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**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

SINGLE BENCH

RAMESH CHAND GUPTA — Appellant

Vs.

STATE OF U.P. — Respondent

( Before : Narayan Shukla, J )

Civil Misc. Writ Petition No. 9786 (MS) of 1988

Decided on : 16-01-2014

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 22, Order 21 Rule 54(1-A), Order 21 Rule 66(2), Order 39 Rule 1, Order 39 Rule 2, Section 65
- Constitution of India, 1950 - Article 348
- Uttar Pradesh General Clauses Act, 1904 - Section 21
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 154, Section 198, Section 246, Section 279, Section 282, Section 284, Section 286, Section 3, Section 341, Section 65

**A. U.P. Zamindari Abolition and Land Reforms Rules, 1952 — Rule 282, 283, 285-A — Auction Sale — Defect in sale proclamation — Failure to mention estimated value and annual demand. The petitioner challenged an auction sale due to violations of Rules 282 and 283. The sale proclamation did not include the estimated value of the property or the amount of annual demand, which are mandatory requirements under these rules. The Court found this to be a material illegality. (Paras 2, 3, 4, 15, 18)**

**B. U.P. Zamindari Abolition and Land Reforms Rules, 1952 — Rule 281(2-A), 285-A — Authority to Conduct Auction — Naib Tehsildar vs. Collector/ Assistant Collector. Rule 281(2-A) and 285-A explicitly state that the Collector or an Assistant Collector specifically appointed by him is the authority**

empowered to conduct an auction sale. In this case, the auction was conducted by a Naib Tehsildar. This constituted a clear violation of the statutory provisions, rendering the auction invalid due to lack of proper authority. (Paras 6, 8, 9, 15, 16)

C. U.P. Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285-I and 285-K — Setting Aside Auction Sale — Irregularities in publication and conduct of sale — Commissioner's powers. The petitioner challenged the auction sale under Rule 285-I for material illegality and mistake in publishing and conducting the sale. The Court found significant irregularities in the auction process, including improper valuation and the auction being conducted by an unauthorized officer. The Court concluded that the Commissioner failed to correctly appreciate the law when rejecting the petitioner's objection, leading to the quashing of the Commissioner's order and the auction sale itself. (Paras 3, 24)

D. Civil Procedure Code, 1908 (CPC) — Order 21, Rule 66(2) and 54(1-A) — Mandatory nature of notice service to judgment-debtor. The Supreme Court ruling in *Desh Bandhu Gupta vs. N.L. Anand and Rajinder Singh* emphasizes that service of notice on the judgment-debtor under Order 21, Rule 66(2) and Rule 54(1-A) is mandatory. Failure to properly serve the defaulter in the present case, despite a nominal service on another person, was considered a significant procedural infirmity, rendering the auction proceedings void. (Paras 17, 18)

E. Auction Purchaser — Bona fide purchaser — Entitlement to compensation upon setting aside sale — Rule 285-L, U.P. Zamindari Abolition and Land Reforms Rules, 1952. While recognizing the distinction between a decree-holder purchaser and a bona fide stranger purchaser, the Court held that Rule 285-L specifically addresses compensation for purchasers when an auction sale is set aside. Under this rule, the purchaser is entitled only to the return of the purchase money plus an amount not exceeding five percent, as determined by the Collector or Commissioner. The Court asserted that purchasers participate in auctions with awareness of potential challenges and are not entitled to further compensation beyond what is prescribed by the rule. (Paras 19, 20, 21, 22, 23)

F. Sale Certificate — Consequence of Quashing Auction Sale. A sale certificate is a direct result of an auction sale. If the underlying auction sale is quashed due to irregularities or legal infirmities, the sale certificate issued in

## **favor of the auction purchaser becomes automatically void and no longer holds legal effect. (Para 24)**

### **Counsel for Appearing Parties**

*S.P. Shukla, Advocate for the Appellant; Mohd. Arif Khan and S.C, Advocate for the Respondent*

