

STATE OF U.P. & ORS.

v.

M/S. SWADESHI POLYTEX LTD. & ORS.

(Civil Appeal No.3840 of 2008)

MAY16, 2008

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952 – rr.246, 273A, 283, 285 and 285A – Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – s.327 – Sick company unable to pay wages due to its employees – Concerned authorities proceeded to recover amounts due, as arrears of land revenue, by way of attachment and sale of property belonging to company in auction – Auction purchaser, a Government agency – Company filed writ petition challenging the auction proceedings – High Court allowed the petition and also passed strictures against the officers of State Government who had been instrumental in arranging the auction – On appeal, held: Issuance of sale proclamation and auction notice did not comply with the procedure prescribed under the Act and the Rules – Hence, auction sale vitiated and cannot be maintained – However, High Court's direction that action should be initiated against the concerned officers not justified – Same accordingly expunged – Strictures – Expunging of - Service Law.

Respondent, a sick company, was unable to pay wages due to its employees. The concerned authorities proceeded to recover the amounts due as arrears of land revenue by way of attachment and sale of property belonging to Respondent-company in auction. U.P. State Industrial Development Corporation (UPSIDC), a Government agency, was the auction purchaser. Respondent-company filed writ petition challenging the entire auction proceedings. It contended that the issuance of the sale

A proclamation and the auction notice did not comply with the procedure prescribed under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952. High Court allowed the writ petition with costs and also passed strictures against the officers of the State Government who had been instrumental in arranging the auction. Hence the present appeal.

Dismissing the appeal, the Court

HELD:1. From a bare reading of the r.246 of the Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952, it is clear that notice can be served on the agent only if it is not possible to serve it on the actual defaulter. In the present case, no attempt whatever had been made to serve the notice to the actual defaulter and had been served on the Chowkidar at the very initial stage. [Para 10] [97-F,G]

2. There is yet another circumstance which indicates that the procedure for sale had not been followed. It is clear from the record that the sale proclamation had been issued without any valuation of the properties and only the area of the vacant land had been specified therein. There was a clear violation of rs. 283 and 285. R.283 provides for the estimated value of the property to be determined under the provisions contained in Chapter XV of the Revenue Manual. The said Chapter specifies the procedure for valuation of the property in terms of other similar properties. It is, however, clear from the record that the figure of 27 Crores, the value of the property which is mentioned in the advertisement in the newspaper "Amar Ujala" appears to have picked up without any basis as it is not the case of the UPSIDC that the property had been valued in accordance with the provisions of the Revenue Manual or by a valuer or expert in the field. [Para 11] [97-H, 98-A-E]

3. The question of valuation is of the utmost importance as it is designed to ensure the best price for the property and it is essential in this circumstance that wide publication and notice of the proposed sale should be given as per r.285-A which postulates a notice of 30 days between the date of issuance of the sale proclamation and the date of auction. In the present case, however, the auction had been held on 2nd May 2005 though the sale proclamation had been issued on 1st April 2005, and served on the Chowkidar on 21st April 2005 and the publication made in "Amar Ujala" on 22nd April 2005. The argument that as SPL (Respondent-company) had suffered no prejudice in the auction proceedings, the sale should not be interfered with, cannot be accepted. [Paras 14, 15] [102-D-F, 104-B]

S.J.S.Business Enterprises (P) Ltd. vs. State of Bihar (2004) 7 SCC 166 – relied on.

4. There is yet another circumstance which vitiates sale. r.285-D provides that 25% of the amount of the auction money shall be deposited at the fall of the hammer and the remaining 75% within 15 days. The case of the appellants is that the Bank draft for 7.80 Crores had been deposited by the auction purchasers on 2nd May 2005 i.e., the date of auction but the High Court found that as the auction had been completed at 1.30 p.m., it would not have been possible to have received the Bank draft from Kanpur 460 km. away on that date. This finding appears to be correct. It is also found that the balance 75% of the amount that had been deposited by various Bank drafts on 18th May 2005 was also beyond the 15 days permissible and the finding of the High Court based on the record is that though the drafts were dated 14th May 2005 but they had, in fact, had been handed over to the concerned authority only on the 18th May 2005. For this additional reason as well, the auction sale cannot be maintained. [Paras 16, 17] [104-B-E, 105-C]

A 5. Moreover, r.273-A makes the provision under Or.
XXI, r.54 of the CPC applicable to proceedings for attach-
ment which specifically provides for the judgment-debtor
to attend Court on a specified date to take notice of the
date which is fixed for setting the proclamation of the sale.
B Concededly, this procedure had not been followed. [Para
12] [98-F]

M.M.Shah vs. S.S.A.S.Mahamad & Anr. 1954 SCR 108
– relied on.

