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Court : Allahabad

Decided On : Jul-30-1984

Reported in : AIR1984All334

Judge : K.N. Singh and ;Gopi Nath, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5; Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 285H, 285I and 285J; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 154, 331 and 341; Uttar Pradesh Land Revenue Act, 1901 - Sections 4(8) and 4(9); Code of Civil Procedure (CPC) - Order 21

Appeal No. : Civil Misc. Writ Petn. No. 10513 of 1983

Appellant : indu Engineering and Textiles Ltd.

Respondent : Commissioner, Agra Division and ors.

Advocate for Def. : Ravi Dhavan, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : M. Katju, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. This is a petition under Article 226 of the Constitution praying for the quashing of an order dated 16-8-1982 passed by the Commissioner, Agra Division, Agra (respondent No. 1). By that order, the respondent No. 1 has set aside an auction sale held in favour of the petitioner in respect of a factory owned by M/s. Indo-Swedish Pipe Manufacturers Limited, Nawalganj (Agra). The sale took place under the provisions of the U. P. Zamindari Abolition and Land Reforms Rules in pursuance of a recovery certificate dated 31-3-1979 issued by the Managing Director of the U. P. Financial Corporation (respondent No. 3) to the Collector. Agra (respondent No. 2) for the recovery of a sum of Rs. 19,96,652.79 from M/s. Indo-Swedish Pipe Manufacturers Limited. Nawalganj (Agra) under the provisions of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972, The Managing Director of the U. P. Financial Corporation in his letter dated 31-3-1979 mentioned details of the landed property, machinery of the factory sought to be auctioned and details of other properties of the defaulter Company. They were marked as schedules A, B and C to the said letter. The Collector, Agra, in pursuance of the recovery certificate, attached the property of the defaulter Firm, issued a sale proclamation dated 26-1-1979, which was served on the Manager of the Indo-Swedish Pipe Manufacturers on 6-8-1979.

According to the Commissioner, Agra Division, Agra, this proclamation included only the landed property, and not the plant and machinery standing on the land. It appears that another proclamation was also issued which included the entire factory including the plant and machinery standing ' thereon. The proclamation of sale was affixed on the gate of the factory on 13-11-1979, and publicity thereof was also made by pasting a copy of the same on the notice boards of the Nagar Mahapalika, Agra and the Collectorate, Agra. Publicity was also made by beat of drum in the industrial area of Nunihaee and Hathras Road, Agra on 22-12-1979. The sale took place on 28-12-1979 on the premises of the defaulter firm at 11-00 a. m. The highest bid was offered by the petitioner--Company through its agent, Sri Vinod Kumar, for a sum of Rs. 10,35,000/-. The auction proceedings had been conducted by the Sub-Divisional Officer (Sale Officer,) Etmadpur (Agra). Although there were nine participants in the auction, the real competitors were one Shri Swaroop Chandra Jain and Sri Subhash Duneria. The bid offered by Sri Swaroop Chandra Jain was for a sum of Rs. 10,15,000/- and that by Sri Subhash Duneria

for a sum of Rs. 10,13,000/-. On 31-12-1979, a report was submitted to the Additional Collector (Finance and Revenue), Agra for approval of the auction sale. The sale was accepted by the Additional Collector (Finance and Revenue) by his order dated 15-1-1980. The sale was thereafter formally confirmed in favour of the petitioner, and a sale certificate was issued to the auction purchaser on 12-2-1980. The petitioner got the sale certificate registered on the same day and possession over the property was directed to be given.

2. It appears that the U. P. Financial Corporation (respondent No. 3), which had applied to the Collector for the recovery of its dues against the Indo-Swedish Pipe ., filed an objection before the Collector, Agra against the sale proceedings. The objection was filed on 25-1-1981 after the sale had been approved by the Additional Collector but before it was confirmed by the Collector on 11-2-1980. The objection filed by the U. P. Financial Corporation was rejected by the Additional Collector on 2-2-1980. It appears that another objection was filed but no action was taken on it. The U. P. Financial Corporation thereafter filed an objection before the Commissioner, Agra Division, (respondent No. 1) on 4-3-1980, and an additional objection was also filed by it on 13-5-1980. The petitioner filed his written reply to the objection on 3-8-1982.

