

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3366 OF 2017
WITH
CIVIL APPLICATION NO. 849 OF 2017

Rajiv Yashwant Bhale }
Survey No. 166/1+2+3, }
Bhale Residency, Bhale Mall, }
Near Pinnac, Gangotri, }
Aundh, Pune - 411 007 } Petitioner

versus

1. The Principal }
Commissioner of Income }
Tax, PMT Commercial }
Building, A-Wing, 4th floor, }
Shankar Sheth Road, }
Swargate, Pune - 411 037 }
}
2. The Tax Recovery }
Officer 1, Income Tax }
Department, PMT, PMT }
Commercial Building, }
C-Wing, 4th floor, Shankar }
Sheth Road, Swargate, }
Pune 411 037 }
}
3. The Tax Recovery Officer }
2, Income Tax Department, }
PMT, PMT Commercial }
Building, C-Wing, 4th floor, }
Shankar Sheth Road, }
Swargate, Pune - 411 037 }
}
4. The Principal Chief }
Commissioner of Income }
Tax, Pune, Ayakar Bhavan }
12, Sadhu Vaswani Road, }
Pune - 411 001 } Respondents

Mr. Porus Kaka-Senior Advocate with

Mr. Manish Kanth and Ms. Chandana Salgaonkar for the petitioner.

Mr. Charanjeet Chanderpal with ms. Namita Shirke for respondent no. 1.

Mr. V. Sridharan-Senior Advocate with Mr. Saket Mone, Mr. S. Sriram, Ms. Chandni Patel, Mr. Vishesh Kalra and Mr. Subit Chakrabarti i/b. M/s. Vidhi Partners for the applicant in CAW/849/2017.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.**

**Reserved on 24th April, 2017
Pronounced on 5th June, 2017**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner is seeking to quash and set aside the sale of a residential bungalow, which was attached. The relief in that behalf, as set out in prayer clause (b), reads as under:-

“b) that this Hon'ble Court be pleased to issue a Writ of Certiorari, or any Writ order or direction in the nature of Certiorari, and after going into the legality, validity and propriety of the sale of the residential bungalow by attachment letters dated 18 February 2013 and 28 April 2016 issued by the Respondent No 2, as also the orders dated 16 January, 2017 and 28th February, 2017 passed by the Respondent No 1; as also letters dated 22 July 2013, 1 November 2016 and 24 January, 2017 issued by the Respondent No. 2 and 3 be pleased to quash and set aside the said sale, orders and letters;”

3. The petitioner, an Indian citizen, has impleaded to this writ petition the Principal Commissioner of Income Tax and two tax recovery officers so also the Principal Chief Commissioner of Income Tax as respondents. The petitioner says that he is about 60 years of age and the principal business, in which he was engaged, was automobile dealership. However, on account of some erroneous commercial decisions, he suffered losses leading to the closure of his automobile dealership business. He had borrowed huge sums from banks and therefore, his properties were attached. In an attempt to restructure the financial liability, the petitioner started a business of developing properties. A group was formed, which comprised of several companies and joint venture agreements with third parties were executed in order to bring in funds for development of the properties in Pune and Pimpri Chinchwad area. The petitioner was involved in the dealings in some litigated properties. The petitioner formed two companies, namely, Yashraj Builders Private Limited and Pratham Builders and Developers Private Limited, of which, the petitioner is a director. The petitioner acquired certain rights in a land (Survey Nos. 210 and 211 at village Wakad, Taluka Mulshi in Pune District). After setting out the history of acquisition of these rights, the petitioner states that he was involved in some litigation regarding this Wakad land. Ultimately, this land was

developed by the petitioner as a developer, after taking huge loan and borrowing sums from financial institutions. He was unable to repay the same and some recoveries were effected by the banks and lenders.

4. As far as the Income Tax Act, 1961 (hereinafter referred to as "the IT Act") is concerned, the proceedings, according to the petitioner, commenced with a search carried out in the petitioner's premises under section 132 of the IT Act on 11th January, 2008. Some papers and other documents were seized by the Income Tax Officer. Thereafter, a notice was issued on 10th October, 2008 under section 142(1) of the IT Act. Then, a notice was issued on 10th October, 2008 under section 142(1) of the IT Act. The petitioner states that he filed an application before the Settlement Commission on 30th July, 2010 invoking section 245-C of the IT Act for the assessment years 2002-03 to 2008-09, in which, he disclosed additional income. The petitioner gave an explanation for his inability to repay the bank loans and other liabilities. The petitioner, during the search, had declared an additional income of Rs.4 crores as income earned by the concerned company (Pratham Builders and Developers Private Limited) to overcome possible error/mistake in not declaring the income correctly for the past years. The petitioner relies upon

the declaration. Then, he states that after receipt of notice under section 153-A of the IT Act, he filed his returns and furnished his computation. He furnished his computation along with the returns was furnished by stating the net loss of Rs.3 crores from the Wakad project. The petitioner states that during the course of assessment proceedings, the assessing officer, after verifying large number of transactions and complexity attached thereto, came to a conclusion that the case was required to be given for special audit under section 142(2A) of the IT Act. The special auditor was appointed and the audit process was completed on 10th June, 2010.

5. Then, the petitioner refers to the application filed before the Settlement Commission by him and the company Pratham Builders and Developers Private Limited. There was a common order passed by the Settlement Commission on 1st December, 2011. The Settlement Commission assessed the taxable income at Rs.20.82 crores for the petitioner and the taxable income at Rs.5.70 crores for the Pratham Builders and Developers Private Limited. Annexure 'B' is a copy of the order passed by the Settlement Commission. Then, the assessing officer worked out the tax dues at Rs.11.98 crores along with interest for various years under sections 234-A, 234-B and 234-C of the IT Act

amounting to Rs.5.10 crores. The chart of year-wise working is annexed as Annexure 'C' to the petition.

6. The petitioner then refers to the relief granted by the Settlement Commission in its order and submits that the Deputy Commissioner of Income Tax, Circle - 1(2), Pune passed an order under section 153-A read with section 245-D(6) of the IT Act giving effect to the order of the Settlement Commission. This order of the Deputy Commissioner is dated 16th January, 2012. Annexure 'D' is a copy of the same. After referring to the details of this order, the petitioner submits that there are assessment orders passed for the years 2003-04 to 2008-09. There were separate penalty orders also. The details of the same are provided in para 16. The petitioner arranged and made payment of Rs.3.55 crores against total amount of Rs.11.98 crores. The final unpaid amount is worked out to Rs.8.43 crores as per Annexure 'F'. Then, the petitioner refers to Annexure 'G', which is a summary of various certificates of attachment as the petitioner could not clear all dues. Then, there is a notice of demand and details of the same are referred to in para 19 and a copy of the same is annexed as Annexure 'H'. A reply thereto, given by the petitioner is at Annexure 'I'. The residential bungalow of the petitioner was attached by order dated 28th February, 2013

Annexure 'J'. Thereafter, the second respondent wrote to the petitioner on 22nd July, 2013 referring to the attachment order dated 18th February, 2013 that the second respondent proposes to sell the residential bungalow under Rule 37 and 52(1) of the Second Schedule of the IT Act and a copy of this letter dated 22nd July, 2013 is annexed as Annexure 'K'.

7. Then, the petitioner submits that he cooperated with the Department, including disclosing a sale of the property at Kusgaon. Thus, the petitioner appraised the Department of all the details. Since the petitioner is in the business of development of properties, including litigated properties, he provided details of the agreements executed in that behalf. The petitioner states that despite his cooperation and assistance, the Income Tax Department attached several properties, the total value of which far exceeds the demand raised on the petitioner. The valuation has increased due to change in the D. C. Regulations in Pune with effect from 5th January, 2017 granting greater FSI due to green belt. The details of the attached properties are provided in para 22 at pages 14 and 15 of the paper book. The further details are also provided in para 23 at page 15. Then, there is a reference made to the attachment of the bank accounts of the petitioner and his family members, thereby adversely affecting his business.

Then, the petitioner, in para 25, refers to a hearing before the Settlement Commission, held on 27th May, 2016. The request of the Revenue, made at that time was for withdrawal of immunity. However, the petitioner brought to the notice of the Commission that the Income Tax Department has not given credit to the petitioner for large amounts paid by him. On 26th June, 2016, the Income Tax Department accepted the payments made by the petitioner and gave the petitioner a figure of Rs.11,19,13,519/- that is required to be paid to clear the total outstanding dues against the Settlement Commission order. However, this figure was changed by the assessing officer on the basis of his working of the interest and interest on penalty. He computed the total outstanding of Rs.16,51,55,214/-. Thus, the Department went on changing and modifying its figure. Due to the revision made repeatedly, the petitioner complains that he was unable to procure a potential lender to finance the tax liability. Then, the petitioner refers to the next date of hearing before the Settlement Commission.

