

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION NO.30620 OF 2009 (GM-RES)

C/W

WRIT PETITION NO.30621 OF 2009 (GM-RES)

IN WRIT PETITION NO.30620 OF 2009

BETWEEN:

1. SRI. N. R. VENKATA REDDY,
(SINCE DEAD BY LR'S)
- 1(a). SMT. VARALAKSHMI,
W/O LATE. N. R. VENKATAREDDY,
AGED ABOUT 58 YEARS,
R/A. NIMMAKAYALAHALLI VILLAGE,
NANDIGANAHALLI POST,
MURAGAMALLAHOBOLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 1(b). SRI. N. V. RAGHUNATHA,
S/O LATE. N. R. VENKATAREDDY,
AGED ABOUT 39 YEARS,
R/A. NIMMAKAYALAHALLI VILLAGE,
NANDIGANAHALLI POST,
MURAGAMALLAHOBOLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 1(c). SRI. N. V. HARISH,
S/O. LATE. N. R. VENKATAREDDY,
AGED ABOUT 37 YEARS,
R/A NIMMAKAYALAHALLI VILLAGE,
NANDIGANAHALLI POST,
MURAGAMALLAHOBOLI,
CHINTAMANI TALUK,

CHIKKABALLAPURA DISTRICT.

1(d). SMT. N. V. SUMA,
D/O LATE. N. R. VENKATAREDDY,
AGED ABOUT 34 YEARS,
R/A. PALAYAKERE VILLAGE & POST,
CHELURHOBLI,
BAGEPALLI TALUK,
CHIKKABALLAPURA DISTRICT.

1(e). SMT. N. V. NAVITHA,
D/O LATE. N. R. VENKATAREDDY,
AGED ABOUT 29 YEARS,
R/A GORAVIMAKALA VILLAGE,
LAKSHMIPURA POST
NELAVANKI HOBLI
SRINIVASAPURA TALUK
KOLAR DISTRICT.

...PETITIONERS

(BY SRI. SADASHIVA REDDY., Y.R. ADVOCATE FOR
SRI. RAHUL S. REDDY., ADVOCATE)

AND:

1 . KARNATAKA STATE KHADI & VILLAGE
INDUSTREIS BOARD
NO.10, JASMA BHAVAN ROAD
BANGALORE
REP BY SPL TAHSILDAR.

2 . MEERA SHERIFF
SINCE DEAD BY LRS

2(a). SMT. ZAHARABI,
W/O. LATE. MEERASHARIEF,
AGED ABOUT 74 YEARS,

2(b). SRI. ZAHEER,
S/O. LATE MEERASHARIEF,
AGED ABOUT 57 YEARS,

2(c). SRI. ZAMEER,
S/O. LATE. MEERASHARIEF,
AGED ABOUT 55 YEARS,

2(d). SRI. AHMED,
S/O. LATE. MEERASHARIEF,
AGED ABOUT 50 YEARS,

2(e). SRI. MOULA,
S/O. LATE. MEERASHARIEF,
AGED ABOUT 45 YEARS,

2(f) SRI. MAQSOOD SHARIEF,
S/O. LATE. MEERASHARIEF,
AGED ABOUT 38 YEARS,

3 . PEDDAPPA REDDPPA,
S/O VENKATARAYAPPA,
AGED ABOUT 42 YEARS

RESPONDENTS NO.2 AND 3 ARE
R/AT NIMMAKAYALAHALLI
NANDIGANAHALLI POST
MURUGAMALA HOBLI
CHIN TAMANI TALUK
CHIKKABALLAPURA DISTRICT - 563 125.

4 . G.M.VENKATAREDDY
SINCE DEAD BY LR'S

4(a) AKKALAMMA,
W/O. LATE. G. M. VENKATA REDDY,
AGED ABOUT 70 YEARS,
R/A. ALAVATTA NIMMAKAYALAHALLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.

- 4(b) RATHNAMMA,
W/O JAYARAM REDDY,
D/O. LATE. G.M. VENKATA REDDY,
AGED ABOUT 50 YEARS,
R/A. NIMMAKAYALAHALLI VILLAGE,
NANDIGANAHALLI HOBLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 4(c) SHAKUNTALAMMA,
W/O. SRINIVASAGOWDA,
D/O. LATE. G.M. VENKATA REDDY,
AGED ABOUT 53 YEARS,
R/A: CHIKKAVALLUR VILLAGE,
BEGUR POST, HOSKOTE TALUK,
BANGALORE RURAL DISTRICT.
- 4(d) SHIVA REDDY,
S/O. LATE. G.M. VENKATA REDDY,
AGED ABOUT 48 YEARS,
R/A. ALAVATTA NIMMAKAYALAHALLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 4(e) MANJUNATH REDDY,
S/O LATE.G.M. VENKATA REDDY,
AGED ABOUT 45 YEARS,
R/A. ALAVATTA NIMMAKAYALAHALLI.
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 4(f) DEEPIKA,
D/O. LATE. G.M. VENKATA REDDY,
AGED ABOUT 19 YEARS,
R/A. ALAVATTA NIMMAKAYALAHALLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.
- 4(g) CHERITH REDDY,
S/O. LATE. G.M. VENKATA REDDY,
AGED ABOUT 11 YEARS,
R/A. ALAVATTA NIMMAKAYALAHALLI,
CHINTAMANI TALUK, CHIKKABALLAPURA DISTRICT.

SINCE RESPONDENT 4(G) IS A MINOR
REPRESENTED BY ITS NATURAL GUARDIAN MOTHER
YASHODAMMA,
W/O. LATE. G.M. VENKATA REDDY,
R/A. ALAVATTA NIMMAKAYALAHALLI,
CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT.