3. M/s. Industrial Credit and Investment Corporation of India Limited (impleaded as respondent No. 4 to the writ petition) filed an application to the Commissioner, Agra Division, (respondent No. 1) for being impleaded as a party in the proceedings. This application was moved before the Commissioner, on 1-6-1982.

4. The instant writ petition was filed for the issue of a writ of prohibition restraining the respondent No. 1 from proceeding with the objections filed before him, and also for the issue of a writ of mandamus directing him to drop the proceedings as, the same were not maintainable. The petition was filed on September 13, 1982. According to the petitioner, the objections had not been disposed of by that time. The respondent No. 1 had, however, by an order dated 16-8-1982, allowed the objections and set aside the sale held in favour of the petitioner. The petitioner thereafter got the writ petition amended and challenged the order dated 16-8-1982. The petitioner had not arrayed M/s. Industrial Credit and Investment

Corporation of India Limited as a party to the writ petition. M/s. Industrial Credit and Investment Corporation of India Limited applied for being impleaded as a respondent to the petition on the ground that its interests had seriously been affected by the sale held in favour of the petitioner as they had granted a loan to M/s. Indo-Swedish Pipe Manufacturers Limited, which was secured by a mortgage and a charge on the movable and immovable properties of M/s. Indo-Swedish Pipe Manufacturers Limited. The prayer for impleadment was granted, and the Industrial Credit and Investment Corporation of India Limited was made respondent No. 4 to the writ petition. It may be mentioned that the respondent No. 4 has filed a suit (being suit No. 1931 of 1980) in the High Court at Bombay on the basis of the mortgage executed in its favour. The suit is pending.

5. The objections raised before the Commissioner as also before this Court mainly were that the proceedings of auction sale were full of irregularities and were collusive, the collusion being among the officers of the Revenue Department, the defaulter Company namely the Indo-Swedish Pipe Manufacturers Limited, and the auction purchaser, namely the petitioner.

6. The Commissioner, Agra Division, (respondent No. 1) set aside the sale on the grounds that the entire factory of the Indo-Swedish Pipe Manufacturers Limited had been sold for an inadequate price, in that the property was worth more than Rs. 45 lacs while it was sold only for a sum of Rs. 10 lacs-odd; that only the immovable property of M/s. Indo-Swedish Manufacturers Limited had to be sold by the impugned auction, and not the movables, namely the plant and the machinery standing on the factory; that the sale proclamation in Form No. 73 mentioned only the the land of the factory of M/s. Indo-Swedish Pipe Manufacturers Limited as the property sought to be sold, and not the movables; that Form No. 73-D which mentioned the plant and machinery standing on the factory appeared to contain an interpolation that adequate publicity was not given to the proposed auction sale and that the sale appeared to be the result of a collusion between the officers of the Revenue Department and the petitioner.

7. The petitioner has challenged the order dated 16-8-1982, passed by the respondent No. 1, on the following grounds : --

1. That the proceedings before the respondent No. 1 on the objections filed by the respondent Nos. 2, 3 and 4 were without jurisdiction as the Commissioner had no power to entertain the objections filed beyond a period of 30 days from the date of sale.

2. That the provisions of Section 5 of the Limitation Act did not apply to the proceedings and the respondent No. 1 had no power to condone the delay in filing the objections.

3. That once the sale had been confirmed by the Collector, it becomes absolute after the expiry of 30 days from the date of sale, and the same could not be set aside by the respondent No. 1. It could, if at all, be set aside by a regular suit filed in a civil court, and not by the Commissioner under Rule 285-1 of the Zamindari Abolition and Land Reforms Rules.

4. That the respondent No. 1 acted under a misapprehension of facts.

5. That the sale proceedings did not suffer from any irregularity or mistake in publishing or conducting the same.

6. That the sale proceedings were conducted according to law and they were not vitiated by any irregularity or collusion as observed by the respondent No. 1.

