

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1434 OF 2015

Rajesh B. Yemkanmardi and others	...	Petitioners
Vs.		
Praful J. Padiya and others	...	Respondents

Mr. Pankaj Savant, Senior Advocate a/w. Mr. Aliabbas Delhiwala and Mr. A. T. Matte i/b. Ms. Archana P. Gaikwad for Petitioners.

Mr. P. S. Dani, Senior Advocate a/w. Mr. Indrajit Suryavanshi a/w. Mr. Nikhil Waje, Mr. Sahil Namavati, Ms. Apurva Sanglikar, Ms. Modini M. i/b. Thodur Law Associates for Respondent Nos.1 to 13.

Mr. S. R. Ganbavale for Respondent Nos.14 and 15.

Mr. C. D. Mali, AGP for Respondent Nos.16 to 19.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 09, 2020
Pronounced on : JUNE 09, 2020

ORDER:

Heard Mr. Pankaj Savant, learned senior counsel for the petitioners; Mr. P. S. Dani, learned senior counsel for respondent Nos.1 to 13; Mr. S. R. Ganbavale, learned counsel for respondent Nos.14 and 15; and Mr. C. D. Mali, learned AGP for respondent Nos.16 to 19.

2. By filing this petition under Article 227 of the Constitution of India, petitioners seek quashing of order dated 24.12.2014 passed by the Divisional Joint Registrar of Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.483 of 2012.

3. Be it stated that by the said order dated 24.12.2014, Divisional Joint Registrar of Co-operative Societies, Kolhapur Division, Kolhapur i.e., respondent No.17 allowed the revision application filed by respondent Nos.1 to 13 being Revision Application No.483 of 2012 whereby the sale certificate dated 04.08.2012 issued by the Deputy Registrar of Co-operative Societies, Kolhapur

has been set aside.

4. Facts as projected by the petitioners may be noted.
5. Respondent Nos.1 to 13 are the original owners of the property situated at C.S.Nos.9081, 9082, 9083 and 9084 admeasuring 3796.13 square feet situated at Ichalkaranji, Taluka Hatkanangale in the District of Kolhapur (briefly referred to as 'the said property' hereinafter). Respondent No.15 is a Co-operative Bank but the same is now under liquidation and is being looked after by the Liquidator. Respondent No.15 was engaged in banking business, extending loans to its members. Respondent Nos.1 to 13 are members of respondent No.15. Respondent No.14 is the Special Recovery Officer appointed under Section 156 of the Maharashtra Co-operative Societies Act, 1960 (referred to hereinafter as 'the Act').
6. Respondent Nos.1 to 12 as the original borrowers had obtained loan from respondent No.15. However, the said borrowers defaulted in the repayment of the loan amounts. As the loan amounts were not repaid, respondent No.15 obtained recovery certificates dated 12.03.2004 against respondent Nos.1 to 12. Thereafter respondent No.14 started recovery proceedings under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (briefly 'the Rules' hereinafter). As a consequence, the said property was attached by respondent No.14 for auction sale to recover the dues.
7. Respondent No.14 thereafter obtained valuation report in respect of the said property from a government approved valuer by the name of Sandeep A. Tare, Architect. By his valuation report dated 19.09.2011 the government approved valuer assessed the valuation of the said property at Rs.1,52,14,000.00.
8. After obtaining the valuation report, respondent No.14 put the said property into public auction. In this connection a proclamation of sale was published by

affixing a notice in the office of respondent No.14 as well as in the Taluka office on 05.03.2012 scheduling the auction on 09.04.2012. It is stated that the said notice was also served upon the borrowers on 05.03.2012 itself.

9. According to the petitioners, respondent No.14 put all the conditions contemplated under Rule 107 (11)(g) of the Rules in the auction notice. The public auction was held on 09.04.2012 as scheduled. 7 persons including petitioner No.1 participated in the auction sale. The bid offered by petitioner No.1 was Rs.1,57,00,000.00 and was found to be the highest. Being the highest bidder, bid of petitioner No.1 was accepted subject to confirmation.

10. In terms of Rule 107(11)(g), petitioners deposited 15% of the price of the immovable property. Accordingly, a sum of Rs.24,00,000.00 was deposited on 09.04.2012 itself. Thereafter the remaining amount i.e., Rs.1,33,00,000.00 was paid by petitioner No.1 on 19.04.2012. As such, the entire purchase money was paid by petitioner No.1 to the Sale Officer. Respondent No.14 thereafter gave notice to the original borrowers informing them that the said property was auctioned for Rs.1,57,00,000.00, giving them 30 days time to deposit the dues along with 5% interest on the amount paid by petitioner No.1 and the expenses incurred in the auction.

11. According to the petitioners they had paid the requisite stamp duty for the purpose of execution of the sale deed in respect of the said property in their favour. The entire sale proceedings were placed before the District Deputy Registrar of Co-operative Societies, Kolhapur i.e., respondent No.18 for confirmation of sale and issuance of sale certificate. Being satisfied, respondent No.18 confirmed the sale and issued sale certificate dated 04.08.2012 in respect of the said property in favour of the petitioners. Thus, on granting of the sale certificate, the entire auction process was complete.

12. Original borrowers filed Revision Application No.483 of 2012 before respondent No.17 challenging the sale certificate dated 04.08.2012. In the said revision application, petitioners were not made parties. By order dated 07.05.2014, respondent No.17 allowed the revision application by setting aside the sale certificate dated 04.08.2012.

13. Aggrieved by the aforesaid order dated 07.05.2014, the present petitioners had preferred a writ petition before this Hon'ble Court which was registered as Writ Petition No.6609 of 2014. The main ground of challenge to the order dated 07.05.2014 was that the revision application was decided without making the petitioners parties to the said proceeding though they were necessary parties since the sale certificate was in their favour, petitioner No.1 being the highest bidder in the public auction and having purchased the said property. This Court by order dated 01.09.2014 allowed the writ petition by setting aside the order dated 07.05.2014 and directing the revisional authority to hear the revision application afresh after impleading the petitioners as parties in the said revision application.

14. Thereafter, on remand, the revision application was suitably amended by the applicants (borrowers) and the writ petitioners were added as opponents therein. Basic contention of the applicants before the revisional authority was that the government had issued rehabilitation scheme and that benefit of the said scheme should have been extended to the borrowers i.e., applicants. But that was not considered by the Special Recovery Officer. Though allegation of fraud was raised, the same was also not considered.