...RESPONDENTS

(BY SRI. PRAKASH T HEBBAR, ADVOCATE FOR R1;
R2-(A-F) ARE SERVED BUT UNREPRESENTED;
SRI. V. VINOD REDDY., ADVOCATE FRO R3;
R4 (B TO E) ARE SERVED BUT UNREPRESENTED;
R4 (B TO G) ARE LR'S OF R4(A)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE ANN-E, DATED 30.07.2009, ISSUED BY THE R1, &
ANN-F, DATED 26.08.2009, PASSED BY THE R1; DIRECT THE
R1, TO ACCEPT THE PAYMENT OF THE PETITIONER & PASS
SUCH OTHER ORDER.

IN WRIT PETITION NO.30621 OF 2009

BETWEEN:

R NARAYANASWAMY
AGED ABOUT 42 YEAS,
S/O LATE RAMANNAR/AT NIMMAKAYALAHALLI
NANDIGANAHALLI POST
MURUGAMALA HOBLI
CHINTAMANI TALUK
CHIKKABALLAPURA DISTRICT - 563 125.

...PETITIONER

(BY SRI. PRAKASH M.H., ADVOCATE)

AND:

1 . KARNATAKA STATE KHADI & VILLAGE
INDUSTRIES BOARD
NO.10, JASMA BHAVAN ROAD

BANGALORE
REP BY SPL TAHSILDAR.

- 2 . MEERA SHERIFF
S/O ABDULLA SHERIFF
AGED ABOUT 70
- 3 . PEDDA REDDPPA
S/O VENKATARAYAPPA
AGED ABOUT 42 YEARS

RESPONDENTS NO.2 AND 3 ARE
R/AT NIMMAKAYALAHALLI
NANDIGANAHALLI POST
MURUGAMALA HOBLI
CHINTAMANI TALUK
CHIKBALLAPUR - 563 125.

...RESPONDENTS

(BY SRI. SHRIDHAR HEGDE, ADVOCATE FOR R1;
SRI. DIVYA K., ADVOCATE FOR R2;
SRI. VINOD REDDY., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEXURE-C, DATED 30.07.2009, ISSUED BY THE R1, VIDE ANNEXURE-D, DATED 26.08.2009, PASSED BY THE R1; DIRECT THE R1, TO ACCEPT THE PAYMENT OF THE PETITIONER AND PASS SUCH OTHER ORDER.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 08.07.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

CAV ORDER

1. Petitioners in these two petitions are before this Court seeking common reliefs in the nature of:

I. Quashment of the public auction notification issued by the Respondent No. 1 vide No.KB/VT/RRC201-208/94/09-10 dated 30.07.2009 and the consequent auctions proceedings dated 26.08.2009 conducted by the Respondent No.1.

II. Issue Writ or Order or direction to the Respondent No.1 to accept the payment from the Petitioners and pass such other order as this Hon'ble Court deems fit to grant in the facts and circumstances of the case, in the interest of justice and equity."

2. Brief facts in both the petitions are as follows:

2.1 That petitioner-Sri.N.R.Venkata Reddy in

W.P.No.30620/2009 is the absolute owner of;

a. land bearing Sy.No.37, measuring 2 acres, out of 6 acres and 16 guntas, situated at Guntapalli Village, Murugamalai Hobli, Chintamani Taluk.

b. portion of house bearing Khatha No.177, house list No.111, measuring East to West 18 feet and North to South 25 feet, situated at Nimmakayalahalli Village, Murugamalai Hobli, Chintamani Taluk,

having purchased the same from its original owner, namely Sri. Meera Sheriff-respondent No.2 in terms of

registered deeds of sale dated 22.08.1994 and 18.11.1996 respectively.

2.2 That the petitioner-Sri.R.Narayanaswamy, in W.P.No.30621/2009, is the absolute owner of;

a. Land bearing Sy.No.20/P24, measuring 2 acres, situated at Guntapalli Village, Murugamalai Hobli, Chintamani Taluk, Which was purchased by his mother in terms of the deed of sale dated 18.11.1996 the same from its original owner, namely Sri. Meera Sheriff-respondent No.2, thereafter having been released in favor of the petitioner in terms of the deed of release dated 21.04.2001.

2.3 That the petitioners had verified all the documents, prior to the purchase of the aforesaid properties. That on enquiry they had found that in the RTC extract pertaining to land in Sy.No.37, there was a mention of a mortgage in favour of VSSN Society. The petitioners accordingly discharged the said loan of VSSN Society and had obtained a no-objection certificate, and only thereafter they purchased the same. Ever since the purchase, the petitioners have been in peaceful possession.

- 2.4 That on 30.09.2009, respondents Nos. 3 and 4 had come to the village of the petitioners and had told them that they had purchased the aforesaid properties of the petitioners in a public auction held at the Divisional Office of Chikkaballapura. The petitioners immediately approached respondent No.1 and learnt that respondent No.2, who is the vendor of the petitioners, had availed financial assistance in a sum of Rs.1,10,000/- against the properties purchased by the petitioners without discharging the said amount and by suppressing these facts had sold the same in favour of the petitioners.
- 2.5 That the petitioners obtained copies of the impugned public auction notice dated 30.07.2009 and the auction proceedings dated 26.08.2009 and found that the public auction notice dated 30.07.2009 was not published as required under law and the auction dated 26.08.2009 was not conducted in accordance with the law.
- 2.6 Thus, being aggrieved by the said public auction conducted by respondent No.1, in which respondents Nos.3 and 4 were declared to be the successful bidders; the petitioners are before this Court seeking the reliefs as noted hereinabove.

3. Objection statement has been filed by respondent No.1, contending *inter-alia*:

3.1 That respondent No.2 had obtained loan of Rs.1,10,000/- on 01.04.1991 for the purpose of establishing Copper, Brass and Bell Metal Industry.

