

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Shampa Sarkar

C.O. No. 3151 of 2023

Aarburgreen Estates LLP & Anr.

vs.

Subhas Chowdhury & Anr.

For the petitioner No.1 : Mr. Abhrajit Mitra, Sr. Advocate
Mr. Suddhasatva Banerjee
Mr. Satadip Bhattacharya
Ms. Rituparna Chatterjee
Ms. Khushboo Choudhury

For the petitioner No.2 : Mr. Aniruddha Chatterjee
Mr. Abirlal Chakraborty

For the opposite party No.1 : Mr. Probal Mukherjee, Sr. Advocate
Mr. Nimish Mishra
Mr. Gaurav Singh
Mr. Abir Mondal

For the opposite party No.2 : Mr. Shamit Sanyal
Ms. Mekhala Kanji

Hearing on: 05.01.2024, 24.01.2024, 25.01.2024,
31.01.2024, 07.02.2024, 13.02.2024, 22.04.2024

Judgment on: 21.05.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated September 1, 2023 passed by the learned Recovery Officer, Debts Recovery Tribunal-II, Kolkata in TRC No.191 of 2001. The order was passed on an application filed by the auction purchaser/opposite party No.1 alleging obstruction

posed by the petitioners, making plot no. 3332 (purchased plot) inaccessible.

2. By the order impugned, the learned Recovery Officer passed certain interim directions, which are under challenge before this Court. The jurisdiction of this Court is invoked on the ground that the order suffers from a lack of inherent jurisdiction. It is alleged that the learned Recovery Officer did not act within the bounds of his authority and also misconstrued the law while passing the mandatory directions at the interim stage.

3. The facts as pleaded in this revisional application were that the petitioner No.1 was the sole and absolute owner of lands measuring about 104.66 satak comprising of R.S. Dag Nos.3325, 3329 and 3334 recorded in R.S. Khatian Nos.832, 697 and 448, in Mouza Jagaddal, J.L. No.71 Ward No.25, Municipal Holding No.408, Dwarir Road, under Rajpur-Sonapur Municipality, Kolkata 700151.

4. The petitioner No.1 acquired right, title and interest in respect of the premises by virtue of seven deeds of conveyance executed between January 8, 2016 and November 28, 2017. The petitioner No.1 entered into a joint development agreement dated August 19, 2022 with the petitioner No.2. On or about December 23, 2022, the petitioner No.1 received a notice dated December 15, 2022, issued by the learned Recovery Officer, requiring personal appearance of the petitioner through its representative or a partner. In the said notice, it was alleged that the petitioner No.1 had obstructed the ingress and egress to and from the property sold to the opposite party No.1 in the auction sale, being land measuring about 22 decimals in R.S. Dag No.3332 of Mouza Jagaddal.

5. Challenging the aforementioned notice, a writ petition was filed before the High Court, being WPA 4260 of 2023. The said writ petition is still pending.

6. By order dated February 20, 2023, notice of the proceeding was issued upon the petitioner No.2. By order dated March 1, 2023, the learned Recovery Officer issued a notice upon the Block Land and Land Reforms Officer, Sonarpur, as also upon the directors of the petitioner No.1 and the petitioner No.2, asking them to be present before the authority. According to the petitioners, till such time, no copy of the application on the basis of which the orders were being passed, had been served. On March 14, 2023, two separate applications were filed before the learned Recovery Officer by the petitioners, praying for service of the copy of the application which had given rise to the proceedings. By order dated March 21, 2023, for the first time, the learned Recovery Officer directed the opposite party No.1 to serve a copy of the application upon the petitioners.

7. In course of hearing of the application on April 11, 2023, the petitioners were served with a copy of the application filed by the opposite party No.1. The application contained allegations of obstruction to the ingress and egress in respect of plot No.3332. Such allegations were levelled against the representatives of the petitioner No.1. There were no allegations against the petitioner No.2.

8. A receiver had been appointed by the learned Recovery Officer in connection with the proceeding, who had filed reports before the learned Recovery Officer from time to time, i.e., reports dated March 1, 2023, August 16, 2023 as well as an undated supplementary report. According to the

petitioners, such reports had been handed over to them at a belated stage i.e., on the very day the order impugned was passed. The petitioners claimed to have asked for copies thereof, repeatedly.

9. By an order dated July 14, 2023, the Recovery Officer again passed certain directions upon the Block Land and Land Reform Officer, Sonarpur, directing him to depute Mr. Atanu Bhattacharya, Revenue Inspector (R.I) to make a demarcation of the old factory shed where a commercial vehicle had been standing. The R.I was directed to show all existing possible passages with their respective length and width along with a sketch map, indicating whether the mini-commercial vehicle could be driven out from plot no.3332 to reach the public road through the existing and possible passages in the premises occupied by the developer (petitioner No.2). The receiver was also directed to submit a report along with videos and photographs. The officer-in-charge Sonarpur, was directed to render police help to the developer and to maintain law and order. The representatives of the petitioner No.2, were directed to allow the receiver and the R.I. of the Block Land and Land Reform Office, to enter into their premises and to carry out the demarcations. The Chairman of Rajpur-Sonarpur Municipality was directed to produce certain documents with regard to proof of ownership of nearby plots, as also the consent letters from the owners of the other plots through which the 20 ft. wide road adjoining Dwarir Road, was located.

10. The order dated July 14, 2023, was challenged by the petitioners by preferring an appeal before the learned Debts Recovery Tribunal-II, Kolkata, under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the said Act). During the

pendency of the appeal, the Revenue Inspector carried out the inspection of the premises in question, and filed a report on August 24, 2023. The application came up for hearing on September 01, 2023, before the Recovery Officer, when a supplementary report was filed by the Receiver containing objection to the report of the Revenue Inspector.

11. Based on the supplementary report of the Receiver and the oral submissions of opposite party No.1, the order impugned was passed. All construction activities on the premises of the petitioner No.1 by the petitioner No.2, were stopped. The Receiver was directed to inspect the status of the property belonging to the petitioner No.1, every 15 days and submit a report after each inspection. The Receiver was allowed to take help of the police from the nearest police station. The officer-in-charge, Sonarpur, was directed to engage adequate police force to help the Receiver during such inspection. Further, the Block Land and Land Reforms Officer, Sonarpur, was directed to replace the revenue inspector. The revenue inspector to be engaged, was directed to file a fresh sketch map, showing the path of access to R.S. Dag No.3332. Cost of Rs.1 lakh was imposed upon the petitioner no.1 for having caused obstruction. The hearing of the case was adjourned till November, 24, 2023. Other directions were also passed which do not impact the petitioners and thus, are not taken into consideration in this order.

12. Mr. Abhrajit Mitra, learned Senior Advocate appeared on behalf of the petitioner No.1 and submitted that the order impugned before this Court was wholly without jurisdiction. The same was perverse and suffered from a total misconception of law. The manner in which the learned Recovery

Officer had proceeded, resulted in a complete travesty of justice. After the confirmation of the sale and handing over possession of the property to the opposite party No.1, the learned Recovery Officer did not retain any jurisdiction to pass any further order or orders in respect of the personal property of the petitioner No.1. The learned Recovery Officer had decided the right, title and interest of the parties. The land in respect of which directions were passed, was owned and possessed by the petitioner No.1. The petitioner No.2 was continuing the development work, on the basis of a development agreement.

13. The opposite party No.1 had purchased the property namely 22 decimals in RS Dag No.332 of Mouza Jagaddal, in an auction sale, from the Tribunal on an “as is where is basis”. The property purchased by the petitioner No.1, was neither the subject-matter in the recovery proceeding nor had any order of attachment been passed in respect of such property. The petitioner No.1 was a bona fide purchaser of value.