C 6. However the High Court's direction that action
should be initiated against the concerned officers is not
justified and the same is accordingly expunged more par-
ticularly as SPL's conduct as well does it no credit. The
directions insofar as the costs are concerned are how-
ever maintained. [Para 20] [106-B,C]

D CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3840
of 2008

E From the final Judgment and final Order dated 3.1.2006
of the High Court of Judicature at Allahabad in W.P. NO. 5160
(MS) of 2005

WITH

C.A. No. 3839 of 2008

F Dinesh Dwivedi, Ashok H. Desai, R.F. Nariman, Rakesh
Dwivedi, P.H. Parekh, D.K. Goswami, Manoj Kumar Dwivedi,
Gunnam Venkateswara Rao, Kamendra Mishra, Ravi Prakash
Mehrotra, Deepti R. Mehrotra, Garvesh Kabra, Ranjeeta
Rohatgi, Sameer Parekh, Deeksha Rai (for M/s. Parekh & Co.)
G and Shrish Kumar Misra for the Appearing Parties.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Leave granted.

H 2. Respondent No.1, M/s. Swadeshi Polytex Limited (here-
inafter referred to as "SPL") a company registered under the

Companies Act, 1956 and presently a sick unit has its registered Office at Kavi Nagar, Industrial Area, Ghaziabad. Concededly approximately 33% of the shares of the SPL are held by Swadeshi Cotton Mills Limited, Kanpur (a unit of the National Textile Corporation, a Government Enterprise) about 28% and 15% by M/s. Paharpur Cooling Towers Limited and some financial institutions respectively, and the remaining 23% or so by the general public. It is on record that the CMD of the National Textile Corporation Ltd. is holding the charge of SPL and steps are underway for the rehabilitation of the company. It appears that till year 1996-97, SPL was doing reasonably well whereafter a financial crisis seems to have set in, forcing its closure on 30th September 1998. As SPL was unable to pay the wages due to its employees, several applications were filed by its workmen under the provisions of the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 (hereinafter called the 1978 Act). A recovery certificate was thereafter issued under sub-section (1) of Section 3 of the 1978 Act and pursuant thereto, the Company was called upon to make good the wages due to the workmen and on its inability to do so, the authorities proceeded to recover the amounts due as arrears of land revenue. A report was thereafter submitted by the Amin on 7th January 2005 which was endorsed by the Sub-Divisional Magistrate, Ghaziabad in his communication dated 10th February 2005, whereupon an attachment notice in Form 73-D was issued and a proclamation for the sale of the property on 23rd February 2005 was also ordered. The proclamation was however cancelled by the SDM, Ghaziabad and on re-consideration, an order dated 1st April 2005 was passed and the Tehsildar, Ghaziabad was directed to hold the auction on 2nd May 2005 after giving wide publicity and after the properties had been properly valued. A fresh proclamation was accordingly issued by the Sub-Divisional Magistrate, Ghaziabad on 1st April 2005 itself, without disclosing the details of the properties or their estimated value as also the date of the auction. An auction notice was, however, published in "Amar Ujala" on the 22nd April 2005 indicating that the estimate value of the properties was