8. In the meanwhile, the petitioner refers to a communication from him dated 20th June, 2016 Annexure 'N'. The petitioner then refers to some offers made by him during the course of the proceedings, but complains that despite the first attachment

order, the third respondent issued another one dated 28th April, 2016 attaching the residential bungalow. The Department also illegally attached Plot Nos. G1 and G2, which does not form part of the residential bungalow and is part of one Surobhee Enclave. Thus, the attachment order, copy of which is at Annexure 'O' is faulted by the petitioner and he then produces the third respondent's letter dated 26th October, 2016 revising and rectifying the demand from Rs.38,39,00,000/- to Rs.37,08,02,437/-. Thus, the petitioner states that the interest liability calculation is exorbitant and illegal and against which, the petitioner has filed appeals before the appropriate authorities, which are under consideration. These demands for assessment years 2010-11 to 2012-13 have not attained finality. Then, the petitioner relies upon a letter dated 1st November, 2016 of the third respondent informing him that he was proposing to sell the residential bungalow for failure to pay the amount as per the Settlement Commission's order and called upon the petitioner to handover copy of the property tax receipt and electricity bill. The petitioner was called upon to handover possession of the residential bungalow.

9. Then, the petitioner, in para 31, states that the letter dated 1st November, 2016 Annexure 'Q' was issued more than three

years from the end of the financial year in which the order giving rise for demand of any tax, interest etc. for the recovery of which the immovable property has been attached, has become conclusive. Since this order is beyond this period, therefore, it is not legally valid and enforceable. Consequently, the petitioner filed an appeal challenging the communication at Annexure 'O'. This appeal was filed before the first respondent under Rule 86(1) of the Second Schedule of the IT Act. That appeal came to be rejected on 16th January, 2017. Then, the petitioner refers to a letter dated 24th January, 2017 of the second respondent, calling upon him to vacate the residential bungalow. In that letter, reliance was placed on the impugned order dated 16th January, 2017. Annexure 'T' is a copy of this letter dated 24th January, 2017. Against this communication, the petitioner filed an appeal to the Chief Commissioner of Income Tax on 3rd February, 2017. The contention of the petitioner was that the tax recovery officer ought to have appreciated that since the order of the Settlement Commission was not conclusive, the entire action proposed was premature and that is why this communication be cancelled. By a letter dated 28th February, 2017 received by the petitioner on 9th March, 2017, the petitioner's application was rejected.

10. Then, there was an advertisement inserted in the Daily “Sakal” dated 20th February, 2017 advertising the auction of the residential bungalow on 16, 17 and 21st March, 2017. The petitioner, therefore, challenges all these orders and communications on the grounds set out in the writ petition.

11. We must note the development post filing of this writ petition. An affidavit in reply has been filed by Mr. Shiv Dayal Srivastava, Principal Commissioner of Income Tax-the first respondent and after setting out the full chronology of events, the said affidavit supports the entire action, including the orders impugned before us.

12. Essentially, the contention appears to be that the final and conclusive demand is intimated vide letter dated 30th January, 2017. This demand is inclusive of the effect of the petitioner’s rectification application. Even the interest has been computed in accordance with law. Thus, the previous letters are superseded by this letter dated 30th January, 2017. This letter, according to the Revenue, has not been placed on record. It is in these circumstances that each of the paragraphs have been dealt with and their contents denied. The petitioner is faulted for not bringing on record the details of the request made for extension of time limit by him. It is urged that these requests are made in

writing. The Revenue submits that there are gross illegalities committed by the petitioner and which are summarised in this affidavit. Thus, it is urged that none of the steps, measures and orders can be said to be contrary to law. On the other hand, it is urged that the petition is filed by a defaulter. The defaulter has defaulted in payment of tax despite availing of all the opportunities to settle the dues. Thus, the settlement route was chosen by the petitioner himself. However, even the relief, which was granted by the Settlement Commission, has not been accepted by the petitioner in letter and spirit. Once, the recomputed demand also is not satisfied by the petitioner, then, there was no alternative but to initiate measures to dispose of the immovable properties. That is how even the legal argument has been dealt with.

13. To this affidavit in reply dated 5th April, 2017, there is an affidavit in rejoinder filed by the petitioner. Apart from reiterating the contents of the petition, additionally, it is submitted that the language of Rule 68B would enable the petitioner to raise a challenge to all the proceedings. Once they are not within the statutory time limit, then, the writ petition deserves to succeed.

14. There is a civil application being Civil Application No. 849 of

2017, which is filed by applicant-Deccan Homes Pvt. Ltd. The applicant says that it has vital interest in the writ petition for the simple reason that after the residential bungalow was attached and put up for sale, the applicant, which is a company incorporated under the provisions of the Companies Act, 1956, *inter alia*, engaged in the business of development of infrastructural facility, participated in the public auction. This public auction was held by the third respondent to this writ petition on 21st March, 2017. The third respondent had fixed a reserve price of Rs.16,29,10,000/- for the property being auctioned. The applicant placed its bid at Rs.17,01,00,000/-. The third respondent declared, by a letter dated 22nd March, 2017 the applicant to be the highest bidder and directed it to pay 25% of the price immediately as per Rule 57 of the Second Schedule of the IT Act. Accordingly, a sum of Rs. 4,25,25,000/- being 25% of the bid price was deposited by a Demand Draft with the third respondent. The balance price had to be paid within 15 days from the date of auction, which the applicant is ready and willing to comply with. The balance price is to the extent of 75%. However, the applicant says that the applicant has to be declared the absolute owner and in that regard, relies upon Rule 63 of the Second Schedule of the IT Act. Thus, the applicant would suffer because its rights and contentions are directly affected by the

present petition and its outcome. It is an interested party and would suffer substantial injury in the event the writ petition is allowed without hearing it.

15. This application was supported by an affidavit of the applicant dated 5th April, 2017 affirmed by its Director Dr.Avinash Mandke.

16. It is in the light of this application filed, supported by an affidavit that, we have allowed the applicant to intervene and oppose the writ petition along with other respondents.

17. Mr. Porus Kaka learned Senior Counsel appearing for the petitioner submits that the factual background would indicate as to how the petitioner has been treated by the respondents. Mr.Kaka raised a preliminary objection to the impleadment of M/s. Deccan Homes Pvt. Ltd. as party respondent to the writ petition and relies upon several decisions of the Hon'ble Supreme Court of India on the satisfaction to be recorded, namely that the applicant would have to be a necessary party so as to direct its impleadment as a party respondent. The applicant is not a necessary party. Apart therefrom and without prejudice, the applicant has made payment after being aware of the dispute between the petitioner and the Department. The petitioner has

objected to the sale in writing. It is in these circumstances that Mr. Kaka would submit that the prayer for impleadment of the applicant as party respondent should be rejected.

18. Then, Mr. Kaka would submit that the order of the Settlement Commission dated 1st December, 2011 is final and conclusive. In that regard, Mr. Kaka relies upon the language of that order and section 245-I of the IT Act. He would submit that it clearly and unambiguously states that the order of the Settlement is conclusive in respect of income which has been fully and truly disclosed by the petitioner vide his application before that commission. Mr. Kaka submits that it is an undisputed matter or fact that neither the petitioner nor the respondents have challenged the efficacy and validity of the order of the Settlement Commission dated 1st December, 2011. Therefore, the said order of the Settlement Commission has attained finality and remains conclusive. Further, there is no dispute between the petitioner and the respondents or even the Settlement Commission that the settlement order dated 1st December, 2011 has been obtained by any fraud or misrepresentation which otherwise could have resulted into the order itself being void.

19. Mr. Kaka submits that Respondent no.1 vide its impugned order dated 16 January 2017 has erred in holding that Petitioner

is in continuing default due to its failure to pay the installments of tax dues. Such conclusion of Respondent no.1 of their being a continuing default is contrary to the provisions of law and the judgment of the Hon'ble Supreme Court of India in the case of *Brij Lal v. CIT* (supra), as the settlement commission order u/s 245-D(4) of the Act giving rise to the demand became conclusive on the date of passing of such order of settlement by the Settlement Commission. Non payment of the tax dues by the petitioner due to precarious financial difficulties does not make a valid and conclusive order of the Settlement Commission passed u/s 245-D(4) of the Act inconclusive in absence of any fraud or misrepresentation or without there being any challenge to such order. Non compliance of the order cannot make the order itself not a final or conclusive one. A continuing default *per se* is different from the finality and conclusiveness of the order itself and cannot affect the conclusiveness of an order of a judicial authority.

20. Mr. Kaka submits that In fact, the conduct of the respondents shows that even on their own interpretation they have issued demands for payment and attached properties before the time for payment of installments ended. They have also charged interest and penalty from the date of the Settlement

Commission's order irrespective of the installment time granted. If the order was not conclusive till the installment time was not over, then, the ITCP – 1 dated 23rd January 2013 and attachment dated 18th February 2013 could not be done.

21. Mr. Kaka submits that the fact that the interests have been levied u/s 220 and 245-D(6)(A) of the Act due to non payment of demand arising out of the conclusive order of settlement itself shows that such interests/penalty have been levied in consequence of the order of settlement u/s 245-D(4) of the Act which till date remains the only conclusive order for the block assessment years determining total income chargeable under the Act and the total demand consequent thereto.

22. Mr. Kaka submits that the respondents have also vehemently argued that since the payment of tax dues has not been done by the petitioner, the immunity granted by the Settlement Commission may get withdrawn and therefore the settlement order dated 1st December 2011 is not conclusive. The petitioner says that the sale has been against the demand arising out of the settlement order dated 1st December 2011 which has become final and not for any additional demand not consequential to the same settlement order. The attachment and sale is not for any possible amendment to the order. In any event, even if the

immunity is withdrawn and gives rise to any new demand in future, that will be a new order giving rise to a new demand, if any. The possibility of such new order in future cannot make the order passed by the Settlement Commission under section 245-D(4) as inconclusive qua the consequent demands that have become final. The fact that the Respondents have attached the residential bungalow against the demand arising out of or in consequence of the Settlement Commission's order dated 1st December 2011 itself shows that such order dated 1st December 2011 is a conclusive order as far as pending demand including interest and penalties; and attachments are concerned.