8. The first question to be considered is whether the respondent No. 1 had the power to condone the delay in filing the objections dated 4-3-1980, 13-5-1980 and 1-6-1982. As observed earlier, the sale took place on 28-12-1979. The objection of the respondent No. 3 filed before the Collector was rejected on 2-2-1980. The sale was confirmed by the Collector on 11-2-1980. The sale certificate was issued and stamp duty paid on 12-2-1980. Possession was directed to be delivered to the petitioner on the certificate issued to it on 15-2-1980. An objection was filed by the respondent No. 3 before the Commissioner on 4-3-1980. Additional objections were filed on 13-5-1980. These objections were admittedly filed beyond a period of thirty days from the date of the sale which had taken place on 28-12-1979. The Commissioner condoned the delay in filing the objections under Section 5 of the Limitation Act. The question is whether Section 5, Limitation Act applied to the

proceedings.

9. Section 341 of the Zamindari abolition and land Reforms Act makes the provisions of Section 5 of the [Limitation Act, 1963](#) applicable to the proceedings under the Act. It states :

'341. Application of certain Acts to the proceeding of the Act. Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court-fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908) and the [Limitation Act, 1963](#) including Section 5 thereof shall apply to the proceedings under this Act.'

Section 5 of the Limitation Act reads :

'5. Extension of prescribed period in certain cases -- Any appeal or any application, other than an application under any of the provisions of Order XXXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. -- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.'

Section 331 of the Zamindari Abolition and Land Reforms Act (hereinafter referred to as 'the Act') lays down that except as provided by or under the Act, no Court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the Civil P. C. 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof, or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application. Rule 338 of the U. P. Zamindari Abolition & Land Reforms Rules (hereinafter referred to as 'the Rules') states that suits, applications and other proceedings specified in appendix III to the rules shall be instituted within the time prescribed in the Appendix. Clauses (a) and (d) of Section 344 (1) of the Act provide as follows :

'344. Rules in general -- Every power to make rules given by this Act shall be deemed to include the powers to provide for-

(a) imposing limits of time within which things to be done for the purposes of rules must be done, with or without powers to any authority therein specified to extend limits imposed;

(b) & (c).....,.....

(d) the time within which suits, applications and appeals may be presented under this Act, in cases for which no specific provision in that behalf has been made therein;'

The controversy in question relates to proceedings under Rules 285-H and 285-1. They read as follow :

'285-H. Any person whose holding or other immovable property has been sold under the Act may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office -

(a) for payment to the purchaser, a sum equal to 5 percent of the purchase money; and

(b) for payment on account of the arrear, the amount specified in the proclamation in Z. A. Form 74 as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account; and

(c) the costs of the sale.

On the making of such deposit, the Collector shall pass an order setting aside the sale;

Provided that if a person applies under Rule 285-I to set aside such sale he shall not be entitled to make an application under this rule.

285-I. (i), At any time within thirty days from the date of the 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.

(ii)

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

For the application of Section 5 of the Limitation Act the following conditions must be satisfied :

1. That the proceedings are of a Judicial nature.
2. That such proceedings are pending before a Court.
3. That a period had been prescribed for the institution of such proceedings.

The proceedings under Rules 285-H and 285-I are not mentioned in the Appendix III to the Rule framed under the Act. Section 5 of the Limitation Act does not apply to proceedings under Order 21 of the Civil P. C. A Commissioner has two capacities under the Land Revenue Act. Under Section 4(8) of that Act, he acts as a court while under Section 4(9), he acts as a revenue officer. It seems to us that he acts as a court in respect of proceedings mentioned in Appendix HI and Schedule II to the Act, while he acts as a revenue officer in respect of other proceedings. The distinction between a court and a tribunal or an authority exercising judicial or quasi-judicial powers has been discussed by one of us in the case of Smt. Kalawati Reja v. 2nd Addl. Civil Judge/Prescribed Authority under U. P. Act No. XIII of 1972, Kanpur, 1983 All LJ 563 wherein it was observed (at p. 566) :