A about 27 Crores and that the transfer of the property pursuant to the auction would be made on the terms and conditions stipulated by the U.P. State Industrial Development Corporation (hereinafter called the UPSIDC) the present appellant. It is also the case of the appellant herein that the personal service of the sale proclamation was also made on the Chowkidar of the SPL on 21st April 2005. The auction was in fact held on the stipulated day i.e. 2nd May 2005 and the UPSIDC was found to be the highest bidder. The recovery certificate issued by the Deputy Labour Commissioner and the auction notice dated 22nd April 2005 was challenged by SPL by way of Writ Petition No. 35005 of 2005 referring to the irregularities in the issuance of the sale proclamation and the auction notice and it was prayed that the proceedings be quashed. A reply was filed in response to the Writ Petition but the petition was ultimately dismissed with the observation that repeated attempts to recover the dues had failed on account of the recalcitrant attitude of SPL and that the procedural defects which had been pointed out could be challenged by filing objections under Rule 285 (i) of the Uttar Pradesh Zamindari Abolition & Land Reforms Rules, 1952 (hereinafter called the "Rules"). Several objections were accordingly filed with respect to the auction and the preceding events, but the Commissioner, Meerut Division, in his order dated 24th June 2005 dismissed the objections. Aggrieved by the order dated 24th June 2005, SPL preferred a revision petition before the Board of Revenue under section 293 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called the "Act") read with Section 219 of the Land Revenue Act but this petition too was rejected by order dated 9th September 2005. This order was challenged before the Lucknow Bench of the Allahabad High Court in Writ Petition No.5160/2005 and it was prayed, inter-alia, that the aforesaid order and the order dated 24th June 2005 be set aside and that the entire auction proceedings dated 2nd May 2005 be quashed. The High Court in its interim order dated 20th September 2005 directed the SPL to deposit a sum of Rs.50 Lacs within a period of 30 days and in the meanwhile, directed that the sale be not confirmed. Aggrieved by the order

dated 20th September 2005, the employees of the SPL filed a Special Leave Petition and in its order dated 5th December 2005, this Court directed that if the writ petition was not disposed of in the course of the week, the interim order passed by the High Court would stand vacated. The High Court, however, in its judgment dated 3rd January 2006 allowed the writ petition with costs of Rs.50,000/- and also passed strictures against the officers of the State Government who had been instrumental in arranging the auction. It is against this order that three Special Leave Petitions have been filed which are SLP (Civil) No.3272/2006 (U.P. State Industrial Development Corporation & Anr. Vs. M/s. Swadeshi Plytex Ltd. & Ors.), SLP (Civil) No.2858/2006 (M/s. Swadeshi Polytex Ltd. Karamchari Kalyan Sangh vs. M/s. Swadeshi Polytex Ltd. & Ors.) and SLP (Civil) No.21002/2006 (State of U.P. & Ors. Vs. M/s Swadeshi Polytex Ltd. & Ors). All these matters are being disposed of by this judgment with the basic facts being taken from the first mentioned appeal.

3. The learned Single Judge, at the very first instance, dealt with the preliminary objections raised during the course of the hearing that in view of the Division Bench judgments of the High Court dated 13th January 2005, 4th May 2005 and 26th May 2005, it was not open to the SPL to contend at this stage that the recovery proceedings including the procedure adopted was not maintainable in law. The Court observed that W.P. No.50571/2002 had been filed by M/s. Paharpur Cooling Towers Pvt. Ltd. and Ors. in which SPL had been arrayed as respondent No.6 and the proceedings relating to the issuance of the recovery certificates by the Deputy Labour Commissioner under subsection (1) of Section 3 of the 1978 Act had been questioned, but the Division Bench had dismissed the Writ Petition observing that as the petitioner therein i.e. M/s. Paharpur Cooling Tower Pvt. Ltd. was pursuing the matter with the Company Law Board and had availed of an alternative remedy, the writ petition was not maintainable. The Court also observed that the matter had been taken by M/s. Paharpur Cooling Towers Ltd to the Su-