23. Mr. Kaka's next submission is that the sale of the immovable property is barred by limitation. Rule 68B of Schedule II of the IT Act as introduced by Finance Act 1992, with a view to prescribe a time limit of 3 years for sale of the attached immovable properties, bars any sale after the expiry of 3 years from the end of financial year in which the order giving rise to a demand of any tax, interest, fine, penalty for which the immovable property has been attached, has become conclusive. The demand comprising of tax, interest, penalty in this case arises out of the conclusive order of the Settlement Commission under section 245-D(4) of the Act, dated 1st December, 2011.

Since the aforesaid order of the Settlement Commission dated 1st December, 2011 was conclusively passed during the financial year 2011-12, the period of limitation for any sale of the immovable property being the residential bungalow for recovery of any tax dues arising out of such aforementioned order has already expired, as per provision under Rule 68B(1). The attachment of the residential bungalow vide the impugned attachment order dated 18th February, 2013 is for the recovery of tax dues which relates to/arises out of the order of settlement dated 1st December, 2011. The impugned attachment order dated 28th April, 2016 attaches the same residential bungalow with different survey numbers alongside plot G1 and G2 belonging to Surabhee Enclave. It must be noted and emphasized that the impugned letter for sale dated 1st November 2016 is for demands that have become final and conclusive vide the Settlement Commission's Order dated 1st December 2011 and not other years pending in appeal and disputed. Therefore, the various attachments and auction-sale thereupon of the residential bungalow, including the advertisement for sale dated 20th February 2017 are against and/or in relation to demands including the various interests and penalties arising out of the only conclusive order of the Settlement Commission under Section 245-D(4) read with Section 245-I of the Act.

24. Mr. Kaka submits that the impugned letter dated 01st November 2016 for intimation of the sale of the attached residential bungalow was undisputedly issued after the expiry of 3 years from the end of financial year 2011-12 during which the final and conclusive order of the Settlement Commission dated 01st December 2011 was passed. Therefore any attachment of the residential bungalow being the immovable property and its sale are beyond the powers of the tax recovery officer.

25. Mr. Kaka further submits that Rule 68B of the IT Act makes it obligatory on the part of the Revenue to complete the sale of the immovable property attached by it for recovery of any tax, interest, fine/penalty or any other sum within the prescribed period. The sale of the immovable property attached for recovery of any tax, interest, etc., cannot be held after the expiry of the period of limitation prescribed under Rule 68B of Schedule II of the IT Act and if the sale is not completed within the prescribed period, the attachment, if any, levied on the property is liable to be vacated. In fact, as held by the judgments of the High Court of Madras and Karnataka, the attachment is deemed to have been vacated already by operation of Rule 68B(4) of the Second Schedule of the IT Act after the expiry of the period of limitation of three years from the date of the order of Settlement

Commission in facts of this case. Mr. Kaka submits that the Hon'ble Supreme Court has also held in the case of *India House vs. Kishan N. Lalwani*.¹ that there is no equity in applying the period of limitation.

26. Mr. Kaka submits that there was no order passed by the Settlement Commission on 1st August, 2016 for payment of Rs.1.25 crores. In any event, the hearing on 1st August, 2016 was in relation to the application filed by the Department for withdrawal of immunity and Settlement Commission, in those proceedings, orally advised/directed the petitioner to pay Rs.1.25 crores and adjourned such hearing to a further date. Therefore, even if an order would have been there to pay Rs.1.25 crores in those proceedings, it cannot have any bearing on finality and conclusiveness of the final order under section 245-D(4) already passed by the Settlement Commission which has statutorily attained finality under section 245-I of the IT Act. Even if any order is passed by the Settlement Commission finally in those separate proceedings against Department's application for withdrawal of immunity, that, by no stretch of imagination, can alter the conclusiveness of the Settlement Commission's order dated 1st December, 2011 passed under section 245-D(4) of the IT

¹ (2003) 9 SCC 393

Act and therefore, the period of limitation under Rule 68B of the Second Schedule of the IT Act has already expired on 31st March, 2015.

27. Mr. Kaka further submits that no stay or injunction has been granted by any court and/or authority on the operation of the order of the Settlement Commission or against any demand arising in consequence of such order and therefore, no time-period ought to be excluded under Rule 68B(2) while calculating the period of limitation. The impugned order against the appeal filed by the petitioner is in any event filed/issued after the expiry of three years from the end of financial year during which the order of Settlement Commission was passed and therefore would not be relevant for computing such period of limitation.

28. Mr. Kaka submits that the interpretation canvassed by the respondents on the basis of intimation of demand dated 30th January, 2017, wherein the demand has been updated after adding interest and penalty, is totally fallacious and incorrect. As per Rule 68B, the period of limitation starts from the end of the financial year in which the order giving rise to the demand and interest becomes conclusive. The order giving rise to the demand became conclusive when the order under section 245-D(4) was passed i.e. on 1st December, 2011. It is also an admitted position

that the order of the Settlement Commission was neither challenged by the petitioner nor by the Income Tax Department before the High Court. As per section 245-I, every order passed by the Settlement Commission is conclusive as to the matters stated therein. The levy of interest under under section 220 and 245-D(6A) of the IT Act is an automatic process. By levy of statutory interest, a conclusive order does not become inconclusive till payment of demand arising out of the conclusive order. The addition of automatic statutory interest under section 220 and 245-D(6A) and/or even penalty under section 221 of the Act due to delay in payment is also based on and arises from the same final and conclusive order of the Settlement Commission dated 1st December, 2011. Even the interest calculation under section 245-D(6A) which is based on the Tax Department's own stand is from the date of the Settlement Commission's order dated 1st December, 2011. The interpretation sought to be advanced by respondent no. 1 that consequential interest and penalty extend limitation will render Rule 68B of the Second Schedule of the IT Act otiose and nugatory and ought to be rejected.

29. Mr. Kaka further submits that the sale only for the penalty levied under section 221 (without prejudice to its being consequential) would be contrary to law, being wholly

disproportionate to the demand as per Rule 34 of the Income Tax Rules. In fact, sub-section (2) of section 221 of the Act itself says that the penalty shall be cancelled and refunded where as a result of any final order the amount of tax, with respect to the default in the payment of which penalty was levied, has been reduced, thereby statutorily providing that penalty under section 221 is consequential to the final order levying tax, which in facts of this case remains the final and conclusive order of the Settlement Commission dated 1st December, 2011. In addition, Rule 5 of the Second Schedule of the IT Act clearly provides that interest, cost and other charges would be consequential and recoverable. Hence, it is clear that the order of the Settlement Commission dated 1st December, 2011 is the only starting point of all these demands.

30. Mr. Kaka complains that after the conclusion of the hearing, the Income Tax Department/respondents have filed an affidavit in reply. This is most unjust and unfair. The whole attempt is to take the petitioner by surprise and by introduction of new materials so as to prejudice his case.

31. Mr. Kaka, therefore, would submit that the affidavit in reply be ignored for it runs into more than 250 pages. Without prejudice to this submission, the petitioner submits that he does

not admit and rather denies each and every statement made in the affidavit in reply, which runs counter or contrary to the case of the petitioner. Therefore, after conclusion of the proceedings, any attempt to reopen the factual matters should not be permitted.

32. For the above reasons, Mr. Kaka would submit that the petition be allowed. Mr. Kaka relies upon the following judgments in support of his contentions:-

(i) M. U. Joshi vs. Tax Recovery Officer and Ors.,
[2005(6) Bom. C. R. 17]

(ii) Brij Lal and Ors. vs. Commissioner of Income Tax,
[(2010) 328 ITR 447 (SC)]

33. On the other hand, Mr. Chanderpal appearing for the respondents would rely upon the statements made in the affidavit in reply. He would submit that these would demonstrate as to how the petitioner has grossly abused the process of this court. He has tried to mislead this court by suppression of true and correct facts. Mr. Chanderpal would submit that there is no merit in the contentions of Mr. Kaka. He would submit that ample opportunities were given to the petitioner and he was accommodated on several occasions. Mr. Chanderpal would rely

upon Chapter XIX titled as “Settlement of Cases” appearing in the IT Act. He would submit that from section 245-A to 245-L, it is apparent that proceedings before the Settlement Commission are judicial proceedings. The order of the Settlement Commission is conclusive, but, the Sections prior to section 245-I falling in the said Chapter, would also have to be taken into consideration. All the provisions read together and harmoniously would indicate as to how in the facts and circumstances of the present case, the Settlement Commission was desirous of obtaining the report about compliance with its order. Thus, so long as the petitioner did not comply with the directions of the Settlement Commission, he would not enjoy the immunity from prosecution. Therefore, for compliance with the order and directions of the Settlement Commission, the matter had to be placed before it. In these circumstances, going by the language of Rule 68B, the time limit specified therein had not expired. In these circumstances, there is no merit in any of the contentions of Mr. Kaka. The writ petition deserves to be dismissed. It is urged that the judgment of the Division Bench of this court, which is relied upon, is distinguishable on facts. Hence, the writ petition be dismissed.

