



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO. 30487 OF 2024 (KLR-RES)

BETWEEN:

1. SRI. DEVARAJULU J.
S/O GOVINDASWAMY NAIDU,
AGED ABOUT 59 YEARS,
RESIDING AT NO.1468/A,
LAKVIN NILAYA,
VISHNUVARDHANA ROAD,
SRINIVSAPURA,
BEHIND JSSIT COLLEGE,
BENGALURU - 560060.

...PETITIONER

(BY SRI. D.R. RAVISHANKAR, SENIOR COUNSEL FOR
SRI. SUDHAKAR G.V., ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT,
K G ROAD,
BENGALURU - 560009.
2. THE SPECIAL DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT,
K G ROAD,
BENGALURU - 560009.
3. THE ASSISTANT COMMISSIONER

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CHAYA S A
Location: HIGH
COURT OF
KARNATAKA



BANGALORE SOUTH SUB DIVISION,
2ND FLOOR, KANDHAYA BHAVAN,
K G ROAD,
BANGALORE 560009.

4. THE TAHSILDAR
BANGALORE SOUTH TALUK DIVISION,
KANDHAYA BHAVAN,
K G ROAD,
BENGALURU - 560009.
5. THE SPECIAL TAHSILDAR
BANGALORE SOUTH TALUK,
KANDHAYA BHAVANA,
K G ROAD,
BENGALURU - 560009.
6. SRI. D.V. BHASKAR REDDY
S/O LATE VENKATSHIVA REDDY,
AGED ABOUT 64 YEARS,
R/AT NO.6-5-699-6
SRINAGARA COLONY,
NEAR WATER TANK,
ANANTHPURA,
ANDHRA PRADESH - 515002.
7. SRI. MANJUNATH SOKKALINGAM
S/O SRI. SOKKALINGAM
AGED ABOUT 39 YEARS
R/AT NO.212, 9TH MAIN
HRBR LAYOUT, 1ST BLOCK
BENGALURU - 560 043.

...RESPONDENTS

(BY SMT. B.P. RADHA, AGA FOR R1 TO R5;
SRI. H. PAVAN CHANDRA SHETTY, ADVOCATE FOR R6 AND R7)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 27.08.2024 PASSED IN R.P.NO. 52/2024 BY THE RESPONDENT NO.1 (ANNX-A) IN RESPECT OF LAND BEARING SY.NO.48/3 MEASURING 9.12 GUNTAS SITUATED AT TURAHALLI VILLAGE, UTTARAHALLI HOBLI, BANGALORE SOUTH TALUK, BANGALORE DISTRICT AND ILLEGAL.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, **E.S. INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV ORDER

In this writ petition, the petitioner is assailing the order dated 27.08.2024 in RP No.52 of 2024 (Annexure-A), passed by the respondent No.1-Deputy Commissioner, in respect of the subject land.

2. Relevant facts for the adjudication of this writ petition are that the respondent No.5-Special Thasildar has issued the public auction notice dated



16.11.2021 to sell the land bearing Sy.No. 48/3, measuring 9.12 Guntas situate at Turahalli village, Uttrahalli Hobli, Bangalore South Taluk, which was owned by Sri. V. Bhaskar Reddy. It is stated in the public notice that, the said public notice was issued in pursuance of the recovery certificate issued by the 1st Additional Bangalore Urban and Rural District Consumer Dispute Redressal Forum as to recover the amount with interest payable by Sri. V. Bhaskar Reddy, as a land revenue under the provisions of Karnataka Land Revenue Act, 1964 (for short, the 'Act') (Annexure-B and B1). It is further stated that, the Public auction was held by the respondent No.5 and the petitioner was declared as highest bidder for sum of Rs.4,41,80,000/-, as per letter dated 06.12.2021 (Annexure-C), and thereafter, the respondent No.2 has confirmed the sale, in favour of the petitioner vide Official Memorandum Dated