15. After hearing the matter, respondent No.17 as the revisional authority allowed Revision Application No.483 of 2012. Consequently, the sale certificate dated 04.08.2012 was set aside.

16. Aggrieved, present writ petition has been filed seeking the relief as

indicated above.

17. Respondent Nos.1 to 13 have filed affidavit-in-reply. Stand taken is that respondent No.17 as the revisional authority had heard all the parties including the petitioners and thereafter had allowed the revision application by setting aside the sale certificate dated 04.08.2012 by a well reasoned order. It is contended that the answering respondents had challenged the sale certificate in revision because respondent No.14 had fixed the upset price illegally after undervaluing the attached property. Contention before the revisional authority was that the answering respondents had availed loan from respondent No.15 through 8 power-loom accounts. Respondent No.15 had initiated recovery proceedings under Section 101 of the Act and obtained recovery certificates dated 12.03.2004. It was the contention of the answering respondents that the recovery certificates were rendered infructuous, rather redundant, in view of reschedulement and settlement of loans because of scheme framed by the Government of Maharashtra. Though the answering respondents had alleged and argued fraud in the auction sale, respondent No.14 failed to consider the time. In this connection reference has been made to Rule 107(14) of the Rules.

17.1. Respondent Nos.1 to 13 had also lodged complaint before the police authorities / Kolhapur Crime Branch alleging fraud etc. in the holding of public auction. Matter is under investigation. Because of the fraudulent auction, respondent Nos.1 to 13 sustained substantial injury. It is contended that the auction was conducted in violation of various provisions of Rule 107 and in collusion between the petitioners and the Special Recovery Officer i.e., respondent No.14. Respondent No.18 did not consider and examine the illegalities in the auction process and mechanically issued the sale certificate dated 04.08.2012. Since the sale certificate was the outcome of an illegal auction process being in violation of the various provisions of Rule 107 of the Rules, the sale was rightly interfered with by respondent No.17. In this connection reference has been made to a

decision of this Court in *Smita Janak Thacker Vs. Commissioner of Co-operation*, **AIR 2002 Bom. 58**. Placing reliance on the said decision it is contended that Special Recovery Officer exercises power under Section 156 of the Act read with Rule 107 of the Rules. Special Recovery Officer must exercise the powers vested in him strictly in accordance with law and in the public interest.

17.2. Making a serious allegation it is stated that petitioners and respondent Nos.14 and 15 are land grabbers; they had conspired to undervalue the auctioned property whereafter they carried out the illegal auction sale. There was collusion amongst them. The sale certificate being a product of fraud is a nullity.

17.3. Another contention raised is that against the said property, one Jamnadas Manjibhai Padiya had obtained two mortgaged loans from respondent No.15. The said properties are mortgaged to respondent No.15 for the said loans. Recovery suits have been filed by respondent No.15 for recovery of the two loan amounts which are pending before the Co-operative Court No.2 at Kolhapur. Jamnadas Manjibhai Padiya expired on 22.10.2003 and he is now represented in the said suits by respondent Nos.1, 2, 3, 4 and 13 who are the legal representatives of the deceased. Without a decree or award from the Co-operative Court, the auction proceedings could not have been held.

17.4. It is further stated that there were 15 loan accounts of the family i.e., respondent Nos.1 to 13. Respondent No.15 had proceeded under Section 101 of the Act and obtained recovery certificates against the said respondents. In the meanwhile Government of Maharashtra had announced and declared incentive package scheme for small power-loom units for rehabilitation. In this connection, respondent No.15 had received substantial amount from the Government under the scheme. But benefit of the scheme was not extended to the answering respondents. In such circumstances, it is contended that auction could not have been held on the basis of the said recovery certificates.

17.5. It is further contended that the said properties are not attached or mortgaged to respondent No.15 for the alleged dues of Rs.1,17,55,458.00.

17.6. Regarding the upset price, it is contended that it was approved at a lower price when the property was worth much more and all these were done behind the back of the said respondents. However, the answering respondents admitted that petitioner No.1 paid the balance amount of Rs.1,33,00,000.00 to the Sale Officer on 19.04.2012. It is further admitted that Sale Officer had given notice to the borrowers (answering respondents) that the property was auctioned for an amount of Rs.1,57,00,000.00 and time of 30 days was given to deposit the dues with 5% interest towards the amount paid by petitioner No.1 and the expenses incurred in the auction.

17.7. Contending that respondent No.17 was justified in passing the order dated 24.12.2014 setting aside the sale certificate dated 04.08.2012, it is submitted that no interference in the said order is called for.

18. Respondent Nos.1 to 13 have also filed a further affidavit to bring better facts on record. It is stated that apart from the loan amount of Rs.3,37,90,503.00 which was outstanding at the time of alleged auction, respondent Nos.1, 2, 3 and 5 to 13 had also availed financial benefits from respondent No.15 totalling Rs.5,80,744.37.

18.1. It is stated that respondent No.15 had granted one time settlement (OTS) of Rs.3,40,82,688.00 in respect of the outstanding loan amount whereas auction purchaser had paid a sum of Rs.1,57,00,000.00. It is stated that an amount of Rs.1,75,09,758.33 has already been deposited by the answering respondents as earnest money with respondent No.15. The remaining amount is subject to outcome of the writ petition.

18.2. It is submitted that in view of the OTS, even question of re-auction in the present case as observed by the revisional authority may not arise.

19. Respondent Nos.14 and 15 have filed a joint affidavit in reply. It is stated that respondent Nos.1 to 12 as borrowers had obtained loans from respondent No.15 under different heads. In all 8 recovery certificates were issued under Section 101 of the Act for failure to repay the loans. Respondent Nos.1 to 13 had filed Revision Application Nos.357 / 2013 and 383 to 391 / 2013 before respondent No.17 against the recovery certificates which were however rejected on 05.03.2014.

19.1. It is further stated that respondent No.14 had passed order of attachment before auction sale on 10.08.2007 in respect of property bearing C.S.No.9080 and 9081. Accordingly he informed City Survey Officer, Ichalkaranji. But this property was mortgaged by Jamnadas Manjibhai Padiya to respondent No.15 for the loans obtained in the year 2001. Therefore, City Survey Officer did not enter attachment order on the said property. The property belongs to Jamnadas Manjibhai Padiya who was a borrower of the bank. After his demise, the said property devolved on respondent Nos.1 to 13 being the legal heirs of Jamnadas Manjibhai Padiya. Respondent Nos.1 to 13 are also defaulters of the bank.