34. Mr. Sridharan, learned senior counsel appearing for the applicant and who sought permission to intervene so as to give

complete assistance for construction of the legal provisions, would support Mr. Chanderpal. Additionally, he would submit that the applicant is the successful bidder and now the purchaser of the property at a public auction. The applicant was declared as the highest bidder in the public auction concluded on 22nd March, 2017. It has since paid full consideration of the auction of Rs.17.01 crores by 4th April, 2017 well within the time limit of 15 days stipulated by Rule 57 of the Second Schedule to the IT Act. Hence, there is a direct interest of the applicant which is involved. Therefore, the applicant should be directed to be impleaded as a respondent to the writ petition.

35. Then, Mr. Sridharan made some legal submissions. However, prior thereto, he relied upon the factual position as emerging from the record of the Settlement Commission. It is submitted that the Settlement Commission determined the income of the petitioner for the assessment years 2002-03 to 2008-09. The Settlement Commission granted eight quarterly installments, which is two years period to the petitioner to pay the arrears as per its order dated 1st December, 2011. The penalty otherwise imposable was much more, but the penalty actually imposed on the petitioner by the Settlement Commission is on an income of Rs.1,71,54,123/-. Precisely, a immunity was

granted by the Settlement Commission to the petitioner qua balance penalty imposable under section 271(1)(c) in its order dated 1st December, 2011. Inviting our attention to section 245-H(1) of the IT Act, Mr. Sridharan would submit that it confers discretion on the Settlement Commission to grant immunity subject to conditions it may impose. That is how the Settlement Commission granted partial immunity, but the same is conditional on meeting the tax demand within the stipulated time. Such a conditional order (granting immunity from penalty) cannot be conclusive under section 245-I of the IT Act, if the conditions imposed by the order of the Settlement Commission are not fulfilled. Even otherwise, by operation of law, namely, section 245-H(1)(A), the immunity was to stand withdrawn on non-compliance with the conditions imposed by the Settlement Commission. Hence, the order dated 1st December, 2011 cannot be conclusive. This would be demonstrated by the fact that the petitioner applied on or about 4th December, 2013 for grant of further time. The Revenue applied to the Settlement Commission for withdrawal of immunity and both these eventualities would demonstrate as to how the order of the Settlement Commission was not conclusive. Our attention is also invited to section 221 of the IT Act and sub-section (1) thereto to submit that it is a distinct and separate provision from the order of the Settlement

Commission. All procedural steps were duly followed for recovery of amount of Rs. 48 lacs. Our attention is also invited to Rule 8 of the Second Schedule, which provides for adjustment of surplus proceeds against outstanding arrears of the assessee.

36. Mr. Sridharan would then submit that the decision of the Division Bench in *Joshi's* case (supra) is clearly distinguishable for the default in this case is a continuing one. Mr. Sridharan elaborated his submissions orally as also in writing thus:-

8.1. Once an order of the Settlement Commission passed under section 245D(4) of the IT Act, inter alia, granting partial immunity from imposition of penalty is subject to certain conditions stipulated therein, the order would become conclusive under Section 245I of the It Act only, if the conditions mentioned therein are complied with.

8.2. In other words, if the conditions stipulated for grant of partial immunity from imposition of penalty in the order passed under Section 245D (4) of the IT Act are not complied with, the order does not become "conclusive" within the meaning of Section 245I. The matter becomes at large for imposition of penalty, which can also only be done by the Settlement Commission alone and no other authority.

8.3 The above is particularly so, for one more important reason. Under Section 271(1) (c), if penalty is impossible, it should not be less than 100% of tax sought to be evaded and not exceeding 300% of tax sought to be evaded. The quantum of penalty to be imposed after withdrawal immunity has to be decided by Settlement Commission alone. Therefore, order of Settlement Commission is not conclusive within the meaning of Section 245-I in such a situation. It is then submitted that the language of section 245-D(6) would also indicate as to how it is mandated that the terms of settlement should, inter alia, include demand of penalty. Hence, all matters, which would make the settlement effective, ought to be provided. If matter

regarding penalty is reopened for withdrawal of immunity, it cannot be said that the settlement is effective. Till a fresh order is passed, the order of the Settlement Commission is not conclusive.

37. Then, reliance is placed on section 245-H(1A) to submit that in view of this express provision, the order dated 1st December, 2011 cannot be said to be conclusive within the meaning of section 245-I read with Rule 68B of the Second Schedule of the IT Act. Mr. Sridharan, relying upon the language of section 245-H, submits that Expression “save as otherwise provided in this chapter” in Section 245-I is significant. Section 245-H(1A) mandates “withdrawal of immunity” and “thereupon provisions of this Act shall apply as if such immunity has not be granted”. In such an event, the case becomes non-conclusive. Rule 68B is therefore inapplicable. Petitioner has applied on or about 4th February, 2013 for more time for payment to the Settlement Commission. In view of the words “or within such further time as may be allowed by the Settlement Commission” employed in Section 245-H(1A), the Commission has power to do so. Hence, earlier order is not conclusive within the meaning of Section 245-I. Subsequent order of the Commission when issued granting or declining more time will be material date for calculating limitation under Rule 68B. It is urged that the Settlement Commission has power to extend time for payment

even after passing an order under section 245-D(4) and even after specifying the time in the order. The words “within such further time as may be allowed by the Settlement Commission” appearing in section 245-H(1A) are indicative of the legislative intent. Mr. Sridharan submits that page 513 of the counter affidavit of the Revenue is a letter dated 30th January, 2013 of the petitioner to the Settlement Commission seeking extension of time. Page 512 (Same as page 232 of the Writ Petition) of the counter affidavit is a letter dated 4th February, 2013 of the petitioner to the Tax Recovery officer enclosing the above application of the petitioner to the Settlement Commission. In this letter dated 4th February, 2013, Petitioner has requested the Commission to give a personal hearing and allow an extended time period for paying all the dues. In the face of this application of the petitioner to the Settlement Commission and the power of Commission under Section 245-H(1A) to extend time, it cannot be said that the order of the Commission has become conclusive within the meaning of Section 245-I.

38. Mr. Sridharan submits that section 245-H(1A) employs expression “immunity granted shall stand withdrawn”. This expression only means that Settlement Commission has no more discretion in granting of or continuing the immunity. However,

formal order has to be necessarily passed withdrawing the immunity, which can be done only by the Settlement Commission and nobody else. Also, the Settlement Commission alone has jurisdiction to decide the quantum of penalty, since quantum of penalty cannot be less than 100% and cannot exceed 300% of tax sought to be evaded. The assessing officer has no jurisdiction to determine the penalty imposable under section 271(1)(c). Therefore, the Settlement Commission has to necessarily pass fresh orders on the quantum of penalty under section 271(1)(c). Only after passing of such an order, the order would be conclusive under Section 245-I.

39. Mr. Sridharan submits that let it be assumed that section 245-H(1A) does not contemplate a formal or fresh order withdrawing the immunity and by operation of section 245-H(1A) itself immunity stands withdrawn. Let it also be assumed that though a fresh order of penalty has to be passed, it can be by assessing officer himself and not necessarily the Settlement Commission. Still, these aspects establish that order of the Settlement Commission is not conclusive within the meaning of Section 245-I. Therefore, until this application by the Revenue for withdrawal of immunity in the present case is decided by the Settlement Commission, the order of the Settlement Commission

dated 1st December, 2011 cannot be regarded as “conclusive” within the meaning of Rule 68 of the Second Schedule to the IT Act, read with Section 245-I thereof.

40. Mr. Sridharan submits that the submission is not this: Non payment of installments as ordered by the Settlement Commission renders the order non-conclusive. The precise submission is this: Immunity from penalty is conditional upon payment of installments. Non adherence to installments implies immunity shall be withdrawn and penalties to be imposed afresh by the Settlement Commission/assessing authority. Therefore, the order of the Settlement Commission is not conclusive under Section 245-I.

41. Mr. Sridharan submits that suppose, the order of the Settlement Commission does not give immunity from imposition of penalty and tax is directed to be paid within 35 days as stipulated in Section 245-H(6A). Suppose, the assessee does not comply with this requirement, still, the non-payment of tax within this stipulated 35 days will not affect the conclusiveness of the order under Section 245-I, since no immunity from penalty has been granted by the Settlement Commission. Similarly, suppose immunity has not been granted from penalty, but tax determined in the order is directed to be paid by installments

and/or time for the same is provided by the Settlement Commission. Suppose the assessee does not adhere to the installments/time granted for payment, still, such a situation may not affect conclusiveness of the order, since no immunity from penalty has been granted by the Commission. Some immunity is granted from imposition of penalty and as a condition thereof, the tax liability is permitted to be paid by installments/within time stipulated in the order. The order of the Settlement Commission will be conclusive if the taxes are paid by the assessee as per the time limit stipulated by the Settlement Commission. Some immunity is granted from imposition of penalty in the order of the Settlement Commission, but that is not conditional upon payment of taxes within a stipulated time specified in the order of the Settlement Commission. If we keep aside Section 245-H(1A) for a moment, then, in this example/situation, non-payment of taxes within the stipulated time, may not affect the conclusiveness of the order for the purposes of Section 245-I read with Rule 68B of the Second Schedule of the IT Act.