24.03.2022 (Annexure-D). The respondent No.5 had executed a Sale Certificate dated 11.05.2022 in favour of the petitioner and same was registered as per Annexure-E. It is also stated that, the revenue entries transferred into the name of the petitioner. In the meanwhile, Sri. D.V. Bhaskar Reddy-respondent No.6, made a claim for transfer of mutation into his name, based on the alleged Sale Deed dated 02.12.2023 and the said application was rejected by the respondent no.5, as per Endorsement dated 31.01.2024 (Annexure-K and L respectively). It is also stated that, the respondent NO.6-Manjunatha Sokkalingam, claims to be the General power attorney holder of respondent No.6, created a registered Sale Deed dated 02.02.2024 (Annexure-M), and made a representation for change of khata as per Annexure-N. It is also stated that, the petitioner came to know about the filing of RP No.52 of 2024 before the respondent No.1,



on 07.02.2022 and also entry in MR No.T2 / 2022-23 in respect of the land in question and immediately filed the present writ petition, challenging the order dated 27.08.2024 (Annexure-A) passed by the respondent No.1.

3. I have heard Sri. D.R. Ravishankar, learned Senior Counsel appearing on behalf of learned counsel Sri. Sudhakar G.V., for the petitioner; Smt. B.P. Radha, learned Additional Government Advocate appearing for the respondent-State and Sri. Pavana Chandra Shetty, learned counsel for the respondent Nos. 6 and 7.

4. Sri. D.R. Ravishankar, learned Senior Counsel appearing for the petitioner, contended that, the impugned order at Annexure- A, is an ex-parte order, and no notice was served to the petitioner herein, and further, the respondent No.6 and 7 have



managed to avoid the notice to the petitioner, from the respondent No.1 which is reflected in the records that the respondent No.1 has published the notice to the petitioner in daily news paper by fixing the date as 01.07.2024 for appearance of the petitioner, however, no proceedings were conducted on 01.07.2024 and the matter came to be adjourned to 23.07.2024. Thereafter, respondent No.6 got the matter pre-poned from 23.07.2024 to 10.07.2024 and, subsequently, the impugned order came to be passed on 27.08.2024. It is argued by the learned Senior Counsel that, these circumstances would indicate that the proceedings were conducted in a manner prejudicial to the interests of the petitioner and disclose an element of fraud on the part of respondent Nos.6 and 7. It is further argued by the learned Senior Counsel for the petitioner that respondent No.6 had already alienated the property in question in favour of



respondent No.7 under the registered Sale Deed dated 02.02.2024 (Annexure-M). In that view of the matter, respondent No.6 had no *locus-standi* to challenge the mutation effected in favour of the petitioner before respondent No.1. The said aspect of the matter, has been completely ignored by respondent No.1 while passing the impugned order. It is further argued by the learned Senior Counsel for the petitioner that, the respondent No.6 has suppressed the rejection of khata application and Endorsement issued by the Special Thasildar and further suppressed the execution of the alleged Sale Deed dated 02.02.2024 in favour of respondent No.7 and therefore, the entire proceedings was conducted with an element of fraud and therefore, sought for interference of this Court.

5. The learned Senior Counsel further submitted that, the petitioner had purchased the land in question in a public auction conducted by the



competent authority, the sale was confirmed in his favour, and a Sale Certificate was issued and registered in his name. Thereafter, the revenue records were duly mutated in favour of the petitioner. In that view of the matter, the findings and observations recorded by respondent No.1 in the impugned order are unsustainable and call for interference in exercise of the writ jurisdiction of this Court.

6. Nextly, learned Senior Counsel for the petitioner, by referring to Section 176 of the Act, and submitted that, the impugned order passed by the respondent No.1-Deputy Commissioner suffers from infirmity and in violation of the judgment of this Court in the case of ***Smt. Amanbi and others vs. Rasulsaheb Nabisaheb Nawaz*** reported in ***ILR 2005 KAR 2659*** and judgment of the Hon'ble Supreme Court in the case of ***Mohan Lal vs. Hari***



Prasad Yadav and others reported in ***(1994) 4 SCC 177*** and accordingly, learned senior counsel contended that the impugned order is liable to be set aside.