### **Cases Referred**

- [Ram Bharosey Vs. State of U.P. and Others](#), (2013) 4 ADJ 61 : (2013) 5 AWC 5110 : (2013) 119 RD 1
- [Bhau Pratap Singh and Another Vs. Board of Revenue and Others](#), (2013) 10 ADJ 10 : (2013) 121 RD 339
- [Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others](#), AIR 1982 SC 989 : (1982) 1 SCALE 191 : (1982) 1 SCC 237 : (1982) 2 SCR 186
- [Gurjoginder Singh Vs. Jaswant Kaur \(Smt\) and Another](#), (1994) 1 JT 524 : (1994) 108 PLR 337 : (1994) 1 SCALE 557 : (1994) 2 SCC 368 : (1994) 1 SCR 794 : (1994) 1 UJ 349
- [Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh](#), (1994) 1 BC 45 : (1993) 5 JT 313 : (1993) 3 SCALE 791 : (1994) 1 SCC 131 : (1993) 2 SCR 346 Supp
- [Ashwin S. Mehta and Another Vs. Custodian and Others](#), AIR 2006 SC 795 : (2006) 130 CompCas 197 : (2006) 2 CompLJ 193 : (2006) 1 JT 229 : (2006) 1 SCALE 33 : (2006) 2 SCC 385 : (2006) 65 SCL 261 : (2006) 1 SCR 56 : (2006) AIRSCW 243 : (2006) 1 Supreme 115
- [Janak Raj Vs. Gurdial Singh and Another](#), AIR 1967 SC 608 : (1967) 2 SCR 77
- [Jagdish Sugar Mills Ltd. Vs. Commissioner of Income Tax, Lucknow](#), AIR 1986 SC 1742 : (1986) 161 ITR 209 : (1986) JT 214 : (1986) 2 SCALE 90 : (1986) 3 SCC 578 : (1986) 3 SCR 198
- [State of U.P. and Others Vs. Swadeshi Polytex Ltd. and Others](#), AIR 2008 SC 2854 : (2008) 9 SCALE 191 : (2008) 12 SCC 596 : (2008) AIRSCW 4715 : (2008) 5 Supreme 64

Final Result : Allowed

### **JUDGMENT**

Narayan Shukla, J.—Heard Mr. S.P. Shukla, learned counsel for the petitioner, Mr. Mohd. Arif Khan, learned Senior Counsel for the respondent No. 6, the learned Standing Counsel and perused the record.

Through the instant writ petition the petitioner has challenged the order dated 6.12.1988,

passed by the Commissioner, Faizabad Division, Faizabad on the petitioner's objection moved under Rule 285-I of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 filed against the auction sale dated 9.3.1987.

Briefly, the facts of the case are that the petitioner established a Firm in the name of M/s. Vishal Farm Equipments Company at Katchehri Road, Bahraich. It had a cash credit account in Bank of Baroda, Bahraich. In order to secure the loan of cash credit, he also mortgaged his agricultural plot No. 663, admeasuring 2.15 acre, situated at village Sohrawa, Pargana, Tehsil and district Bahraich. Owing to dispute arisen out between the Firm and Bank, the Bank filed Civil Suit for recovery of money against the Firm before the Civil Court Bahraich, which was registered as Regular Suit No. 168 of 1986. Meanwhile the Bank issued a recovery certificate to the Collector to recover the loan as arrears of land revenue. The petitioner being defendant moved an application under Order 39 Rule 1 and 2 CPC in the civil suit against said recovery in which the Bank filed an objection stating therein that the Bank has withdrawn the recovery certificate, therefore, there is no occasion to entertain the application. Under the circumstances the Civil Court refrained it from issuing any temporary injunction.

2. Ultimately the business of the Firm was closed and the company also bound up. However, it appears that the Firm had committed default in payment of Sales Tax, therefore, the Sales Tax Officer, Bahraich also issued a recovery certificate to the Tehsil authorities to recover the amount of tax as arrears of land revenue, pursuant to which the Tehsil authorities issued citation to the petitioner and further published the sale proclamation in the local News Paper Lok Riti in its Daily issue of 8th of January, 1987, whereby the petitioner's agricultural land was put for auction sale on 23rd of January, 1987. The petitioner claims the violation of Rules 282 and 283 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as the Rules, 1952). He submits that in proclamation of sale neither any amount of annual demand nor estimated value of the property was shown, whereas it is mandatory. That being so the petitioner also preferred a writ petition before this Court bearing writ petition No. 1571 of 1987, but this Court did not entertain the writ petition on the ground that the civil suit in the matter was already pending, in which the petitioner could move an appropriate application.

3. However, the petitioner chose to move the objection u/s 285-1 of the Rules, 1952 before the Divisional Commissioner to set aside the sale on the ground of material illegality and mistake in publishing and conducting the sale. The petitioner also stated that on the land in question about 200 eucalyptus trees of three years old and 25 trees of Sheesham of 25 years old were standing, but those had not been evaluated. He also stated that the entire property of the petitioner was auctioned only for Rs. 27,000/-, whereas the minimum value of the auction property on the date of auction, had it been evaluated, would have been found not less than Rs. 1 lakh. However, the Divisional Commissioner rejected the petitioner's objection, therefore, the petitioner instituted the instant writ petition before this Court.