'The State exercises its judicial functions through court. It is distinct from a tribunal or an authority which is invested only with a part of the judicial powers and functions of the State for a particular purpose. A body is constituted a court by the

attributes it possesses by its constitution and not by the prescriptions made as to its performances for a particular purpose. It seems to me that a body invested with judicial powers of a state gets the constitution of a court by its being vested with the judicial power of a sovereign character. The court exercises the normal judicial sovereign powers of the State which is unlimited and if limits are to be fixed, the court itself decides the same while a tribunal or a body which is not a court exercises judicial powers in a limited area and for a particular purpose, and does not decide its own limits. While a court represents the entire sovereign judicial power of a State in its own field, a tribunal exercises only some of them for a particular purpose.'

Reference in this connection may also be made to :

1. Bharat Bank Ltd. Delhi v. Employees of the Bharat Bank Ltd. Delhi : (1950)NULLLLJ921SC ;
2. Shell Co. of Australia v. Federal Commr. of Taxation (1931) AC 275;
3. Huddart Parker & Co. v. Moorehead (1909) 8 C.L. R. 330;
4. Associated Cement Companies Ltd. v. P. N. Sharma : (1965)ILLJ433SC ;
5. Virindar Kumar Satyawadi v. State of Punjab : 1956 CriLJ326
6. Brajnandan Sinha v. Jyoti Narain : 1956 CriLJ156 ;
7. Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunhunwala : [1962]2SCR339 ;
8. Jaganant Prasad v. State of Uttar Pradesh : [1963]2SCR850 ;
9. Commr. of Income-tax Bombay city v. Bai Shirinbai K. Kooka : [1962]46ITR86(SC) ;
10. Engineering Mazdoor Sabha v. Hind Cycles Ltd. : (1962)IILLJ760SC ;
11. Bijai Narain Singh v. State of U. P. : AIR1970 All241 ;

12. All Party Hill Leaders' Conference, Shillong v. Captain W. A. Sangma : [1978]1SCR393 ;
13. Sita v. State of U. P. : AIR1969 All342 ;
14. Ram Bharosey Lal v. Dy Dir. of Consolidation, U. P., Fatehpur 1964 Rev. Dec. 411;
15. Royal Aquarium and Summer and Winter Garden Society v. Parkinson(1892) 1. Q. B 431;
16. Thakur Jugal Kishore Sinha v. Sitamarhi Central Co-operative Bank Ltd. : 1967 CriLJ1380a ;
17. Hira Lal v. Ranjit Singh : AIR1976 All480 ;
18. Gur Narain Jagat Narain & Co. v. Motor and General Sales Pvt. Ltd. 1977(U. P.) R. C. C. 58;
19. Smt. Shakuntala Devi v. 4th Addl. District Judge, Meerut (1981) 7 All LR 396 : 1981 All LJ 336;
20. Nathulal v. Collector, Sawai Jaipur ;
21. Ebrahim Aboobakar v. Tek Chand Dolwani : [1953]4SCR691 ;
22. Sahkari Ganna Vikar Samiti Ltd. v. Mahabir Sugar Mills (P) Ltd. : AIR 1982 SC119 ; and
23. Smt. Sushila Devi v. Ram Nandan Prasad : [1976]2SCR845 .

In shell Co. of Australia v. Federal Commissioner of Taxation (1931) AC 275 it was pointed out that 'a tribunal is not necessarily a court in this strict sense because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decisions which affect the rights of subjects, nor because there is an appeal to a Court, nor because it is a body to which a matter is referred by another body.' The judicial power of the State is the power which every sovereign