7. Per contra, Sri. Pavana Chandra Shetty, learned counsel for the respondent Nos. 6 and 7 submitted that, the respondent No.6, has informed the to the respondent No.4, on 20.08.2019 as to sale of the schedule property in favour of D.V. Bhaskar Reddy, as per the registered Sale Deed dated 04.07.2014. Referring to the said fact, learned counsel sought to justify the claim of respondent No.6 and controvert the submissions advanced on behalf of the petitioner. It is further contended by the learned counsel for the respondent Nos. 6 and 7 by reiterating the averments made in the statement of objections that the petitioner was negligent in not participating in the proceedings before the respondent No.1, and



further, the respondent No.1, acted as per the provisions of Section 128 and 129 of the Act, and therefore, sought for dismissal of the writ petition.

8. Smt. B. P Radha, learned Additional Government Advocate appearing for the respondent-State sought to justify the impugned order passed by respondent No.1.

9. In the light of the submission made by the learned counsel appearing for the parties, it is not in dispute that, the respondent No.5, has conducted public auction, as per Annexure- B and B1, in respect of the subject land belonging to Sri. V. Bhaskar Reddy. The public auction was conducted at the instance of the order passed by the 1st Additional Bangalore Urban and Rural District Consumer Dispute Redressal Forum to recover the amount along with interest payable by Sri. V. Bhaskar Reddy (owner of



the land in question) as per the provisions of the Act. The petitioner had participated in the auction and declared as highest bidder for sum of Rs.4,41,80,000/- and the bid was confirmed as per the Official Memorandum dated 24.03.2022 (Annexure-D). It is not in dispute that the petitioner has deposited entire bid amount to the Bengaluru Rural District Consumer Commission and pursuant to the same, the respondent No.5 executed the Sale Certificate dated 11.05.2022 (Annexure-E). Thereafter, the revenue authorities, in compliance of Section 128 and 129 of the Act, entered the name of the petitioner in respect of subject land vide MR No.T2/2022-23. However, perusal of the writ papers would indicate that the said V. Bhaskar Reddy has sold the subject land in favour of one D.V. Bhaskar Reddy, as per registered Sale Deed dated 04.07.2014 (Annexure-K). A further perusal of the said Sale Deed



would indicate that, though the document bears the date 04.07.2014, the same was kept pending and came to be finally registered only during the year 2023-24. It is also forthcoming from the recitals of the said Sale Deed that respondent No.6 is stated to have paid a sum of Rs.33,75,000/- as the sale consideration to the vendor, namely V. Bhaskar Reddy, entirely by way of cash and not through any other mode. It is also to be noted from the Endorsement dated 31.01.2024 (Annexure-L) issued by respondent No.5, would indicate that, the Sale Certificate has been issued to the petitioner and thereafter, khata has been made in favour of the petitioner. In the light of the aforementioned aspect it is relevant to consider the scope and ambit of Section 176 of the Act. This court, in the case of **Smt. Amanbi** supra, at paragraph 14 to 18 held as follows:



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"14. Section 176(1) would deal with that part of the subject where the property of a defaulter or any person who is entitled to own such property or holding an interest therein at any time should make an application within 90 days from the date of the sale to the Deputy Commissioner to have the sale set aside, (emphasis supplied). The grounds on which the sale can be set aside are that some material irregularity, mistake or fraud is committed which has resulted in loss of injury to the interested person or in the alternate the interested person depositing with the Deputy Commissioner the amount of the arrears for which the property brought to sale along with the cancellation of the sale and a sum equal to five per centum of the purchase money. On such application being made by the interested person, the Deputy Commissioner, if he is satisfied and after holding a summary enquiry that some material irregularity, mistake or fraud has crept in publishing or conducting the sale, set aside the sale and direct a fresh sale. Admittedly, as could be gathered from the narration of events, neither Janha Saheb, the vendor of the defendant, nor the defendant himself having come to know that the sale is likely to take place or has taken place on 30th November 1966, did not venture to make an application as contemplated under Section 176. The fact that no such application was made by the defendant for setting aside the sale within the time



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prescribed under law, he cannot be heard to say that the sale in favour of the plaintiffs predecessor was accentuated by misrepresentation.