19.2. Respondent No.14 made valuation of the said property for fixation of the upset price from government approved qualified valuer Mr. Sandeep A. Tare, Architect. He submitted his valuation report dated 19.09.2011. Respondent Nos.1 to 13 never challenged the upset price till completion of the entire auction process.

19.3. It is stated that respondent No.14 had published the proclamation regarding auction sale by affixing a copy of the proclamation notice in his office and in the Taluka office on 05.03.2012 besides publishing it in newspaper having wide

circulation. A copy of the said notice was also served upon respondent Nos.1 to 13 on the same day. As per the notice, the auction was scheduled on 09.04.2012. It is asserted that respondent No.14 scrupulously followed and complied with the concerned provisions of the Act and the Rules while conducting the auction process.

19.4. While admitting that petitioner No.1 was the highest bidder, it is stated that 15% of the bid amount was paid by petitioner No.1 on the date of the auction i.e., on 09.04.2012. Because of income tax requirement the said amount could not have been paid in cash. Therefore the said amount was paid by way of demand draft on 09.04.2012 which was deposited in the bank on the next day i.e., on 10.04.2012. Thereafter the remaining amount was paid well within the stipulated time. The auction amount is still in the custody of the bank because of the pending litigation.

19.5. It is stated that the auction process was duly conducted and completed by respondent No.14 by following the procedure laid down in Rule 107(11) of the Rules. The auction process was carried out and the said property was auctioned to the highest bidder to protect the interest of respondent No.15.

19.6. After realisation of the said amount, respondent No.14 gave notice to the borrowers i.e., respondent Nos.1 to 13 under Rule 107(13) dated 10.04.2012. Petitioners have paid the requisite stamp duty. Though it was not necessary for respondent No.14 to apply for confirmation of sale and issuance of sale certificate to the District Deputy Registrar who is the higher authority, respondent No.14 thought it proper to get approval of the auction process from his superior authority. Accordingly, District Deputy Registrar confirmed the auction sale and issued the sale certificate dated 04.08.2012 to the petitioners.

19.7. Regarding the allegation of respondent Nos.1 to 13 that they were not extended the benefit of re-settlement of loans of power-loom holders as per

scheme of the Government of Maharashtra, it is stated that though respondent No.15 had received certain amount from the Government, respondent Nos.1 to 13 did not pay the remaining loan installments as agreed to by them. So the loan accounts of respondent Nos.1 to 13 were not entitled to re-settlement. As respondent Nos.1 to 13 had not paid any installment or interest, the amount mentioned in the recovery notice was more than the amount mentioned in the recovery certificate including interest.

19.8. Though Jamnadas Manjibhai Padiya was the borrower and made equitable mortgage of the said property to respondent No.15, as per terms and conditions of the equitable mortgage it was binding upon respondent No.13 who also never objected to this. As the default amount was increasing on account of interest, respondent Nos.4 and 13 made an application to respondent No.15 with the request to sell the collateral property and to adjust the sale amount with the remaining loan amount in the loan accounts excluding the amount deposited by the petitioners under auction. As the remaining loan amount was also huge, respondent No.15 accepted the offer and sold the property. An amount of Rs.1,80,90,503.00 has been adjusted with the default account of respondent Nos.1 to 13. Thus the aforesaid compromise and settlement had nothing to do with the auction held; rather it was for the remaining default amount.

19.9. Respondent Nos.14 and 15 have denied all allegations of collusion and fraud. Respondent No.14 has asserted that he was duty bound to protect the interest of the creditor bank i.e., respondent No.15 and had made genuine and *bona fide* endeavour to do that through the auction process. Respondent No.14 was not acquainted with any of the bidders including the petitioners. The property was auctioned at a value more than the prevailing market price. Respondent No.14 has reiterated that he had scrupulously followed the provisions of Rule 107 of the Rules while conducting the auction process.

20. Respondent Nos.1 to 13 have jointly filed affidavit in rejoinder to the affidavit in reply of respondent Nos.14 and 15. It is stated that respondent No.15 had issued a letter dated 31.03.2017 to respondent Nos.1 to 13 offering OTS of the outstanding loan amount in respect of two categories of loans, one of which covers the said property. Pursuant thereto a memorandum of settlement dated 28.12.2017 was entered into between respondent No.15 on the one hand and the answering respondents on the other hand for a sum of Rs.3,40,82,688.00 which included settlement of the loan covering the said property to the extent of Rs.1,57,00,000.00. It is stated that in terms of the memorandum of settlement an amount of Rs.1,80,90,503.00 has been paid by the answering respondents, payment of the remaining amount being made subject to outcome of the present writ petition.

20.1. Respondent Nos.1 to 13 have denied and disputed the contention of respondent Nos.14 and 15 that the OTS did not cover the loan and the property auctioned.

20.2. Asserting that since it is a case of fraud, revision against the sale certificate would be maintainable and question of pre-deposit of 50% of the amount under the recovery certificates would not arise.

20.3. Respondent Nos.1 to 13 have also placed reliance on judgments of this Court in *Manisha Bijal Shah Vs. Shankar Laxman Sutar*, **Writ Petition No.1965 of 2013**, decided on **07.03.2018** and on *Tanaji Dattu Chalke Vs. Megha Ashok Gangadhar*, **Writ Petition No.3891 of 2012**, decided on **09.06.2014** besides reiterating the decision in **Smita Janak Thacker** (*supra*).

21. Mr. Savant, learned senior counsel for the petitioners has placed before the Court a synopsis and a brief written submission on behalf of the petitioners. At the outset, he submits that confirmation of sale or issuance of sale certificate is neither

a decision nor an order. Therefore, a revision application under Section 154 of the Act would not be maintainable against a sale certificate. Since the revision application itself was not maintainable, impugned order allowing the revision application by setting aside the sale certificate is without jurisdiction. Therefore, the impugned order is null and void. In support of the above contention, Mr. Savant has placed reliance on the following decisions:-

1. **2012 (2) ALL MR 561**,
Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. Vs. State of Maharashtra;
2. **2018 (2) Mh.L.J. 245**,
Ramchandra Sitaram Malik Vs. Janata Nagari Sahakari Patsanstha Ltd.;
3. **2018 (5) Bom.C.R. 100**,
Sunil Sitaram Mahajan Vs. Suryakant Pandurang Badave; and
4. **(2017) 1 SCC 302**,
P. N. Abubakar Vs. State of Karnataka.