3.2 That he had executed a simple mortgage in favour of the respondent No.1 in respect of four items of landed Properties. That execution of the said mortgage was duly reflected in the Encumbrance Certificate issued by the Sub-Registrar, Chintamani Taluk, vide certificate dated 02.04.1991 in W.P.No.30621/2009 and 03.04.1991 in W.P.No.30620/2009.

3.3 That the respondent No.2 failed to repay the loan amount and interest accrued thereon. Respondent No.1 had issued notice dated 22.09.1994 to respondent No.2 in Form No.37.

3.4 That the respondent No.2 became chronic defaulter. As such, Chairman of the Karnataka State Khadi & Village Industries Board, requested the Deputy Commissioner Kolar to recover sum of Rs.1,36,121/- in terms of Section 22A of the Karnataka Khadi & Village Industries Act, 1956

(hereinafter referred to as 'the Act, 1956'). Accordingly, respondent No.1 passed the order of attachment on 01.10.1996 in respect of the mortgaged properties.

3.5 That the respondent No.2 was thus prohibited from alienating or transferring the aforesaid properties in any manner.

3.6 That public auction notice dated 30.07.2009 was issued by respondent No.1 in accordance with Section 22A of the Act, 1956. The Deputy Commissioner has been vested with authority to recover the dues of respondent No.2 as arrears of land revenue.

3.7 That the petitioners, being third parties, have no right to challenge when, admittedly, the said amount has not been paid.

3.8 That the auction notice had been published in "Samyuktha Karnataka", Kannada daily newspaper, dated 15.08.2009, and the auction was conducted in accordance with law.

3.9 That the petitioners cannot challenge the auction proceedings dated 26.08.2009 on the ground of having purchased the properties from respondent No.2, as they deemed to have had knowledge of the mortgage deed

executed by respondent No.2 in favour of the Khadi and Village Industries Board.

3.10 That as many as 11 bidders participated in the auction proceedings and respondent No.3 became the successful bidder. The said auction proceedings cannot be set at naught at the instance of petitioners. Hence, sought for dismissal of the petition.

4. Respondent No.3 filed statement of objections contending *inter-alia*;

4.1 That respondent No.2, who had defaulted in discharging the loan liability, did not pay the amount despite service of notice by respondent No.1.

4.2 That respondent No.1 has therefore initiated the proceedings under the provisions of the Act, 1956 as recovery of land revenue.

4.3 That an order of attachment was passed on 05.02.2001 under Section 165 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act, 1964"). Subsequently, Special Tahsildar (Recovery), Karnataka State Khadi and Village Industries Board, Bengaluru Division, Bengaluru had issued written notice in prescribed

Form No.38 under Sections 113 and 124 of the Karnataka Land Revenue Rules, 1966, for sale of immovable properties specified therein at a public auction to realize a sum of Rs.3,30,530/-, due and payable by respondent No.2 to respondent No.1.

4.4 That the Special Tahsildar (Recovery), Karnataka State Khadi and Village Industries Board, Bengaluru Division, Bengaluru had issued notification of the sale of immovable properties in "Samyuktha Karnataka", Kannada Daily Newspaper, dated 30.07.2009, fixing the sale of properties in public auction on 26.08.2009. In addition, hand bills were also circulated and 11 persons had participated.

4.5 That respondent No.3, being the highest bidder, was declared successful bidder and made the payment in accordance with law.

4.6 The Special Tahsildar (Recovery), Karnataka State Khadi and Village Industries Board, Bengaluru Division, had issued a letter dated 29.10.2009 to the Senior Sub-Registrar, Chintamani Taluk, for registration of the sale certificate and to exempt him from personal appearance.

4.7 That petitioners who claim to have purchased the properties in question from respondent No.2 under the

registered deeds of sale five years after the execution of the registered Mortgage Deed on 01.04.1991 by respondent No.2 in favour of respondent No.1.

4.8 That the said deed of mortgage is binding on the petitioners. The covenants in the mortgage run with the land and the house property in question, and the deed of sale would not affect the subject matter of the transaction under the deed of mortgage dated 01.04.1991.

4.9 That respondent No.2, being the absolute owner of the property, had created a mortgage of the properties in favour of respondent No.1. He was under a legal obligation to clear the loan availed from respondent No.1. As he became a defaulter in repaying the loan amount, action to recover the said amount was initiated completely in accordance with law, warranting no interference at the hands of this Court. Hence, sought dismissal of the petition.

5. Respondent No.2 filed the statement of objections denying the claim of the petitioners and contended;

5.1 That the transaction entered into between the petitioners and respondent No.2 under deeds of sale dated

22.08.1994 and 18.11.1996 was nominal and was only to secure the loan amount advanced to respondent No.2. It was never intended to be acted upon, as the sale consideration mentioned in the said deeds of sale was far less than the actual market price on the date of the alleged deeds of sale.

5.2 That respondent No.2 had also filed a suit in O.S.No.66/2008 on the file of the Civil Judge (Jr. Dn.), Chintamani for a direction to the petitioners herein to execute registered deeds of sale in favour of respondent No.2 in respect of the aforesaid properties.

5.3 That respondent No.2 had also filed another suit in O.S.No.243/2008 on the file of the Civil Judge (Jr. Dn.), Chintamani, seeking a declaration that the alleged deed of sale dated 22.08.1994, executed by respondent No.2 in favour of the petitioner, was null and void.

5.4 That the petitioner had also filed a suit in O.S.No.32/2008 on the file of the Civil Judge (Jr. Dn.), Chintamani, seeking a declaration only with respect to house property.

5.5 That respondent No.2 had mortgaged the properties in question in favour of respondent No.1 and due to financial difficulty, he could not clear the aforesaid loan.