15. *As observed in the preceding paragraph, Section 176 of the Act is in pari materia with Order 21 Rule 92 and 94 of CPC which would deal with the sale of the suit property in execution of a decree, where the same has been purchased by the third party. Order 21 Rule 92 contemplates period for setting aside the auction sale. Thus it is clear that a judgment debtor whose property is sold does not cease to be its owner capable of selling it effectively under certain conditions, so long as he can apply to have the sale set aside, that is to say, till the expiration of 30 days from the date of sale. The question would be what would be the position after the said time is expired. The question would be can he still dispose of the property so as to pass an effective title to the transferee against the auction purchaser, An identical question fell for consideration before the Madras High Court in the case of S. Ramaswamilyer v. Komalavalliammal [AIR 1941 Madras p. 277.] It is observed that "after the expiry of the period for an application to set aside an auction sale, the auction-purchaser can effectively sell the property purchased even in the absence of a*



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confirmation of the auction sale by the Court and therefore the judgment-debtor cannot be said to have a saleable interest in the property". Thus, it is clear that once the judgment-debtor does not make an application as contemplated under Law, namely, order 21 Rule 92 of CPC to set aside the sale and he loses all his right in the said property and the auction purchaser would get all saleable interest to deal with the property. Admittedly, in the case on hand, after the plaintiffs predecessor purchased the suit property in the revenue auction, the defendant did not make any application for setting aside the sale as contemplated. In view of the fact that no application for setting aside the sale is made under Section 176 of the Act, he loses all his rights in the suit property. Thus, the defendants, as stated earlier, cannot be heard to say that the sale in favour of the auction purchaser, namely, predecessor of the plaintiff is bad. Instead of making an application as contemplated under Section 176 of the Act, he has chosen to contest the sale in favour of the predecessor of the plaintiffs in a suit which was instituted by him for declaration of title and injunction. It is no doubt true, in the said suit a finding was recorded by the learned trial Judge that the said sale in favour of Ajamatbi was wholly illegal, void and ab initio. But, however, on appeal, the appellate Court was of the opinion that the Civil Court would lack inherent jurisdiction to deal with the matter



in respect of the sale under the land revenue Courts. But however recorded a finding that the sale in favour of the plaintiffs' predecessor was valid. The finding recorded by the learned trial Judge that the sale in favour of the plaintiffs' predecessor was valid, to my mind, is wholly without jurisdiction, inasmuch as, once having come to the conclusion that the Civil Courts do not have jurisdiction to deal with the auction sale under the land revenue court, the finding recorded by the learned Appellate Judge that the sale was valid or otherwise will have to be excused. In view of this, the contention of Mr. Tarakaram, learned senior counsel that the doctrine of res judicata under Section 11(4) of the C.P.C. is applicable cannot be accepted, inasmuch as, the said finding recorded by the appellate Court was wholly without jurisdiction.