21.1. Referring to various provisions of Rule 107 of the Rules particularly sub-rule (11) thereof, he submits that respondent Nos.1 to 13 did not apply for setting aside attachment of land. They also did not apply for setting aside the sale by depositing the money. Further, they also did not file any application for setting aside the sale within a period of 30 days alleging fraud or collusion. Therefore, respondent No.18 had rightly confirmed the sale and issued the sale certificate. Referring to his initial submissions, he contends that no revision is maintainable against such confirmation of sale and issue of sale certificate.

21.2. Further submission of Mr. Savant is that respondent Nos.1 to 13 had challenged the auction held on 09.04.2012 by filing Revision Application No.214 of 2012. However, the said revision application was rejected on 28.03.2013. Against the said rejection order, the said respondents had filed Writ Petition No.4836 of 2013. However, the said writ petition was withdrawn on 07.10.2013. Therefore, there cannot be further challenge to the said auction process by indirectly challenging the sale certificate.

21.3. Highlighting another aspect, Mr. Savant submits that respondent Nos.1 to 13 had also challenged the recovery certificates issued under Section 101 of the Act by filing Revision Application Nos.357 of 2013 and 381 to 391 of 2013. However these bunch of revision applications were also rejected on 03.01.2014. Therefore, the recovery certificates issued under Section 101 of the Act had attained finality, so also the auction process. In such circumstances Revision Application No.483 of 2012 challenging sale certificate would be hit by the principles of *res judicata*. Even otherwise also such a revision application seeking to re-litigate the issue of validity of the auction process is an abuse of the legal process. To support his contentions, learned counsel has placed reliance on the following decisions:-

1. **(1994) 2 SCC 14**,
Sulochana Amma Vs. Narayanan Nair; and
2. **(1998) 3 SCC 573**,
K. K. Modi Vs. K. N. Modi.

21.4. Mr. Savant has also drawn the attention of the Court to the rights of the petitioners who are *bona fide* purchasers of the property through the auction sale. Therefore their rights would have to be protected. Unless the *bona fide* purchasers are assured of title, such public auction would lose its sanctity besides it would not fetch good price.

21.5. Referring to the OTS on which heavy reliance has been placed by respondent Nos.1 to 13, he submits that respondent No.15 has made it abundantly clear that the said OTS is for the balance outstanding loan amount still recoverable from respondent Nos.1 to 13 after giving credit for the amount realized through auction sale, besides being subject to outcome of the writ petition.

21.6. In conclusion Mr. Savant submits that without entering into the merit of the matter, the impugned order may be set aside and quashed as the same is *ex-facie* illegal being without jurisdiction.

22. *Per contra* Mr. Dani, learned senior counsel for respondent Nos.1 to 13 has referred to the procedure while conducting public auction leading to confirmation of sale and issuance of sale certificate detailed in Rule 107(11) of the Rules. His contention is that respondent No.14 being the Special Recovery Officer did not follow the laid down procedure which has vitiated the entire auction proceeding including the sale certificate. The reason for this, he submits, is collusion between the petitioners on the one hand and respondent Nos.14 and 15 on the other hand. Result of such collusion is a fraudulent auction process which has caused serious prejudice not only to respondent Nos.1 to 13 but also to respondent No.15. The upset price was deliberately fixed at a low amount thereby enabling the petitioners to purchase the auctioned property at a low price through the facade of auction sale, thereby jeopardising the interest of respondent No.15. Contending that fraud vitiates everything and can be raised at any stage, he submits that no interference is called for in the decision setting aside the sale certificate. Mr. Dani has referred to and relied upon the decisions of this Court in *Smita Janak Thacker*, *Tanaji Dattu Chalke* and *Manisha Bijal Shah*.

22.1. Referring to the case of **Smita Janak Thacker** (*supra*), he submits that Special Recovery Officer is duty bound to follow the procedure laid down in Rule 107(11) of the Rules. While conducting public auction, public interest i.e., interest of the creditor bank is of paramount consideration. That apart, when there was OTS between respondent Nos.1 to 13 and respondent No.15, it was not justified on the part of respondent No.14 to proceed with the auction sale. Mr. Dani submits that respondent No.17 was justified in interfering with the sale certificate and in the circumstances, no interference is called for.

23. Mr. Ganbavale, learned counsel representing respondent Nos.14 and 15 strongly supports the auction process and has taken exception to the interference to the sale certificate by respondent No.17 in revision. Supporting the submissions

of Mr. Savant, he has also taken the stand that revision against confirmation of sale or issuance of sale certificate would not be maintainable and therefore impugned order is without jurisdiction.

24. Mrs. Nimbalkar, learned AGP representing respondent Nos.16 to 19 has however supported the impugned order dated 24.12.2014.

25. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record and considered the judgments cited at the bar.

26. The first question to be considered is whether there was collusion between the petitioners on the one hand and respondent Nos.14 and 15 on the other hand in conducting the auction process, thereby committing fraud in the sale of the said property through the public auction, thus vitiating the sale certificate dated 04.08.2012?

26.1. The second question which arises for consideration is whether a sale certificate issued under Rule 107(14)(v) of the Rules can be interfered with by the revisional authority under Section 154 of the Act? In other words, whether a revision application under Section 154 of the Act would be maintainable against a sale certificate issued under Rule 107(14)(v) of the Rules?

26.2. Question No.1 has been so framed and placed above question No.2 because a collusive auction process would amount to playing fraud and fraud would vitiate the entire auction process irrespective of the answer to the second question.

26.3. Depending on the outcome of the above two questions, a third question may still arise i.e., whether the public auction sale of the said property undertaken by respondent Nos.14 and 15 complied with the requirement of Rule 107 of the

Rules?

27. To answer the above questions it would be appropriate to examine the relevant legal provisions and the admitted facts which can be culled out from the pleadings and submissions.