14. The Income Tax Certificate Proceeding Rules, 1962 (hereinafter referred to as the 1962 Rules) and the Second Schedule of the Procedure for Recovery of Tax, which were invoked while passing the order impugned, would not be applicable to the properties which were not the subject-matter of the recovery proceeding. The bank had never prayed for attachment of all other properties of the certificate debtor. The properties which had not been mortgaged, were not part of the recovery proceedings. The Tribunal had not enjoined sale of other properties of the debtor as wrongly stated in the order impugned. Title had passed to the opposite party No.1, in respect of plot No.3332 and the said opposite party had also been put in possession

thereof. Such facts were available from the report of the R.I Atanu Bhattacharya. It was specifically contended by Mr. Mitra, that even if there was a provision of an appeal under the said Act, the alternative remedy would not be a bar in this case. This was a case of wrongful assumption of jurisdiction and illegal exercise thereof.

15. Referring to the different documents annexed to the application, Mr. Mitra submitted that as per the deed of conveyance of the opposite party No.1, the possession of the property was taken by the Receiver in terms of the order dated April 28, 2006, passed by the learned Recovery Officer, DRT-II, Kolkata. The sale notice was published on June 1, 2006, and on September 25, 2006, sale was confirmed and certificate of sale was issued in favour of Subhas Chowdhury. The amended certificate of sale was issued on September 19, 2014. The schedule of the conveyance deed mentioned the boundaries of the property sold at the auction and it was evident that plot No.3332 was a land locked property. The said plot alone, had been conveyed to the opposite party No.1. No passage or right of way through the other plots had been mentioned.

16. On September 19, 2014 one Shri Kajal Kumar Halder was appointed as Receiver and was authorized to sign and execute the deed of conveyance on behalf of the Tribunal in favour of the opposite party No.1. The deed of sale was executed on March 10, 2017.

17. According to Mr. Mitra, possession had already been handed over through an existing wide passage, as recorded by the R.I in the report dated August 8, 2023 addressed to the BL&LRO, Sonarpur. The question of creating a passage through the property of the petitioner No.1, did not arise

as the deed did not make any provision for a passage through the lands of the petitioner No.1 i.e., plot Nos.3325, 3339 and 3334 of Mouza Jagaddal. Secondly, the Recovery Officer did not retain any power or jurisdiction over the property of the petitioner No.1 and his duty, obligation and authority ended with the handing over of possession of plot No.3332 to the opposite party No.1. On mere allegation of alleged obstruction on a subsequent date and blockage of ingress and egress to and from the land of the opposite party No.1, the learned Recovery Officer could not assume jurisdiction which was not vested upon him by the said Act. The allegation of blockage of passage through the land of the petitioner No.1 or creation of any obstruction at a later stage, were to be decided in a separate proceeding by a civil court. The learned Recovery Officer was in the process of creating an easementary right in favour of the opposite party No.1, which had not been provided for in the deed of conveyance. The conveyance deed did not contain any covenant that the access to plot No.3332 would be through the land purchased by the petitioner No.1. Apart from a small portion of plot No.3329, the other plots of the petitioner No.1, were not even adjacent to plot No.3332.

18. Mr. Mitra referred to the provisions of Sections 19, 25 and 28 of the said Act in support of his contention that after the execution of the sale and taking over possession of the property sold, the learned Recovery Officer had become *functus officio*. The learned Recovery Officer could not adjudicate title. The tenor of the order impugned, indicated that the Recovery Officer was proceeding on the basis that the opposite party No.1 had a right of ingress and egress through the property of the petitioner No.1 and a passage

should be demarcated through the property of the petitioner No.1. Rules 39 and 41 of the 1962 Rules would not be attracted in the present case as there was no resistance with regard to taking over possession of the property sold to the opposite party No.1. There was no order of the Tribunal, in respect of the plots of land purchased by the petitioner. Reference was made to a deed of gift, by which Indrajit Mitra had become the owner of the adjacent plots. In the said deed, a passage had been mentioned as a common passage for ingress and egress of all. The same was identified by the R.I and through the said passage, possession had been handed over to the opposite party No.1. Such fact had been recorded in the report of the R.I. It was contended that the order impugned was unreasoned. The finding that the petitioner had converted the property purchased by the opposite party No.1 to a landlocked property was neither backed by any reason nor evidence. Referring to the application on the basis of which several mandatory orders had been passed after delivery of possession to the auction purchaser, Mr. Mitra submitted that the opposite party No.1, in paragraph 9 thereof, had claimed that one Shekhar Burman, had 'recently' disturbed the ingress and egress of the petitioner, by illegally blocking the entrance of the purchased land and also demolished an existing shed on the property. The opposite party No.1 prayed that necessary orders should be passed, directing Shekhar Burman and Satyajit Burman, the partners of the petitioner No.1, not to block the ingress and egress of R.S. Plot No.3332.

19. Prayer C of the said application is the relevant prayer. The same is quoted below:-

“Please pass further order to the Ld. Receiver to handover the physical possession after proper demarcation in respect of property no.2 of Jagaddal Mouja i.e. 22 decimal land.”

20. It was urged that the deed of conveyance recorded that the Receiver had been in possession of the property after attachment thereof since 2006. The deed of conveyance was executed in 2017. The deed did not mention any passage through the land of the petitioner No.1. Thus, the question of revisiting the issue and creating a passage for access to plot no.3332, was wholly illegal and beyond jurisdiction.

21. Mr. Mitra submitted that the petitioner No.1 was a bona fide purchaser of the property and had absolute right to enjoy the property in whatever manner it wished. The learned Recovery Officer could not transform himself into a civil court and decide the issue of title, encroachment and right of easement after a period of five years from execution of the deed of conveyance and after having put the opposite party No.1 in possession of the property. Earlier orders of the Recovery Officer mentioned that the opposite party No.1 was not cooperating with the learned Receiver at the time of taking over possession. Mr. Mitra further submitted that the deed of gift categorically indicated that there was a common passage on plot No.3331 for use of all. Mr.

22. Mitra relied on the following decisions :-

- (i) ***Bhavnagar University vs Palitana Sugar Mill (P) Ltd. and Ors. reported in (2003) 2 SCC 111,***
- (ii) ***S.J.S. Business Enterprises (P) Ltd. vs State of Bihar and Ors. reported in (2004) 7 SCC 166 and***

**(iii) GBM Manufacturing Pvt. Ltd. & Anr. vs Indian Overseas Bank
& Ors. reported 2013 SCC Online Cal 11753,**

23. Mr. Aniruddha Chatterjee, learned Advocate appeared on behalf of the opposite party No.2/developer. According to Mr. Chatterjee, the opposite party No.1 purchased the property on an 'as is where is whatever is basis'. The schedule of the property in the deed of conveyance would clearly indicate that the property was a landlocked property. In the application filed by the opposite party No.1, which led to the passing of the order impugned, there was no allegation against the petitioner No.2. The schedule of the property was mentioned in the auction notice and the certificate of sale. The opposite party No.1 purchased a land locked property with his eyes and ears open and at his own risk and peril. Further, the allegation that the petitioner No.1 had illegally obstructed the ingress and egress would indicate that the opposite party No.1 had been enjoying the property and was in possession thereof. The allegation of disturbance with regard to ingress and egress, if at all, was made at a later point of time, after the possession had been handed over. Such allegation should not be decided by the Recovery Officer as the same was a civil dispute, to be adjudicated by a civil court, on evidence.