42. Mr. Sridharan submits that position would be totally different if the order of Settlement Commission granting partial immunity from penalty is conditional upon payment of taxes in stipulated time. That is the position in the present case and that

makes all the difference. In such a case, the order of the Commission is not conclusive.

43. Mr. Sridharan submits that the another argument of the petitioner is this: Even if the immunity granted from imposition of penalty is withdrawn, the tax liability would not be affected. Only amount of penalty may increase. Therefore, the order of the Settlement Commission is “conclusive to the extent of tax or penalty determined”. Therefore, any recovery of the said amounts by sale of immovable property should be within the limitation in Rule 68B of the Second Schedule. The argument is clearly flawed.

44. Rule 68B of the Second Schedule to the IT Act prescribes that the period of limitation would be from “order becoming conclusive” and not from “part or portion of the order giving raise to the demand of tax or penalty becoming conclusive”. The order of the Settlement Commission is one order and has to be read as a whole. For the purposes of Rule 68B, the order of the Commissioner cannot be dissected into (a) part determining tax liability; (b) part determining liability, and (c) part providing for immunity from penalty.

45. To interpret Rule 68B of the Second Schedule to the IT Act

in the above manner would amount to reading of the words “part of” or “portion of” before the phrase “order becoming conclusive” into the said Rule 68B. This is not permitted in the garb of interpretation.

46. Mr. Sridharan submits that Section 221 of the Act, provides for levy of penalty on an assessee for default in payment of tax, even if there is no evasion of tax. Section 221(1) of the IT Act is reproduced below:-

“221. Penalty payable when tax in default.-(1)
When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of Section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears”.

47. Obviously, Section 221(1) is a provision enacted in terrorem to ensure timely collection of tax. The said penalty is leviable even when there is no willful intention to evade tax. Liability of penalty may arise on mere non-payment of tax by a defaulting assessee. Proviso to Section 221 gives a discretion to the assessing officer not to levy penalty.

48. Mr. Sridharan submits that order of penalty under section

221(1) is a distinct and separate order from the order of the Settlement Commission and is passed by the assessing officer himself. Section 245I also reinforces this position. The levy of penalty under section 221(1) of the IT Act by the assessing officer is a distinct order, different from and over and above the order of the Settlement Commission. It is in fact imposed for non-payment of tax as directed by the Settlement Commission. It is in fact over and above the liability determined by the Settlement Commission.

49. Mr. Sridharan submits that section 246-A enumerates orders passed under the Act which are appealable to CIT (A). It expressly specifies that order of penalty under Section 221 is appealable to CIT (A) vide section 246-A(i)(j)(A). This also establishes that an order imposing penalty under Section 221(1) is a distinct order. Mr. Sridharan submits that the above position is reiterated by section 245-J of the IT Act.

50. Mr. Sridharan submits that Section 245-J forms part of Chapter XIX-A relating to Settlement Commission. It expressly provides for the imposition of penalty, evidently under section 221(1) of the It Act, for default in making payment of sum specified by the Settlement Commission in its order. Therefore, the order of the assessing officer imposing penalty under section

221(1) read with section 245-J is distinct from the order of the Settlement Commission and is independent of it.

51. Mr. Sridharan submits that the assessing officer has, vide five distinct and separate orders, for each of the different assessment years involved in the present case, all dated 14th August, 2013, imposed penalty under section 221(1) of the IT Act aggregating to Rs. 48 lakhs. These were for solely non-payment of taxes within the time limit specified by the Settlement Commission in its order dated 1st December, 2011. (Illustrative copies of these five Orders are at pages (a) 447 to 448, (b) 465 to 468 of Counter affidavit of the Revenue).

52. Mr. Sridharan submits that these Orders of penalties passed under section 221(1) have not been challenged by the petitioner and have become final. The petitioner has himself referred to these penalties, vide Exhibit 'C' at page 179 of the writ petition while setting out the total liability according to petitioner in the form of a table. The last item in that table is "Add: Penalty under section 220(1) Rs.48,00,000" (Referred to section 220(1) by the petitioner is a typing mistake for Section 221(1)).

53. Mr. Sridharan submits that all procedural steps are duly followed by the Revenue for recovery of this amount of Rs.48

Lakhs. Five notices of demand were issued in Form 7 of the Income Tax Rules, 1962 under Section 156 of the IT Act, totaling to Rs.48 lakhs for payment of these penalties, vide illustrative pages 446 and 464 of the counter affidavit of the Revenue. Ultimately, Notice in Form ITCP-16 dated 28th April, 2016 (page 244 of the writ petition) was issued for Rs.38,39,64,000/- attaching the impugned property. On an application filed by the petitioner, rectification was done giving credit for amount of Rs.1,65,89,038/- paid by petitioner. Letter dated 26th October, 2016 was accordingly issued for a revised sum of Rs.37,08,02,437/- (page 245-245 of the writ petition). This sum duly included the penalty amount of Rs.48 lakhs. Thereafter the impugned property belonging to the petitioner was attached under Rule 48 of the Second Schedule to the IT Act by issuance of another notice in Form ITCP 16 dated 17th February, 2017 (Annexure 'A') *inter alia*, for non-payment of Rs.48 lakhs (as part of total arrears of Rs.6,61,36,789). Relevant portion of this form ITCP-1 reads as under:-

“Where as, Shri Rajiv Yashwant Bhale has failed to pay the sum of Rs.6,61,36,789/- (interest under Section 245D (6A) Rs 6,13,36,789 + penalty under Section 221 of Rs.48,00,000/-), in letter of intimation dated 30/01/2017, and the interest payable under Section 220(2) of the Income Tax Act, 1961”

54. Mr. Sridharan submits that also a proclamation of sale was issued against the subject property vide Form ITCP 13 dated 17th February, 2017 *inter alia*, for non-payment of Rs.48 lakhs (as part of total arrears of Rs.16,51,55,214/-).

55. Mr. Sridharan submits that the advertisement published for auction of the property (at page 316 of the writ petition) and the communication sent to the petitioner by respondent No. 3 on 30th January, 2017 (at page 368 of the counter affidavit), indicated the total dues of Rs.16,51,55,214/- for which the attached property was being auctioned. The said total dues, *inter alia*, specifically and duly included the amount of penalty under section 221 of Rs.48 lakhs. Therefore, all the procedures, *inter alia*, for the recovery of Rs.48 Lakhs by way of attachment and auction sale of the impugned property have been duly followed by the Income Tax Department.

56. For all these reasons and relying upon the written submissions tendered on record by Mr. Sridharan on 24th April, 2017, it is urged that the writ petition be dismissed.

57. Reliance is placed upon judgments of the Hon'ble Supreme Court of India and this court to buttress and support the above contentions.

58. For properly appreciating the rival contentions, it would be worthwhile if one refers to the facts. An application for settlement was made by the petitioner to the Income Tax Settlement Commission, Additional Bench, second floor, Mahalaxmi Chambers, Mahalaxmi, Mumbai 400 034. The petitioner sets out the details in the prescribed format, including that of payment of additional tax and interest. The petitioner, while elaborating the particulars of the issues to be settled, nature and circumstances of the case (assessment year-wise) at Annexure 'C', has set out as to how the tax was assessed and was payable. He also refers to the nature and circumstances of the case and complexity of the investigation involved.

59. The issues to be settled by the Hon'ble Settlement Commission were determined by the petitioner as under:-

3.1 Determination of the person in whose name the entire income relatable to land sale and land development part of Wakad Project is to be taxed.

3.2 Determination of the total undisclosed income of the applicant in respect of period covered under the assessment proceedings u/s 153A of the ITA, 1961 i.e. A.Y. 2002-03 to A.Y.2008-09.

3.3 Telescoping of the additional income offered and capitalization of the amount as may be considered appropriate by the Hon'ble Settlement Commission.

3.4 Waiver/reduction of penalty leviable under the various provisions of the Income-tax Act, 1961.

3.5 Grant of immunity from prosecution to the applicant

under the ITA, 1961 and all other central enactments as may be applicable.

3.6 Grant of installments for the payment of the additional amount of tax etc., if any and as may be found payable.

3.7 Grant of such other relief to the applicant as is deemed fit and proper by the Honorable Commission.

3.8 The applicant craves leave to add/amend/delete/modify all / any of the issues to be settled.”

60. Then, the petitioner at Annexure ‘E’ (Item Nos. 1 to 5 of the confidential Annexure) gave a full and true statement of facts regarding the issues of settlement, including the terms of settlement sought by the petitioner. The petitioner sets out the manner in which the income was derived. The petitioner also supplied the requisite documents. Then, the Settlement Commission passed an order, copy of which is annexed as Annexure ‘B’ at page 108 of the paper book and that order is fairly detailed. The Settlement Commission, in para 28 points out that there were two applicants, namely, Mr. Rajiv Yeshwant Bhale and M/s. Pratham Builders and Developers Pvt. Ltd. and both of them requested for waiver of interest chargeable under sections 234-A, 234-B and 234-C of the IT Act. Without prejudice, it was requested that the interest may be charged in accordance with the judgment of the Hon’ble Supreme Court of India in the case of Brijlal (supra). The Commission held that in the light of the Hon’ble Supreme Curt decision in the case of M/s. Anjuman

Ghaswalla (supra), it has no power to waive interest chargeable under the aforesaid provisions. However, it agreed with the alternate plea of the applicants that interest under section 234-B will be charged up to 6th August, 2010 i.e. the date on which the order under section 245-D(1) was passed as per the directions of the Supreme Court in the case of Brijlal (supra). The Settlement Commission, in para 29, then observes that the applicants also requested for waiver of interest chargeable under section 220(2) of the IT Act. However, in the view of the Settlement Commission, the request is infructuous because the assessments are still pending and the assessment orders are yet to be passed, which the assessing officer will do consequent to these orders. Then, in para 30 of this order, the Settlement Commission dealt with the request for payment by installments and directed as under:-

“30. Payment by installments:

Both the applicants have requested for granting of 8 quarterly installments for making the payments against demand raised in pursuance of the order of settlement. It was submitted that financial condition of both the applicants is quite precarious, and it will not be possible for them to pay the demand in one go. The request was not countered by CIT (DR) and the same is being allowed. The first installment will be due within stipulated period of 35 days mentioned in section 245D(6A).”