28. But first, the relevant legal provisions.

28.1. Section 101 provides for recovery of certain sums and arrears due to certain societies including credit societies and co-operative banks as arrears of land revenue. Shorn of details, it provides for issuance of recovery certificate by the Registrar of Co-operative Societies for recovery of the amount stated therein to be due as arrears. Such a certificate may be issued by the Registrar after making enquiry in the prescribed manner.

28.2. Section 154 of the Act deals with revisionary powers of the State Government and of the Registrar. As per sub-section (1), the State Government or the Registrar of Co-operative Societies may *suo motu* or on an application may call for and examine the record of any enquiry or proceedings of any matter [other than those referred to in sub-section (9) of Section 149 which deals with appellate jurisdiction of Maharashtra State Co-operative Appellate Court] where any decision or order has been passed by any sub-ordinate officer and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order and as to the regularity of such proceedings. In an appropriate case, the revisional authority may modify, annul or reverse such decision or order but only after giving the affected person an opportunity of being heard. As per sub-section (2A), no application for revision shall be entertained against a recovery certificate issued under Section 101 of the Act unless the revision applicant deposits 50% of the total amount of recoverable dues with the concerned society. Since sub-section (1) of Section 154 is relevant,

the same is quoted hereunder:

“154. Revisionary powers of State Government and Registrar

(1) The State Government or the Registrar, *suo motu* or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.”

28.3. As per sub-section (1) of Section 156 of the Act, the Registrar or any officer subordinate to him and empowered by him in this behalf or an officer of such society as may be notified by the State Government who is empowered by the Registrar in this behalf may without prejudice to any other mode of recovery provided by or under the Act, recover, amongst others, any amount due as per certificate granted by the Registrar under sub-sections (1) or (2) of Section 101 of the Act together with interest due on such amount and the cost of process by attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

28.4. Sub-section (2) provides that the Registrar or the empowered officer when exercising powers under sub-section (1) shall be deemed to be a civil court for the purposes of Article 136 in the Schedule to the Limitation Act, 1963.

28.5. Rule 2(h) defines 'recovery officer' to mean any person empowered to exercise in any district, the powers of the Registrar under Section 156. 'Upset price' is defined in Rule 2(m) to mean a price approved by the Registrar and such price may be a minimum price at which an item of property may be auctioned or sold or transferred by public sale.

28.6. Rule 107 lays down the procedure for attachment and sale of property under Section 156 of the Act. The procedure laid down is elaborate and exhaustive covering 23 sub-rules. As per sub-rule (1), a creditor shall apply to the jurisdictional Recovery Officer for initiating the process of attachment and sale or sale without attachment of the property of the person against whom decree, decision, award or order has been obtained or passed. However, as per the proviso, no such application shall be necessary in respect of a certificate given under sub-sections (1) or (2) of Section 101 of the Act.

28.7. Sub-rules (2), (3) and (4) are not relevant because those deal with filing of application for initiating the process of attachment and sale or sale without attachment.

28.8. Sub-rules (5) to (9) are also not relevant because those deal with seizure and sale of movable property.

28.9. According to sub-rule (10), immovable property shall not be sold in execution of a decree unless such property has been previously attached. As per the proviso, where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.

28.10. Sub-rule (11) deals with the procedure to be followed in the attachment and sale or sale without attachment of immovable property. Clause (d) says that where attachment is before sale, the Recovery Officer shall, if possible, cause a notice of attachment to be served on the defaulter either personally or by affixing in some conspicuous part of the defaulter's last known residence, if any. The attachment notice shall mention that unless the amount due is paid with interest and expenses within the prescribed date, the property will be brought to sale. Under clause (d-1)(i), there shall be no sale of immovable

property under the said Rules unless possession thereof is taken or caused to be taken.

28.11. Clause (e) provides for proclamation of sale. It shall be published by affixing a notice in the office of the Recovery Officer and the Taluka Office at least 30 days before the date fixed for the sale and also by beat of drum in the concerned village. Where attachment is required, such proclamation shall be made after attachment. The notice of proclamation shall also be given to the defaulter. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible the property to be sold, any encumbrance to which the property is liable, the amount for the recovery of which sale is ordered and every other matter which the Recovery Officer considers material for a purchaser to know in order to judge the nature and value of the property.

28.12. Though clause (f) covers various aspects, what is relevant to note is that the Recovery Officer is not bound to accept the highest bid where the price offered appears to be unduly low or for other adequate reasons. That apart, Recovery Officer shall obtain prior approval of the Registrar to fixation of the upset price before publication of proclamation of sale. Guidelines are also laid down for the Registrar to consider while approving upset price. Clause (f) further provides that the sale shall be held after the expiry of not less than 30 days calculated from the date on which the proclamation notice was affixed in the office of the Recovery Officer. Time and place of sale shall be fixed by the Recovery Officer, normally place of sale being where the property is situated.

28.13. As per clause (g), a sum of money equal to 15% of the price of the immovable property shall be deposited by the purchaser in the hands of the Recovery Officer at the time of the purchase and in default of such deposit, the property shall forthwith be re-sold. Clause (h) provides that remainder of the purchase money and the amount required for stamp duty for the sale certificate

shall be paid within 30 days from the date of sale, which period is however extendable for a further period of 15 days for good and sufficient reasons.

28.14. As per sub-rule (12), where prior to the date fixed for sale, the defaulter or any person acting on his behalf or any person claiming an interest in the property sought to be sold, tenders payment of the full amount due together with interest etc., the Recovery Officer shall forthwith release the property and in a case where the property has been attached, cancel the order of attachment.

28.15. Rule 13(1) deals with a situation post sale of immovable property. Where immovable property has been sold by the Recovery Officer, any person either owning such property or holding an interest therein by previous title, may apply to have the sale set aside on his depositing with the Recovery Officer for payment to the purchaser a sum equal to 5% of the purchase money and for payment to the applicant the amount of arrears specified in the proclamation etc. As per clause (ii), if such deposit and application are made within 30 days from the date of sale, the Recovery Officer shall pass an order setting aside the sale whereafter the purchase money shall be repaid to the purchaser together with the 5% deposited by such person.