16. *It is to be stated that the defect of jurisdiction cannot be cured by consent or by waiver. It is settled law that normally a decree passed by the Court of competent jurisdiction after its adjudication in a settlement suit or proceedings and the parties or persons claiming such right, title or interest from the parties, the validity of the said judgment and decree could be assailed only in an appeal or revision as the case may be. The validity thereof cannot be questioned in a subsequent proceeding. A decree passed by a Court which does not have jurisdiction*



over the subject matter or on any other ground which goes to the root of the jurisdiction or a Court which lacks inherent jurisdiction the said decree would be a nullity and non-est. Its validity or otherwise can be questioned or set aside whenever it is sought to be enforced and is acted upon as a foundation for a right even at the stage of execution or collateral proceedings. The defect of jurisdiction attracts the authority of the Court to pass a decree which cannot be cured by consent or waiver of a party. In these circumstances, it cannot be said that in the present case on hand Section 11(4) of CPC is attracted and the validity of the same thereof having been affirmed by the appellate Court in the earlier proceedings will be of no avail. Admittedly, a clear finding has been recorded in the said appeal that the Civil Court do not have jurisdiction to set aside a sale which has taken place under the Karnataka Land Revenue Act. When such is the finding recorded by the learned appellate Judge, the subsequent finding that the title has passed on to the plaintiffs cannot be accepted. As has been stated, any finding by the Court which lacks inherent jurisdiction is non-est in law. The Apex Court in identical case, Municipal Committee Sirhind v. Parshotam Dass [1996 (8) SCC p. 324.] , which reads thus:

"S. 11 — Res judicata — Applicability — Findings arrived at by a Court without jurisdiction cannot



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operate as res judicata — Findings of Court under S. 30 of Land Acquisition Act that the acquired land belonged to the claimants khewtdars and not to Municipal Committee would not operate as res judicata for determining whether the khewatdars had title to the land”.

17. *The next question which would fall for consideration is whether the title has passed on to the auction purchaser without there being any confirmation of sale. In this regard Sri Visveswar, learned counsel appearing for the defendants respondents has relied on two judgments of this Court. The first of the judgment is Nagesh Alias Nagappa Ganapathihegde v. Syndicate Bank [ILR 1981 Kar 477.] and another Division Bench decision of this Court Goudappa Appaya Patil v. Shivaribhimappapattar, which in substances has affirmed the view of the learned single Judge in the above referred decision. What fell for consideration in the said two decisions is the interpretation of Sections 177 and 179 of the Act Section 177 of the Act would deal with confirmation of sale and Section 179 would deal with issuance of a sale certificate. This Court held that the title will pass on to the auction purchaser only on confirmation of sale. Grant of sale*



certificate under Section 179 would only be a ministerial act. The Division Bench has observed thus:

"Auction sale - Property sold in auction undee Land Revenue Act of State - Still title in property passes on confirmation of auction sale - Absence of sale certificate immaterial"

In view of the authoritative pronouncement of the Division Bench in this regard, it has to be held that the title has not passed on to the predecessor of the plaintiff when she purchased the suit property in auction though the sale is valid. There is no material placed either before the trial Court or before this Court to say that the confirmation of sale has taken place.

18. *Section 177 which would deal with confirmation of sale read as follows:*

"177. Confirmation of sale-If, on the expiration of ninety days from the date of sale of any immovable property, no application has been made for setting aside the sale or if any such application has been made and rejected, the Deputy Commissioner shall make an order confirmation the sale:

Provided that for reasons to be recorded, the Deputy Commissioner may set aside the sale subjected to such conditions as he may deem proper, notwithstanding that no application therefor has been



made, or on grounds other than those alleged in any application which has been made and rejected”.

Admittedly, in the case on hand, after the property was sold in auction no application is made by the defendants herein under Section 176 of the Act to set aside the sale. The natural corollary would be one of confirmation of sale under Section 177 of the Act. Since no application was made within the stipulated time of 90 days for setting aside sale, it was obligatory on the part of the Deputy Commissioner to have made an order confirmation the sale. That has not been done in the case on hand. But, however, it is to be noticed that on the basis of the auction sale and non-filing of the application by the defendant respondent to set aside the said sale presuming that the title has passed on after the auction, the present suit is filed by the plaintiff for recovery of possession. Section 180 of the Act would deal with the removal of obstruction. Section 180 reads thus:

"Removal of obstruction (1) Where a purchaser of immovable property, to whom a certificate is granted under Section 179, is resisted or obstructed by any person, in obtaining possession of the property, such purchaser may apply to the Civil Court having jurisdiction over the property, for removal of such resistance or obstruction and such Court shall investigate the matter as if the property were



purchased by the applicant at a sale held in execution of a decree of such Court under the Code of Civil Procedure 1908.

