

Rao Mahmood Ahmed Khan Through Their L.R vs Shri Ranbir Singh & Ors on 22 February, 1995

Equivalent citations: 1995 AIR 2195, 1995 SCC SUPL. (4) 275, AIR 1995 SUPREME COURT 2195, 1995 AIR SCW 1584, 1995 AIR SCW 1575, 1995 ALL. L. J. 772, (1995) 2 ALL WC 896, 1995 SCC (SUPP) 4 275, (1996) 81 CUT LT 190, (1995) 2 ARBILR 1, (1995) 2 IJR 972 (SC), (1995) 1 CURCC 593, (1995) 2 JT 383 (SC), (1995) 2 JT 561 (SC), 1995 (2) JT 383, (1995) 2 SCR 230 (SC), (1995) 2 SCR 441 (SC), 1995 ALL CJ 1 358

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:

RAO MAHMOOD AHMED KHAN THROUGH THEIR L.R.

Vs.

RESPONDENT:

SHRI RANBIR SINGH & ORS.

DATE OF JUDGMENT 22/02/1995

BENCH:

FAIZAN UDDIN (J)

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FAIZAN UDDIN (J)

AGRAWAL, S.C. (J)

CITATION:

1995 AIR 2195

1995 SCC Supl. (4) 275

JT 1995 (2) 383

1995 SCALE (1) 842

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.

2. Learned counsel for parties are heard.

3. The short question that arises for our consideration in this appeal is whether the payment of one fourth of the amount of auction-sale by cheque is a valid tender within the meaning of Rule 285-D of U.P. Zamindari Abolition and Land Reforms Rules, 1952.

4. The facts in brief leading to the filing of this appeal may be stated thus :The deceased respondent No. 1 Rao Mahmood Ahmad Khan being the defaulter of Government dues to the extent of Rs. 23026.37 paise was proceeded against for recovery of the said amount as arrears of land revenue and in pursuance of recovery proceedings the Collector, Saharanpur on 15.11.1986 attached his agricultural land bearing Khasra No. 162, Mohalla Ismail Khan, Khewat No. 1/2 situated in Village Palhanpur, Tehsil & District Saharanpur. The said land was put to auction sale on 18.10.1973. Raghubir Singh, the respondent No. 1 herein was one of the bidders and his bid being highest for Rs. 31500/-, it was knocked down in his favour. The Sale Officer taking the bid made by respondent No. 1 to be adequate and reasonable accepted the same and directed the respondent No. 1 to deposit 25 per cent of the bid amount at once and the balance of the sale amount within 15 days by his order dated 18.10.1973. The respondent No. 1, auction purchaser deposited a sum of Rs. 8000/- by means of a cheque dated 18.10.1973 which was encashed and accounted for in Tehsil account on 22.10.1973 and the balance of the bid amount Rs. 23500/- was deposited in cash on 30.10.1973 well within the time stipulated by Rule 285-E of the said rules. The deceased Rao Mahmood Ahmad Khan filed an objection on 17.11.1973 for setting aside the auction sale, inter-alia on the grounds that 1/4th of the bid amount was not deposited as required by law and that the auction was fictitious and collusive, for the reason that the very same property when put to auction, earlier in 1969 the highest bid offer was Rs. 50,000/ but same was rejected by the sale officer Saharanpur on the ground that the bid money was inadequate as compared to the value of the property whereas the subsequent auction sale held on 18.10.1973 could fetch only Rs. 31500/- as the highest price which was accepted to be adequate price in collusion of the Tehsil authorities with the auction purchaser respondent No. 1 herein.

5. The aforesaid objection filed by deceased Rao Mahmood Ahmad Khan was rejected and the sale held on 18.10.1973 in favour of Ranbir Singh, respondent No. 1 was confirmed by the Collector by his order dated 9.5.1974. The revision filed against the said order was recommended by the Commissioner, Meerut Division, Meerut to the Board of Revenue for dismissal but the Board of Revenue by its order dated 31.5.1977 remanded the case back to the Commissioner for deciding the revision himself. On remand the Commissioner, Meerut dismissed the revision on merits by his order dated 25.5.1978. The Commissioner took the view that no material irregularity was committed in the conduct of auction sale nor it was proved that the deceased Rao Mahmood Ahmad Khan had suffered any substantial injury by reason of any of the alleged irregularities or mistakes. The said order of the Commissioner dated 25.5.1978 was, however, set aside by the Board of Revenue in revision by order dated 12.4.1985 on the ground that the deposit of 1/4th of the bid money by means of cheque was not a valid deposit within the meaning of Rule 285-D of the rules and the auction sale was therefore void. The said decision of the Board of Revenue was challenged by Shri Ranbir Singh, auction purchaser, respondent No. 1 herein before the High Court of Allahabad in Civil Miscellaneous Writ Petition No. 9589/1985 under Article 226 of the Constitution of India. The High

Court by the impugned judgment dated 22.1.1992 allowed the writ petition filed by respondent No. 1, by setting aside the aforesaid order of the Board of Revenue dated 12.4.1985 by holding that the confirmation of the auction sale in favour of respondent No. 1 was valid as the deposit of 25 per cent of the bid amount by cheque was a valid deposit for the purposes of Rule 285-D of the rules. It is this decision of the High Court which has been challenged by the appellants in this appeal who are the legal representatives of deceased Rao Mahmood Ahmad Khan.