28.16. Rule 14(1) gives an opportunity to the applicant or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, to apply to the District Deputy Registrar to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting it. However, the proviso clarifies that no sale shall be set aside on the above grounds unless the District Deputy Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud. In the event of the application being allowed, the Recovery Officer shall set aside the sale and may direct a fresh one. Clause (iii) provides that on expiration of 30 days from the date of sale, if no application to have the sale set aside is made or such

application is rejected if made, the District Deputy Registrar shall make an order confirming the same. As per clause (v), after confirmation of such sale, the District Deputy Registrar shall grant a certificate of sale bearing his seal and signature to the purchaser and such certificate shall state that the property is sold and the name of the purchaser.

28.17. The other provisions of sub-rule (11) are not relevant for the present litigation and therefore, no reference is made to those provisions.

29. The dispute in **Smita Janak Thacker** (*supra*) arose in relation to auction of residential property following award passed by the Co-operative Court decreeing the claim of the creditor bank at Rs.16,26,545.00 as on 05.02.1992 with interest. The award was sought to be executed by the Special Recovery Officer under Section 156 of the Act and Rule 107 of the Rules. Grievance of the petitioner was that she was the highest bidder at the auction sale whereafter she had deposited the entire purchase price which was equal to the lowered upset price fixed subsequently i.e., the initial upset price fixed was scaled down post auction sale. But there was an attempt to up-scale the upset price after the sale was made in her favour. It was in that context that this Court observed that in conducting public auctions a greater degree of probity and regularity is required to be followed. The upset price must be determined prior to the auction and once the upset price is fixed, a bid which does not measure upto the upset price is required to be rejected. Acceptance of highest bid below upset price and thereafter seeking sanction of higher authority for reduction in the upset price was held to be arbitrary and illegal. Once upset price is fixed, that price must necessarily be the governing price for the purposes of evaluating the bids received at the auction. An observation was made that the appropriate authorities under Sections 152 and 154 of the Act have sufficient appellate and revisional powers to correct an error or illegality. However, it must be mentioned that whether revision under Section 154 of the Act against a sale certificate would be maintainable or not was not an issue

in **Smita Janak Thacker** (*supra*), which case was decided on 06.07.2001.

30. Having broadly surveyed the relevant legal provisions, the undisputed facts which can be culled out from the pleadings and submissions made may now be summarized and briefly noted to provide a proper perspective.

30.1. The said property was originally owned by Jamnadas Manjibhai Padiya who was a director of respondent No.15 (Co-operative Bank). Respondent Nos.1 to 13 are the heirs of Jamnadas Manjibhai Padiya. They had obtained loans from respondent No.15 but they defaulted in repayment of the bank loans. Ultimately, respondent No.15 obtained recovery certificates under Section 101 of the Act on 12.03.2004.

30.2. Thereafter, attachment order dated 10.08.2007 was issued in respect of the said property. Valuation report of the said property was obtained by respondent No.14, who is the Special Recovery Officer under Section 156 of the Act, from a government approved registered valuer on 19.09.2011. The said property was valued at Rs.1,52,14,000.00.

30.3. Auction proclamation was made and notice in this regard was affixed in the concerned places on 05.03.2012. Notice was also given to the borrowers on the same day. In the notice of auction proclamation it was mentioned that auction would be held on 09.04.2012 besides detailing the requisite particulars of the said property and the place of auction.

30.4. As scheduled, the auction was held on 09.04.2012. There were a number of bidders who had participated in the auction, including petitioner No.1. Bid offered by petitioner No.1 was Rs.1,57,00,000.00, which was found to be the highest. Being the highest bidder and his bid being above the upset price, bid of petitioner No.1 was accepted. Petitioner No.1 deposited 15% of the purchase price i.e.,

Rs.24,00,000.00 by way of demand draft on the same day. Thereafter the balance 85% was deposited by petitioner No.1 on 21.04.2012. In the meanwhile, on 10.04.2012 notice was given to the borrowers that the said property was auctioned for Rs.1.57 crores and called upon them to make the deposits within the period prescribed as per Rule 107(13) of the Rules. However respondent Nos.1 to 13 failed to make the deposits in terms of Rule 107(13).

30.5. The 30 days period provided under Rule 107(14)(i) for making application to set aside the sale on the ground of material irregularity or mistake or fraud also expired on 09.05.2012. But no such application was made by respondent Nos.1 to 13 within the said period.

30.6. On 04.08.2012, respondent No.18 i.e., District Deputy Registrar confirmed the sale under Rule 107(14)(iii) and thereafter issued certificate of sale under Rule 107(14)(v).

30.7. Respondent Nos.1 to 13 filed Revision Application No.483 of 2012 before respondent No.17 challenging the certificate of sale without making the petitioners party. Revision application was filed on 27.08.2012.

30.8. Following issuance of sale certificate, sale deed was executed in favour of the petitioners on 13.03.2013. Petitioners had paid stamp duty of approximately Rs.9 lakhs.

30.9. Respondent Nos.1 to 13 had earlier filed Revision Application No.214 of 2012 against the auction sale dated 09.04.2012. The said revision application was rejected on merit vide order dated 28.03.2013. Against such rejection order dated 28.03.2013, respondent Nos.1 to 13 had filed Writ Petition No.4836 of 2013 before this Court. The said writ petition was dismissed on withdrawal on 07.10.2013. Therefore, the auction sale held on 09.04.2012 attained finality.

30.10. Respondent Nos.1 to 13 had also filed Revision Application Nos.357 of 2013 and 381 to 391 of 2013 before the Divisional Joint Registrar i.e., respondent No.17 challenging the recovery certificates issued under Section 101 of the Act. The said revision applications were rejected on merit by the revisional authority vide the order dated 03.01.2014. No further challenge was made to the order dated 03.01.2014.

30.11. Thus, the recovery certificates issued under Section 101 of the Act had attained finality. Auction sale conducted on 09.04.2012 on the basis of the said recovery certificates had also attained finality.

30.12. Revision Application No.483 of 2012 was allowed by respondent No.17 vide the order dated 07.05.2014 and the certificate of sale dated 04.08.2012 was set aside. Petitioners herein filed Writ Petition No.6609 of 2014 before this Court assailing the order dated 07.05.2014. The said writ petition was allowed by this Court vide order dated 01.09.2014 on the ground that petitioners were not made parties in the revision application and consequently they were not heard before setting aside the sale certificate dated 04.08.2012. Order dated 07.05.2014 was set aside and the matter was remanded back to the revisional authority to hear the revision application afresh after impleading the petitioners as parties in the said revision application.

