of the learned single Judge of the High Court of Judicature at Allahabad passed in Civil Misc. No.54478 of 2004 whereby the said court has affirmed the order of the Board of Revenue which had held that the auction sale made in favour of the appellant was liable to be set aside as there had been non-compliance of Rules 285B and 285C of the U.P. Zamindari Abolition of Land Reforms Rules, 1952 (for short, 'the Rules') and also violations of the principles conducting auction.

2. The facts which are essential to be stated for adjudication of this

appeal are that the Deputy Labour Commissioner passed an award for a sum of Rs.2,08,565.67 against the respondent for non-payment of dues to the Employees State Insurance Corporation (ESI). In pursuance of the aforesaid award and keeping in view Section 45C of the Employees State Insurance Act, 1948, the Regional Director of ESI issued a recovery certificate to the Collector concerned for realization of the said amount as land revenue. After receipt of the said requisition, the competent authority commenced the proceedings. On 24.11.1980, auction notice was issued in respect of the property situated on plot No.123/256 (47A), Factory Area, Fazalganj, Kanpur admesasuring an area about 667 sq. yards. The auction sale was conducted on 25.11.1980 and the appellant was the sole bidder in the auction and his offer of Rs.50,000/- was accepted by the concerned Tehsildar.

3. As per the conditions set out in the auction, the successful bidder was required to deposit $1/4^{\text{th}}$ of the amount in cash and the balance $3/4^{\text{th}}$ amount within 15 days. There was a postulate that no cheque would be accepted. Despite the aforesaid stipulation in the auction notice, the appellant deposited a cheque for $1/4^{\text{th}}$ amount in favour of the Tehsildar and a cheque for the balance $3/4^{\text{th}}$ amount was deposited on 4.12.1980. Both the cheques were returned by the Tehsildar on 13.1.1981 indicating that the Manager of the State Bank

of Bikaner and Jaipur had refused to give the certificate of “good for payment” to the cheques. The said intimation was furnished to the appellant requiring him to submit a bank draft for the amount immediately so that further action could be taken at his end. As is evident, a sum of Rs.50,000/- was deposited by way of bank draft drawn on the State Bank of Bikaner and Jaipur but the said bank draft was also returned by order dated 2.12.1981 stating that there was no account in the name of Tehsildar, Kanpur. Thereafter, the appellant deposited the amount in cash some time in December 1981, after expiry of almost one year.

4. As the facts would exposit, the first respondent filed certain objections to the auction sale which were not accepted and the auction was confirmed. The said confirmation of auction sale was challenged before the Additional Commissioner by way of a revision and the said authority declined to interfere. Being aggrieved by the order passed by the Additional Commissioner, the respondent filed a revision before the Board of Revenue and the revisional authority vide order dated 05.08.1989, dismissing the revision opining that it was not maintainable. The said order was assailed in a writ petition before the High Court. The writ Court noticed that the Board of Revenue had dismissed the revision without adverting to the merits solely on the

ground that the revision petition was not maintainable. The High Court placing reliance on the Full Bench decision in ***Ram Swaroop vs. Board of Revenue***¹ allowed the writ petition and set aside the order dated 5.8.1989 by the Board of Revenue and remanded the matter to the revisional authority for adjudication on merits.

5. After the remand, the Board of Revenue vide order dated 6.8.2004 held that the plot in question was auctioned on 25.11.1980 and 1/4th of the amount was deposited by cheque which could not have been regarded as payment as per the rules; that from the letter dated 13.1.1981 by the purchaser to the Tehsildar that he wanted to pay the amount by bank draft it was clear that after 25.11.1980, that is, after the expiry of one and a half month a request had been made to deposit the amount by way of bank draft which is not as per rules; that after auction, 1/4th amount ought to have been deposited by cash but was deposited through cheque which was impermissible; and that it was demonstrable from the file that the total amount had not been deposited. An addition to the aforesaid, it was also held that the publication in the newspaper alongwith the pamphlets proved that the publication was not made before the time fixed, and there was no wide publicity. Taking into consideration both the aspects, the authority opined that the auction and the subsequent action were invalid.

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1999 RD 291

Resultantly, the revisional authority allowed the revision petition and remanded the case to the District Collector, Kanpur directing him to conduct a fresh auction as per the rules.

6. The order passed in revision was called in question a writ petition before the High Court and by the impugned order, as has been stated earlier, the High Court has given the stamp of approval to the same.

7. We have heard Ms. Manjeet Chawla, learned counsel for the appellant and Ms. Indu Malhotra, learned senior counsel along with Mr. Jasvir Nayar, learned counsel for the respondent.