- 5.6 That respondent No.1 auctioned the same in accordance with law, and the balance amount which is in excess of the amount due from respondent No.2 to respondent No.1, has not been paid to respondent No.2. In any event, execution of the deeds of sale in favour of the petitioners was subject to the terms of the deed of mortgage. It is for the petitioners to have the mortgage redeemed and perfect their title, and the petitioners have not taken any steps in this regard. Contending as above, respondent No.2 sought dismissal of the petitions.
6. Respondent No.4 filed statement of objections contending that respondent No.4 had purchased the house property in the said public auction. He reiterated the averments made by the other respondents.

Submissions:

7. Sri.Y.R.Sadashiva Reddy, learned Senior Counsel, along with learned counsel for the petitioners, taking this Court through the records, submitted;
- 7.1 That respondent No.1 conducted the auction of the properties in furtherance to the provisions of Section 22A

of the Act, 1956 which mandates the auction proceedings to be conducted as per the procedure contemplated under the Karnataka Land Revenue Act, 1964 (the Act, 1964).

7.2 That there was a violation of Section 157(2) of the Act, 1964. In case of any default by any person who is primarily liable under the said provision, the land revenue, including arrears, shall be recoverable from the person who is in possession of the land. Since the petitioners had purchased the properties in 1994 and were in possession of them, and all revenue records, including RTC extracts, stood in their names, the respondent-Authority had not issued any notice or intimation to the petitioners before conducting the public auction.

7.3 That there is a violation of the provisions of Sections 161(a) and (b) of the Act, 1964, in that the respondent-authorities ought to have proceeded against the movables of the defaulter; only if the said movables were insufficient should respondent No. 1 have proceeded against the immovable properties, which was not followed in the instant case.

7.4 That the respondent No.1, on the other hand, directly proceeded against the immovable properties. Thus, there

is a violation of the provisions of Section 161 of the Act, 1964.

7.5 He also pointed out that there is a violation of the procedure contemplated in publishing Form No.38, as prescribed under the Karnataka Land Revenue Rules, 1966. In that, it is mandatory to notify the person in occupation of the subject land and to intimate him regarding the public auction.

7.6 Though the revenue records, as on the date of the auction, reflected the name of the petitioners, they have not been shown as persons in occupation in the particulars mentioned in Form No. 38. As such, there is a clear violation.

7.7 In terms of Section 176 of the Act, 1964, any person holding an interest in the said property may, at any time within 90 days of the date of sale, apply for setting aside the sale. The Authorities concerned were required to conduct a summary enquiry and pass necessary orders thereon.

7.8 In the instant case, the auction was conducted on 26.08.2009 and the petitioner made the representation on 12.10.2009, i.e., within 90 days. Since the Deputy

Commissioner had delegated the powers for conducting the auction to the Tahsildar, representations were also given to the concerned Tahsildar. However, no enquiry has been conducted and no order has been passed. The confirmation of sale made on 12.10.2009 was within 90 days. As such, there is a gross violation of Section 176 of the Act, 1964.

7.9 As per Section 177 of the Act, 1964 the confirmation can be made by the Deputy Commissioner only if no applications were filed even after the expiry of 90 days from the date of the auction.

7.10 It is also alleged that there is no compliance with the requirement of Rule 126 of the Karnataka Land Revenue Rules, 1966 which mandates conducting such auction within the town or village in which the land is situated.

7.11 He relies upon the judgment of the Division Bench of this Court in W.A.No.639/2009 passed on 13.01.2023 in the case of C Rajamalliah S/o Late Venkaiah v. State of Karnataka and sought for allowing of the writ petition.

8. Sri. Prakash T. Hebbar, learned counsel appearing for respondent No.1, referring to the synopsis filed, submitted:

- 8.1 That the encumbrance certificate dated 03.04.1991 issued by the Sub-Registrar, Chintamani, reflects the entries of the mortgage created by respondent No.2 in favour of respondent No.1. Thus, when the petitioner purchased the property from respondent No.2 in the year 1994, it was subject to the prior charge created by respondent No.2 in favour of respondent No.1.
- 8.2 He refers to the letter dated 12.10.2009 submitted by the petitioner to respondent No.1, acknowledging the loan, requesting waiver of interest and offering to pay the principal amount, and submitted that the same amounts to unambiguous admission on the part of the petitioners regarding existence of mortgage debt and right of respondent No.1 to recover the said amount.
- 8.3 That the petitioners having acknowledged the right of respondent No.1 to recover the amount through public auction, cannot now seek to challenge the validity of the very proceedings as the same amounts to approbate and reprobate, which is impermissible.
- 8.4 That the petitioners are strangers and not being parties to the mortgage. They are neither judgment-debtors nor

borrowers and that they have no contractual relationship with respondent No.1.

8.5 That respondent No.2, who is the judgment-debtor and the borrower, has not questioned the public auction conducted by respondent No.1. The petitioners, who claim to be the purchasers have no *locus-standi* to challenge the public auction.

8.6 That the sale of the land was on 22.08.1994, and the sale of the house was on 18.11.1996. All these were subsequent to the mortgage and the initiation of the proceedings for recovery. The transaction between the petitioners and respondent No.2 is voidable under Section 53 of the Transfer of Property Act, 1882.

8.7 That the petitioners are not *bonafide* purchasers for value, as the transaction of mortgage deed dated 30.03.1991 was reflected in the Encumbrance Certificate deed dated 03.04.1991, which was notice to the world at large. That the sale certificate dated 29.10.2009, issued in Form No.41 in favour of Respondent Nos.3 and 4, who have paid the consideration by demand drafts and the sale certificate not having been challenged by the mortgagor i.e.,

respondent No.2 or by the petitioners, a validly conducted public auction cannot be set at naught.

8.8 That the petitioners have not availed themselves of the statutory remedy available under Section 176 of the Act, 1964, by filing an application before confirmation of the sale on the alleged grounds of material irregularity of fraud.