61. Further, on the point of immunity from penalty and prosecution, the Settlement Commission dealt with the case of both sides from para 31 onwards. The argument of the assessee's

representative that applicants have made full and true disclosure of their income and they are acting in the spirit of settlement has been noted and dealing with all this in para 31.1, the Commission held thus:-

“31.1 The CIT(DR) left the matter at the discretion of the Commission so far as the immunity in regard to prosecution is concerned. He, however objected to the request of applicants that they should be granted immunity in respect of imposition of penalties. It was strongly pleaded that the applicants have not made true and full disclosure of their income in the petition filed before the Commission. According to him even if it is presumed that large part of concealed income determined in this order is based on estimation, one cannot ignore the fact that there are several issues in respect of which there was no full disclosure in the SOF. He took up the case of Shri Rajeev Bhale first. It was pointed that in PB-2, which was filed on 27.9.2011 at the commencement of proceedings, the undisclosed income was admitted at Rs.7.95 crores as against a sum of Rs.2.25 crores disclosed u/s. 153A + Rs.1.70 crores disclosed in SOF=3.95 crores. It shows that the applicant was aware of the fact that he was not making true and full disclosure while coming before the Commission. Secondly, surrender of following items suo-moto in PB-II clearly shows applicant's casual approach while preparing the SOF:

Credit balance written off	Rs.20,76,792
Profit on sale of shares	Rs.52,77,657
Salary fresh offer	Rs.23,91,548
Peak shortage in cash flow	Rs.1,41,35,301
Interest on fixed deposit	Rs.23,03,819
Unaccounted investment	Rs.7,15,000

According to CIT(DR) settlement provisions stand on a unique pedestal and applicant's desire to come clean forms basic platform of the scheme of Settlement. Any breach of this basic foundation will make the applicant disentitled from the immunity provisions. CIT(DR) then

stated that similar arguments apply in regard to Pratham Builders where also nature of additions offered is similar.”

62. Then, year-wise computation of concealed income, on which penalty is leviable, is set out in a chart at page 155 of the paper book. In para 32, the Settlement Commission observes that the immunity granted to the applicants vide this order may be withdrawn if they fail to pay the applicable tax demanded within time, and in the manner specified by this order, or fail to comply with other conditions stated therein. In para 33, the Commission directed as under:-

“33. Immunity granted to the applicants may also at any time be withdrawn, if the Commission is satisfied that the applicants had in the course of the settlement proceedings, concealed any particulars material to the settlement, or have given false evidence. Thereupon the applicants may be tried for the offence for which immunity was granted, or for any other offence for which the applicants appear to have been guilty in connection with the settlement, and the applicants shall also become liable to the imposition of any penalty under the Act to which the applicants would have been liable had such immunity not been granted.”

63. Thus, in para 33 and 34, the Settlement Commission made certain pertinent observations. The Settlement Commission then forwarded the figures in terms of its directions.

64. The petitioner himself, in the writ petition, mentioned that the chart of the year-wise working has been annexed as Annexure 'C' to the petition. The petitioner then states in para 16 of the petition that the Deputy Commissioner of Income Tax,

Circle - 1(2), Pune passed order under section 153-A read with section 245-D(6) of the IT Act giving effect to the order of the Settlement Commission on 16th January, 2012, copy of which is at Annexure 'D' to the petition. Then, the notice of demand under section 156 of the IT Act was issued to the petitioner on 16th January, 2012, copy of which is annexed as Annexure 'E' to the petition. The petitioner, in para 16 at page 11 of the petition, states that the penalty orders were passed under section 271(1) (c) read with section 245-D(6) on 14th August, 2013 and in para 17, the petitioner says that he paid an amount of Rs.3.55 crores against the total amount of Rs.11.98 crores and the final unpaid amount thus works out to Rs.8.43 crores as per Annexure 'F'.

65. In para 18, the petitioner states that due to non-payment of installments, the Tax Recovery Officer, Circle - 1, Pune, drew a certificate of recovery in the prescribed form for the amount of Rs.9.68 crores. Thereafter the error in payment of tax dues was realised and the quantum of outstanding demand was reduced to Rs.8.51 crores. Various other certificates were drawn for attachment and recovery of tax dues. Then, a notice of demand dated 23rd January, 2013, calling upon the petitioner to pay a sum of Rs.9,86,12,000/-, was issued and after which, there was a correspondence. The petitioner, in the correspondence,

requested that the proceedings be kept in abeyance as he was making efforts to pay the dues, but was facing financial problems. Thus, the orders giving effect to the directions of the Settlement Commission had to be passed. Then, there was a notice of demand, which was issued. The petitioner disputed the computation thereof. Admittedly, on 16th January, 2012, there was a penalty order under section 271(1)(c) read with section 245-D(6) of the IT Act passed by the Deputy Commissioner of Income Tax, Pune, which order also given effect to the directions of the Settlement Commission. We have on record the petitioner's reply at page 232 of the paper book dated 4th February, 2013. That reply reads thus:-

“04.02.2013

From,
Rajiv Bhale,
Pinnac Gangotri,
Aundh, Pune

To,
Tax Recovery Officer,
(Central) Range - 1, Pune,
Income Tax Department,
PMT Building,
Pune.

Dear Madam,

**Sub.: Reply to your letter dated 23.01.2013,
for arrears recovery of Rajiv Bhale, A. Y. : 2003-
04 to 2008-09.**

In reference to the above subject, we want to request you to kindly hold the rigorous recovery proceedings in

regards to the arrears of Rajiv Bhale for the dues laid down by settlement commission for the A. Y. 2003-04 to 2008-09, as we are requesting the Hon. Settlement Commission to give us a personal hearing, and allow us an extended time period for paying all the dues,. We are doing the same as we are facing several genuine liquidity problems, demonstrating submission for the same are already made to the Hon. Settlement Commission. We are also attaching the copy of the submission letter accepted by the Hon. Settlement Commission.

We again request you to kindly understand our position, and kindly positively look at the matter, as we are an honest tax payer and we will pay all our dues promised, it is just the matter of time.

Thanking you in anticipation

Yours sincerely,
For Rajiv Bhale

CA Kishor B. Phadke
Authorised Representative”

66. A bare perusal of this letter/reply would indicate as to how a defaulter like the petitioner, who makes a request as above and in the language as reproduced above, is now complaining that the sale of the attached property violates Rule 68B of the Second Schedule to the IT Act. It is the petitioner, who makes a specific case in this letter that he wishes to approach the Settlement Commission seeking a personal hearing on the issue of extension of time for paying all the dues. The request in that behalf, according to the petitioner is already made in writing to the Settlement Commission. It is in these circumstances that we are of the opinion that a defaulter like the petitioner cannot raise the

issue of the sale being vitiated in law. The petitioner is urging that the order of the Settlement Commission dated 1st December, 2011 is final and conclusive and the time would begin to run from this date. However, it is the very defaulter-petitioner, who addresses the above communication. The petitioner, therefore, cannot blow hot and cold. The petitioner urges that he desires postponement of the recovery proceedings for he wants to again request the Settlement Commission to accommodate him. It is such a petitioner who now faults the whole process and by purporting to raise a legal challenge.

67. We have before us the communications from the petitioner to the Tax Recovery Officer. At Annexure 'N' at page 240 of the paper book, there is a copy of the letter dated 20th June, 2016 addressed by the petitioner to the Assistant Commissioner of Income Tax, Circle - 2, Income Tax Department, PMT Building, Pune. This letter is on the subject of payment of tax dues for the block period A. Y. 2002-03 to A. Y. 2008-09. In this communication, the petitioner refers to the hearing before the Settlement Commission dated 27th May, 2016. The petitioner in final para 7 of this communication/letter at page 243 of the paper book states that he has submitted a plan of action. He is already in advanced stage of understanding with the intending

lenders/financial institutions in this regard. Further, the assessee-petitioner requests the Assistant Commissioner of Income Tax to release two current accounts, one with the HDFC Bank and another with Janata Sahakari Bank Limited, Pune so that some financial transactions can be undertaken from these accounts and at least he can restart operations. Presently, there is complete stoppage.