8. It is submitted by learned counsel for the appellant that when he had deposited the amount pursuant to the communication made by the Tehsildar before the competent authority, there was acceptance of the amount and, therefore, there was no justification on the part of the Board of Revenue to nullify the auction on the ground that the entire amount was not deposited, and the High Court has fallen into error by concurring with the said view. It is urged by her that the Rules do not prescribe that there should be deposition of the amount within a prescribed period by way of cash but the authorities having been guided by the said concept have annulled the auction as a consequence of which serious error has crept in. That apart, it is argued by her that though the amount has been deposited for last 35

years the appellant has not got back the money as a result of which immense loss has been caused.

9. Resisting the aforesaid submissions, it is urged by Ms. Indu Malhotra, learned senior counsel for the respondent that the revisional authority has allowed the revision on two counts, namely, (i) that the procedure for auction had not been duly followed; and (ii) the amount, as required under the Rules and also as per the auction notice, had not been deposited and hence, no right had accrued to the appellant to claim the benefit of the auction. Learned senior counsel would further urge that auction notice was issued on 24.11.1980 and the auction was held on the next day which runs counter to the principles of holding auction as laid down in the Rules. She has commended us to the authorities in ***Rao Mahmook Ahmad Khan through their L.R. vs. Ranbir Singh & Ors.***², ***State of Uttar Pradesh & Ors. vs. Swadeshi Polytex Limited & Ors.***³ and ***Ram Kishun & Ors. vs. State of Uttar Pradesh & Ors.***⁴.

10. It is not in dispute that the deposit of the amount by the successful bidder is required to be made as per the Rules. Rules 285D to 285G of the Rules, being relevant, are extracted below:-

² 1995 Supp. (4) SCC 275

³ (2002) 12 SCC 596

⁴ (2012) 11 SCC 511

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

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

285-F. If the proceeds of the sale which is eventually made are less than the price bid by such defaulting purchaser, the difference shall be recoverable from him as of it were an arrear of the revenue.

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

11. The said Rules had come up for interpretation in **Rao Mahmook Ahmad Khan** (supra) and a two-Judge Bench, scrutinizing the anatomy of the said Rules, especially the term “immediately”, came to hold as follows:-

“9. Further the Rule 285-D provides resale of the property forthwith on the failure of the purchaser to deposit 25 per cent of the bid amount. The meaning of the word 'forthwith' is synonymous of the word immediately which means with all reasonable quickness and within a reasonably prompt time. It, therefore, necessarily follows that the intention of

the Legislature is that as soon as it becomes known that the purchaser has failed to deposit 25 per cent immediately after he is declared as purchaser, the property shall be put to re-sale forthwith without any loss of time or postponement of the date of re-sale. The provision has been made mandatory because if the property is not re-sold forthwith and on the same day but later on after a day or two, the sufficient number of purchasers may not be forthcoming and the property may not fetch adequate and fair price to the prejudice of the judgment debtor. There is yet another reason for making this provision mandatory and it is this that if on the failure of the purchaser to deposit 25 per cent of the bid amount immediately and on the day the person is declared to be purchaser then the sale of the property will have to be postponed to some other date and according to the provisions contained in Rule 25-G reproduced in para 6 above, no sale after the postponement under Rule 285-D in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale. It is to avoid this situation and the delay in the sale that a provision under Rule 285-D has been made mandatory and on the failure of compliance of the same the sale becomes a nullity.

10. The controversy whether the provisions of Order 21, Rule 84, 85 and 86 are mandatory or not has been set at rest by this Court. The provisions of Order. Rule 84, 85 and 86 of the Code of Civil Procedure, as said earlier, are almost similar in terms to the provisions contained in Rule 285-D and 285-E of the Land Re-form Rules. This court in the case of *Mani Lal Mohan Lal v. Syed Ahmad* A.I.R. 1954 S.C. 349 ruled as under:-

"Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of the opinion that the provisions of the rules requiring the deposit of 25 per cent 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 per cent 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 law. We hold, therefore, that in the circumstances was no sale and of the present case there was no sale and the purchasers acquired no rights at all.”

Interestingly, in the said case, the question arose whether the amount could be deposited by cheque. Dealing with the said facet, it has been held thus :-

“It, therefore, appears to us that Rule 285-D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory rule 285-D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule. This was also the view taken by a Division Bench of the Allahabad High Court in the case of Hira Lal (supra) and the Learned Single Judge was not right in ignoring the said view by observing that it was obiter. The High Court of Madhya Pradesh in *MI s. Progressive Industrial Enterprises v. Bank of Baroda* - A.I.R. 1989 M.P. 177 also expressed the view that deposit of 25 per cent of the bid amount by cheque which was not encashed on the date on which the person was declared purchaser but on a later date, there was no compliance of Order 21 Rule 84 (C) C.P.C.”