8.9 That suits in O.S.No.66/2008, O.S.No.243/2008 and O.S.No.32/2008 are pending consideration, and the petitioners' rights, if any, could be adjudicated in the said suits. That in view of the alternative remedy provided thereunder, the present petition under Article 226 is not maintainable.

8.10 That, in terms of Section 177 of the Act, 1964, the sale shall be confirmed within 90 days from the date of the auction. In the instant case, the auction was conducted on 26.08.2009, confirmation was accorded on 03.10.2009, and the sale certificate was issued on 29.10.2009. Thus, the entire process was completed within a period of 90 days as contemplated under Section 177 of the Act, 1964.

8.11 That the petitioners were required to invoke the provisions of Section 176 of the Act, 1964, by making an application before issuance of the sale confirmation certificate . The petitioners, not having availed themselves of the remedy, cannot invoke Article 226 of the Constitution of India.

8.12 That even if there were any irregularity, the petitioners are required to prove substantial injury, which is absent in the instant case. The objections raised with regard to the delegation of power by respondent No. 1 by Government Notification dated 30.08.1969, issued in exercise of the power under Section 195 of the Act, 1964, are untenable, as the Tahsildar in charge of Taluks is empowered to exercise powers under Section 168.

8.13 In addition, the Deputy Commissioner, Kolar District, had issued specific authorization vide letter dated 17.07.2004, specifically authorizing the Special Tahsildar (Recovery), Karnataka State Khadi and Village Industries Board, to recover the arrears of land revenue within the meaning of Sections 8 and 190 of the Act, 1964.

8.14 That Section 157(2) of the Act, 1964, pertains to land revenue liability and not mortgage enforcement notices. Debt arising from a contractual or mortgage liability

cannot be equated with land revenue. The notice was issued to all three mortgagors under Section 168(1) of the Act, 1964.

8.15 That written auction notices in Form No.38 were individually served on all the mortgagors, namely, respondent No.2-Meera Sheriff, Smt.Zaharabi W/o Meera Sheriff and Sri. Mahaboob Pasha. Thus, there is complete compliance with regard to the provisions of Section 168(1) of the Act, 1964.

8.16 That the petitioners, though claimed to have purchased the properties in the year 1994, had not obtained mutation of their names in the revenue records, at least until the public auction conducted in the year 2009. Possession derived under a voidable transfer cannot override a prior registered mortgage.

8.17 Reliance placed by the learned Senior Counsel appearing for the petitioners on the judgment of the Division Bench of this Court passed in W.A.No.639/2009, with regard to the operation of Sections 168, 169, 174, 175, 176, 177 and Rule 124 of the Karnataka Land Revenue Act and Rules, is not applicable to the facts and circumstances of the present case. All auction procedures have been

conducted and followed in accordance with the provisions provided under Sections 168, 169, 174, 175, 176, 177 and Rule 124 of the Karnataka Land Revenue Act and Rules. Contending as above, sought for dismissal of the petition.

9. Learned counsel appearing for respondent Nos.3 and 4 adopted the arguments of respondent No.1.
10. Heard and perused the records.

11. Points that arise for consideration are:

- (1) Whether the petitioners are justified in contending that the sale transactions entered into by them with respondent No.2, are not affected by the prior mortgage created by respondent No. 2 in favour of respondent No. 1?*
- (2) Whether the petitioners have made out a case for quashing the public auction of the subject immovable properties conducted on 26.08.2009 by respondent No. 1?*

Regarding Point No.1

12. There is no dispute about the fact that respondent No.2 had availed himself of financial assistance from respondent No. 1 against the security of the aforesaid four landed properties and one item of residential property created in terms of the simple deeds of mortgage dated 30.03.1991, which were registered in the office of the Sub-Registrar, Chintamani. Encumbrance certificates produced by the

respondents along with the statement of objections reflect the subsistence of the said mortgage even as on 03.04.1991.

13. The petitioners, however, claim to have purchased the said properties from respondent No. 2 in terms of deeds of sale dated 22.08.1994 and 18.11.1996. Thus, the execution of deeds of sale by respondent No. 2 in favour of the petitioners, conveying the aforesaid properties admittedly subsequent to the execution of the mortgage by respondent No. 2 in favour of respondent No. 1, would be subject to the rights created in favour of respondent No. 1.
14. Though the petitioners have pleaded that before purchasing the properties they had verified the records and the documents of title and found that the only mortgage created over the subject properties was in favour of VSSN society, which the petitioners claimed to have discharged and obtained a 'No Objection Certificate'.
15. Learned counsel for the petitioners, however, relied upon the Encumbrance Certificate dated 12.10.2009, produced

at Annexure-C to contend that the said document is for the period between 01.04.1986 and 18.11.1996 and did not reflect the mortgage that was created by respondent No. 2 in favour of respondent No. 1.

16. There is no dispute about the creation of the mortgage by respondent No. 2 in favour of respondent No. 1 as per Annexure-R1 of the writ petition. The said document is undisputedly a registered document. It is a settled principle of law that registration of an instrument in respect of an immovable property is notice to the world at large. Besides, such execution of a document has indeed been reflected in the Encumbrance Certificate dated 03.04.1991 produced at Annexure-R2 to the statement of objection, which fact is not denied.

17. The Co-ordinate Bench of this Court in the case ***M Ramakrishna Reddy Vs. The Sub-Registrar and another*** reported in ***ILR 1999 Kar 2033*** at paragraphs 5 and 6 has held as under:

5. The petition proceeds on a misconception as to what is an 'Encumbrance Certificate'. It proceeds on the assumption that it is a document of title and an entry therein by itself affects the title of the owner. An Encumbrance Certificate neither creates, nor affects title. It is not a document of title, but a document giving the references of the deeds of title, and encumbrances. A brief reference to the relevant

provisions of the Registration Act, 1908 ('the Act' for short), the Transfer of Property Act, 1882 ('the TP Act' for short) and the Karnataka Registration Rules, 1965 ('the Rules' for short) will be necessary to know the true meaning and effect of an Encumbrance Certificate.