68. The attachments were levied, but on 26th October, 2016, the Tax Recovery Officer communicated to the petitioner the outcome of the request made on 26th June, 2016 by the petitioner in writing. The Assistant Commissioner of Income Tax, Circle - 2, Pune carried out rectification for the assessment years and gave credit for the prepaid tax of Rs.1,65,89,038/- and the outstanding demand was revised in terms of the order of the Settlement Commission. However, it was clarified that the total demand outstanding in individual capacity, excluding interest under section 220(2) and penal interest under section 245-D(6A) as on that date is Rs.37,08,02,437/-.

69. On 1st November, 2016, the Income Tax Department wrote to the petitioner that a notice in the requisite format was issued to pay a sum of Rs.9.86 crores. However, that demand was revised by giving effect to a rectification as requested by the

petitioner. The revised demand of Rs.8.52 crores plus interest and penal interest was intimated on 26th October, 2016. Such a demand was covered by the order of the Settlement Commission, Mumbai. Further, as instructed by the Settlement Commission, Mumbai, vide the hearing conducted on 1st August, 2016, the petitioner was requested to pay Rs.1.25 crores within one month from the date of hearing to show his bonafides. That also has not been adhered to. Thereafter, there is an attachment of the residential bungalow. Since the petitioner has failed to pay the outstanding tax liability and demand is not disputed before any Income Tax authority, there was no alternative, but to sell the property by way of public auction. That is how it was proposed to sell the residential bungalow and adjust the sale proceeds against the tax liability.

70. The petitioner preferred an appeal and in which, he himself states that the Commission passed an order under section 245-D(4) of the IT Act dated 1st December, 2011. The financial year ends on 31st March, 2012. Yet, the petitioner, in para 6 of the statement of facts, preceding the grounds of appeal, stated that the assessing officer passed an order giving effect to the directions of the Settlement Commission on 16th January, 2012. He further states that the Settlement Commission allowed him to

pay the demand in installments and thereafter, when the order of the Settlement Commission was given effect to, the assessing officer computed the demand. The petitioner states that he made part payment towards the outstanding demand, but was not able to honour the balance. That is how the notice dated 23rd January, 2013 was issued.

71. Then, the petitioner refers to the attachment and a final notice of demand. The order giving effect to the Settlement Commission's directions was passed on 16th November, 2012 together with final notice of demand. However, the petitioner raises the issue of applicability of Rule 68B of the Second Schedule to the IT Act and submits that the Tax Recovery Officer erred in law and on facts and proceeded to acquire vacant possession of the residential bungalow for effecting its sale vide his letter dated 1st November, 2016. The Tax Recovery Officer ought to have appreciated the provisions of Rule 68B, the permissible period of four years from the date of finality of demand i.e. 1st December, 2011 being the date of the order under section 245-D(4) of the IT Act. Thus, the petitioner himself approbates and reprobates in the sense that the requisite period, according to the petitioner, begins to run from 1st December, 2011, but in the same breath, now, the petitioner projects in the

memo of appeal the ground that this period is four years from the date of finality of demand. Though he refers to all the communications emanating from him, yet, the permissible period of four years has been carved out in the above manner. This, the petitioner computes on the basis of a standing order 164E dated 1st March, 1996, under which, the period was extended to four years. The petitioner, thus, was not sure as to whether the period is three years from the end of the financial year in which the order giving rise to the demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive or as the case may be final or as understood by him. Pertinently, the petitioner was aware that the Rule is employing the words “from the end of financial year”, in which the order giving rise to the demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I of the IT Act”. The petitioner, at one stage, refers to the order dated 1st December, 2011 passed by the Settlement Commission as triggering point. However, in the grounds, he conveniently, does not refer to the period consumed by his own applications before the Settlement Commission and his own request for postponement or deferment of the recovery proceedings or to

hold them in abeyance. These requests were made by the petitioner on his own and because of the financial problems faced by him. All this was a creation of the petitioner himself.

72. This memo of appeal presented by the petitioner on 21st November, 2016 was then considered by the Principal Commissioner of Income Tax – II, Pune, who made an order under Rule 86 of the Second Schedule of the IT Act. Rule 86 reads as under:-

“86. (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

(4) Notwithstanding anything contained in sub-rule (1), where a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.”

73. A bare perusal of this rule would indicate as to how the Principal Commissioner was empowered to deal with an appeal

against the original order passed by the Tax Recovery Officer under the Second Schedule, not being an order which is conclusive. While dealing with this appeal, all the facts and circumstances have been referred in great details. The argument based on the Division Bench judgment of this court, to which we will advert a little later, has also been noted. While rejecting this appeal, the appellate authority held thus:-

“17. In this case, it is undisputed that the order of the Hon'ble Settlement Commission dated 01.12.2011 in para 30 very clearly stated that the assessee has requested for grant of 8 quarterly instalments for payment of the demand and this time expired on 24.10.2013. Hence, it is clear that the order of the Settlement Commission can only become conclusive after the assessee has paid the 8 quarterly instalments because the order of the Hon'ble Settlement Commission has to be read as a whole and not in parts/bits & pieces and when taken as a whole the order is very clear as to its being conclusive only on payment of 8 quarterly instalments granted to the assessee on his request.

Till date, the assessee has not paid any of the instalments on time and has only paid Rs.1,65,89,038 which is slightly more than the amount of first instalment and was also paid beyond the time for payment of the first instalments as required by the order of the Hon'ble Settlement Commission.

18. Hence, assessee is in default-which is continuing default till date since no further instalments have been paid by the assessee and so much so that when the assessee was required to deposit an amount of Rs.1.25 crores on or before 01.09.2016 by the direction of Hon'ble Settlement Commission, he failed to even deposit this. So, it is a clear case of violation of the conditions required to be fulfilled for the order of the Hon'ble Settlement Commission to become conclusive, because the order requires the assessee to fulfill the payment of demand arising from the settlement order in order to make it conclusive which assessee has failed to comply with till

date and it is a continuing default on the part of the assessee which attracts interest, penalty under the relevant provisions of the Income Tax Act for failure to comply with the payment of instalments granted to the assessee at his request.

19. Now therefore the assessee cannot say that the order of the Hon'ble Settlement Commission has become conclusive because he has defaulted in making the payments in instalments and thereby obstructed the fulfillment of the condition imposed by the order of the Hon'ble Settlement Commission requiring the assessee to make the payment in 8 quarterly instalments and therefore making it conclusive on fulfillment of this condition. The assessee cannot be allowed to take advantage of his own default and state that even though he has not fulfilled the stipulated conditions required to be complied with mandatorily - by mere lapse and efflux of time, he will derive a benefit on the basis of his own default simply because the time to pay the 8 quarterly instalments has run out and therefore he is absolved and discharged of all liabilities and his property cannot be sold to recover the dues not paid by him. The order of the Hon'ble Settlement Commission in para 30 imposing conditions for payment of the tax liability in 8 quarterly instalments is compulsory condition on the fulfillment of which only the order can become conclusive because the order has to be read as a whole and not selectively and therefore not having fulfilled the condition - the default being continuous till date, the order remains uncomplied with and therefore not conclusive between the assessee and the Hon'ble Settlement Commission and Department.

20. Further interests as per Section 245D(6A) and 220 of the Income Tax Act on the assessee will have to be levied on the assessee. The interest u/s 245D(6A) is mandatory and becomes applicable as soon as time period of 35 days after receipt of order of hon'ble Settlement Commission expires. These interests will be calculated till the date on which assessee pays his entire demand. Thus demand arising out of these interests has not yet reached finality. The Rule 68 is not only about the 'tax demand' but also covers 'interest demand'. As explained above, the amount of interest is not yet crystalized in this case. Hence, from this angle also, it cannot be said that the demand in the context of Rule 68 became final in F.Y. 2011-12.

21. Rule 68B (2)(i) states that *“In computing the period of limitation under sub-rule (1), the period-*

- i. During which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any Court, shall be excluded.”*

The matter of non payment of demand of Hon'ble Settlement Commission and withdrawal of immunity is raised before Hon'ble Settlement Commission and the commission had started hearings also in this regard. On 27.10.2016 hon'ble Settlement Commission gave sine-die adjournment for the hearings u/s 245H(1A). Thus, proceedings are pending in the Hon'ble Settlement Commission in connection with pending demand from 20.11.2012 till today, it can be said that this period of 4 years (20.11.2012 to 25.11.2016) should be excluded while computing the period of limitation under 68B(1). Thus, from this angle also, it cannot be said that the time period available for the department for the sale of the Aundh property has been expired.

22. Further from the available records it is also seen that show cause letter for withdrawal of immunity was sent by the hon'ble Settlement Commission to the assessee on 04.01.2013. However assessee by his letter dated 04.02.2013 requested TRO (central) not to hold rigorous recovery action as he will be approaching hon'ble Commission with the request of extension of time for payment of dues. Thus assessee himself had requested more time for the payment to hon'ble Settlement Commission. It is clearly a violation of principle of estoppel. Assessee cannot raise one point before one authority and another before other authority to suit his needs.

23. Also, it is pertinent to note that the assessee having defaulted on 01.09.2016 for payment of Rs. 1.25 crores as required by the Hon'ble Settlement Commission to demonstrate his intention to comply with the terms & conditions of the order has by his acts of omission and commission failed to fulfill the mandate of the Hon'ble Settlement Commission. The

requirement of payment of tax in 8 instalments is sine-qua-non for the fulfilment of the requirement of order of Hon'ble Settlement Commission and is inextricably linked to the terms of the order and cannot be severed and therefore the case of failure of compliance of above terms of payment and the order of Hon'ble Settlement Commission remains inconclusive.