A preme Court and an interim order dated 7th February 2005 had been made directing the petitioner to deposit a sum of Rs.5/- Crore in favour of the Registrar General of this Court, but this amount had not been deposited and the Special Leave Petition had been dismissed on 24th February 2005. The Court accordingly held that in this view of the matter, it was clear that no order against SPL had been made by this Court in the above mentioned SLP. The learned Judge then went into the scope and effect of W.P.No.35005/2005 filed by SPL impugning the auction notice dated 22nd April 2005 and observed that this petition had been dismissed with the observation that it would be open to SPL to avail of the alternative remedy available under rule 285(i) of the Rules. The Bench also noted that the third writ petition, filed by one Jitendra Khaitan (Writ Petition No.36736/2005) once again challenging the validity of the auction notice dated 22nd April 2005 had been filed and this writ petition too had been dismissed with the observation, inter-alia, that in the light of the order in Writ Petition No.35005/2005, the petitioner herein could also avail the alternative remedy by filing objections under rule 285(i) of the Rules. The Court accordingly rejected the prayer of the respondents before it that in view of the aforesaid writ petitions, the writ petition was not maintainable. The Court then examined the submission as to whether the procedure envisaged for recovery of arrears under the Act and the Rules had been observed and in case they had been breached, the effect thereof and after examining the various provisions threadbare, held that the Act and Rules prescribed a procedure for the recovery of arrears of land revenue and that before a recovery certificate could be issued, the defaulter was required to be effectively served, that the Rules in question were mandatory and required strict compliance and in conclusion highlighted that there was no material on record to show that any attempt had been made to serve the demand notice on SPL, and service on the Chowkidar was clearly not proper service on the defaulter. The Court also observed that auction sale was liable to set aside for the additional reason that a clear 30 days notice of the proposed auction had not been given even if

the service on the Chowkidar was held to be appropriate. The Court also held that the sale proclamation issued on 2nd May 2005 was not valid and did not comply with the provisions of rule 285, 286 and 283 of the Rules and that the proclamation that had been issued was only of Rs. 1.10 Crores and did not provide for the full amount as envisaged under rule 245, which provided an opportunity to the defaulter to make good the payment so as to avoid the sale of the property. The Court also held that on facts, it was impossible for the auction-purchaser i.e., the UPSIDC to have procured the Bank Drafts from the Punjab National Bank, Kanpur on the day of the auction so as to make the deposit of the 25% of the sale price at the fall of the hammer as the auction had been conducted at Meerut, about 460 Kms. away from Kanpur and that the balance 75% of the amount due on the auction had also been deposited late i.e. on 18th May 2005 which again was contrary to rule 285-D of the rules. The Court also observed that it appeared that the property had been sold at a price far below its market price and in conclusion, passed strictures against the district authorities which had conducted the auction and sale of the property in question thus quashing the order dated 9th September 2005 passed by the Board of Revenue, the order dated 24th June 2005 of the Commissioner as well as the auction sale proceedings dated 2nd May 2005 conducted by the Tehsildar, Ghaziabad with costs of Rs.50,000 and all consequential relief, and a direction that it would be open for the State Government to recover the costs from the salary of the officers who were responsible "for the auction of the property in question in such unruly manner" by holding an enquiry and that the Chief Secretary was advised to take appropriate action against the defaulting officers.

4. Before we embark on an examination of the contentions raised by the learned counsel for the parties, we deem it appropriate to refer to certain supervening and material factors. It is the admitted position that the workmen at whose instance the initial process of sale of the property had been initiated, have entered into an agreement dated 3rd January 2008

A with SPL and the entire due amount due to them and something more has since been paid. It is also clear that the auction-purchaser is the UPSIDC, which is a Government agency and is the owner of the land over which the super-structure of SPL has been built.

B 5. In this background, the learned counsel for the appellants has submitted that the findings recorded by the High Court were erroneous as it was clear from the record that despite numerous opportunities given to SPL to make the payments due to their own workmen, no serious attempt had been made to do so and that on the contrary, every attempt had been to forestall the payment. It has been pointed out that the had suddenly woken up to its obligations and made full payment after the decision in the writ petition to take advantage of the huge spurt in the price of real estate in Ghaziabad and the surrounding areas. It has been pleaded that there was absolutely no irregularity in the procedure relating to the auction and the finding of the High Court that the sale price appeared to be undervalued was also not based on any relevant material. It has also been pleaded that no substantial injury had been caused to SPL, as the recovery certificate initially had been issued in the year 2002 and had been challenged by the associates of SPL or by SPL itself and despite the fact that in the case of the SLP filed by M/s. Paharpur Cooling Towers Ltd., this Court had directed that a sum of Rs.5 Crore be deposited before the Registrar General, the order had not been complied with and the SLP had been dismissed proving a lack of intention on the part of the SPL or its associates to make the payment. It has finally been pleaded that the UPSIDC had deposited a sum of Rs.32.20 Crores in May 2005 and the sale had thereafter been confirmed in its favour and the possession transferred, and that if this amount plus interest of 18% was taken into account, the amount now due to the appellant would be almost 48 Crores, in case the order was to be set aside.