5.1. *The object and intent of providing for registration of instruments under the Act is to create and maintain a public record of transactions relating to immovable properties, on which every person dealing with an immovable property can rely with confidence, for a full and complete account of the transactions by which his title to the immovable property, may be affected. Section 17 of the Act enumerates the documents of which the registration is compulsory. All instruments (except wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in regard to an immovable property, the value of which is Rs. 100/- or more, and all Gift Deeds as also leases relating to immovable properties for any term exceeding one year, are compulsory registerable.*

5.2. *Section 3 of TP Act defines the terms "registered" and "a person is said to have notice". The word 'registered' means registered under the law for the time being in force regulating registration of documents. 'A person is said to have notice' of a fact, when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation I, II and III to the said definition refer to three classes of constructive notice. What is relevant is, Explanation I [to Section 3 of the TP Act] which provides that where any transaction relating to any immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property (or part or share or interest in such property) shall be deemed to have notice of such registered instruments, provided (i) such instrument has been registered and its registration completed in the manner prescribed by the Act and the Rules thereunder; (ii) the instrument has been duly entered or filed in the books kept under Section 51 of the Act; and (iii) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of the Act. Thus, any person who wants to deal with an immovable property is deemed to have knowledge of all duly registered instruments relating to the said immovable property.*

5.3. *Section 51 of the Act requires four books to be kept and maintained in all registration offices, of which 'Book No. 1' is the Register of non-testamentary documents relating to immovable property (registered under Section 17, 18 and 89*

of the Act). Once the documents registered are copied/filed, they have to be entered in current indexes. Section 54, of the Act requires every registration office to prepare and maintain current indexes of the contents of 'Book No. 1' and that entries shall be made in such indexes immediately after the registering office has copied/filed the documents. Section 55 requires two indexes to be maintained regarding Book No. 1. Index No. 1 shall contain the names of persons executing the document and persons claiming under every document entered/filed in Book No. 1. Index No. II shall contain the particulars (description with boundaries, etc.) of the property and other particulars relating to every such document as may be directed by the Inspector General from time to time. Rule 125 prescribes the manner of preparing Indexes. Form No. 16 relates to Index No. 1 (Nominal Index to Book No. 1). Forms 17 and 17A relates to Form of Index No. 11 (Descriptive Index to Book No. 1).

5.4. Section 57 of the Act provides that subject to the payment of prescribed fee, Book No. 1 and the indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and copies of entries made therein shall be given to all persons applying for such copies. Rule 148 of the Rules relates to issue of Encumbrance Certificates. It provides that when an application is made for a search for encumbrance in respect of any immovable property and for issue of a Certificate of Encumbrance should be furnished to him, the request should be complied with by the Registering Officer and a certificate should be issued in the prescribed form. Rule 151 provides that a certificate of encumbrance shall contain a complete list of all acts and encumbrances affecting the property in question. The encumbrance certificate is issued in Form No. 15 when there are entries relating to the property and in Form No. 16 when there are no entries. While issuing a certificate in Form No. 15, the Registering Authority has to mention in regard to each entry (transaction which has been registered) the description of the property, date of execution, nature and value of the documents, name of executants, name of claimants under the documents and the particulars of registration (Registration Number of the document with year of registration and volume and page, of Book No. 1 at which it is copied). The certificate contains a caveat that though the requisite search has been made by the office as carefully as possible, the Registration department will not, on any account, hold itself responsible for any errors in the results of the search embodied in the certificate.

5.5. When an application for search of Book No. 1 and its Indexes is made, the registration office goes through the Indexes (I and II) and lists all transactions relating to the property during the period for which such search has been

sought, in the form of Encumbrance certificate. Where no entries are found in the Indexes, a nil encumbrance certificate is issued. Thus; a certificate of Encumbrance issued by a Registering Office is nothing but a list of references/extract of entries relating to the specified property, from Index Nos. I and II of Book No. 1 maintained in the Registration Office.

6. *In this context, it should be noticed that the term 'encumbrance' occurring in the 'Encumbrance Certificate' is some what misleading. The term 'encumbrance' in law refers to a burden, a charge, a legal claim, lien or liability attached to or upon a property. In the strict sense of the word, a sale or partition or release is not an encumbrance. Mortgage is an encumbrance. An Encumbrance Certificate relating to an immovable property issued by the Registration Office is not only of encumbrances, but of "all acts and encumbrances affecting such property". It is an enumerations of all documents relating to the specified immovable property, which have been registered and entered in Book No. 1 (and the Indexes relating to Book No. 1), during the period for which search is sought. As an Encumbrance Certificate is nothing but an extract of the entries in the Indexes relating to Book No. 1, it is not a document of title.*

18. In the instant case execution of deeds of sale by respondent No.2 in favour of the petitioners, conveying the aforesaid properties, appears to have taken place on 22.08.1994 and 18.11.1996, respectively, which is much subsequent to the creation of the mortgage. Therefore, merely because the encumbrance certificate obtained by the petitioners as per Annexure-C did not mention the mortgage created by respondent No.2 in favour of respondent No.1, petitioners cannot claim not to be bound by the said mortgage.