Thus, till date the order of Hon'ble Settlement Commission not having become conclusive by reason of continuing default of the assessee for failure to make the payment the plea of the assessee fails and the appeal is therefore dismissed."

74. It is in the light of these observations that the Principal Commissioner dismissed the petitioner's appeal. We do not think that the view taken by the Principal Commissioner was either perverse or vitiated in law. It is a passible view of the matter. We equally agree with the Principal Commissioner when he faults the petitioner for having not disclosed the communication dated 30th January, 2017. The demand was computed on the basis of the petitioner's rectification application. The penalty under section 221 was also computed together with interest. In the affidavit in reply, the Principal Commissioner says in clearest terms that this letter intimates the final and revised demand for the block period 2003-04 to 2008-09. The final and conclusive demand is intimated by this letter, which includes the demand after giving the effect to the petitioner's rectification application and interest under section 220(2) and 245-D(6A) of the IT Act. This letter

having been brought on record that the Department's action is justified, according to this Principal Commissioner. We see much force in this stand of the Revenue. On facts, we find that this is not a case which requires our interference in writ jurisdiction. This court's jurisdiction under Article 226 of the Constitution of India is both, extraordinary and discretionary. It is equitable as well. It should not be exercised so as to allow a defaulter like the petitioner to derive benefit or take advantage of his own wrong. We think that the writ petition deserves to be dismissed on this ground alone.

75. Once the above view is taken, strictly, it is not necessary to decide the legal question. The only issue raised in this case was whether the order passed by the Settlement Commission can be said to be conclusive or not. In the present case, the facts are eloquent enough. They clearly spell out the position that in the order of the Settlement Commission, there was a request noted. That was a request made by the petitioner and for payment of the tax in installments. That request was granted and time was stipulated for payment by installments. All this is incorporated in the order of the Settlement Commission. It is the petitioner, who could not abide by the time limit and applied for extension. It is the petitioner, who proceeded on the footing that such an

application for extension could have been filed and pressed. It is in these circumstances that the petitioner cannot now raise a technical plea. That too by relying upon the period prescribed by Rule 68B(1). That rule itself and as clarified above, does not end with the words “after the expiry of three years from the end of financial year”, but states further that “demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive”. The rule does not end here as well, but makes a specific reference to the provisions of section 245-I and Chapter XX. Section 245-I has been referred by us already. The conclusivity of the order passed by the Settlement Commission is to matters stated in such orders and passed under section 245D(4). Save as otherwise provided in Chapter XIXA, no matter referred by the order can be reopened in any proceeding under this Act or any other law for the time being in force. However, there is a power of Settlement Commission to grant immunity from prosecution and penalty and that is to be found in section 245-H. It cannot be argued and at least by the petitioner that the Settlement Commission could not have entertained any application for extension of time. The Settlement Commission makes an order under section 245-D(4) and which order in this case granted liberty to the petitioner to pay the amount by

installments. Since the petitioner made an application for extension of time, that was entertained. It is in these circumstances, the reliance placed on sub-section (6) of section 245-D is justified as that determinates that it is the Settlement Commission, which has to make an order in terms of sub-section (4) of section 245-D, but such order shall provide for the terms of settlement, including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective. Therefore, the Settlement Commission, according to the petitioner, retained control over the proceedings and was not denuded of its power to grant the extension for such period as was sought by the petitioner. It is in these circumstances the conclusiveness attached to the matters referred by the order of the Settlement Commission, in terms of section 245-I of the IT Act, has been subject to the provisions of Chapter XIXA and Chapter XIXA itself contains Section 245-D(6) and (6A). Further, sub-section (6B) of section 245-D empowers the Settlement Commission to entertain an application for rectification of any mistake apparent on the face of the record, amend any order passed by it under sub-section (4) with a view to rectify any mistake apparent from the record. Hence, our view that the Settlement Commission retains control over the

proceedings and that is how it entertained the further application of the petitioner is in accord with the statutory scheme. We have not deviated from it. We do not think that the larger issue and posed for our consideration needs to be decided in the facts and circumstances of the present case.

76. In any event, the word “conclusive” itself has to be understood in the context. It means “bring or come to an end”. In Advanced Law Lexicon, 3rd Edition Reprint 2007, this word is understood as final, finishing, ending. The word “conclusive” means the closing, settling or finally arranging of a treaty, contract, deed etc. It is in that sense the word has been understood and must be, therefore, given that meaning. In these circumstances, we do not think that the view taken is in any way perverse or contrary to law.

77. The decisions relied upon by Mr. Kaka and particularly in the case of *M. U. Joshi* (supra) are distinguishable. In *M. U. Joshi* (supra), the petitioner, at the relevant time, was a partner of a firm. The assessment orders were passed, huge demands were raised against the firm. The appeals by the firm against these assessment orders were dismissed and further appeals were also dismissed. The Division Bench noted that there was never any dispute that the order passed by the Income Tax Appellate

Tribunal on 15th June, 1994 has attained finality. Since the firm failed to discharge the tax liability finalized for the assessment years 1986-87 and 1987-88, the Tax Recovery officer treated the petitioner Joshi, who was a partner of the firm, as defaulter and attached the residential flat of the petitioner for recovery of the demand confirmed against the firm. Pertinently, an attempt was made by proclamation of sale dated 26th August, 1996 to sell the flat by public auction on 26th September, 1996, but it did not materialise. Then, the petitioner filed a miscellaneous application before the Income Tax Appellate Tribunal seeking stay of the auction. That application was also dismissed on 19th May, 1998.

78. The Division Bench noted that on several occasions the Revenue attempted to auction the flat, but it did not materialise. Ultimately, the proclamation of sale dated 23rd February, 2004 was issued for auction of the attached flat. That was objected to on the ground of the limitation prescribed under Rule 68B of the Second Schedule of the IT Act. That objection was rejected and the sale of the attached flat was confirmed. That is how the writ petition was filed. The Division Bench, therefore, noted that Rule 68B is clear. Given the fact that the order passed by the Income Tax Appellate Tribunal dated 15th June, 1994 had attained finality, several attempts were made to sell the flat, but they did

not materialise. The eventual auction notified on 23rd February, 2004 was clearly beyond statutory period. In para 12, based on this reasoning, the Revenue's contention was rejected and the argument of the petitioner Joshi was accepted. It was also the case of the Revenue that the miscellaneous application of petitioner Joshi was dismissed by the tribunal and the starting point would be the date of the order of the tribunal on the miscellaneous application. Since it was to expire on 31st March, 2004, the confirmation of the sale on 30th March, 2004 would be within the period of limitation. The Division Bench noted this argument and rejected it on the ground that the miscellaneous application filed by petitioner Joshi was not to seek stay of the levy of tax, interest and penalty, confirmed by the Income Tax Appellate Tribunal on 15th June, 1994. The miscellaneous application was filed only to seek stay of the auction on the ground that the attached flat was the only flat owned by the petitioner and if he is evicted from the same, he and his family members would be rendered homeless. Even if such an application was pending, there was no stay against the recovery or enforcement of the demand. It is on such a view that the petition was allowed by applying Rule 68B.

79. The facts before us are not identical. The petitioner himself seeks a substantive relief in the form of extension of time to comply with the Settlement Commission's order. The Settlement Commission's initial order was based on the petitioner's request to make payment of the tax in installments. That request was accepted, installments were determined and even the time was stipulated. It is the petitioner, who sought modification of this time relief and extension to make payment by installments. This was not a request as made in Johsi's case (*supra*). The request was distinct. There was an attachment levied and the petitioner apprehended that if the time to make payment expires, the auction may follow. Therefore, the request of the petitioner was to extend the time to make payment in installments and if that had been granted, nothing could have been done by the Revenue pursuant to the attachment. If the time was extended and the payment was made, then, the sale could not have taken place at all. In these circumstances, based on the petitioner's request, no steps were taken. Secondly and more importantly, the Settlement Commission's order itself was not conclusive until the request, as noted above, was dealt with and disposed of. The payment by installments was a direction incorporated in the order of the Settlement Commission. It is that main order, which has not attained finality, particularly in the light of the application made by the petitioner. If that order was not

conclusive within the meaning of Rule 68B and which finding cannot be said to be perverse or vitiated by any error of law apparent on the face of the record, then, the decision of the Division Bench in Joshi's case (supra) cannot be applied. It is distinguishable on facts.

80. We see no difficulty for *Brij Lal* (supra) was not relied upon as much for the construction and interpretation of Rule 68B, but for understanding the scheme of the settlement as well. We do not see how we can take any assistance from the observations in *Brij Lal's* case (supra) for the interpretation of Rule 68B. Even that decision does not carry the petitioner's case any further.

81. As a result of the above discussion, the writ petition fails. Rule is discharged. There would be no order as to costs.

82. In the light of the disposal of the writ petition, the civil application does not survive and stands disposed of as such.

83. At this stage, a request is made to stay the operation of this judgment as also to maintain *status quo* prevailing today. This request is opposed by the respondents, and equally, by the intervener. Having noted that we have dismissed the Writ Petition by assigning reasons and secondly, that the sale is concluded, we do not think either request of Ms. Salgaonkar can be accepted. The request is refused.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)