(2) The provision of the Code of Civil Procedure 1908, shall apply mutatis mutandis to the investigation and the order made thereafter by the Court, under sub-section (1)".

where a purchaser of immovable property wherein a sale certificate has been granted under Section 179 of the Act and if there is any obstruction by any person in obtaining possession of the property, two options are open to the auction purchaser - one is that he may apply to the Civil Court having jurisdiction over the said property for removal of such resistance or obstruction-and the Court shall investigate the matter as if the property was purchased by the applicant at a sale held in execution of a decree of such Court under the Code of Civil Procedure, 1908. Consequently, it will have to be held that in the absence of any confirmation of sale the present proceedings for possession will have to be termed as premature. But, however, one will have to give a thought to the proceedings which were initiated way back in the year 1992, whether the plaintiff-appellants can be non-suited since they have not obtained the confirmation of sale nor the sale certificate, as it has been held, is only a ministerial act. The only option



now which is open to the plaintiffs-appellants is to seek confirmation of sale before the revenue authorities on the basis of the auction. Once the confirmation of sale is granted by the concerned revenue authorities and the sale certificate is issued, it is once again not necessary for the plaintiffs-appellants to initiate proceedings for the purpose of recovery of possession of the suit schedule property, which exercise has already been taken in the present proceeding. It is no doubt true that it would be trite that even before confirmation of sale and in the absence of sale certificate, whether the proceedings initiated for recovery of possessions as contemplated under Section 180 of the Act would be competent. But, however, one will have to take into consideration the fact that the defendant herein had initiated proceedings against the present plaintiffs for injunction in the year 1968 and they have been kept out of possession. The parties cannot be redegated to the position of 1992 once again to start the entire proceedings fresh from the trial Court for recovery of the said possession. Justice, equity and good conscience of the Court would require that the party should not be relegated to a position which they had not at all expected when they had initiated the present proceedings. Sir Barnes Peacock in Sarrop v. Trayla Khomath [(1861) 9 WR page 230.] ,



"Now having to administer justice, equity and good conscience, when are we to look for the principles which are to guide us? we must go to other countries, where equity, justice are administered..... and if we find that the rules which are laid down are in accordance with the true principle of equity, we cannot do wrong in following them".

In view of this, I am of the considered view that a quietus will have to be given to the proceedings lest the parties to the present proceedings or their progeny spend couple of more decades in the corridors of the Courts."

10. It is also to be noted that, once the Sale Certificate has been made in favour of the petitioner by the respondent-authorities, through a registered instrument it has to be concluded that transfer of the title in favour of the petitioner is completed. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of **Sadashiv Prasad Singh v. Harendra Singh and Others**



reported in **(2015) 5 SCC 574** wherein, it is relevant to extract paragraph 18 and 19 and paragraph 23.

"18. On the same subject, and to the same end, the learned counsel placed reliance on another judgment rendered by this Court in Janatha Textiles v. Tax Recovery Officer [Janatha Textiles v. Tax Recovery Officer, (2008) 12 SCC 582] , wherein the conclusions drawn in Ashwin S. Mehta case [Ashwin S. Mehta v. Custodian, (2006) 2 SCC 385] came to be reiterated. In the above judgment, this Court relied upon the decisions of the Privy Council and of this Court in Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan [(1887-88) 15 IA 12] , Janak Raj v. Gurdial Singh [AIR 1967 SC 608] , Gurjoginder Singh v. Jaswant Kaur [(1994) 2 SCC 368] , Padanathil Ruqmini Amma v. P.K. Abdulla [(1996) 7 SCC 668] , as also, on Ashwin S. Mehta [Ashwin S. Mehta v. Custodian, (2006) 2 SCC 385] in order to conclude, that : (Janatha Textiles case [Janatha Textiles v. Tax Recovery Officer, (2008) 12 SCC 582] , SCC p. 586, para 18)

"18. It is an established principle of law that in a third party auction-purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise."