30.13. On such remand, petitioners were impleaded as parties (opponents) in the revision application whereafter the parties were heard. By the impugned order dated 24.12.2014, the said revision application was allowed and the sale certificate dated 04.08.2012 was set aside.

31. This being the factual scenario, question No.1 as framed may now be examined. This question deals with the allegation of collusion and fraud in

conducting the auction process raised by respondent Nos.1 to 13 in their affidavit in reply.

32. It has already been noticed that under Rule 107(14)(i) of the Rules, at any time within 30 days from the date of sale of the immovable property, the applicant or any person entitled to a share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the District Deputy Registrar to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting it though no sale shall be set aside on such ground unless the District Deputy Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud. In case such application is allowed and the sale is set aside, a fresh sale may be directed. On the other hand, if no such application is made within the said period of 30 days or if made and rejected, the District Deputy Registrar shall make an order confirming the sale and after such confirmation, grant a certificate of sale.

33. In the present case, no such application under Rule 107(14)(i) of the Rules was filed by respondent Nos.1 to 13. Therefore, on expiration of 30 days from the date of sale, the sale was confirmed whereafter certificate of sale was granted to the petitioners.

34. In the impugned order dated 24.12.2014 whereby the sale certificate dated 04.08.2012 was set aside, the revisional authority took the view that the said property was not mortgaged or attached for obtaining the bank loan the default of which led to the auction sale. The said property was mortgaged by Jamnadas Manjibhai Padiya for the loan which he had obtained from the bank i.e., respondent No.15. The said property was subject to proceedings pending before the Co-operative Court. The revisional authority found fault in the attachment of the property under Rule 107(11)(d) as well as in the proclamation notice under Rule 107(11)(e). Respondent No.17 i.e., revisional authority also found fault with

the deposit of money by the purchaser under Rules 107(11)(g) and (h) of the Rules. He was further of the opinion that fixation of the upset price and the approval thereto were not in accordance with the prescribed procedure. In such circumstances, respondent No.17 came to the following conclusion:-

“ In view of the observations made herein above, I come to the conclusion that if the upset price is fixed properly by giving an opportunity of hearing, and property is kept for public auction for the proper dues / encumbrances to which the property is liable by following due procedure of Rule 107, then there is no harm to anybody. So far as the bonafide purchaser opponent No.4 to 14 is concerned, they are at liberty to take part in a fresh bid by following due conditions of auction sale. In result, I pass following order:

ORDER

The revision application is hereby allowed.
The sale certificate dated 4/8/2012 is hereby set aside.
No order as to costs. ”

34.1. Thus, according to respondent No.17 if the upset price is fixed properly by giving an opportunity of hearing and the property is auctioned by following the due procedure, there would be no harm to anybody. In so far petitioners are concerned, they have been referred to as '*bona fide* purchaser' with further observation that they would be at liberty to take part in the fresh auction sale by following the due conditions.

35. From the above it is clearly evident that no finding was recorded by respondent No.17 that there was collusion and fraud in the auction sale and that the sale certificate was an outcome of fraud. Rather, there was no discussion at all in this regard in the order dated 24.12.2014. On the contrary, the revisional authority described the petitioners as '*bona fide* purchaser'. When the revisional authority had allowed the revision application not on the ground of collusion and fraud but on other grounds, it is not open to the successful revision applicant to assail the sale certificate in a collateral manner in the writ petition filed by the revision opponents by raising grounds of collusion and fraud. This course of action is certainly not open to respondent Nos.1 to 13, more so when they had

failed to avail the remedy of Rule 107(14)(i) of the Rules.

36. Notwithstanding the above, a perusal of the averments made by respondent Nos.1 to 13 in the three affidavits filed by them in the present proceeding would go to show that those made *vis-a-vis* collusion and fraud are bald statements and vague allegations. All that has been stated is that fraud is evident in the auction process and that the sale certificate dated 04.08.2012 is continuation of the fraudulent action. It is only alleged that respondent No.14 acted in collusion with the petitioners to grant them undue benefit. In support of such allegation it is stated that the said respondents had filed criminal complaint before the police but no details of such complaint or outcome has been placed on record. Another contention made is that the auction property was undervalued by fixation of lower upset price and auctioned off at a much lower price. No tangible or cogent material has been placed on record to substantiate such allegation. I am afraid on the basis of such bald and vague allegations no conclusion of collusion or fraud can be reached. Merely because the quantum of upset price was lower or ought to have been higher according to the borrower, no conclusion can be reached that it was done deliberately or collusively to benefit the purchaser. Fraud has a definite meaning in law. Fraud must be proved and not merely alleged and inferred.

[Please see **(2017) 2 SCC 797**, *Harjas Rai Makhija Vs. Pusparani Jain*; and **(2017) 7 SCC 636**, *DDA Vs. Bankmen's Co-operative Group Housing Society Ltd.*]

37. In so far the case laws relied upon by respondent Nos.1 to 13 are concerned, those are clearly distinguishable and cannot be applied to the facts and circumstances of the present case. In **Tanaji Dattu Chalke** (*supra*), petitioner had challenged the order passed by the revisional authority allowing the revision application filed by respondent No.1 setting aside the auction sale and sale confirmation. This Court dismissed the writ petition and confirmed the order of the revisional authority. It was noticed that the outstanding amount due from respondent No.1 was Rs.1,48,583.00. On the date of auction sale, respondent No.1 i.e., the borrower was present at the venue of sale and offered to pay the entire outstanding dues. In furtherance thereof an amount of Rs.14,500.00 was deposited

by respondent No.1 which was accepted by the creditor bank. Notwithstanding acceptance of Rs.14,500.00, the auction sale was proceeded with whereafter offer of the petitioner (bidder) was accepted by the Special Recovery Officer. Though respondent No.1 offered to make payment to the creditor bank, the same was refused on a technical plea. This Court further noted that what was staring in the face was that for recovery of an amount of Rs.1,48,583.00 property worth Rs.15,00,000.00 was sought to be auctioned. Therefore, in the facts of that case, revisional authority had interfered with the auction sale and this Court declined to interfere with the decision of the revisional authority. This decision was rendered on 09.06.2014.