4. At this stage the learned counsel for the petitioner has raised several legal questions before this Court to interfere in the order passed by the Divisional Commissioner as well as to quash the auction sale. On the point of proper evaluation of the land as well as declaration of estimated value of the property the petitioner has cited a decision of this Court i.e. [Bhau Pratap Singh and Another Vs. Board of Revenue and Others](#), in which this Court in paragraph 32 has held as under:

32. It is no doubt true that there is no provision in the Act or Rules for fixation of reserved price before property is put up for auction sale but Rule 283 provides that estimated value of property sought to be auctioned to be determined under the provisions contained in Chapter XV of the Revenue Manual. The said Chapter specifies the procedure for valuation of property in term of other similar properties. This exercise has to be undertaken by the Collector or Sub Divisional Officer before issuance of sale proclamation. In case valuation of property would have been done properly in that event it would have been possible that price of only small portion of the land would have satisfied the debt of the petitioners and their remaining mortgaged property would have been saved. The proper valuation of property and wide publicity of proposed auction is interlinked with the price which the auction fetches, but in instant case, no such exercise was undertaken by the Collector or Sub Divisional officer.....

5. The next judgment is [State of U.P. and Others Vs. Swadeshi Polytex Ltd. and Others](#), decided by the Hon'ble Supreme Court. Relevant part of paragraph 37 is reproduced hereunder:

37. The question of valuation is to our mind of the utmost importance as it is designed to ensure the best price for the property and it is essential in circumstance that wide publication and notice of the proposed sale should be given as per Rule 285-A which postulates a notice of 30 days between the date of issuance of the sale proclamation and the date of auction. It can hardly be overemphasized that the proper valuation of the property and wise publicity of the proposed auction is intimately linked with the price that the auction fetches.....:

6. At this stage he also raised the question on the jurisdiction of the Naib Tahsildar who hold the auction and submitted that Rule 281(2-A) of the Rules provides that in the case of sale of a holding, the Collector shall auction the holding in lots of 1.26 hectares 3.125 (acres) to 5.04 hectares (12.50 acres) after working out and announcing the land revenue and the estimated value of each lot.

7. The learned counsel for the petitioner placed some Notifications issued by the State Government empowering the Assistant Collector under the U.P. Zamindari Abolition and Land Reforms Act, 1950:

(a) Notification No. 1756/I-A-1073-53. "In exercise of the powers conferred by clause (4) of Section 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Act 1

of 1951), the Governor is pleased to empower all the Sub-Divisional Officers in Uttar Pradesh except those in the districts of Almora, Garhwal, Tehri-Garhwal and Rampur to discharge all the functions of a "Collector" under the said Act."

(b) Notification No. 365/I-A-2-1(2)-68 dated December 5, 1968. "In exercise of the powers under clause (4) of Section 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), and in super-session of notification No. 1756/I-A-1073-53, dated June, 11, 1953, the Governor is pleased to empower all the Sub-Divisional Officers in Uttar Pradesh to discharge all the functions of a Collector under the said Act, except those u/s 198 of the said Act."

(c) Notification No. 1/1/76(6)-Rajaswa-7 dated January 17, 1976. "In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of Notification No. 1/1/76(1)(6)-Rajaswa-7, dated January 17, 1976. In exercise of the powers under clause (4) of Section 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), and in super-session of notification No. 1/8/74(693) Rajaswa-7, dated November 28, 1974, the Governor is pleased to empower all the Assistant Collectors of First Class on whom powers as such have been conferred under Rajaswa (Ka) Vibhag notification No. 1498-RZ/LA-2587-59, dated July 25, 1960, to discharge the functions of Collector u/s 282 of the aforesaid Act in cases in which the sum of money recoverable as arrears of land revenue does not exceed rupees three thousand."

(d) Notification No. U.O.-592/1-7-80-Rev.-7 dated May 30, 1981. "In pursuant of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English Translation of Notification No. U.P.-592/1-7-80-REv-7 dated May, 30 1981. "In exercise of powers under clause (4) of Section 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1, 1904) the Governor is pleased to rescind the Notification No. 1/1/76(3)(6)-Rajaswa-7, dated January 17, 1976, empowering all the Assistant Collectors of First Class Incharge of the Sub-Division to discharge the functions of a Collector u/s 286 of the Aforesaid Act."

(e) Notification No. 73/14(2)/1980-Ra-1 dated 10th of August, 1981. This notification speaks that the powers provided to the Assistant Collectors u/s 284 and 286 of the U.P. Zamindari Abolition and Land Reforms Act 1950, by means of Notification dated 17 January, 1976 have been rescinded by the Notification No. U.O.-592/1-7-80-Rev-7 dated 30 May, 1981 and now the Assistant Collector shall exercise only the powers of the Collector delegated to him under this Notification. Sub Clause (2) of clause 1 of this Notification restores the Notification dated 5th of December, 1968 empowering the Assistant Collector to exercise powers of Collector under the U.P. Zamindari Abolition and Land Reforms Act, 1950 except those u/s 198 of the said Act.