It is, therefore, that this Court in its ultimate analysis observed as under : (Janatha Textiles case [Janatha Textiles v. Tax Recovery Officer, (2008) 12 SCC 582] , SCC pp. 588-89, para 20)

"20. Law makes a clear distinction between a stranger who is a bona fide purchaser of the property at an auction-sale and a decree-holder purchaser at a court auction. The strangers to the decree are afforded protection by the court because they are not connected with the decree. Unless the protection is extended to them the court sales would not fetch market value or fair price of the property."

(emphasis supplied)

On the issue as has been dealt with in the foregoing paragraph, this Court has carved out one exception. The aforesaid exception came to be recorded in Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. [(2008) 9 SCC 299] , wherein it was held as under : (SCC p. 305, paras 30-31)

"30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the



sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

31. In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

(emphasis supplied)

19. *It is, therefore, apparent that the rights of an auction-purchaser in the property purchased by him cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion.*

* * *

23. *At the time of hearing, we were thinking of remanding the matter to the Recovery Officer to investigate into the objection of Harender Singh under Rule 11 of the Second Schedule to the Income Tax Act, 1961. But considering the delay such a remand may cause, we have ourselves examined the objections of Harender Singh and rejected the objections for a variety of reasons:*

23.1. Firstly, the contention raised at the hands of the respondents before the High Court, that the facts



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narrated by Harender Singh [the appellant in Special Leave Petition (C) No. 26550 of 2010] were a total sham, as he was actually the brother of one of the judgment-debtors, namely, Jagmohan Singh. And that Harender Singh had created an unbelievable story with the connivance and help of his brother, so as to save the property in question. The claim of Harender Singh in his objection petition was based on an unregistered agreement to sell dated 10-1-1991. Not only that such an agreement to sell would not vest any legal right in his favour, it is apparent that it may not have been difficult for him to have had the aforesaid agreement to sell notarised in connivance with his brother, for the purpose sought to be achieved.

23.2. Secondly, it is apparent from the factual position depicted in the foregoing paragraphs that Harender Singh, despite his having filed objections before the Recovery Officer, had abandoned the contest raised by him by not appearing (and by not being represented) before the Recovery Officer after 26-10-2005, whereas, the Recovery Officer had passed the order of sale of the property by way of public auction more than two years thereafter, only on 5-5-2008. Having abandoned his claim before the Recovery Officer, it was not open to him to have reagitated the same by filing a writ petition before the High Court.



23.3. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5-5-2008:

*"30. Appeal against the order of Recovery Officer.—
(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.*

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

The High Court ought not to have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh.

23.4. Fourthly, Harender Singh could not be allowed to raise a challenge to the public auction held on 28-8-2008 because he had not raised any objection to the attachment of the property in question or the



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proclamations and notices issued in newspapers in connection with the auction thereof.

23.5. All these facts cumulatively lead to the conclusion that after 26-10-2005, Harender Singh had lost all interest in the property in question and had therefore, remained a silent spectator to various orders which came to be passed from time to time. He had, therefore, no equitable right in his favour to assail the auction-purchase made by Sadashiv Prasad Sinha on 28-8-2008.

23.6. Finally, the public auction under reference was held on 28-8-2008. Thereafter the same was confirmed on 22-9-2008. Possession of the property was handed over to the auction-purchaser Sadashiv Prasad Sinha on 11-3-2009. The auction-purchaser initiated mutation proceedings in respect of the property in question. Harender Singh did not raise any objections in the said mutation proceedings. The said mutation proceedings were also finalised in favour of Sadashiv Prasad Sinha. Harender Singh approached the High Court through CWJC No. 16485 of 2009 only on 27-11-2009. We are of the view that the challenged raised by Harender Singh ought to have been rejected on the grounds of delay and laches, especially because third-party rights had emerged in the meantime. More so, because the auction-purchaser was a bona fide purchaser for consideration, having purchased the



property in furtherance of a duly publicised public auction, interference by the High Court even on the ground of equity was clearly uncalled for."

11. The Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi v. Pramod Kumar Gupta*** reported in **(1991) 1 SCC 633** has held that the sale attains finality upon issuance of the Sale Certificate by the competent authority in accordance with the provisions of the relevant rules. Recently, the Hon'ble Supreme Court in the case of ***Indian Overseas Bank v. RCM Infrastructure Limited and Another*** reported in **(2022) 8 SCC 516** at paragraph 30 to 33 held as follows:

"30. In B. Arvind Kumar [B. Arvind Kumar v. Union of India, (2007) 5 SCC 745] , the property in question was a suit property and was sold in a public auction. The sale was confirmed by the District Judge, Civil and Military Station, Bangalore. What has been held by this Court is that when a property is sold by public auction in pursuance of the order of the court and the bid is



accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. It has been held that a sale certificate is issued to the purchaser only when the sale becomes absolute. It was held that when the auction-purchaser derives title on confirmation of sale in his favour and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Additionally, in the said case, the Court found that the sale certificate itself was registered.

31. *In Kaliaperumal [Kaliaperumal v. Rajagopal, (2009) 4 SCC 193 : (2009) 2 SCC (Civ) 101] also, the sale deed was registered on partial payment of consideration. However, in spite of registration of the sale deed, in the facts of the said case, the Court held that what was important is the intention of the parties. It was held that normally the ownership and the title of the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. However, that was not an invariable rule. What was paramount, was the intention of the parties. In the facts of the said case, the Court held that the parties intended that the ownership of the property would be transferred to the appellant only after the receipt of the entire sale consideration by the vendors as a condition precedent.*



Upon interpretation of the sale deed, the Court found that the title was intended to be passed only on the payment of the balance consideration.

32. *It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. The sale would be complete only when the auction-purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the said Rules.*

33. *In Shakeena v. Bank of India [Shakeena v. Bank of India(2021) 12 SCC 761 : 2019 SCC OnLine SC 1059] , which was a case arising out of SARFAESI Act, this Court has held that the sale certificate issued in favour of Respondent 3 did not require registration and that the sale process was complete on issuance of the sale certificate. The same has been followed by this Court in S. Karthik [S. Karthik v. N. Subhash Chand Jain, (2022) 10 SCC 641 : 2021 SCC OnLine SC 787]."*

12. Following the declaration of law made by the Hon'ble Supreme Court in the aforementioned cases



so also considering the object of Section 176 of the Act, I am of the opinion that, the respondent No.1 has committed an error in allowing the RP No.52 of 2024 (Annexure-A), dehorse the well settled principle as to completion of sale process, pursuant to the issuance of Sale Certificate in favour of the petitioner and that apart, the respondent No.6, has no jurisdiction to challenge the mutation made in favour of the petitioner, since the property in question was sold in favour of respondent No.7 on 02.02.2024 (Annexure-M). By looking into the aforementioned reasons and also, the observation made by the respondent No.1, it is apparent that, the impugned order suffers from infirmity and liable to be quashed. In the result, I pass the following:

ORDER

- i. The writ petition is ***allowed***;



- ii. Impugned order dated 27.08.2024 passed in
RP No.52 of 2024 (Annexure- A) by
respondent No.1-Deputy Commissioner is
hereby quashed ;
- iii.The mutation in favour of the petitioner in
M R No. T2/2022-23 is hereby confirmed.

SD/-
(E.S.INDIRESH)
JUDGE

SB