authority must of necessity have to decide controversies between the subjects, or between itself and its subjects. See also *Huddart Parker & Co. v. Moorehead* (1909) 8 CLR 330, at p. 357. In *Sudama Prasad v. State of Uttar Pradesh* 1968 Rev. Dec. 88 it was held that the proceedings for the realisation of land revenue being essentially of a non-judicial character, the Collector or Commissioner exercising their power in regard to it do not act as a court. In *Nityanand M. Joshi v. The Life Insurance Corporation of India* : (1969) IILLJ711SC it was held that only a court can exercise powers under Section 5 of the Limitation Act. In *Surendra Kumar Goel v. The S. T. Transport Appellate Tribunal* (Writ Petn. No. 326 of 1976) decided on 20-4-79 (1979) 5 All LR 599 a Full Bench of this Court, of which one of us was Member, held that Section 5 of the Limitation Act is not applicable to a proceeding before a tribunal nor are the principles contained therein applicable to the State Transport Appellate Tribunal under the Motor Vehicles Act. Section 5 of the Limitation Act is applicable to the period of limitation prescribed, and not to conditions imposed for the doing of an Act. See *Vellinayagi v. T. Subramaniam* : AIR1969 Mad479 and *Savaram Kacharoo Mhatre v. Yeshodabai Savlaram Mhatre* : AIR1962 Bom190 . In Schedule II of the Act and appendix III to the Rules which provide for periods of limitation for a suit, appeal or application under the Act, the proceeding under Rule 285-1 does not find place. Rule 285-K provides :

'If no application under Rule 285-1 is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred.

Provided that nothing contained in this rule shall bar the institution of a suit in the civil court for the purpose of setting aside a sale on the ground of fraud.'

A sale is confirmed under Rule 285-J which provides that on expiration of thirty days from the date of sale if no such application as is mentioned in Rule 285-H or Rule 285-1 has been made or if made is rejected by the Collector or the Commissioner, the Commissioner shall pass an order confirming the sale after satisfying himself that the purchase by the bidder would not be in contravention of the provisions of Section 154, of the U. P. Zamindari Abolition and Land Reforms Act, and every order passed under this Rule shall be final. The nature of the

proceedings under the provisions aforementioned suggests that the period of thirty days is a fixed time schedule for the filing of an application for the setting aside of the sale; and the provisions of Section 5 of the Limitation Act do not seem to apply to the proceeding under Rule 285-1 as the Commissioner does not act as a court under that provision.

10. Learned counsel for the respondents submitted that the functions of a Collector or a Commissioner adjudicating upon the validity or invalidity of a sale are not administrative functions but quasi-judicial functions. We have already observed that an authority exercising judicial or quasi-judicial function does not necessarily become a court in respect of a proceeding unless it is specifically constituted as such for that purpose, In *Sudama Prasad v. State of Uttar Pradesh* 1968 Rev Dec 88 it was held that proceedings for realisation of land revenue are essentially of a non-judicial character, and although at some stage the hearing before the Commissioner may assume the character of a quasi-judicial proceeding but that circumstance does not alter the essence of the proceeding as a whole. It was further held that Section 219 of the Land Revenue Act was to be deemed to be part of the Zamindari Abolition and Land Reforms Act and there was no conflict between Rule 285-K of the U. P. Zamindari Abolition and Land Reforms Rules and Section 219 of the Land Revenue Act, and full effect had to be given to the provisions of Section 219 of the Land Revenue Act.

11. Learned counsel for the respondents contended that Rules 285-A to 285-N were not a part of the Act at the time it was passed, and since they were subsequently introduced by an amendment, the omission of these Rules in Schedule II to the Act or Appendix III to the Rules does not help the petitioner. The proceedings relate to the realisation of dues as arrears of land revenue. Chapter VIII of the Land Revenue Act deals with collection of revenue. The provisions corresponding to Rule 285-A to Rule 285-N are contained in Sections 146 to 177 of the Land Revenue Act. Thus the omission of Rules 285-A to 285-N in the Act when passed does not affect the decision rendered in 1968 Rev Dec 88. Reliance was placed by the learned counsel for the respondents on *Kunwar Bahadur Verma v. U. P. Board of Revenue*, Allahabad 1974 U. P. T. C. 374 to contend that an application filed under Section 173 of the Land Revenue Act to set aside a sale

could not be put at par with an application under any of the provisions of the Order 21 of the Civil P. C. if the same was filed on the ground of fraud. Such an application if filed beyond a period of thirty days could not be held to be barred by time since the benefit of the provisions of Section 17 of the Limitation Act would be available to it. It was observed in this case that the sale of property of a defaulter under the Bhoomi Aur Bhawan Kar Adhiniyam by the Collector under the provisions of the U. P. Land Revenue Act could not be treated to be proceedings for execution of a decree, and if the proceedings for sale suffered from a fraud practised in respect of them, the application to set it aside could be entertained beyond the period prescribed for the same. The instant was not a case of fraud. Further, the applicability of the provisions of Section 5 of the Limitation Act to the proceedings in question mainly depended upon whether the Commissioner acted as a court in respect of these proceedings.