12. In ***Swadeshi Polytex Limited*** (supra), a recovery certificate was issued by the Deputy Labour Commissioner and proceedings were

initiated under the Rules for recovery of the amount. It was contended before the competent authority that the property had been sold at a price below its market price. When the matter travelled to the High Court, it was held by the learned single Judge that there was no material on record to show that the appropriate procedure as prescribed in the Rules had been adopted. Analysing the rule position, the Court agreed with the view expressed by the High Court on the said score. The issue arose whether Rule 285D of the Rules had been complied with or not. The Court referred to the authority in ***Manilal Mohanlal shah vs. Sardar Sayed Ahmed Sayed Mohmad***⁵ wherein it has been opined as under:-

"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 law. We hold, therefore, that in the

5 AIR 1954 SC 349

circumstances of the present case there was no sale and purchasers acquired no rights at all."

13. Relying on the same, the Court opined that the auction sale could not be maintained. On the aforesaid analysis of the factual score and the legal position, the appeal could have faced its inevitable fate, that is, dismissal. However, Ms. Indu Malhotra, learned senior counsel, however, harped on the fact that proper procedure was not at all followed in the case while conducting the auction and the same has been gone into by the Board of Revenue and, therefore, this Court may advert to the same so that the authorities in future while conducting the auction shall be bound to act in accordance with Rules. Learned senior counsel has drawn our attention to a passage from the order passed by the Board of Revenue. We think it appropriate to reproduce the opinion expressed by the Board of Revenue in this context:-

"It is clear from the file that the total amount has not been deposited and the publication in the newspaper and the pamphlets prove that the publication was not made before the time fixed, hence the auction of the plot cannot be said to be in accordance with rules."

14. From the aforesaid opinion, it is graphically clear that the competent authority has not followed the due procedure as per Rules. We have already indicated that the auction was held within one day after the notice was issued. In this regard, we may fruitfully refer to the Rules dealing with sale of immovable property. Rule 285A to

285C deal with the procedure for putting the property in auction. On a perusal of the aforesaid Rules, it is demonstrable that the proclamation has to be issued in a particular Form 34 and it is incumbent on the Collector to give the estimated value of the property calculated with the Rules in Chapter XV of the Revenue Manual. It is submitted by Ms. Malhotra, learned senior counsel that there has been no estimation of the value and no notice was given to the respondent. As we find, the Board of Revenue has clearly ruled that the auction procedure has not been followed. To satisfy ourselves, we have adverted to the same and we find that the conclusion arrived at by the Board of Revenue is absolutely infallible. We may hasten to add a word of caution for the authorities. When steps are taken for putting a property for auction for realization of land revenue, they are required to be strictly guided by the Rules as the whole conduct of the auction is governed and controlled by the Rules. The authority conducting the auction must acquaint itself with every facet of the Rules and proceed so that the matters are not procrastinated on such counts. We say so as many a time the authorities throw the rules out of the window and proceed at their own whim or caprice. Such an auction is legally unacceptable and also absolutely contrary to the fundamental principles of holding auction. The authority holding the auction should bear in mind that his action has serious effect and,

therefore, no impropriety or violation can be allowed to usher in.

15. Presently to the alternative submission of Ms. Manjeet Chawla. It is put forth by her that for no fault of the appellant, he has suffered. It is urged by her that once the money was accepted, he nurtured the hope to get the property. In essence, her submission is that the appellant should be allowed to get back the money along with some interest as there is no justification for any forfeiture. Regard being had to the aforesaid submission and keeping in view the factual matrix in entirety, we direct that the amount deposited by the appellant before the authority should be refunded with 5% interest *per annum*. Be it clarified, we have fixed 5% interest *per annum*, regard being had to Rule 285L of the Rules. The competent authority shall compute the amount and make the refund within eight weeks hence.

16. Consequently, with the aforesaid direction for refund, the appeal stands disposed of. There shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(Shiva Kirti Singh)

New Delhi;
March 03, 2016.

ITEM NO.103

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1178/2007

SARDAR NIRMAL SINGH (DEAD) THR. LRS

Appellant(s)

VERSUS

BHATIA SAFE WORKS & ANR.

Respondent(s)

Date : 03/03/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Appellant(s) Ms. Manjeet Chawla, AOR.

For Respondent(s) Ms. Indu Malhotra, Sr. Adv.
Mr. Vinay Garg, Adv.

Mr. Adarsh Upadhyay, AOR

Mr. Vikas Mehta, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the signed reportable judgment. There shall be no order as to costs.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)