H 6. The learned counsel for the respondents have, however, supported the judgment of the High Court. It has been espe-

cially emphasized that the workers due having been discharged by SPL, it did not lie on the State Government or a State Government undertaking, the appellant herein, to still pursue the matter doggedly in this Court. It has been reiterated that the property in question had not been properly valued, as provided by rule 283 of the Rules and that the notice of the proclamation has also not been served on the SPL or on any of its functionaries and had in fact been served to the Chowkidar and that too, about a week before the auction whereas a minimum notice period of 30 days ought to have been given. It has further been pleaded that the auction purchaser i.e., the UPSIDC had not deposited 25% of the sale price and/or the balance of 75% of the amount within 15 days, as required under rule 245 of the Rules and this too was a ground which was relevant in determining the propriety of the sale of the auction.

7. As would be clear, the arguments pressed by the learned counsel for both the sides pertain to the procedure adopted for the auction. Sub-section (1) of Section 3 of the 1978 Act provides that in case the occupier of an industrial establishment is in default of payment of wages in excess of Rs.50,000/-, the Labour Commissioner may forward to the Collector a certificate under his signatures specifying the wages due from the establishment concerned and that the Collector shall accordingly proceed to realize the amounts due as arrears of land revenue. Admittedly the recovery certificate had been issued and sent to the Collector, Ghaziabad by the Labour Commissioner under section 3(1) and it is in this situation that the proceedings against the SPL had been set in motion. Section 279 of the Act provides for the recovery of arrears of land revenue by various methods including an attachment and sale of the immovable property of the defaulter in respect of the arrears due. Section 280 stipulates that as soon as the land revenue had become due, a writ of demand may be issued by the Tehsildar calling upon the defaulter to pay the amount within a specified time and under section 284, the property of the defaulter may also be attached. Section 327 provides for the modes of service of

A the notice on the defaulter and reads as under:

“327. Mode of service of notice.- Any notice or other document required or authorised to be served under this Act may be served either –

- B (a) by delivering it to the person on whom it is to be served, or
- (b) by leaving it at the usual or last known place of abode of that person, or
- C (c) by sending it in a registered letter addressed to that person at his usual or last known place of abode, or
- (d) in case of an incorporated company or body by delivering it or sending it in a registered letter addressed to the Secretary or other principal functionary of the company or body at its principal office, or
- D (e) in such other manner as may be laid down in the Code of Civil Procedure, 1908.

E 8. Section F of Chapter 10 of the Rules deals with the coercive procedure which can be adopted by the Collector to recover the amounts as arrears of land revenue.

F 9. Rules 235 and 236 authorize the Tehsildar to issue citations, writs and warrants etc. as per the prescribed form whereas Rules 241 and 245 provide as to how the citation is to be issued and writ of demand for the purpose of land revenue. Rule 246 provides for the service of the writ or citation shall, if possible, be made on the defaulter personally, but if service cannot be made on the defaulter, it can be made on the agent and sub-rule thereof further postulates that personal service shall be made by delivery to the defaulter or the agent of the foil of the writ of citation and with the sanction of the Collector such writs of demand may also be served as registered post. Rule 247-A also refers to a warrant of arrest which may be executed

G

H by a duly authorized person for the recovery of the arrears and

Rule 247-B (1) deals with the situation that where a defaulter at the time of his arrest pays the entire amount of arrears specified in the warrant of arrest to the process-server or to authorized officer, the defaulter will not be arrested. Rules 272, 272-A, 272-B, 273, 273-A, 278 and 285-C deal with the procedure for the attachment of the land which is proposed to be sold and Rule 273-A postulates that the procedure envisaged in Order XXI, Rule 54 of the Code of Civil Procedure must be followed at the time of attachment. Rule 285-C also provides that in case the defaulter pays the arrears of land revenue in respect of the land proposed to be sold on any day before the fixed day of the sale, the sale officer on being satisfied shall stay the sale. Rules 282 and 283 when read together provide that in the proclamation of sale to be issued in Form Z.A. 74, it will be incumbent on the Collector to give the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual.

10. We now examine the primary arguments in the background of the above provisions. The question arises as to whether the provisions for the attachment and sale of the property had been followed scrupulously, as would be necessary in such a case. We notice that the learned Single Judge has examined the matter and has concluded that there was no material on record to show that proper procedures had been adopted. A positive finding has been arrived at on facts that the Tehsildar or the Collector had even attempted to serve the demand notice personally or by registered post on SPL, as called upon under Section 327 of the Act and Rule 246, as the notice had been served on the Chowkidar who could not be said to be an agent of SPL. It must also be noticed from a bare reading of the Rule 246 that the notice can be served on the agent only if it is not possible to serve it on the actual defaulter. In the present case, we find that no attempt whatever had been made to serve the notice to the actual defaulter and had been served on the Chowkidar at the very initial stage.

11. There is yet another circumstance which indicates that

A the procedure for sale had not been followed. It appears from
the record that the notice of citations for appearance and demand
had been issued on 11th January 2005 and on 1st April 2005,
B the Sub-Divisional Magistrate had passed an order for the valuation
of the properties as well as for wide publicity of the auction and
sale of the property in question and the Tehsildar, Ghaziabad
had been appointed as the auction officer and the auction had
been fixed for the 2nd May 2005. It is clear from the record
C that the sale proclamation had been issued on 1st April 2005
without any valuation of the properties and only the area of
the vacant land had been specified therein and it was this
notice that had been served on the Chowkidar on the 21st April
2005 and publication had been made in the newspaper "Amar
Ujala" on the 22nd April 2005. There has, thus, been a clear
D violation of the Rules 283 and 285 *ibid*. Rule 283 provides for
the estimated value of the property to be determined under the
provisions contained in Chapter XV of the Revenue Manual. The
said Chapter specifies the procedure for valuation of the property
E in terms of other similar properties. It is, however, clear from
the record that the figure 27 Crores, the value of the property
which is mentioned in the advertisement in the "Amar Ujala",
appears to have picked up without any basis as it is not the
case of the UPSIDC that the property had been valued in
accordance with the provisions of the Revenue Manual or by a
valuer or expert in the field.

F 12. Moreover, Rule 273-A makes the provision under Order
XXI, Rule 54 of the CPC applicable to proceedings for attachment
and Rule 1-A of Rule 54 specifically provides for the judgment-
debtor to attend court on a specified date to take notice of the
G date which is fixed for setting the proclamation of the sale.
Concededly, this procedure had not been followed. The learned
counsel for the respondent has also disputed the valuation of
the property by the UPSIDC and has referred us to the pleadings
in the writ petition and in particular to paragraphs 26 and 30
thereof. These paragraphs are reproduced below:

H "That the auction was held on 2.5.2005 but in the furd

neelam no time of auction was provided. Even the description of the land sought to be auctioned, has not been provided in the furd neelam. Six bidders, had participated in the auction, out of which only U.P. State Industrial Development Corporation was the major bidder in competition with one M/s. Suder Steel Pvt. Ltd. The property worth Rs.56.00 Crores as per the rate list issued by the U.P. State Industrial Development Corporation has been auctioned for petty amount of Rs.32.00 Crores and odd. In the open market, rate of the property in question could fetch atleast Rs.100 Crores. This is apparent from the letter dated 26.4.2005 issued by Shri Mahak Singh, District Manager, UPSIDC. The circle rate of the land of the area fixed by UPSIDC is effective from 9.4.2005 is Rs.3000/- per sq.meter, by which calculation, cost of the land in question comes to Rs.56.42 Crores approx., whereas the same has been sold only @ Rs.1700/- per sq.meter, amounting to Rs. 32.20 Crores, to the UPSIDC. A true copy of the furd neelam letter dated 26.4.2005 issued by District Manager, UPSIDC are annexed herewith as Annexure No.23A & 24 to this Writ Petition.

That as per the newspaper clipping published in The Times of India property section, New Delhi edition dated 25.6.2005, the land price in Kavi Nagar, Ghaziabad is Rs. 11,000/- per sq.mt. The petitioner has suffered a substantial injury and loss in the auction held by the District Administration of a prime property situated at Kavi Nagar, Ghaziabad Industrial Area, Ghaziabad @ Rs.1700/- per sq.mt. a true copy of the newspaper clipping dated 25.6.2005 is annexed herewith as Annexure No.27 to this Writ Petition."

The replies to the paragraphs are given in SLP(C) No.3272 of 2006:

"That in reply to the contents of paras 23 to 25 of the writ petition which are not correct, hence denied. It is submitted

A that the petitioner had full knowledge about the auction,
and the auction has not held much higher to the present
circle rate. It is further submitted that the rate offered and
accepted by the deponent is of developed land whereas,
B the present land is a lease land on 99 years of which
already 35 years had expired and it is undeveloped area
for which maximum rate has been got in the auction held
on 2.5.2005.”

13. Shri Nariman, the learned senior counsel for the re-
spondents, therefore, appears to be right in contending that the
C specific averments made by SPL in the writ petition have not
been denied by the respondent and it was therefore open to
SPL to contend that the property had not been properly valued
and that the sum of Rs.27 crores represents not even half the
market price. In *Gajraj Jain vs. State of Bihar* (2004) 7 SCC
D 151 while dealing with a case under the State Financial Corporations Act, this is what this Court had to say:

“In the light of the aforesaid judgment of this Court, the
issue which arises for determination is – whether
Respondent 2 Corporation acted reasonably and in
accordance with Section 29 of the 1951 Act in transferring
the assets of the Company on 19.3.2002 and in entering
into agreement for sale with Respondent 4 on 26.4.2002.
As stated above, Respondent 2 Corporation had a
paramount first charge on the assets of the flour mill
whereas Central Bank of India had the second charge
thereon. There is a difference between a charge and a
mortgage. In the case of a charge under Section 100 of
the TP Act, there is no transfer of interest in the property.
A charge is not a jus in rem. It is jus ad rem. It creates a
right of payment out of the property/fund charged with the
debt or out of proceeds of the realization of such property,
a phrase used in Section 29(1) of the 1951 Act. A charge
as defined under Section 100 of the TP Act may be
enforced by sale [See Mulla: Civil Procedure Code (15th
H Edn.), p.2420]. We have discussed the concept of charge

as it has a direct bearing on the interpretation of Section 29 of the 1951 Act. A

In the present case, it has been urged that absence of valuation report and the reserved bid does not vitiate the sale. We do not find met in this argument. In the case of S.J.S. Business Enterprises (P) Ltd. it has been held that the financial corporation, in the matter of sale under Section 29, must act in accordance with the statute and must not act unreasonably. In this case, the Corporation fails on both the counts. It has neither complied with the provisions of sub-sections (1) and (4) of Section 29, nor has it acted fairly. The test of reasonableness has been laid down in the above judgment in which it is held that reasonableness to be tested against the dominant consideration to secure the best price. Value or price is fixed by the market. In the case of a going concern, one has to value the assets shown in the balance sheet (Datta,S.: Valuation of Real Property,p.198). In our view, if the object of Section 29 of the Act is to obtain the best possible price then the Corporation ought to have called for the valuation report. This has not been done. There is no inventory of assets produced before us. The mortgaged assets of the Company could be sold on itemized basis or as a whole, whichever is found on valuation to be more profitable. No particulars in that regard have been produced before us. If publicity and maximum participation is to be attained then the bidders should know the details of the assets (or itemized value). In the absence of the proper mechanism the auction-sale becomes only a pretence. Further, in this case, the Corporation advanced Rs.90 Lakh to the Company. At that time, it must have valued the assets. Nouch report has been produced. Lastly, in this case, the price of the assets is pegged to the dues of the Corporation and Central Bank of India. The assets are agreed to be sold to Respondent 4 not for the market price but against repayment of dues of the Corporation plus a promise to

A discharge the liability of Central Bank of India. Therefore, the Corporation, Respondent 2, has not acted reasonably. It has not taken any steps to secure the best price. In fact, it has failed to protect the interest of Central Bank of India, which is having the second charge on the assets transferred to Respondent 4 as well as the mortgagor which would be entitled to the balance of the sale proceeds, if any. It was contended that as the bids were withdrawn, the offer of Respondent 4 was accepted. Even assuming for the sake of argument, that there were no offers except the offer of respondent 4, it shows that value of the assets was Rs.198.85 lakhs (i.e. Rs.28.85 lakhs + Rs.170 Lakhs). No reason has been given why Respondent 2 did not insist on downright payment of Rs.198.85 lakhs.”

14. 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 this 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 over emphasized that the proper valuation of the property and wide publicity of the proposed auction is intimately linked with the price that the auction fetches. As already mentioned above, the auction had been held on 2nd May 2005. The sale proclamation had been issued on the 1st April 2005, and served on the Chowkidar on the 21st April 2005, the publication made in “Amar Ujala” on 22nd April 2005 whereas rule 285 itself postulates a notice period of 30 days to be counted from the date of issuance of the sale proclamation. While dealing with a similar situation, this is was what this Court had to say in *S.J.S.Business Enterprises (P) Ltd. vs. State of Bihar* (2004) 7 SCC 166:

“We are of the view that the sale effected in favour of Respondent 6 cannot be sustained. It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised

bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabillise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. (See Pannal Binraj v. Union of India, AIR at p.409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under section 29 of the State Financial Corporations Act, as prescribed in Mahesh Chandra v. Regional Manager, U.P.Financial Corpn. Are no longer in place in view of the subsequent decision in Haryana Financial Corpn. Vs. Jagdamba Oil Mills. However, in overruling the decision in Mahesh Chandra this Court has affirmed the view taken in Chairman and managing Director, SIPCOT v. Contromic (P) Ltd. and said that in the matter of sale under section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

"This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price."

Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity

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A must be given to the possible purchaser who is required to purchase the property on “as-is-where-is basis” to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.”

B 15. We must, therefore, repel Mr. Dwivedi’s argument that as SPL had suffered no prejudice in the auction proceedings, the sale should not be interfered with.

C 16. There is yet another circumstance which vitiates sale. Rule 285-D of the Rules that 25% of the amount of the auction money shall be deposited at the fall of the hammer and the remaining 75% within 15 days. The case of the appellants is that the Bank draft for 7.80 Crores had been deposited by the auction purchasers on 2nd May 2005 i.e., the date of auction but the learned Single Judge has found that as the auction had been completed at 1.30 p.m., it would not have been possible to have received the Bank draft from Kanpur 460 km. away on that date. This finding appears to be correct. We also find that the balance 75% of the amount that had been deposited by various Bank drafts on 18th May 2005 was also beyond the 15 days permissible and the finding of the learned Single Judge based on the record is that though the drafts were dated 14th May 2005 but they had, in fact, had been handed over to the concerned authority only on the 18th May 2005. This Court in *M.M. Shah vs. S.S.A.S. Mahamad & Anr.* 1954 SCR 108 has held as under:

F “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

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

17. For this additional reason as well, the auction sale cannot be maintained.

18. In this view of the matter, we need not go into the argument raised by Mr. R.F. Nariman that in the facts of the case we should not entertain this matter in the exercise of the discretionary jurisdiction under Article 136 of the Constitution of India.

19. We also notice from the last paragraph of the judgment of the learned Single Judge appears to have been extremely annoyed with what he perceived to be gross irregularities on the part of the officers of the State Government connected with the sale of the property and he had accordingly directed as under:

"Subject to above writ petition is allowed with cost quantifies to Rs.50,000/- Petitioner shall be entitled to withdraw Rs.25,000/- and rest of Rs.25,000/- shall be remitted to U.P. State Legal Services Authorities to utilize for providing legal aid to the litigants approaching Lucknow Bench of High Court. The cost shall be deposited within one month from today in this court by the District Magistrate, Ghaziabad. Registrar to ensure compliance. It shall be open for the State Government to recover the cost from the salary of the office/officers who are responsible to auction the property in question in such unruly manner by holding an inquiry. The Chief Secretary Government of

A U.P. is further directed to take appropriate action against the officers or employees who had acted in arbitrary manner while proceeding with the auction and sale of the property in question.

B Let a copy of the judgment be sent to the Chief Secretary, Govt. of U.P. by the office within a week for appropriate action.”

C 20. We are of the opinion, however, that High Court’s direction that action should be initiated against the concerned officers, is not justified and we accordingly expunge these directions more particularly as SPL’s conduct as well does it no credit. We, however, maintain the directions in so far as the costs are concerned. With this minor modification, the appeals are dismissed.

B.B.B.

Appeals dismissed.