12. Learned counsel for the respondents relied upon *Sahkari Ganna Vikas Samiti Ltd. v. Mahabir Sugar Mills (p) Ltd.* : AIR 1982 SC119 to submit that the Commissioner was a court in respect of the proceedings in question. That case is distinguishable. It arose out of proceedings under the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. The Cane Commissioner was the highest authority under that Act but the Divisional Commissioner, who was a revenue court, was conferred an appellate jurisdiction under the Act. The High Court held that so far as the Commissioner of the Division was concerned, he was undoubtedly a revenue court but since he exercised appellate jurisdiction as an authority under the Act, he was a *persona designata*. This decision was reversed by the Supreme Court which held that if the intention of the Legislature was that appeal should lie to a special tribunal then it would have provided that the appeal should lie to the Cane Commissioner, and not to the Divisional Commissioner. This fact, it was observed, clearly showed that the Divisional Commissioner acted as an appellate court, and not as a person a designate under the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953.

13. We have already held that the Commissioner in matters relating to realisation of arrears of land revenue acts as a revenue officer, and not as a revenue court.

14. Learned counsel submitted that if the proceedings were non-judicial in character, the writ would not lie under Article 226 of the Constitution. The Commissioner in the instant case acted as an administrative authority in a proceeding which was quasi-judicial in nature. Under Article 226 of the Constitution, the High Court can issue a writ or direction in a proceeding as the one in question. The objection is misconceived.

15. Learned counsel for the petitioner then submitted that the sale having been confirmed on 11-2-1980, it could not be set aside on 16-8-1982. Reliance was placed on *Janak Raj v. Gurdial Singh* : [1967]2SCR77 . It was observed in that case that 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. The instant case, however, does not arise out of proceedings in execution of a decree, and for that reason, the proceedings under Rules 285-H, 285-1, 285-J and 285-K are distinguishable from proceedings under Order 21 of the Civil P. C. The contention, however, was that the sale could if at all, be set aside by a regular suit in a civil court, and not by the Commissioner under Rule 285-1 after it had been confirmed. The Industrial Credit and Investment Corporation of India Limited (respondent No. 4) has already filed a suit at Bombay. Those proceedings would not be affected by the instant proceedings. The interest of the respondent No. 4 in the suit filed at Bombay shall thus not be affected by the technical objections raised in the instant writ petition.

16. Learned counsel for the parties then addressed us on the merits of the impugned order. Learned counsel for the petitioner submitted that inadequacy of price was no ground for setting aside the sale under Rule 285-1 of the Rules framed under the U. P. Zamindari Abolition & Land Reforms Act. The only two grounds on which a sale could be set aside were (i) material irregularity in publishing or conducting the sale; and (ii) mistake in publishing or conducting the sale. The sale could further not be set aside even on these two grounds unless the applicant proved to the satisfaction of the Commissioner that he had sustained

substantial injury by reason of such mistake. It was submitted that the Commissioner had recorded no finding on the question of substantial injury, and the findings recorded on publication and conduct of sale and the contents of the said proclamation were perverse. The sale, it was submitted, had been conducted in accordance with law. It was further submitted that under the sale proclamation, the entire factory of M/s Indo-Swedish Pipe Manufacturers Limited had been put to sale including the plant and machinery standing thereon, and not only the Land and the building of the factory. It was submitted in this connection that the plant and machinery of the factory embedded to earth constituted immovable property, and were rightly sold.