24. In the application filed by the opposite party No.1, which led to the passing of the order impugned, there was no whisper of any easementary right through the property in question. There was no whisper that the opposite party No.1 had been enjoying ingress and egress through the property in question. Admittedly, there was no hindrance at the time of

taking over possession. There was direct access through plot Nos.3331 and 3339. The opposite party No.1 had availed of such passage in January 2023 and the learned Receiver had given possession through the said passage. Such fact was available from the report of the R.I. Thus, the order impugned was wholly perverse and liable to be set aside. Moreover, the learned Receiver could not have raised objections to the report of the R.I with regard to the existence of an alternative passage, thereby insisting on creation of a passage through the property of the petitioner No.1.

25. Mr. Sanyal, learned Advocate for the bank submitted that it was the duty of the certificate-debtor to secure the debts and before selling the property to the petitioner No.1, permission ought to have been taken from the learned Recovery Officer. Rule 16 of the Second Schedule of the Procedure for Recovery of Tax (hereinafter referred to as the Second Schedule), would be applicable to all the properties of the certificate-debtor. Section 25(a) of the said Act and Rule 23 of the Second Schedule were also referred to.

26. According to Mr. Sanyal, the bank could always approach the Tribunal for orders under Rule 16 of the Second Schedule. The learned Recovery Officer had the jurisdiction to take steps in the matter, as the admitted position was that the property purchased by the petitioner No.1 belonged to the certificate-debtor, who had notice of the sale certificate. A proclamation had also been issued. The certificate debtor could not have sold other properties, even if they had not been mortgaged, without obtaining permission from the Recovery Officer.

27. Mr. Probal Kumar Mukherjee, learned Senior Advocate appearing on behalf of the opposite party No.1, submitted that the learned Recovery Officer retained the power over all the properties belonging to the certificate-debtor, which also included the property of the petitioner No.1. Even though the said properties were not the subject-matter of the sale certificate, in order to perfect the title of the auction purchaser, the learned Recovery Officer had the power to enquire, investigate and remove any kind of blockade or obstruction over the property purchased by the auction purchaser.

28. Mr. Mukherjee submitted that the issue of non-delivery of possession of plot No.3332 was alive since its very inception and it was not a sudden change of events, which led to the filing of the application. The learned Recovery Officer was under a statutory mandate to ensure that the title of the auction purchaser was perfected and such duty included ensuring that the auction purchaser could access the property and use the same freely. The sale would otherwise become an empty formality and the property would be rendered useless to the auction purchaser. Mr. Mukerjee referred to orders dated January 10, 2007, April 24, 2007, January 28, 2009, April 21, 2009, June 15, 2009, January 28, 2013, September 19, 2014, December 20, 2016, August 28, 2017, March 22, 2018 and May 04, 2018, in support of his contention that the process of handing over physical possession of the Plot No.3332 had not been completed. During such process, there were changes in the Receivers. At one point, joint Special Receivers were also appointed for the said purpose. The obstruction was created when such process was going on. Thus, the submissions on behalf of the petitioner

No.1 that the Recovery Officer had become *functus officio* after the property was sold and after the execution of the sale certificate in favour of the opposite party No.1, were incorrect. The records spoke otherwise. All the orders passed by the Recovery Officer indicated that the process of identification and demarcation of the property had been going on. For the above purpose, the Block Land and Land Reform Officer, Sonarpur, had been directed to provide necessary assistance to the Receivers of the property with the help of the Registered Amin/Surveyor, at the cost of the purchaser. Referring to the said Rules, Mr. Mukherjee submitted that if the purchaser of the immovable property was either resisted or restricted by any person while obtaining possession of the property sold, he could apply to the Tax Recovery Officer, complaining of such resistance and obstructions, within 30 days therefrom. The Tax Recovery Officer would fix a date for the purpose of investigating the matter and summon the party against whom the application was made, to appear and answer to the complaint. Similar prayers were made by the opposite party No.1, before the Recovery Officer. The provisions of the 1962 Rules were also applicable in the case in hand as per Section 29 of the said Act.

29. Reliance was further placed on Rules 42 to 47 of the 1962 Rules. Mr. Mukerjee submitted that if the Recovery Officer was satisfied that the resistance and obstruction were occasioned without any just cause, either by the defaulter or any person claiming through the defaulter, the auction purchaser could be put into possession of the property by removing such obstruction. Moreover, if the Recovery Officer was satisfied that the resistance and obstruction were occasioned by any person other than the

defaulter, claiming in good faith to be in possession of the property on his own account or on account of some other person than the defaulter, the officer could dismiss an application filed by the auction purchaser seeking removal of the obstruction. A *bona fide* claimant could be restored possession of the property, in case of dispossession. The said issues were yet to be decided by the Recovery Officer and the interim order was passed to prevent further damage and obstruction. On this score, Mr. Mukerjee submitted that Rule 47 of the 1962 Rules gave the petitioners a right to file a suit from the orders passed under the provisions of Rules 42, 43 or 45. The petitioners had the remedy to approach the appropriate forum with their grievance.

30. Mr. Mukherjee, also referred to Rule 16 of the Second schedule. According to Mr. Mukherjee, when a notice had been served upon the defaulter under Rule 2 of Recovery Certificate Rules, neither the defaulter nor his representative-in-interest, would be competent to mortgage, charge or otherwise deal with any property belonging to him, except with the permission of the Tax Recovery Officer. Nor could any civil court issue any process against such property in execution of the decree for the payment of money. Where an attachment had been made under the said schedule, any private transfer or delivery of the attached property, would be void against the claim enforceable under such attachment. Such provision would apply in the case in hand.

31. Referring to the application filed by the opposite party No.1, Mr. Mukherjee submitted that there were sufficient pleadings in paragraphs 7, 8 and 9 with regard to the dispute relating to delivery of the possession and

the obstruction created in respect of the access to the property. The power of the recovery officer to remove such obstruction was recognized by law. The opposite party no.1 was not claiming an easementary right, as wrongly submitted by the petitioner No.1, but had only prayed for removal of the obstruction. Such power was vested upon the Recovery Officer in terms of the said Rules. Delivery of possession was also the duty of the learned Recovery Officer and while doing so, he had the power to investigate insofar as the obstruction was concerned and take appropriate measures to remove such obstruction. The sale of the property to the petitioners, in the teeth of an enquiry or investigation against the certificate-debtor, was itself void and liable to be set aside by a competent authority. Moreover, the order impugned was an interim order and no final order had been passed against the petitioners. This court ought not to interfere with the interim order. The order was not capricious. The order was backed by facts and evidence, available from the reports of the receiver. As the auction purchaser did not obtain meaningful possession of the property in question. The obstruction was required to be removed by the Recovery Officer. The Recovery Officer had passed a series of orders prior to the order impugned, upon meticulously examining the entire matter and upon recording the findings.

32. Sections 25(aa) and 25(c) of the said Act, vested the Recovery Officer with the power to take possession of the property over which security interest had been created or any other property of the certificate-debtor and appoint a receiver over such property or sell the same.

33. The learned Recovery Officer was also vested with the power to appoint a receiver upon the immovable property of the certificate debtor.

Thus, the properties sold to the petitioner were properties of the certificate-debtor and the Recovery Officer retained jurisdiction over such property. The Recovery Officer recorded that an order of injunction had been passed against all the properties of the certificate debtor.

34. The report of the receiver had been considered by the learned Recovery Officer, in detail. The learned Recovery Officer arrived at a specific finding with regard to the blockage and obstruction created by the petitioners and also the demolition of the factory shed which was on plot No.3332. The excavation of earth, digging of ditches were noted.

35. Thus, the Recovery officer, upon appreciating the factual aspects and the receiver's report rightly held that it would be proper to restrain the petitioners from raising further construction, as in the process of such construction, the access to the R.S. Plot No.3332 had been obstructed and damaged.

36. Mr. Mukherjee submitted that the petitioners were always aware that the order impugned was an appealable order under Section 30 of the said Act and had already preferred an appeal against an earlier interim order passed on July 14, 2022.

37. According to Mr. Mukherjee, the Act of 1993 was a complete code. The Act provided a remedy by way of a statutory appeal. The Recovery Officer had acted within the power conferred by law and proceeded in a manner provided by law. Upon hearing all the parties and upon appreciation of the reports of the receiver, the interim order was passed. In this case, the alternative remedy of appeal would operate as a bar.

38. According to Mr. Mukherjee, the Recovery Officer did not assume jurisdiction which was not vested upon him by law. The order was not based on extraneous considerations. There was no procedural irregularity. The decision making process was not faulty. The order would not shock the conscience of a reasonable man. Thus, this court in exercise of the general power of superintendence should not upset the findings of fact. Mr. Mukerjee submitted that the order impugned should not be interfered with.

39. Mr. Mukerjee relied the following decisions :-

- (i) ***Canara Bank v. P. Selathal and Others, reported in (2020) 13 SCC 143,***
- (ii) ***Authorized Officer, State Bank of Travancore and Anr.v. Mathew K.C., reported in (2018) 3 SCC 85,***
- (iii) ***Punjab National Bank v. O.C. Krishnan and Ors, reported in (2001) 6 SCC 569,***
- (iv) ***Official Liquidator, Uttar Pradesh and Uttarakhand v. Allahabad Bank and Ors., reported in (2013) 4 SCC 381,***
- (v) ***Nitin Gunwant Shah v. Indian Bank and Ors, reported in (2012) 8 SCC 305,***
- (vi) ***Union of India and Anr. v. Delhi High Court Bar Assn. and Ors., reported in (2002) 4 SCC 275,***
- (vii) ***Radhey Shyam and Anr. v. Chhabi Nath and Ors., reported in (2015) 5 SCC 423,***
- (viii) ***Sameer Suresh Gupta v. Rahul Kumar Agarwal, reported in (2013) 9 SCC 374,***

- (ix) *Sadhana Lodh v. National Insurance Co. Ltd. and Anr., reported in (2003) 3 SCC 524,***
- (x) *Sugarbai M. Siddiq and Ors. v. Ramesh S. Hankare (Dead) by Lrs., reported in (2001) 8 SCC 477,***
- (xi) *Estralla Rubber v. Dass Estate (P) Ltd., reported in (2001) 8 SCC 97,***
- (xii) *Rena Drego (MRS) v. Lalchand Soni and Ors., reported in (1998) 3 SCC 341***

40. Parties have advanced arguments in great detail and the matter was heard on several dates. Dates were fixed on consent of the parties.

41. Having considered the rival contentions of the parties, certain facts which are available from the record and the earlier orders passed, require a brief narration. The opposite party No.1 participated in a public auction for sale of plot no. 3332 and was the successful bidder. The learned Tribunal issued the certificate of sale. The sale was confirmed on September 25, 2006. The certificate of sale and confirmation of sale were amended by an order dated September 19, 2014. The learned Receiver Mr. Kajal Kumar Halder, on behalf of the learned Tribunal, executed the deed of conveyance on March 10, 2017 in the office of A.D.S.R. Sonarpur, being deed No.160801360 for the year 2017. By an application filed in April 2022, the opposite party No.1 alleged before the Recovery Officer that the petitioner No.1 and his associates had 'recently' disturbed the ingress and egress of the opposite party No.1 to R.S. Plot No.3332, by blocking the entrance and had also demolished some portion of an old shed. Necessary orders directing the petitioner No.1, not to block the ingress and egress to the subject

property, was prayed for. The opposite party No.1 also prayed for release of the Receiver and appointment of a new Receiver from the panel, so that demarcation and handing over of physical possession after proper demarcation of the property could be completed and the possession letter could be issued by the learned Receiver. His further prayer was that the certificate-holders should be directed to handover the original deeds of the property.

42. The said application came up for hearing on December 13, 2022 and the learned Recovery Officer had recorded the prayer of the opposite party No.1 and issued certain directions, namely, (i) Mr. Gautam Sur be appointed as the new Receiver in place of Mr. P. Mitra, (ii) the Receiver to handover physical possession of the said property to the auction purchaser after demarcation and identification by an Amin to be deployed by the B.L.&L.R.O; (iii) B.L.& L.R.O to provide one Amin to measure and demarcate the property in question and file a report with a sketch map before the Tribunal; (iv) Receiver be directed to take help of the police while handing over possession to the auction purchaser; (v) Notice be issued upon Mr. Shekhar Burman and Mr. Satyajit Burman, partners of Aarburgreen Estates; (vi) Notice be issued to Mrs. Dalia Nandi to submit documents possessed by her in reference to the property sold; (vii) Officer-in-Charge of the concerned police station be directed to give full cooperation to the Receiver for handing over physical possession of the property; (viii) The petitioner No.1 and its representative to help the Receiver and the auction purchaser in taking possession; (ix) Cost to be borne by the auction purchaser. On February 20, 2023, the petitioner No.1 was represented

before the learned Recovery Officer. In the order dated February 20, 2023, the allegations of illegal blockage of the passage made by the auction purchaser and the purported sale of the property of the certificate debtor to the petitioner No.1, without any permission from the learned Tribunal, were recorded. The Recovery Officer observed that the Presiding Officer of the Tribunal had debarred the certificate-debtor from transferring, alienating and encumbering any of the properties belonging to the certificate-debtors, till the decretal amount was recovered from the certificate-debtors. It was further observed that as the certificate-debtors had failed to pay the outstanding dues of the bank, the bank was entitled to recover the dues by sale of the secured assets and was also entitled to proceed against the personal properties of the certificate-debtors, both movable and immovable. Thus, the sale in favour of the petitioner No.1, was illegal.

43. The Receiver had also submitted before the learned Recovery Officer that a housing project was being carried on by the petitioner No.2 and the passage for ingress and egress to and from the property of the auction purchaser had been blocked by tin structures, rooms and gates, which had been constructed by the petitioner No.2. Thus, notice of the proceeding was also issued to the petitioner No.2.

44. Apart from the above, notices upon the Block Land and Land Reforms Officer, Sonarpur, directing the said officer to file the Amin's report and also upon the O.C. Sonarpur directing assistance to the receiver, were issued. The order dated February 20, 2023, is quoted below:-

“(1) Let Notice be issued to the Authorised Persons of the Housing Project – Multicon Prestige Residences to be present on the next date with their documents to hear their submissions.

(2) Also Notice be issued to the BL&LRO, Sonarpur to submit the Amin's Report and sketch map on the Next date.

(3) Let Notice be issued to the OIC, Sonarpur to submit a report related to obstacles created by the persons of Multicon Prestige Residences while executing the order of the Tribunal by the Ld. Receiver.

(4) The Ld. Receiver is directed to submit his report, related photographs and minutes of meeting along with Amin's report of demarcation & identification with sketch map on the next date."

45. On March 01, 2023, Mr. Gautam Sur filed a report and it was stated by the Receiver that the Block Land and Land Reforms Officer had failed to demarcate the 20ft. x 30ft. wide passage running from Dwarir Road towards North and then towards East, which was the only passage for ingress and egress to R.S. Plot No.3332. The gate on the southern portion of the entrance was under the control of the petitioner No.1 and unless the control of the gate was enjoyed jointly by the petitioner No.1 and the auction purchaser, the auction purchaser would not have a proper passage to the R.S. Plot No.3332. Also, unless the brick walls and the rooms of labourers were demolished, the auction purchaser would not be able to enter the said plot through the said passage. When the Receiver went to remove the obstacles, representatives of the petitioner No.2 had resisted him.

46. The receiver admitted to have locked the door of the inside room which was broken open at the time of entry and also locked the tin gate through the passage, standing on the lands of Lions Calcutta Greater Education Trust and Mr. Indrajit Mitra and others. The keys to the said locks were retained by the said receiver. A written complaint was also filed with the police authority. According to the receiver, conventionally, there was only one passage for ingress and egress to all the plots, namely, R.S.

Dag Nos.3325, 3329, 3332 and 3334, which originally comprised of the factory compound of the certificate-debtors.

47. On appreciation of such report, it was recorded by the Recovery Officer that the demarcation and identification of the property was done by the R.I, through the passage of some other persons. Notices were again directed to be issued to the Block Land and Land Reform Officer, Sonarpur and the petitioner No.1.

48. By an order dated July 14, 2023, it was recorded that the petitioners had violated the directions of the Recovery Officer and further directions were issued upon the Block Land and Land Reforms Officer and the R.I to carry out the directions and file a report along with the documents. Directions were also issued for correction of the record of rights.

49. The order is quoted below :-

“1) The BL&LRO, Sonarpur has to depute the R.I- Mr. Atanu Bhattacharya after communicating this order by the Ld. Receiver and fix a date for compliance.

The R.I-Mr. Atanu Bhattacharya is directed to –

(a) Make demarcation of the area of old factory shed where the mini commercial vehicle with Regd no. WB19D4936 printed as Aarbur is standing and mention the shed area in sketch map which is part of the Dag No. 3332 of the Auction Purchaser-Mr. Subhash Choudhury.

(b) Also the R.I has to show all the existing and possible passages with length & width in the sketch map, if the mini commercial Vehicle will be driven out from the present standing point to the Roads available outside through all the existing and possible passages via the gates of the premises occupied by the developer -MULTICON who has arrangement with the Land Owner - Aarburgreen.

(c) The R.I has to prepare a Report along with sketch map in this connection.

(d) The BL& LRO, Sonarpur has to forward the Report & sketch map of the RI to this Tribunal immediately after completion of the work assigned to the RI by this Tribunal.

(2) The Ld. Receiver is directed to communicate today's order along with the sketch map of the auction purchaser's land prepared by the RI previously and send immediately to the BL&LRO Sonarpur for

compliance. The Ld. Receiver has to submit one report along with video & photographs and minutes of meeting in this connection after compliance of the tribunal's order. The Ld. Receiver also has to communicate today's order to the OIC, Sonarpur P.S. for compliance. The Ld. Receiver has also to serve today's order to the Officials of the 'Aarbur Green' and 'MULTICON' and communicate them the date fixed for work to be done by him and the R.I deputed from the BL&LRO, Sonarpur.

The Ld. Receiver has also to prepare inventory of the items present in the unauthorized premises built by the 'Aarbur Green' in the Land of the Auction purchaser which is put under the lock and key on 24.01.2023 by the Ld. Receiver.

(3) The OIC Sonarpur P.S. is directed to give full cooperation and protection to the Ld. Receiver and the RI deputed from BL& LRO Sonarpur while executing the Tribunal's order. Also the OIC, Sonarpur maintain Law and Order at the property site during execution of work assigned to the Ld. Receiver by this Tribunal.

(4) The Authorities and guards of the MULTICON and Aarburgreen are directed to allow the Ld. Receiver and the R.I of BL & LRO to enter their premises for doing the necessary work as per the directions of this Tribunal.

(5) The Auction Purchaser - Mr. Subhas Choudhury is directed to Pay Rs. 15000/- (Rupees Fifteen thousand only) to the Ld. Receiver after compliance of today's order.

In connection with the letter of the Deputy Secretary addressed to the Chairman, Raipur Sonarpur Municipality, The Aarburgreen is directed to submit the following documents:-

- (i) The copy of the petition along with enclosures filed by Sri Arjun Singh Mehta.
- (ii) The proof of ownership of R.S Dag No.3330 and 3351 (copies of title deeds and revenue record with English Translation).
- (iii) Consent Letters of the Property owners of other Dag Nos through which the 20' feet wide road adjoining Dwarir Road will pass and to be declared as public Road as prayed by the Sri Arjun Singh Mehta.

Despite direction was given in the Last order of this Tribunal for the CHB officials to be present on each hearing date fixed for this case, the Officials from CHB are absent.

The Officials present on the last date on behalf of CHB are again directed to be present on the dates of hearing of this case. Today's order should be communicated to the CHB officials by the Advocate appearing for CHB.

ALSO NOTICE BE ISSUED TO THE CHAIRMAN, RAJPUR SONARPUR MUNICIPALITY (Address at :- Netaji Subhas Chandra Bose Road, Harinavi, Kolkata, West Bengal, PIN-700148) to file a detail report

with municipal rules by him/her to this Tribunal with reference to the Petition of Sri Arjun Singh Mehta of Aarbur green and also to Letter no. 484/UDMA-19011(11)/4/2021-GENL Sec-Dept of UDMA Dated 6.6.2023 of the Deputy Secretary, to the Government of West Bengal the Chairman, Rajpur Sonarpur Municipality has to explain in his report whether 'Declaration of public Road is feasible without the consent of the private Land owners of the respective Dag Nos through which the 20 feet wide Road adjoining the Dwarir Road will pass'.

Also the copy of the conclusive Action Taken Report has to be provided by the Chairman, Rajpur Sonarpur Municipality to this Tribunal as per the request made by the Deputy Secretary to the Government of West Bengal.

The Ld. Receiver is directed to Serve today's order of this Tribunal to the Chairman, Rajpur Sonarpur Municipality in his Letter head and file Service Report."

50. The said order was challenged in an appeal before the learned Debt Recovery Tribunal-II, Kolkata by the petitioners and an interim prayer was made for an order of injunction. The learned Tribunal was of the opinion that as the appellants therein would not suffer irreparable loss and injury if the demarcation of the possible passages was made, no interim order was required to be passed. The said order is quoted below:-

"Hearing has been made through virtual mode.

IA/990/2023 along with put up IA/991/2023 has been filed by the appellant for stay of the operation of order dated 14.07.2023 passed by the learned Recovery Officer, DRT-2, Kolkata in TRC No.191 of 2001 on the petition of the auction purchaser regarding ingress and egress to his purchased property. The respondent no.2 had purchase the land of R.S. Dag no.3332 in e-auction in the year 2006 and the appellants have purchased the adjoining lands and the learned Recovery Officer has passed the order for demarcation as well as showing the existing and possible passages with length and width in the said sketch map and all the work has to be done by the officer attached with the Block and B.L.R.O. Learned counsel of the respondent no.2 seeks seven days' time to file the objection of the main appeal with is required to be heard on merit and so far the interim order is concerned during the pendency of appeal there is no any question of irreparable loss or injury if any demarcation is made or any sketch map is submitted showing the existing and possible passages with length and width in the sketch map and accordingly, the IA/990/2023 is disposed of and direction is given to the learned counsel of the respondent no.2 as well as other respondents to file the objection, if any, positively within one week after serving copy of the

same to the learned counsel of the appellant who will also be at liberty to file the replication, if any.

Being the put up IA/991/2023 is disposed of.

List this matter for final hearing the appeal on dated 28.08.2023 under the heading of 'put up'.

Order be uploaded in the Tribunal's website."

51. The appeal is still pending adjudication. During the pendency of the said appeal, the Recovery Officer again took up the application of the opposite party No.1 for hearing and passed the impugned order, inter alia, holding that as no interim order had been passed by the appellate authority, the Recovery Officer could proceed with the matter. The observation of the Recovery Officer in the order impugned are quoted below:-

"After going through the submissions made by the ld. Advocates appearing for the various parties associates with this case matter and after perusal of all the reports, annexures, photographs, the Tribunal has observed the following points mentioned below:-

- (1) That the officials of the 'Aarbur Green and MULTICON' have created various obstacles/hindrances in the path of the ld. Receiver while executing the Tribunal's orders.
- (2) That the officials of the 'Aarbur Green and MULTICON' have dug holes, ditches and had made constructions underground knowing fully that judicial proceeding is going on fixed dates for hearing on the basis of petition filed by the auction purchasers- Mr. Subhash Choudhury denying him the passage for going to his purchased land from this Tribunal through public auction in the year 2006 and also illegally constructed structure and put obstacle in the entrance of the shed/structure and land of the auction purchaser.
- (3) The Officials of Aarbur Green and MULTICON have made the property owned by Mr. Subhash Choudhury as land locked.
- (4) The Acts of the Officials of Aarbur Green and MULTICON towards the land purchased by the auctioned purchaser Mr. Subhash Choudhury from this Tribunal through public auction giving wrong message to the public as well as society that the Auctioned property purchased by the auctioneers through the Tribunal are intentionally landlocked and ingress/egress blocked willfully and is facing hardship to access his property legally."

The directions passed are quoted below:-

"(A) ALL THE CONSTRUCTION GOING ON IN THE PROPERTIES OWNED BY 'AARBUR GREEN' AND DEVELOPED BY THE MULTICON, WHICH ARE PURCHASED FROM THE PERSONAL PROPERTIES OF

CDS WITHOUT TAKING PERMISSION FROM THE COURT OF THE RECOVERY OFFICER AS MENTIONED IN THE RULE 16 SUB RULE I ARE HEREBY STAYED TILL FURTHER ORDER.

(B) THE LD. RECEIVER IS DIRECTED TO INSPECT THE STATUS QUO POSITION OF THE PROPERTY WITH 15 DAYS GAP AND SUBMIT ONE REPORT AFTER EVERY INSPECTION OF THE PROPERTY SITE. HE MAY TAKE THE HELP OF POLICE OF THE NEAREST POLICE STATION WHILE INSPECTION.

(C) THE OIC SONARPUR SHALL PROVIDE ADEQUATE POLICE FORCE TO THE LD RECEIVER WHILE GOING FOR INSPECTION OF THE PROPERTY OF THE AARBUR GREEN.

(D) THE BL&LRO SONARPUR SHALL PROVIDE ONE SENIOR RI REPLACING THE PREVIOUS RI MR. ATANU BHATTACHARYA AND COMPLY THIS TRIBUNAL ORDER DATED 14-07 2023. THE SENIOR RI TO BE DEPUTED FROM THE BLALRO DEPARTMENT SHALL FILE THE FRESH SKECTH MAP SHOWING THE PATH OF INGRESS AND EGRESS TO THE PROPERTY OF THE AUCTIONED PURCHASER-MR. SUBHASH CHOWDHURY.

(E) BECAUSE OF THE UNSATISFACTORY CONDUCT OF THE OFFICIALS OF THE AARBUR GREEN AND THE MULTICON AND CREATING VARIOUS OBSTACLES/HINDRACNES IN THE PATH OF THE LD. RECEIVER WHILE EXECUTING THE TRIBUNAL'S ORDERS AND WILLFULLY CREATING BLOCKAGE TO THE PASSAGE OF THE PROPERTY PURCHASED BY THE AUCTIONED PURCHASER DIRECTION IS GIVEN TO THE OFFICIALS OF AARBUR GREEN AND MULTICON TO DEPOSIT/PAY "THE DEBTS RECOVERY TRIBUNAL BAR ASSOCIATION, KOLKATA OF RS. 1.00 LAC (RUPEES ONE LAC ONLY) IN THE FORM OF COST IMPOSED ON THEM WITHIN 15 DAYS FROM THIS DATE OF ORDER EITHER THROUGH DEMAND DRAFT OR THOUGH NEFT/RTGS IN THE 18 ACCOUNT-0091010354576, IFSC CODE PNB80009120, PUNJAB NATIONAL BANK HIGH COURT BRANCH AT CALCUTTA"

52. Earlier directions with regard to inspection and demarcation of possible passages, creation of a 20 ft. wide road through land of others, preparation of inventory of the items of the petitioner No.1 and directions upon the municipality, were all under challenge before the appellate authority. The interim injunction was refused by the appellate forum on the ground that the order of demarcation of a possible passage and preparation of a sketch map etc., would not cause any irreparable loss and injury to the

petitioners. However, as similar issues were involved before the higher forum, the Recovery Officer ought to have refrained from passing mandatory directions, which have been impugned.

53. The R.I Atanu Bhattacharya had submitted a report before the Recovery Officer indicating that it was difficult to access plot no.3332 through the multiple properties, as a boundary wall in the western side of the property had been constructed by the petitioner No.1. A mini-gate was situated in plot No.3334 to enter the property where the construction was going on and the petitioner No.2 had dug an open ditch for the construction work. The Plot No.3332 could be reached through a narrow passage, but due to the open ditch, the passage was inaccessible to any vehicle. However, there was a 20 ft. wide passage on plot No.3339, which was used in January 2023, when possession of the Plot No.3332 was taken by the Receiver and the Receiver had been accompanied by the R.I through the said passage. There was a tin structure with a tin gate, which had been locked by the receiver, by affixing a padlock. At the time of taking possession, the lock was removed from the gate. From the sketch map it appears to this court that only a part of plot no.3329 had a common boundary with the plot purchased by the opposite party No.1. In the supplementary report filed by the receiver, objections were taken to the report of the R.I. It had been stated that the lock on the passage and the tin gate, had been affixed by the receiver, but the reason for such action is unknown. The receiver in his supplementary report stated that passage in plot nos.3339 and 3331 was a private passage owned by Mr. Indrajit Mitra, Greater Calcutta Vidya Mandir and Others. The said owners had objected to the use of such passage.

54. On the other hand, the deed of gift on the basis of which Mr. Indrajit Mitra had acquired ownership and possession of the property mentioned the existence of a common passage on plot No.3331. The common passage had been used for water connection, electric connection, telephone connection and as a common pathway with easementary rights. Such aspect was relevant in this context. Through such passage, the possession was given to the opposite party No.1, as per the version of the R.I. The Recovery Officer held that the private passage could not be encumbered. The Recovery Officer had exercised the jurisdiction conferred by the 1962 Rules. The law provides that such power could be exercised in case of resistance in obtaining possession of the property 'sold' and not any other property, unless those properties were attached. The Recovery Officer held that he could investigate into the matter, summon the parties creating such resistance and obstruction and also remove the obstruction.

55. In my view, before such order was passed, there should have been a definite conclusion that the blockade was on the property sold and over the area which had been used as a passage. Whether the Recovery Officer had control over the property of the petitioner No.1, either by way of attachment or in the manner as contemplated under Section 25(aa) of the said Act or Rule 39 of the 1962 Rules, was also of vital consideration.

56. From the records, it appears that the R.I had reported that possession was taken in January 2023 through the common passage on plot Nos. 3339 and 3331. The deed of gift of Mr. Indrajit Mitra, mentioned such common passage and right of easement over plot No.3331. Orders had been issued upon the municipality to produce consent of the owners of such property

and report whether such 20 ft. wide passage could be declared as a public road. Such order was challenged in the appeal, which is pending. Moreover, a bona fide purchaser for value also had a right to have the applications filed by the opposite party No.1 dismissed, upon proof of such bona fide purchase. The opposite party No.1 filed the application much later than January 20, 2023 and not within 30 days as contemplated under Rule 41 of the said Rules. Although the Recovery Officer had observed that there was an injunction upon the certificate debtor from selling, alienating and transferring all other property, even those which were not part of the mortgaged property, the records do not contain any such order. The sale was liable to be set aside. However, learned Advocate for the bank could not show that the bank had ever approached the learned Tribunal, by taking steps under Section 25(a) or 25(aa) of the Act. The parties have not been able to satisfy this Court about any such order of attachment or injunction. Moreover, the opposite party No.1 is not the alter ego of the bank. Without considering such aspects, powers were invoked under Rule 41 of the 1962 Rules and Rule 16 of the Second Schedule, inter alia, holding that the sales in favour of the petitioner No.1, were illegal. The Recovery Officer could not assume jurisdiction and pass the interim injunction, directing stoppage of all constructions by the petitioner No.2 on the plot purchased from the certificate debtor. The prima facie case of the opposite party No.1, ought to have been adjudicated first, with reference to the questions discussed. Applicability of the provisions of the Income Tax Certificate Proceeding Rules required certain pre-conditions to be fulfilled. Whether such pre-conditions had been fulfilled, was to be determined. Injunction on the ongoing

construction and direction upon the learned receiver to inspect the property, every 15 days and further direction upon the O.C. Sonarpur to provide adequate police force during such inspection, amounted to obstructing the right of the owner of the property. Cost of Rs.1 lakh was arbitrarily imposed on the petitioner No.1. Without final adjudication of the issues involved, order of injunction and further mandatory directions, could not be passed.

57. This Court finds that the learned Recovery Officer ought to have given an opportunity to the petitioner No.1 to deal with each and every report of the learned receiver (Mr. Gautam Sur), including the supplementary report and to cross-examine him. Passing the order of injunction on the constructions, without any prima facie finding as to a passage through the land of the petitioner No.1, is perverse. The deed of conveyance, prima facie, does not speak of any such passage. The findings of the Recovery Officer that the transfers of the land to petitioner No.1 were illegal and the construction should not be proceeded with are contrary to records. First, whether the purchaser had a right through the said properties of the petitioner No.2 in the deed of conveyance was to be ascertained. Whether steps had been taken and orders had been passed in terms of Sections 25(a) and 25(aa) of the said Act, which would allow the Recovery Officer to exercise powers under the 1962 Rules and the Second Schedule, were to be verified from the records. Whether, in terms of Rule 2 of the Recovery Certificate Rules, Part I, notice had been issued to the certificate-debtors, was also to be determined before the order impugned was passed.

58. Moreover, the fact that the receiver had entered the passage through the 20 ft. wide road on the plot Nos.3339 and 3331, was not taken into

consideration. Such passage had a tin gate, which the receiver had admittedly locked and kept the keys in his possession. The reason behind such action has also not surfaced.

59. Thus, in my prima facie view, whether Rule 41 of the 1962 Rules and Rule 16 of the Second Schedule permitted the Recovery Officer to pass directions with respect to plot Nos.3325, 3329 and 3334, which were not the subject matter of the plots sold to the auction purchaser, especially in the absence of any order of attachment, is answered in the negative at this stage. Whether the Recovery Officer was empowered to create a passage through the other plots purchased by the petitioner No.1 without ascertaining the existence of any easementary right either in the conveyance deed of the auction purchaser or on the basis of past user, is answered in the negative. The deed of conveyance was not taken into consideration at all. Whether removal of blockage as per the 1962 Rules, could empower the Recovery Officer to direct stoppage of construction on the lands of another person which were not the part of the auctioned property, is also answered in the negative. Unless all the issues with regard to the extent of the property sold to the opposite party No.1, the extent conveyed, the covenants in the deed of conveyance, the manner in which possession was granted, the description of properties mortgaged and whether there was any order of attachment of the properties purchased by the petitioner No.1, finally adjudicated on the basis of evidence and record, the order impugned could not have been passed.

60. Under such circumstances, the order impugned is set aside. The order suffers from an inherent lack of jurisdiction and an assumption of

jurisdiction not vested upon the Recovery Officer by law. Moreover when an appeal was pending at the instance of the petitioner No.1, challenging similar directions for inspection, demarcation of existing passages etc. in respect of the self-same property, propriety and discipline demanded that the Recovery Officer should have waited for the appeal to be disposed of first. The appellate forum refused the interim relief for stay of the earlier order dated July 14, 2023 on the ground that an order of demarcation of a passage would not cause irreparable loss and injury. Upon taking note that no interim order had been passed in the appeal, the order of the learned Recovery Officer, stopping all construction work and further mandatory directions in respect of properties, not a part of the auction, were wrongly passed.

61. Precedents relied on by the opposite party No1 are dealt with as hereunder:-

(a) *Canara Bank vs. P. Selathal (supra)* relates to rejection of a plaint in a suit where a seven year old ex parte decree of the DRT, had been challenged. The trial court and the high court refused to reject the plaint on the prayer of the bank. The Hon'ble Apex Court held that the decree of the DRT should have been challenged by way of an appeal and not by a separate suit before the civil court. The facts of the case are distinguishable

(b) In *Authorized Officer, State of Travancore vs. Mathu K.C. (supra)*, the Hon'ble Apex Court discussed the reasons behind promulgation of the law relating to recovery of money from borrowers by banks and financial institution. It was held that the existing legal framework relating to commercial transactions had not kept pace with changing commercial

practices and financial sector reforms, resulting in tardy recovery of defaulting loans. Thus, law was enacted for securitization and empowering banks and financial institutions to take possession of securities and sell them without court's intervention. The banks were enabled to realize long term assets, manage problems of liquidity, asset liability mismatches and also improve recovery. The decision is not applicable to the facts of this case as the security interest had already been taken possession of and sold to the opposite party No.1 via auction. The order impugned relates to the order of injunctions and mandatory directions passed by the Recovery Officer on a property which was neither mortgaged nor sold.

(c) In **O.C. Krishnan (supra)**, the Hon'ble Apex Court held that the SARFAESI Act was a special procedure for recovery of debts due to banks and financial institutions. There was a hierarchy of an appeal in the Act itself. Such fast track procedure could not be allowed to be derailed either by taking recourse to proceedings under Article 226 or Article 227 of the Constitution of India or by filing a civil suit. Even if the Act did not oust the applicability of Article 226 and 227 of the Constitution of India, the alternative remedy of appeal should be availed in order to maintain judicial prudence. The present case does not deal with recovery of dues. The facts are distinguishable, as already discussed hereinabove.

(d) In **Official Liquidator vs. Allahabad Bank (supra)**, the Hon'ble Apex Court held that a person aggrieved by an act or an order of the Recovery Officer, could prefer an appeal. When the appellate forum had been provided by a special procedure, sufficient safeguard was inbuilt in the law. If the Recovery Officer acted arbitrarily or in an unreasonable manner,

appeal could be preferred. The facts of the case are distinguishable, inasmuch as, in the case cited by Mr. Mukherjee, the official liquidator had challenged the manner in which the auction was conducted and he thought it apposite to report the same to the learned company judge, who set aside the auction. The facts are completely different and the said decision is not applicable. In the present case, the order under challenge does not have anything to do with either the auction sale or with the recovery of the money and securities. In this revisional application, the wrongful assumption of jurisdiction by the Recovery Officer has been assailed. It is well settled that the High Court, by invoking the power of superintendence, can pass orders to keep the courts and tribunals, within the bounds of their authority.

(e) *Nitin Gunwant Shah (supra)* deals with various modes of recovery of the amount indicated in the certificate, including attachment and sale of immovable property of the certificate debtor. The judgment lays down that the Income Tax Certificate Proceedings (Rule 1962) would apply with modifications as far as possible for recovery of the amount due, pursuant to a certificate issued. Rules 39, 40 and 41 of the 1962 Rules were discussed. The Hon'ble Apex Court held that when the Recovery Officer was satisfied that resistance by the borrower or his agents was not justified, he could take steps to put the auction purchaser in possession of the property. In the present case, the Recovery Officer sought to apply the provisions of the 1962 Rules without first ascertaining the basic facts required to be satisfied for invocation of such Rules. The possession was delivered to the auction purchaser/opposite party no.1, as per the report of the R.I. Without further adjudication of the entire issue with regard to allegation of blockade of

ingress and egress on the basis of evidence, at the interim stage, the tribunal could not have invoked the powers conferred under 1962 Rules.

(f) In ***Delhi Bar Association (supra)***, the Hon'ble Apex Court reiterated the proposition of applicability of the Income Tax Act, 1961 and the second and third schedule of Income Tax Certificate Proceeding Rules 1962, for realization of the dues by the Recovery Officer. There is no quarrel with the proposition of law laid down by the Hon'ble Apex Court, but the facts in this case indicate that the Rules under the Income Tax Act, were not applied in its proper perspective by the Recovery Officer. Here, the mortgaged property was already sold. Before passing any injunction on the construction going on in the property of the petitioner No.1 and before directing the Receiver to enter into the private property of the petitioner No.1 every 15 days, to make an inspection and take measurements, what was actually conveyed to the opposite party No.1 by the deed of conveyance and whether the right of user of the land of the petitioner No.1 had been provided for, should have been ascertained.

(g) In ***Radhesham vs. Chabina (supra)***, it was held that the High Court should not entertain a petition under Article 227 of the Constitution of India in a routine manner, thereby expanding the power of superintendence. Frequent interference by the High Court either under Articles 226 and 227 of the Constitution of India, should be discouraged. Apart from ensuring that there was no abuse of process of court, the High Court should not entertain an application under Article 227 of the Constitution of India on the mere asking. The said decision primarily dealt with the difference between the powers under Article 226 and Article 227 of the Constitution of India.

The law and facts discussed herein would indicate why this is a fit case for interference under Article 227 of the Constitution of India.

(h) In ***Samir Suresh Gupta (supra)***, the Hon'ble Apex Court held that supervisory power under Article 227 of the Constitution of India should be exercised to keep the subordinate courts within the bounds of their authority under the law. When a subordinate court assumed a jurisdiction which it did not have or had failed to exercise a jurisdiction, which it did have, the High Court would step in to exercise its supervisory powers. A patent error or the procedure followed which resulted in grave injustice and gross failure of justice, would be revisable under Article 227 of the Constitution of India. In the facts of this case, this court holds that the Recovery Officer acted beyond its jurisdiction, by passing interim orders without adjudicating the lis in its proper perspective.

(i) In ***Sadhana Lodh (supra)***, it was held that the only function of the High Court under Article 227 of the Constitution of India, was to ensure that the inferior court or tribunal had proceeded within its parameters. The high court could not review or reweigh the evidence upon which the inferior court or tribunal purported to act. In the present case, the findings of the Recovery Officer with regard to the restrain order upon the certificate-debtor to sell other property, the reference to the Income Tax Act, 1961 and the 1962 Rules as also the direction to create a passage through the property of the petitioner No.1, were premature, without any factual or legal basis. The Recovery Officer proceeded to pass directions at the interim stage without even, prima facie, ascertaining the existence of the facts the certain facts required to be satisfied before invoking the provisions of the 1962 Rules. The

proceeding in this case was not connected with the recovery of dues. The Recovery Officer definitely had jurisdiction in respect of the property which was sold to the auction purchaser and the power to ensure that possession was handed over to the opposite party No.1 in respect of the plot of land sold. The question is whether an ongoing construction on another plot could be stopped and a passage could be created upon demarcation of an area belonging to a third party at the interim stage, by the Recovery Officer or not. In my view, the Recovery Officer exceeded his jurisdiction. He ought to have been, *prima facie*, satisfied that the properties had been attached on the prayer of the bank. This fact was to be first ascertained, on the basis of the records. The order impugned does not reflect that any such enquiry was undertaken. The observation of the Recovery Officer that there was an injunction over all the properties of the certificate-debtor, was contrary to the submissions of the bank.

(j) *Sugar Bai M. Siddiq (supra)*, also deals with powers under Article 227 of the Constitution of India. The Hon'ble Apex Court held that the High Court could entertain an application under Article 227 of the Constitution of India, if it was of the view that the order impugned before it was vitiated by procedural irregularity and the decision making process was flawed. This ratio applies to the facts of this case.

(k) In *Estrala Rubber (supra)*, the Hon'ble Apex Court held that exercise of power under Article 227 was not to correct the hardship or wrong decisions made by the tribunals within the limits of its jurisdiction, but the exercise of power was restricted to dereliction of duty and flagrant violation

of the principles of law and justice. High Court could interfere to prevent grave injustice.

(l) In ***Rena Drego (Mrs.) (supra)***, the principle that power under Article 227 should be exercised sparingly and only in appropriate cases, was reiterated once again. The interference of this court under Article 227 in the facts of the present case, is justified. The Recovery Officer had wrongly passed mandatory directions and injunction at the interim stage, without disposing of the main application. The Recovery Officer, by directing repeated inspection every 15 days in respect someone else's property, had denied a valuable right of the petitioners.

62. The jurisdiction of this Court has been invoked challenging irregular and erroneous assumption of jurisdiction. In ***GBM Manufacturing Pvt. Ltd. (supra)*** the High Court held that the Recovery Officer did not have any authority to decide title of any property. In the facts of the present case, it appears that the Recovery Officer proceeded to hold that the sale of the plots to the petitioner No.1 was contrary to law and illegal.

63. In ***Bhabnagar University (supra)*** it was held that a statutory authority was required to act strictly within the four corners of the statute. The restriction as imposed by the Recovery Officer on the property of the petitioner No.1, could only be done in the mode and manner prescribed under the statute as has been discussed hereinabove. Without determination of the relevant factors, the Recovery Officer, could not straightaway impose restrictions.

64. In ***Cityscape Developers Pvt. Ltd vs Alka Builders Pvt. Ltd.*** reported in ***(2000) 1 CALLT 346 (HC)***, it was held that interim relief could

not partake a final character and the interim orders could not march from strength to strength, resulting in prejudice being suffered by a party. Such decision squarely applies to the facts of this case.

65. ***In Himalayan Cooperative Group Housing Society vs Balwan Singh*** decided in ***Civil Appeal Nos. 4360-4361 of 2015***, it was held that power under Article 227 of the Constitution should be exercised to keep the authorities within the bounds of their jurisdiction. The power of revision in some ways was broader than the powers and jurisdiction under Article 226 of the Constitution of India.

66. In this case, the alternative remedy of appeal would not be a bar as the order suffers from erroneous exercise of jurisdiction and procedural impropriety.

67. Thus, in the facts of the case and legal provisions applicable to the case, this court holds that the Recovery Officer had passed an interim order which was in the form of granting a final relief. This court finds sufficient reason to entertain the revisional application and to invoke the general powers of superintendence. The order impugned is set aside. The application filed by the opposite party No.1 should be heard and disposed of afresh, on evidence and on the issues discussed hereinabove. Such adjudication shall be entered into by the Recovery Officer after disposal of the pending appeal and subject to the result of the appeal and directions if any, that may be passed in the appeal.

68. The appellate authority is requested to dispose of the pending appeal within one month.

69. The revisional application is allowed. Order impugned is set aside.

70. The observations made herein are tentative and the appellate forum as also the learned Recovery Officer as the case may be, shall adjudicate all points raised by the parties, independently.

71. There will be no order as to costs.

72. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)