19. An encumbrance certificate is basically a certificate that is issued by the concerned Sub-Registrar, reflecting the transactions that have taken place during a particular period in respect of the immovable property concerned. It is only in the nature of information; if there is any error in the issuance of such a certificate, the same cannot be read to undo the effect of otherwise valid registration contemplated under the Indian Registration Act and the Transfer of Property Act.
20. The petitioners therefore cannot take advantage of the non-reflection of the mortgage in the encumbrance certificate produced by them as per Annexure-C, when the document at Annexure-R2 produced by respondent No. 1, as well as similar documents produced by respondent Nos.3 and 4, reflect the execution of a simple mortgage by respondent No.2 in favour of respondent No.1.
21. As rightly contended by the learned counsel for respondent No.1, petitioners have neither disputed nor questioned the mortgage deeds executed by respondent No.2 in favour of respondent No.1. On the other hand, as seen at Annexures-G and H, the petitioners themselves have issued a communication to the Special Tahsildar

(Recovery), Karnataka State Khadi and Village Industries Board, Bengaluru Division, Bengaluru, on 12.10.2009, admitting and acknowledging the prior mortgage created by their vendor, respondent No.2, in favour of respondent No.1, and acknowledging that they had purchased the land and residential property on 22.08.1994 and 18.11.1996. Thus, there is a categorical admission on behalf of the petitioners regarding the prior mortgage created by respondent No.2 in favour of respondent No.1.

22. That apart, the petitioners themselves have expressed their intention and readiness to settle the matter and have also requested that the khatha not be affected in favour of the auction bidder, besides seeking waiver of the interest accrued on the principal borrowed amount.

23. This also indicates that the petitioners were completely aware of the mortgage, the consequent auction conducted, and the property being purchased by respondent Nos.3 and 4 in the said auction proceedings.

Regarding Point No.2

24. Learned Senior counsel appearing for the petitioners, sought to canvass that the auction proceedings conducted

by respondent No.1 are in violation of the provisions of Sections 157(2) and 161 of the Karnataka Land Revenue Act and Rule 126 of the Karnataka Land Revenue Rules, 1966.

25. In the instant case, what is sought to be recovered is the loan amount which was lent by respondent No.1 in terms of the mortgage deed, under the provisions of the Karnataka Khadi and Village Industries Act, 1956.

26. Section 22A of the Act, 1956 reads as under:

"22A. Recovery of money due to the Board as arrears of land revenue.

(1) Where any sum of rupees one lakh and above is payable to the Board under any agreement, express or implied or otherwise, however, by any person, is not paid on or before the due date and remaining in arrears after fifteen days from the date of service of a notice of demand on such person by the Chief Executive Officer or any other officer authorised by the Board in that behalf, may be recovered in any one or more of the following ways namely:-

- (a) As an arrear of land revenue, on the written application of Chief Executive Officer or any officer authorised by the Board in this 'behalf certifying under his hand indicating the sum due' to the Board to the Deputy Commissioner of any district in which proceedings are required to be taken.*
- (b) By distraint and sale of the movable and immovable property of such person by any Officer authorised under the Karnataka Land Revenue Act 1964 and rules made there under."*

27. Sections 157(2) and 161 of the Karnataka Land Revenue Act, 1964 reads as under;

" 157. Liability for revenue.—

(2) In the case of default by any person who is primarily liable under this section, the land revenue including arrears as aforesaid shall be recoverable from any person in possession of

the land: Provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands for the year in which the recovery is made: Provided further that when the land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payment which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him in account with the person who is primarily liable."

" 161. Process for recovery of arrears.— An arrear of land revenue may after serving a written notice of demand on the defaulter under section 162 be recovered by any one or more of the following processes, namely:—

(a) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due, under section 163;

(b) by distraint and sale of the defaulter's moveable property including the produce of the land under section 164;

(c) by attachment and sale of the defaulter's immoveable property under sections 165 to 168;

(d) in the case of alienated holdings consisting of entire villages or shares of villages, by attachment of the said villages or shares of villages and taking them under Government management, under sections 183 to 187."

28. Thus Section 157(2) of the Act, 1964, provides that in case of default by any person who is primarily liable under this Section, the land revenue including arrears as aforesaid shall be recoverable from any person in possession of the land. As rightly pointed out by the learned counsel for respondent No. 1, it is only for procedural convenience that the provisions of Section 157(2) of the Act, 1964, are required to be followed, while the amount to be recovered is strictly under Section 22A of the Act, 1956.

29. Petitioners therefore cannot equate the mortgage due with the land revenue. Further, even if the provisions under Section 157(2) of the Act, 1964, are applied, in the event

of failure on the part of the person primarily liable to make the payment, it is the person who is in possession of the property who would become liable to make the payment. Even on that count, the petitioners cannot seek to evade the liability.

30.The auction notice has admittedly been served on the borrower/mortgagors as required under Section 168(1) of the Act, 1964, and there is no dispute with regard to service of the notice on the actual borrowers, namely, respondent No.2, and there is no claim of non-compliance with the provisions of Section 161 of the Act, 1964.

31.The reliance placed by the learned Senior counsel appearing for the petitioners, on the judgment of the Division Bench of this Court passed in W.A.No.639/2009 is not applicable, as rightly contended by learned counsel for the respondents. Also, in the said writ appeal, it was the borrower who had approached the Court challenging the procedure adopted in auctioning his property, whereas, in the present proceedings, the borrower, namely, respondent No.2, has not challenged the auction proceedings. It is only the petitioners who claim to be the purchasers are seeking

to dispute the procedure adopted by the respondent No.1 in auctioning the subject properties.

32. That apart, respondent No.2 has disputed the nature of the transaction that he had entered into with the petitioners, contending that the said transaction was only as security for the loan borrowed by respondent No.2 from the petitioners and was never intended to be acted upon.
33. He also, as noted, referred to certain suits filed by him against the petitioners, which are stated to be pending consideration. Thus, if at all any person was aggrieved by the public auction, it was respondent No.2 and not the petitioners.
34. Petitioners having voluntarily made a representation on 12.10.2009 agreeing to pay and clear the outstanding amount, have indeed confirmed and recognized the public auction conducted by the respondent authorities and the conveyance of the property in favour of respondent Nos.3 and 4. The petitioners have not chosen to challenge the auction process by filing an application under Section 176 of the Act, 1964.