38. In **Manisha Bijal Shah** (*supra*), there was clear finding by this Court that fraud was practised by the petitioner in collusion with the creditor bank and the Special Recovery Officer in conducting the auction sale of the properties of respondent No.1. This Court found or rather recorded as findings of fact that no notice of sale was given to respondent No.1 i.e., the borrower. Signatures of the petitioner on the receipts of the alleged deposits on the date of the alleged auction did not tally with the signature of the petitioner on the sale deed. Auction *panchnama* did not bear the signature of the petitioner though his presence was marked. Valuation report was found to be fraudulent and the upset price report was also found to be tampered with. Besides 85% of the purchase price was not deposited by the petitioner within the prescribed period in terms of Rule 107(11) (g) of the Rules. The three sale certificates issued were found to be fraudulent with the sole intent to cover up the false case of the petitioner and respondent Nos.4 and 5. It was a clear case of fraud played by the petitioner (purchaser), respondent No.4 (creditor bank) and respondent No.5 (Special Recovery Officer) upon respondent No.1 (borrower) in auctioning the property of respondent No.1. It is settled law that once fraud is proved, all advantages gained by playing fraud would stand vitiated. Any decision, order or advantage obtained by fraud is a nullity and *non est* in the eye of law. It is in these circumstances that this Court held that if fraud is committed in affecting the sale certificate, the remedy of

revision under Section 154 of the Act is not taken away. Therefore the writ petitions were dismissed.

39. The decision in **Smita Janak Thacker** (*supra*) has already been discussed above. Though an observation was made that the appropriate authorities under Sections 152 and 154 of the Act have sufficient appellate and revisional powers to correct an error or illegality in conducting auction sale, the core issue in that case was the action of the Special Recovery Officer in obtaining approval of the higher authority to reduction in the pre-fixed upset price after it was found that the highest bid offer in the auction was less than the upset price. Again after deposit of the purchase price by the petitioner (highest bidder), an attempt was made to re-fix the upset price. It was in that context that this Court disapproved of the entire process as lacking in propriety and regularity. The question as to whether a revision application under Section 154 of the Act would be maintainable against confirmation of sale and sale certificate was not the issue in **Smita Janak Thacker** (*supra*).

40. In the light of the above discussion, the first question framed has to be decided in the negative by holding that there is no proof of collusion between the petitioners and respondent Nos.14 and 15 in conducting the auction process and fraud in the sale of the said property through the public auction could not be proved. Question No.1 is answered accordingly.

41. In **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd.** (*supra*), this Court had examined the scope and ambit of Section 154 of the Act in the context of Rule 107 of the Rules. Referring to the language of Section 154, it was held that revision application under Section 154 of the Act is possible either *suo motu* or on an application against any decision or order passed in an enquiry or proceeding by a subordinate officer. It was held that since the borrower did not avail the opportunity under sub-rule (13) of Rule 107 and also did not avail the remedy

available under sub-rule (14) of Rule 107, the order confirming the sale was a mere formality. Order confirming sale is thus not an order in the real sense. It was held by this Court that the order confirming sale could not be construed to be an order contemplated within the meaning of Section 154 of the Act.

42. This issue again cropped up in **Ramchandra Sitaram Mulik** (*supra*). Relying upon **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd.** (*supra*) this Court held that revision application under Section 154 of the Act against confirmation of sale and issuance of sale certificate was not maintainable in as much as confirmation of sale and issuance of sale certificate were not orders within the meaning of Section 154 of the Act. It was pointed out that an aggrieved person has adequate and efficacious remedy under Rule 107(14)(i) of the Rules.

43. Finally, in **Sunil Sitaram Mahajan** (*supra*) decided on June 13, 2018, this Court was again confronted with the same question. Relying on the two previous decisions as alluded to hereinabove, this Court held in clear and categorical terms that the action of confirming sale and issuing sale certificate could not have been challenged by way of revision application under Section 154 of the Act.

44. The above decisions are squarely applicable to the facts of the present case. In the absence of fraud, the revision application under Section 154 of the Act against confirmation of sale and issuance of sale certificate was clearly not maintainable. Therefore, the revisional authority i.e., respondent No.17 acted without jurisdiction in entertaining the revision application and passing the impugned order dated 24.12.2014.

45. In the light of the above the second question framed i.e., as to whether confirmation of sale under Rule 107(14)(iii) of the Rules and sale certificate issued under Rule 107(14)(v) of the Rules can be interfered with by the revisional authority under Section 154 of the Act has to be answered in the negative. In the

absence of fraud, such a revision application would not be maintainable.

46. In view of the answer to question No.2, the third question framed need not be gone into.

47. However, before concluding, a word or two about the conduct of respondent Nos.1 to 13. As already noted above, they had filed Revision Application No.214 of 2012 against the auction sale held on 09.04.2012. The same was rejected on merit vide the order dated 28.03.2013. Writ petition filed against the said order was withdrawn. If that was not enough, the said respondents had also filed Revision Application Nos.357 of 2013 and 381 to 391 of 2013 assailing the recovery certificates issued under Section 101 of the Act. All these revision applications were dismissed vide order dated 03.01.2014. Thus the recovery certificates and the auction sale had attained finality. The auction sale having been affirmed, confirmation of sale and issuance of sale certificate were only consequential and a mere formality. In view thereof it was not open to respondent Nos.1 to 13 to have re-agitated the decided issue of public auction sale by challenging the sale certificate which was nothing but a formality and a consequential action.

48. A somewhat similar situation had arisen in the context of Rule 38(6) of the Karnataka Co-operative Societies Rules, 1960 which is *pari-materia* to the provisions of Rule 107(13) of the Rules. In that context, Supreme Court in **P. M. Abubakar** (*supra*) held that once auction sale is confirmed by the competent authority, it is not open to the authority to exercise power under Rule 38(6) to set aside the sale. It was held that it would be against the spirit of legislative intent of giving finality to the auction sale process upon passing of an order of confirmation of sale.

49. In such circumstances, it was not justified on the part of respondent No.17

to have passed the order dated 24.12.2014 ignoring the orders of the revisional authority in affirming the recovery certificates and the auction sale.

50. Thus having regard to the discussions made above and upon thorough consideration of the entire matter, Court is of the view that the writ petition deserves to be allowed. Consequently, impugned order dated 24.12.2014 is hereby set aside and quashed. Writ petition is accordingly allowed.

51. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab