

A PRAVESH KUMAR SACHDEVA
v.
STATE OF UTTAR PRADESH & ORS.
(Civil Appeal No. 9836 of 2014)

B SEPTEMBER 13, 2018

**[MADAN B. LOKUR, S. ABDUL NAZEER AND
DEEPAK GUPTA, JJ.]**

C *Auction: Auction sale – Waiver of rights – On facts, confirmed
auction sale of land belonging to private respondents – Set aside
by the High Court despite there being no objections to it –
Justification of – Held: Not justified – Private respondents through
their conduct, in failing to file objections to the auction sale and
making an application and accepting the excess amount recovered
from the auction sale, waived off their rights in respect of the auction
D sale and acquiesced in the auction sale – They are estopped through
their conduct from challenging the auction sale in any manner
whatsoever – Conduct of all the private respondents is a clear
indication of their acceptance of the validity of the auction sale
and they had no objections to the auction sale – High Court erred
E in ignoring the basic and primary fact on record – It erred in setting
aside the auction of the land belonging to the private respondents
and thereby prejudicing the rights of the appellants, highest bidder
of the auction sale – Order passed by the High Court is set aside.*

F *Waman Shriniwas Kini v. Ratilal Bhagwandas & Co.
[1959] 2 Suppl. SCR 217 ; Municipal Corporation of
Greater Bombay v. Dr Hakimwadi Tenants' Association
(1988) Suppl. SCC 55 : [1988] 2 SCR 21 ; P. Dasa
Muni Reddy v. P. Appa Rao (1974) 2 SCC 725
– referred to.*

G **Case Law Reference**

[1959] 2 Suppl. SCR 217	referred to	Para 21
[1988] 2 SCR 21	referred to	Para 22
(1974) 2 SCC 725	referred to	Para 23

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9836 A
of 2014.

From the Judgment and Order dated 23.03.2006 of the High
Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 76863
of 2005

WITH

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Civil Appeal Nos. 9838 & 9837 of 2014 and Civil Appeal No.9524
of 2018.

Ajay Kumar Mishra, AAG, V. Shekhar, Guru Krishna Kumar,
Sr. Advs., A. Subba Rao, Annam D. N. Rao, Rajesh Sharma, Sudipto
Sircar, Annam Venkatesh, Rahul Mishra, Bharat Singh, Umesh Prasad,
Amit Pawan, Abhijat P. Medh, S. S. Kushrotha, Ms. Shashi Kiran,
Satish Chandra, Arjun Sain, Manoj Jain, Sarim Naved, Ms. Anitha Shenoy,
Ms. Shakshi Kakkar, Ms. Swarupama Chaturvedi, Amit Sharma,
M. P. Shorawala, T. Mahipal, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

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MADAN B. LOKUR, J. 1. Leave granted in S.L.P.(C) No.21229
of 2007.

2. A narrow question arises for consideration in these appeals,
namely, whether the Allahabad High Court was right in setting aside a
confirmed auction sale despite there being no objection to it. In our opinion,
the High Court was in error in setting aside the auction of the land belonging
to the private respondents (Alok Mitra, Ashok Mitra, Deepak Mitra,
Manmohan Mitra and Madhurima Ghosh) and thereby prejudicing the
rights of the appellants.

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3. The private respondents were having businesses under the name
and style of Mitra Prakashan Ltd. and Maya Press Ltd. It appears that
the businesses were not successful and they fell in debt being unable to
pay the workmen or even pay closure compensation.

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4. This led the workmen to approach the Labour Court which
decided in their favour resulting in the private respondents having to
shell out a huge amount of about Rs. 56 lakhs towards unpaid dues. Since
the amounts were not paid despite a citation and recovery certificates,
the property/vacant land of the private respondents being 1877.88 sq.
yards in Plot No.4-A/4(1A/A)Hashimpur Road, Allahabad was attached.

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A 5. Subsequently, the property/vacant land was put to auction which took place on 17th November, 2004. One of the appellants Pravesh Kumar Sachdeva (for short Sachdeva) was the highest bidder having given a bid of Rs. 70 lakhs.

B 6. In terms of the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and the Rules of 1952 framed thereunder, 30 days' time was given for filing objections to the auction sale under Rule 285-I which reads as follows:

C “**RULE 285-I** (i) At any time within thirty days from the date of sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.

D (ii) ***

(iii) The order of the Commissioner passed under this rule shall be final.”

E 7. One of the private respondents (Alok Mitra) filed an application/objections on 16th December, 2004. The cause title of the application/objections mentioned the name of all the private respondents that is, Alok Mitra, Ashok Mitra, Deepak Mitra, Manmohan Mitra and Madhurima Ghosh. However, on a perusal of the application/objections placed before us in original, we found that it was signed only by the advocate R.K. Pandey. The vakalatnama given to the advocate was signed only by Alok Mitra. One of the issues raised before us was whether the application/objections were filed by Alok Mitra or by all the private respondents.

F 8. Be that as it may, in our opinion, the application/objections were filed only by Alok Mitra and by none of the other private respondents even though their names find mention in the cause title of the document. We say this because the vakalatnama was given in favour of the advocate only by Alok Mitra and there is nothing to indicate that he had given the vakalatnama as the attorney or representative of the other private respondents.

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9. The District Magistrate was not informed about the application/ objections having been filed by Alok Mitra and on the belief that no one had objected to the auction sale, the District Magistrate confirmed it on 18th December, 2004. Thereafter Alok Mitra prepared an application dated 31st December, 2004 which was filed by him on 4th January, 2005 withdrawing the objections raised by him. The withdrawal of the objections was allowed by the competent authority on 24th January, 2005.

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10. Quite independently on 11th January, 2005 and 25th January, 2005 the private respondents (including Alok Mitra) moved two sets of applications for being paid the difference between the auction sale price of Rs. 70 lakhs and the dues and liabilities of the private respondents of about Rs. 56 lakhs. These applications were allowed and the differential amount was also given to the private respondents.

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11. The position as it stood, therefore, was that the auction sale had taken place and was confirmed; objections filed to the auction sale by Alok Mitra were withdrawn; all the private respondents got back the difference between the auction sale price and the dues and liabilities incurred by them.

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12. On or about 1st April, 2005 Sachdeva got the subject land converted to freehold and a little later in May 2005, he sold a part of it to Pawan Kumar Agarwal (also an appellant).

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13. After the aforesaid transaction, an application was filed by the private respondents other than Alok Mitra before the Competent Authority on 19th May, 2005 in which a prayer was made to recall the order of 24th January, 2005 permitting withdrawal of the application/ objections filed by Alok Mitra. The averments made in the application in paragraphs 3 and 4 are significant and read as follows:

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“3. That the applicants had never given a power of attorney to the opposite party No. 6 Alok Mitra to act for them and on their behalf, and were also not ratified the act and action taken by said Sri Alok Mitra.

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4. That the applicants never asked, directed and consented with Sri Alok Mitra opposite party No. 6 not to press or to withdraw the aforesaid objection/application No.5 of 2004.”

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A 14. A reading of the aforesaid two paragraphs indicates an inherent self-contradiction. While it is stated in paragraph 3 that the applicants had not given any power of attorney to Alok Mitra to act for them and on their behalf whereas in paragraph 4 they say that they had not asked, directed and consented to the withdrawal of the objections/application filed by Alok Mitra. The inherent contradiction is that if they had not
B authorized Alok Mitra to file an application, there cannot be any question of their authorizing Alok Mitra to withdraw the application since it was not filed on their behalf. The two paragraphs quoted above confirm that the application/objections of 16th December, 2004 were not filed by the private respondents.

C 15. Unfortunately, by an order dated 21st November, 2005 the application filed by the private respondents (other than Alok Mitra) was allowed by the Competent Authority and the confirmation of sale in favour of Sachdeva was set aside. This led Sachdeva to file a writ petition¹ in the Allahabad High Court, which came to be dismissed by the impugned
D judgement and order dated 23rd March, 2006. This resulted in Sachdeva and the vendee, Pawan Kumar Agarwal to prefer the present appeals in this Court.

E 16. As mentioned above, on these facts, the only question for our consideration is whether the High Court was in error in setting aside the confirmed auction sale.

F 17. It is quite clear from the narration of facts that the objections raised to the auction sale were only by Alok Mitra, who did not communicate the objections to the District Magistrate in time. No other objection was raised to the auction sale and it was duly confirmed by the District Magistrate. Alok Mitra later withdrew his objections.

G 18. The other private respondents contended that even they were parties to the objections filed by Alok Mitra. We cannot agree for the simple reason that the objections were signed only by R.K.Pandey, advocate and the vakalatnama given to him was signed only by Alok Mitra. None of the other private respondents signed the vakalatnama in favour of R.K.Pandey. On the contrary, when the other private respondents objected to the withdrawal of the objections by Alok Mitra, they categorically stated that they had not given a power of attorney to Alok Mitra. In that view of the matter, it can hardly lie in the mouth of

H ¹Civil Miscellaneous Writ Petition No. 76863 of 2005

these private respondents to contend that the objections filed by Alok A
Mitra were also filed on their behalf. The private respondents other
than Alok Mitra have come out with an unbelievable story only to
somehow or other keep the issue alive through litigation and unfortunately,
they have been successful in doing so for the last more than one decade.

19. We also find that the conduct of all the private respondents is B
a clear indication of their acceptance of the validity of the auction sale.
It has come on record that the auction sale resulted in a sale price which
was over and above the dues and liabilities of the private respondents by
an amount of about Rs. 14 lakhs. Through applications filed by the private
respondents on 11th January, 2005 and 25th January, 2005 requests were C
made for being given back the excess amount raised by the auction sale.
In fact this request was acceded to and the amount was given back to
the private respondents by the Competent Authority. It appears that the
present litigation is being fought by the private respondents on the basis
of the amounts received by them from the Competent Authority. In any
event, the conduct of the private respondents is a clear indication, if any D
is required, that they had no objection to the auction sale.

20. Through their conduct, in failing to file objections to the auction
sale and making an application and accepting the excess amount
recovered from the auction sale, the private respondents have waived
off their rights in respect of the auction sale and have acquiesced in the E
auction sale. Today, the private respondents are estopped through their
conduct from challenging the auction sale in any manner whatsoever.

21. In *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.*²
it was observed as follows:

“Waiver is the abandonment of a right which normally everybody F
is at liberty to waive. A waiver is nothing unless it amounts to a
release. It signifies nothing more than an intention not to insist
upon the right. It may be deduced from acquiescence or may be
implied.”

22. In *Municipal Corporation of Greater Bombay v. G
Dr Hakimwadi Tenants’ Association*³ it was held that “In order to
constitute waiver, there must be voluntary and intentional relinquishment
of a right. The essence of a waiver is an estoppel and where there is no

² 1959 Supp (2) SCR 217

³ 1988 Supp SCC 55

A estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.”

23. Finally, in *P. Dasa Muni Reddy v. P. Appa Rao*⁴ this Court held:

B “ ... Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts.”

C 24. We are of the clear opinion that in view of the law, the High Court erred in ignoring the basic and primary facts on record and setting aside the auction sale in favour of Sachdeva, and thereby also prejudicing Pawan Kumar Agarwal.

D 25. Under the circumstances, the appeals are allowed and the impugned judgment and order passed by the Allahabad High Court on 23rd March, 2006 is set aside.

Nidhi Jain

Appeals allowed.

⁴ (1974) 2 SCC 725