35. Though the learned Senior counsel sought to contend that the representations dated 12.10.2009, produced at Annexures-G and H, were such applications, this Court is not persuaded to accept the same, inasmuch as the petitioners herein have merely expressed their intention to pay and settle the amount and have not sought to dispute the auction proceedings, as now sought to be contended. Appropriate to extract the applications at Annexures-G and H filed by the petitioners which read as under:

ANNEXURE-G

Dt: 12.10.2009

From:

*HARISH.N.V.,
S/o N.R.Venkatareddy,
R/at Nimmakayalahalli Village,
Murugamale Hobli, Chintamani Taluk,
Chikkaballapura.*

To:

*The Special Tahsildar,
Karnataka Khadi Board,
Behind Congress Office,
Bangalore.*

Sir/Madam,

*Sub: Regarding the payment of the Loan Amount borrowed by one
Mr.Meera Shariff resident of Nimmakayalahalli Village.*

With reference to the above I submitted that my father Sri.N.R.Venkatareddy had purchased Land property bearing Sy.No.37, for an extent of 2 Acres situated at Guntapalli Village, Murugamalai Hobli, Chintamani Taluk from one Meera Shariff on 22.08.1994, but prior to that said Meera Shariff have pledged the above mentioned property in your board by way of Simple Mortgage dt: 13.03.1991.

Subsequently, on 26.08.2009 Khadi Board has auctioned the said property. My father being the absolute owner in possession has got no knowledge regarding the auction proceedings. It is hereby submitted that we are ready to settle the above matter by way of one time settlement. Till then I request your goodselves to not to effect Khata in the name of auction bidders and also request your goodself to waive the interest amount accrued from the Principal borrowed by said Meera Shareef, Kindly do the needful and oblige.

Thanking you,

Yours faithfully,"

ANNEXURE-H

Dt: 12.10.2009

From:

*HARISH.N.V.,
S/o N.R.Venkatareddy,
R/at Nimmakayalahalli Village,
Murugamale Hobli, Chintamani Taluk,
Chikkaballapura.*

To:

*The Special Tahsildar,
Karnataka Khadi Board,
Behind Congress Office,
Bangalore.*

Sir/Madam,

*Sub: Regarding the payment of the Loan Amount borrowed by
one Mr.Meera Shariff resident of Nimmakayalahalli Village.*

With reference to the above I submitted that my father Sri.N.R.Venkatareddy had purchased house property No.177, House List No.111 measuring 18X25 out of 38X26, situated at Nimmakayalahalli Village, Murugamalai Hobli, Chintamani Taluk from one Meera Shariff on 18.11.1996, but prior to that said Meera Shariff have pledged the above mentioned property in your board by way of Simple Mortgage dt: 13.03.1991.

Subsequently, on 26.08.2009 Khadi Board has auctioned the said property. My father being the absolute owner in possession has got no knowledge regarding the auction proceedings. It is hereby submitted that we are ready to settle the above matter by way of one time settlement. Till then I request your goodselves to not to effect Khata in the name of auction bidders and also request your goodself to waive the interest amount accrued from the Principal borrowed by said Meera Shareef, Kindly do the needful and oblige.

Thanking you,

Yours faithfully,

36. Sections 176 and 177 of the Karnataka Land Revenue Act, 1964 reads as under;

"176. Setting aside sale.

(1) Where immovable property has been sold under this Chapter, the defaulter or any person owning such property or holding an interest therein may, at any time within ninety days of the date of sale, apply in the prescribed manner to the Deputy Commissioner to have the sale set aside,-

- (a) on the ground of some material irregularity or mistake or fraud resulting in loss or injury to him; or*
- (b) on his depositing in the Deputy Commissioner's office the amount of the arrear specified in the proclamation of sale the cost of the sale, and for payment to the purchaser a sum equal to five per centum of the purchase money.*

(2) On an application made under clause (a) of sub-section (1), the Deputy Commissioner shall, if he is satisfied after a summary enquiry that there has been some material irregularity, mistake or fraud in publishing or conducting the sale set aside the sale and direct a fresh sale provided that no sale shall be set aside on the ground of any irregularity or mistake unless it is proved that the applicant has sustained loss or injury as a result of such irregularity or mistake.

(3) on an application with the required deposit being made under clause b of sub section 1 within the period specified therein the deputy commissioner shall make an order setting aside the sale provided that if more persons than one have made deposits and applied under this section the application of the first depositor or in case all the depositors agree to the application of any other depositor being accepted the application of such depositor shall be accepted."

" 177. Confirmation of sale.— *If, on the expiration of ninety days from the date of sale of any immoveable 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 confirming the sale:*

Provided that for reasons to be recorded, the Deputy Commissioner may set aside the sale subject 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."

37. Section 176 of the Act, 1964 as noted above, operates in a completely different context, which is not the case at hand. Applications filed by the petitioners as extracted hereinabove do not meet the requirement of law noted above. Since no such applications were filed seeking to set aside the sale deed, the confirmation of the sale made by respondent No.1 in favour of respondent Nos.3 and 4 cannot be found fault with.

38. Under the aforesaid facts and circumstances of the case, the reliance placed by the learned Senior counsel appearing for the petitioners on the judgment of the Division Bench of

this Court passed in W.A.No.639/2009 is distinguishable and is of no avail to the case of the petitioners.

39. Points raised above are answered accordingly.

40. For the aforesaid reasons and analysis, the following:

ORDER

(i) Writ petitions are ***dismissed***.

Sd/-
(M.G.S. KAMAL)
JUDGE

RL