8. In the light of the aforesaid Notifications he submits that thus the Assistant Collector has

been empowered to exercise the power under U.P.Z.A. & L.R. Act except u/s 198 of the Act, whereas in the case on hand the auction sale was done by the Naib Tahsildar, which is clear violation of the provisions of the U.P. Zamindari Abolition and Land Reforms Act and Rules framed thereunder.

9. Section 284 of the Act empowers the Collector to attach the holding in respect of which the arrear is due and also to sell it, whereas Section 286 empowers the Collector to realise the arrears of land revenue by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter. Since in the aforesaid Notification dated 10th of August, 1981 the Assistant Collectors have been empowered to exercise these powers, it is stated that it is only the Assistant Collector, who can exercise it, whereas in the case on hand it is the Naib Tehsildar who has exercised the power of auction under Rule 281(2-A) of the Rules, 1952.

10. Thus the learned counsel for the petitioner sums up his arguments with the submissions that this Court in the case of *M/s. Swadeshi Polytex Limited v. Board of Revenue, U.P. and others*, 2006(24) LCD 1, has held that the provisions of Rules 281, 282 and 283 etc. are mandatory and the violation of the same vitiates the proceedings of the auction. He further claims that admittedly no service of citation was made upon the defaulter. No valuation of the land was estimated nor was it published to the public at large, therefore, the whole proceeding of auction is bad in law.

11. Per contra, Mr. Mohd. Arif Khan, learned Senior Counsel appearing for the auction purchaser submitted that the sale proclamation under Rule 282 was issued on 6.2.1987. He further raised objection against the maintainability of the writ petition on the ground that once the petitioner approached this Court pointing out the illegality in the auction and this Court refused to entertain the writ petition by giving liberty to the petitioner to raise the grievance in the Civil Suit, the instant writ petition for the same cause of action is not maintainable. He further submits that the petitioner's objection has also been rejected by the competent authority and the Assistant Collector, who was empowered to exercise the power of the Collector confirmed the auction sale on 3.10.1994. At the time of auction the petitioner did not raise any objection with regard to the valuation of the land nor was raised for the valuation of trees. He further claims that the petitioner has cut the trees despite the stay order passed by the Additional District Magistrate on 21st of January, 1998. He further contended that after confirmation of sale now the sale certificate has been issued and the possession has been delivered on 26.10.1994. It is also stated that the petitioner's brother himself participated in the auction and he offered the bid amounting to Rs. 14,200/- which itself proves the value of the land i.e. Rs. 14,200/-.

12. About the service of auction sale notice he stated that it was served upon one Mr. Chedi on 8th of July, 1989, who has holding in due course the power of the petitioner. He further submitted that the answering respondent is a purchaser for a good consideration and in good faith, therefore, if any default has been committed by the auction officer much less

the purchaser should not put to suffer therefor. Moreover the sale certificate issued to him can be cancelled only by the Court of competent jurisdiction i.e. Civil Court. In support of his submission he also cited the following decisions:

(1) [Ram Bharosey Vs. State of U.P. and Others](#), The relevant paragraph 35 of the said judgment is reproduced hereunder:

35. Before I part with the record, I must notice that in Rakesh Kumar Goel and others v. Uttar Pradesh State Industrial Development Corporation Ltd. and others, the Apex Court has pointed out number of anomalies under the provisions of U.P.Z.A. & L.R. Act and Rules framed thereunder pertaining to the auction proceeding and it was observed that existing provisions of U.P.Z.A. & L.R. Act and Rules are out of date by three quarters of a century. Those were designed to deal with agricultural holdings in a rural area. Even for that purpose the provisions appear far from satisfactory. Now they have become completely deficient for dealing with land holdings and other immovable properties in highly urbanised and industrialized regions of the State. Therefore, the Apex Court expressed an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones. The pertinent observations made by Apex Court in paras 26, 27, 28 and 49 of the aforesaid decision are quoted as under:

26. It is, thus, to be seen that under the Rules the only mode for advertisement of auction-sale is by affixation of the sale proclamation at a conspicuous place in the village where the property is located and by beat of drum. There is no provision of advertisement in the newspapers or by any other means to spread the information about the proposed auction on a large scale. Form ZA 73 (under Rule 273 and Form ZA 73-D (under Rule 273-A) only provide any description of the type of the property and plot/house number and boundaries of the immovable property; Form 74 (Rule 282) does not provide any description of the type of property (e.g. agricultural, home-stead, industrial etc.) or type of rights (e.g. lease and its term or freehold, etc.).

27. There is no provision in the Act or the Rules for fixation of reserve price before the property is put up for auction-sale. We were, however, informed that the Collector of the district regularly notifies "circle rate" for different types of land and different locations. This circle rate is primarily used for computation of stamp duty for registration of document. We were informed that in 2007 instructions were given to confirm sale only above the market price. There is also no provision enabling the authorities to bar someone with a criminal record or against whom there are tax dues or Government dues or any other kinds from taking part in the sale of land by the Government.