17. Learned counsel for the respondents, on the other hand, sought to support the findings recorded by respondent No. 1 on merits. He submitted that the questions relating to publication and conduct of sale related to questions of fact, and the findings rendered thereon were not liable to be interfered with in exercise of this Court's powers under Article 226 of the Constitution. It was submitted that on 28-12-1979 when the auction was held, there was no. attachment or warrant of sale in Form No. Z. A.-72 of the movable properties including the plant and machinery mentioned in Schedule (C) to the recovery certificate and that only the immovable property was attached by the issuance of Forms Z. A.-73, Z. A.-73-D and Z. A.-74 which comprised of the land and the factory standing thereon but not the plant and the machinery.

Learned counsel further submitted that the Collector (respondent No. 2) while conducting the auction sale, did not take into account the right, title and interest of the Industrial Credit and Investment Corporation of India (respondent No. 4) and there was no warrant for the sale of the assets charged to the said Corporation, for which no recovery certificate had been issued. Thus the property charged to the said Corporation stood excluded from sale held in pursuance of the recovery certificate issued by the U. P. Financial Corporation, and they could not be treated as sold in favour of the petitioner. The recovery certificate was to the tune of Rs. 19,96,652.79 only which did not include the claim of the Industrial Credit and Investment Corporation of India. Thus the sale of properties subject to the charge of the Industrial Credit and Investment Corporation of India constituted a material

irregularity in the proceedings.

18. It was then submitted that the immovable property of the factory was valued at rupees twelve lacs while the movables were not valued at all. Learned counsel further submitted that there was no proper publicity of the sale proceedings, and the affixation of the proclamations of sale on the notice-boards of the Municipal Board and the Collectorate and on the factory gate, and the alleged beating of the drum in the industrial area was not sufficient publicity for an auction sale of the kind in question when the revenue authorities knew full well that without an adequate publicity in all Indian newspapers, the bidders would not be forthcoming. Adequate publicity by publication in newspapers to attract sufficient number of proper bidders was the pre-requisite of a valid auction-sale which was wanting in this case. It may be mentioned that the U. P. Financial Corporation (respondent No. 3) had undertaken to make an extensive publicity in all Indian newspapers. The petitioner's contention is that due publicity was made in accordance with law, and the proceedings of sale did not suffer from any lack of adequate publicity.

Learned Counsel for the respondent No. 4 further submitted that omission to mention the encumbrance of the Industrial Credit and Investment Corporation of India on the property in question again rendered the sale invalid. It was further submitted that the revenue authorities should have stated in the sale-proclamation that the property was being sold subject to the mortgage of the Industrial Credit and Investment Corporation of India. The revenue authorities admitted that the claim of the Industrial Credit and Investment Corporation of India was not included in the auction-sale. They advised the respondent No. 4 to file a regular suit in a competent court for the recovery of their dues, and respondent No. 4 has filed Suit No. 1931 of 1980 at Bombay.

19. We do not consider it necessary to consider or adjudicate upon the rival submissions made on behalf of the parties relating to the validity of the sale-proclamation and the auction-sale as, in our opinion, the Commissioner had no jurisdiction to entertain an application for setting aside the auction-sale, filed beyond time. The questions relating to the rights of the parties over the property in dispute however, can be decided properly by a regular suit.

20. We accordingly hold that the respondent No. 1 exceeded his jurisdiction in setting aside the sale. He wrongly gave the benefit of Section 5 of the Limitation Act to the respondents Nos. 3 and 4 and erred in condoning the delay and entertaining the applications filed for setting aside the sale. This shall, however, not affect the interests of respondent Nos. 3 and 4 to press or pursue their rights and claims in a regular suit filed in a proper civil court. The Industrial Credit and Investment Corporation of India Limited (respondent No. 4) has already filed a suit at Bombay which is pending. We have already observed that the instant proceedings shall have no effect on the proceedings of that suit.

21. In the result, the petition succeeds, and is allowed, The order dated 16-8-1982 passed by the Commissioner (respondent No. 1) is quashed. But in the circumstances of the case, the parties shall bear their own costs.

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