28. It is, thus, evident that the law under which the auction-sale proceedings were held was itself quite deficient. But the enumeration of the shortcomings and the lacunae in the provisions of an archaic law is not to say that the auction proceedings of the two plots were otherwise fair and proper and suffered from some irregularities only due to the flaws in the law. On the contrary, we have no doubt in our mind that auction-sale of the two plots was

illegal, fraudulent and collusive and the appellants and their abettors in the Revenue Department of the State Government fully exploited the weaknesses of the law to their advantage. This would be evident as the facts of the case further unfold.

49. Before parting with the records we feel obliged to say that the existing provisions of the U.P.Z.A.L.R. Act and the U.P.Z.A.L.R. Rules are out of date by three quarters of a century. Those were designed to deal with agricultural holdings in a rural area. Even for that purpose the provisions appear far from satisfactory. But they have become woefully inequitable and completely deficient for dealing with landholdings and other immovable properties in highly urbanised and industrialised regions of the State. There is, therefore, an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones.

(2) [Jagdish Sugar Mills Ltd. Vs. Commissioner of Income Tax, Lucknow](#), Relevant paragraph 11 of the same is reproduced hereunder:

11. Turning to the second contention, the question is whether the sale can be said to have taken place when the properties were auctioned or on the date when the sale certificate was issued. The recovery of an arrear of land revenue in Uttar Pradesh is governed by the provisions of the U.P. Zamindari Abolition and Land Reforms Act and the Rules made thereunder. We have been taken through the pertinent provisions, of that Act and its Rules. The High Court, in the judgment under appeal, has made detailed reference to them and, in an admirable exposition of the law, has demonstrated that the date on which the sale certificate was issued is the date on which the sale must be regarded as having taken place. We have no hesitation in endorsing that view. Section 279 of the U.P. Zamindari Abolition and Land Reforms Act specifies the modes for the recovery of an arrear of Land revenue, and Section 282 prescribes the procedure for the attachment and sale of moveable property. Section 286 empowers the Collector to proceed against other immoveable property belonging to the defaulter. Rule 281 authorises the Collector to sell immovable property and upon the property being auctioned under the Rules, and the objections, if any, thereto having been considered and disposed of, provides for confirmation of the sale by an order of the Commissioner. Rule 285-M provides that the Collector shall thereupon put the person declared to be the purchaser into possession of the property, and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers, and that such certificate shall be deemed to be a valid transfer of such property. It is apparent that it is only after the sale is confirmed and a certificate is granted that the property stands transferred and the purchaser becomes the owner of the property. Rule 285-M is explicit. The certificate operates as a transfer of the property. As before the High Court, learned counsel for the assessee relies on Section 65 of the CPC in support of his submission that the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute. The application of Section 65 turns upon the scope of Section 341 of the U.P. Zamindari Abolition and Land Reforms Act, which applies the provisions of the CPC to the

proceedings taken under that Act. S. 341, however, applies the Code only so far as it can be applied consistently with the Act and not in derogation of it. As is clear, the procedure incorporated in the U.P. Zamindari Abolition and Land Reforms Act and the Rules made under it specifically exclude the operation of Section 65. When the sale certificate itself operates as effecting the transfer of the property, no question arises of relating the transfer back to the date of auction. It is true that the order of the Commissioner confirming the sale refers back to the auction which has already taken place, but that is hardly of any moment in view of the terms of Rule 285M. We see no force in the second contention.

(3) [Ashwin S. Mehta and Another Vs. Custodian and Others](#), Relevant paragraph 70 of the judgment is quoted hereunder:

70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See *Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan*). The said decision has been affirmed by this Court in *Gurjoginder Singh v. Jaswant Kaur*.

Thus he submits that in the light of the law laid down as above no interference is warranted in the auction sale.

13. In order to verify the certain facts as well as the correctness of proceedings of the auction sale, I also summoned the original record of the auction sale proceeding. The sale proclamation in ZA Form 74 dated 6.2.1987 is on record, in which the total amount of arrears is mentioned as Rs. 2,83,706.84 and the date of auction was mentioned as 9th of March, 1987 at the place of Tehsil Bahraich. The land of auction is mentioned as Khata No. 456, Gata No. 663 area 2.15. The endorsement on the back of the notice speaks that it was served upon one Mr. Chedi, father of the defaulter and one copy was pasted on the notice Board, one more copy was provided to Gram Pradhan concerned. The auction proceeding as recorded speaks that the Government bid was fixed for Rs. 50,000/-. Total six persons participated in the auction proceeding. The highest bid amounting to Rs. 27,000/- was offered by Kallo son of Smil, opposite party No. 6. The proceeding of auction dated 9th of March, 1987 has been signed by the Naib Tehsildar and speaks that Kallu's bid is highest, which is amounting to Rs. 27,000/-, therefore, the auction is finalised in his favour, who deposited one fourth of the amount of the auction i.e. Rs. 6750/- on the date of auction. There is one letter written by Kallo-opposite party No. 6 on 9th of May, 1987, whereby keeping in view the legal complications as well as the conduct of the petitioner, he demanded to refund his amount of Rs. 27,000/- so that he may engage himself in another business to survive his family.

14. This Court in the instant writ petition passed an interim order on 22.12.1988 to the effect that in the meantime the sale in question shall not be confirmed, which was

vacated on 21st of September, 1994 as on that date none was present from the side of the petitioner. The record shows that the petitioner's property has been auctioned against the default of trade tax as well as the bank loan in the form of cash credit limit both. On vacation of stay order, the respondent No. 6 moved an application on 24.9.1994 to confirm the sale, therefore, by means of order dated 3rd of December, 1994 the Assistant Collector/ SDO, Bahraich confirmed the auction sale in favour of the respondent No. 6.

15. Meanwhile by means of order dated 20.10.1994, passed on C.M. Application No. 3591 of 1994 this Court issued direction to the parties to maintain status quo and no one be disturbed. Rules 281 and 283 of the Rules 1952 the violation of which is claimed are extracted below:

Rule 281. Section 284.--(1) Recourse can only be had to the sale of the holding u/s 284 when the processes specified in clause (a), (b), (c) or (d) of Section 279 would be insufficient for the recovery of the arrear.

(2) process for sale of holding u/s 284 and of other immovable property u/s 286 shall be issued by the Collector.

(2-A) In the case of sale of a holding the Collector shall auction the holding in lots of 1.26 hectares 3.125 (acres) to 5.04 hectares (12.50 acres) after working out and announcing the land revenue and the estimated value of each lot. It should also be made clear that only those persons would bid in the auction, acquisition of land by whom would not contravene the provisions of Section 154.]

(3) [\*\*\*]

283. In proclamation for sale u/s 286, the Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual.]"

As is evident from the aforesaid provisions, sub-rule (2-A) of the Rule 281 provides that it is the Collector who shall auction the holding in lots after working out and announcing the land revenue and the estimated value of each lot, whereas in the case on hand the notice of auction sale, which is on record does not indicate any estimated value of the land in dispute.

16. Rule 285-A speaks that every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. Rule 285-A is extracted below:

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

The Collector may from time to time postpone the sale.

The record of auction sale shows that the auction sale has been done by the Naib Tehsildar, therefore, that is clearly in violation of Rule 285-A of the Rules.

17. Whether service of notice is a complete service on defaulter or not has been discussed by the Hon'ble Supreme Court in the case of [Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh](#), which has been referred to by this Court in paragraph 32 of 2013 119 RD 569 which is extracted below:

32. He further cited another decision of the Hon'ble Supreme Court i.e. [Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh](#), in which the Hon'ble Supreme Court considered the provisions of Order 21, Rules 66(2) and 54(1-A) of the CPC and observed as under:

10. Above discussion indicates a discernible rule that service of notice on the judgment-debtor is a fundamental part of the procedure touching upon the jurisdiction of the Execution Court to take further steps to sell his immovable property. Therefore, notice under Order 21 Rule 66(2), unless proviso is applied (if not already issued under Order 21 Rule 22), and service is mandatory. It is made manifest by Order 21 Rule 54(1-A) brought on statute by 1976 Amendment Act with peremptory language that before setting the terms of the proclamation the judgment-debtor shall be served with a notice before settling the terms of the proclamation of sale. The omission thereof renders the further action and the sale in pursuance thereof void unless the judgment-debtor appears without notice and thereby waives the service of notice.

18. Keeping in view the facts, I, in the light of aforesaid decision, observe that no notice was served to the proper person nor does the endorsement of service marked on the back of notice, record any reason for not serving it upon the defaulter.

The learned counsel for the petitioner also raised one question that the proclamation of sale in question was also not issued in ZA Form 74, however a bare perusal of the original record shows that it was issued in ZA Form 74. It is a different thing that it does not mention the estimated value of the property.

19. At the last the learned counsel for the respondents raised one more argument that since the respondent No. 6 is a bona fide purchaser, if the petitioner succeeds in the writ petition then the answering respondent must be compensated properly. He submitted that had the loan account been not closed by depositing the auction amount deposited by the answering respondent, it would have increased so many times and definitely would have burdened the petitioner, therefore, on being successful in the writ petition the petitioner be directed to compensate the answering respondent with the amount saved by him. In support of his submission he also cited the following decisions of the Hon'ble Supreme Court:

(1) [Gurjoginder Singh Vs. Jaswant Kaur \(Smt\) and Another](#),

(2) [Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others](#),

(3) [Ashwin S. Mehta and Another Vs. Custodian and Others](#),

(4) (1888) ILR 10 166 (P.C.) (Privy Council)

20. In the case of Gurjoginder Singh (Supra) the Hon'ble Supreme Court, in paragraph 3, has held as under:

3. We are unable to share the view expressed by the High Court as in our considered opinion, the status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stands on a distinct and different footing from that of a person who is inducted as a tenant by a decree-holder-landlord. A stranger auction purchaser does not derive his title from either the decree-holder or the judgment-debtor and therefore restitution may not be granted against him but a tenant who obtains possession from the decree holder landlord cannot avail of the same right as his possession as a tenant is derived from the landlord. Even in the case of Binayak Swain (supra) which the High Court relied upon this Court has drawn a distinction between purchase made by a decree-holder and a stranger in auction-sale by quoting with approval the following observation made in the case of (1888) ILR 10 166 (P.C.) (Privy Council)

It appears to their Lordship that there is a great distinction between the decree-holders who came in and purchased under their own decree, which was afterwards reversed on appeal, and the bona fide purchasers who came in and brought at the sale in execution of the decree to which they were no parties, and at a time when that decree was a valid decree, and when the order for the sale was a valid order.

21. In the case of Sardar Govindrao Mahadik (Supra) the Hon'ble Supreme Court in paragraphs 59 to 62 has held as under:

59. The question, however, is what happens if at an intermediate state pursuant to the decree of the trial Court the attached property is sold at a Court auction ? How would the rights and obligations of the auction purchaser be adversely affected if the appeal is allowed and the suit is dismissed. Ordinarily where the appeal is preferred an attempt should be made to obtain stay of the execution of the decree of the trial Court. However, it is notorious that the appellate Court is loath or reluctant to grant stay of a money decree and the judgment debtor may not be in a position to deposit the decretal amount and in this situation more often the execution proceeds and before the appeal is disposed of an equity in favour of a third person as auction purchaser who purchases the property at a Court auction may come into existence. If afterwards the appeal is allowed and the suit is dismissed, would the auction purchaser be adversely affected ? The emerging situation in this case clearly demonstrates the dilemma.

60. Ordinarily, if the auction purchaser is an outsider or a stranger and if the execution of the decree was not stayed of which he may have assured himself by appropriate enquiry,

the Court auction held and sale confirmed and resultant sale certificate having been issued would protect him even if the decree in execution of which the auction sale has been held is set aside. This proceeds on the footing that the equity in favour of the stranger should be protected and the situation is occasionally reached on account of default on the part of the judgment debtor not obtaining stay of the execution of the decree during the pendency of the appeal.

61. But what happens if the auction-purchaser is the decree holder himself? In our opinion, the situation would materially alter and this decree holder-auction purchaser should not be entitled to any protection. At any rate when he proceeds with the execution he is aware of the fact that an appeal against the original decree is pending. He is aware of the fact that the resultant situation may emerge where the appeal may be allowed and the decree which he seeks to execute may be set aside. He cannot force the pace by executing the decree taking advantage of the economic disability of a judgment debtor in a money decree and make the situation irreversible to the utter disadvantage of the judgment debtor who wins the battle and loses the war. Therefore, where the auction-purchaser is none other than the decree holder who by pointing out that there is no bidder at the auction, for a nominal sum purchases the property, to wit, in this case for a final decree for Rs. 500, Motilal purchased the property for Rs. 300, an atrocious situation, and yet by a technicality he wants to protect himself. To such an auction purchaser who is not a stranger and who is none other than the decree holder, the Court should not lend its assistance. The view which we are taking is not unknown and to some extent it will be borne out by the observations of this Court in [Janak Raj Vs. Gurdial Singh and Another, Janak Raj Vs. Gurdial Singh and Another](#). This Court made a pertinent observation which may be extracted:

The policy of the legislature seems to be that unless a stranger auction purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified.

62. Viewed from this angle, the order of the High Court that the auction-purchaser decree holder Motilal would be entitled to recover the decretal amount of Rs. 500 with interest at the rate of 4% per annum and proportionate costs could be styled as manifestly equitable. However the Court cannot overlook the conduct of the mortgagor Govindrao Mahadik, his subsequent purchaser Gyarsilal and even the original mortgagee Devi Sahai in not paying a small debt and allowing the property to be auctioned and forcing Motilal to the logical end of litigation and yet without the slightest recompense to go on investing into this bottomless pit of unending litigation. And at best his attachment before judgment is a security that his decree would be satisfied from the property attached and sale to the extent of recovery of decretal amount from attached property would be, against attaching creditor void. If we assure him payment of decretal amount and costs the sale in his favour is of no significance. The logical course for us would have been to leave Motilal to his own remedy

which we consider iniquitous in the facts and circumstances of this case. The order made by the High Court would hardly provide him Rs. 1,500 to recover which he must have spent at the inflated rate of litigation costs. In our opinion, while not granting the substantial relief claimed by Motilal and looking to the conduct of all the parties, we direct that Motilal should be paid Rs. 7,500 inclusive of decretal amount, interest, proportionate costs and costs of the litigation till today, and for this amount there will be a charge on this property to be cleared by Govindro Mahadik at the time of redemption of the property which amount will have to be paid by Gyarsilal's heirs in view of the sale-deed in favour of Gyarsilal.

In the case of Ashwin S. Mehta and another (Supra) the Hon'ble Supreme Court in paragraphs 70 and 72 has held as under:

70. In that view of the matter, evidently, creation of any third party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an action sale is treated differently than a decree holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction sale is saved. [See Nawab Zain-ul-Abdin Khan v. Muhammad Asghar Ali Khan]. The said decision has been affirmed by this Court in Gurjoginder Singh v. Jaswant Kaur.

72. In Padanathil Ruqmini Amma v. P.K. Abdulla, this Court making a distinction between decree-holder auction purchaser himself and a third party bona fide purchaser in an auction sale, observed: (SCC p. 672, para 11)

The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the Court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in Court auctions would not fetch a proper price and the decree-holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection.

In the case of Zain-ul-Abdin Khan (Supra) the Hon'ble Privy Council in paragraphs 6 and 9 has held as under:

6. The plaintiff claimed that "the auction sales of the disputed property detailed in the plaint, held on 20th November 1874, 20th November 1875, and 15th November 1876, be declared null and void, and the sale-deed in favour of Shaukat Husain Khan, dated 2nd November 1880, so far as it pertains to the plaintiff's claim, be set aside." Thus he claimed to set aside all the auction sales, not only as against the decree-holders who had purchased, but as against bona fide purchasers who were no parties to the decree. Secondly, he claimed that "plaintiff be put in absolute possession of the undermentioned property of the value of

Rs. 21,450 after dispossession of the defendants."

9. A great distinction has been made between the case of bona fide purchasers who are no parties to a decree at a sale under execution and the decree-holders themselves. In Bacon's Abridgment, Title "Error," it is laid down, citing old authorities, that "if a man recovers damages, and hath execution by fieri facias, and upon the fieri facias, the sheriff sells to a stranger a term for years, and after the judgment is reserved, the party shall be restored only to the money for which the term was sold, and not to the term itself, because the sheriff had sold it by the command of the writ of fieri facias. "There are decisions to a similar effect in the High Court of Calcutta. They are collected in a note in Broughton, in his book on the Code of Civil Procedure, fourth edition, note to Section 246, Act VIII of 1859. So in this case, those bona fide purchasers, who were no parties to the decree which was then valid and in force, had nothing to do further than to look to the decree and to the order of sale.

22. After going through the provision of the Uttar Pradesh Zamindari Abolition and Land Reform Rules, 1952, I find that in framing the Rules the Legislation was conscious about the situation discussed as above and therefore, it has framed Rule 285-L, which is extracted below:

285-L. Whenever the sale of any holding or other immovable property is set aside under rule 285-H or rule 285-I the purchaser shall be entitled to receive back his purchase money plus an amount not exceeding five per cent of the purchase money as the Collector or the Commissioner, as the case may be, may determine.]

I am also of the view that when the bidder participates in bid, it always stand on speculation to retain the auctioned property with him finally even after finalization of bid in his favour.

23. The reason is that the defaulter has been given an opportunity to challenge the auction sale under Rule 285-I before the Commissioner by way of filing objection as well as under Rule 285-K before the Civil Court by way of filing a Suit, therefore, it is always presumed that the auction purchaser, participates in the auction, being aware with the result of auction. Therefore, I am of the view that he is not entitled for any more compensation than provided under Rule 285-L of the Rules.

24. So far as the argument of learned counsel for the respondents that after issuance of sale certificate, it can be cancelled only by the Civil Court concerned, I am of the considered opinion that the sale certificate is a result of auction sale and once it is quashed for being irregular or mistaken in publishing and conducting it, the sale certificate issued in favour of the auction purchaser, itself goes. Thus, after going through the facts and circumstances of the case as well as the legal effect on the proceeding of sale in question, I find that the learned Commissioner has failed to appreciate the law correctly. Therefore, the order 6.12.1988, passed by the Commissioner, Faizabad Division, Faizabad is hereby quashed.

Since there are several irregularities in holding the auction in question, as is discussed above, it is hereby quashed.

In the result the writ petition is allowed.

Let the original record be returned to the office concerned through the learned Standing Counsel to consign in office.