6. Learned counsel for the appellants urged that the provisions contained in Rule 285-D of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as the Rules) are mandatory and have to be strictly applied in so far as the requirement of deposit of 25 per cent of the amount of bid immediately after the declaration of the person to be the purchaser of the property is concerned and on his failure to do so the sale becomes a nullity. He submitted that in the present case the sale was knocked down in favour of the respondent No. 1 on 18.10.1973 and, therefore, it was obligatory on him to deposit 25 per cent of the bid amount immediately on 18.10.1973 itself but he did not do so. On the contrary the respondent No. 1 is said to have delivered a cheque of 25 per cent of the purchase money on 18.10.1973 which is said to have been encashed on 22.10.1973 which under the provisions of Rule 285-D could not be said to be a valid deposit. The learned counsel for the appellants, therefore, strenuously urged that the High Court had fallen in grave error of law in accepting the deposit of 25 per cent of the bid amount by cheque as a 'valid deposit by taking a view contrary to a Division Bench decision of the Allahabad High Court rendered in Hira Lal v. Mst. Champa [A.I.R 1955 Allahabad 226]. It was, therefore, submitted that the impugned judgment/order of the High Court of Allahabad is contrary to the mandatory rule and deserves to be set aside.

7. With a view to appreciate the submissions made by the learned counsel for the appellants it would -be appropriate- at this stage to examine the relevant provisions of the rules in question. For the purposes of disposal of this appeal, Rules 285-D, 285-E, 285-F and 285-G are the relevant rules which are reproduced for ready reference hereunder 285-D. The person declared to be the pur-

chaser shall be required to deposit imme-

diately twenty five per cent of the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold and such person shall be liable for the expenses attending the first sale and any deficiency of price which may occur on the re- sale which may be recovered from him by the Collector as if same were an arrear of land revenue.

285-E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any sub-treasury and in case of default the deposit, after the expenses of sale have been defrayed therefrom, shall be forfeited to Government and the property shall be sold and the defaulting purchaser shall forfeit all claims to the property, or to any part of the sum for which it may be subsequently sold.

285-F. If the proceeds of the sale which is eventually made are less than the price bid by such defaulting purchaser, the difference shall be recoverable from him as if it were an arrear of the

revenue.

285-G. No sale after postponement under Rule 285-A, 285-D or 285-E in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale.

8. It may be noted that similar provisions are contained in the Code of Civil Procedure, 1908 also. Order 21, Rule 84 of the Code is almost similar in terms to Rule 285-D of the Rules in question which provides for deposit of 25 per cent of the bid amount immediately and on failure to do so re-sale of the property forthwith. Order 21, Rule 85 and 86 of the Code are similar to Rule 285-E of the Land Reforms Rules requiring the purchaser payment of the full amount of the purchase money before the court closes on the 15th day from the date of sale of property and in the event of default to do so the property shall be re-sold with the only distinction that in the case of default under Order 21, Rule 86 the Court has the discretion to forfeit to the Government 25 per cent of the bid amount deposited on the date of sale while in the case of default under Rule 285-E of the Land Reforms Rules there is no such discretion but in the event of default to deposit the full amount of purchase money, 25 per cent deposit has to be forfeited after defraying the expenses of re-sale. Similarly the provisions contained in Order 21, Rule 87 of the Code are similar to the provisions contained in Rule 285-G of the Land Reforms Rules.

9. A perusal of the language employed in Rule 285-D would go to show that it requires the person declared to be.

purchaser to deposit immediately 25 per cent of the amount of his bid, and in default of such deposit the property shall be resold forthwith and such person who failed to deposit 25 per cent of the bid amount shall be liable for the expenses incurred in the first sale and the deficiency of price, if any, which may occur on the re-sale would be recovered from such defaulting purchaser as arrears of land revenue. The use of the word 'immediately' in depositing 25 per cent of the bid amount and the expression re-sale of the property 'forthwith' are equally meaningful and significant. Strictly speaking the requirement of deposit of 25 per cent immediately, by the person declared to be the purchaser may not mean the deposit on fall of hammer within twinkle of an eye and without affording the purchaser even the reasonable time to enable him to make the deposit. According to us the word 'immediately' connotes and implies that the deposit should be made without undue delay and within such convenient time as is reasonably requisite for doing the thing same day with all convenient speed excluding the possibility of rendering the other associated corresponding act and performance of duty as nugatory. Here the other associated corresponding act and duty cast upon the officer/authority conducting the sale as envisaged by Rule 285-D is to put up the property for re-sale 'forthwith' on the failure of the declared purchaser to deposit 25 per cent of the bid amount. The word "immediately" therefore, connotes proximity in time to comply and proximity in taking steps to re-sell on failure to comply the requirement of deposit as first condition that is to take place within relatively short-interval of time and without any other intervening recurrence. But it has to be noted that the meaning of the word immediately has to be determined by the context in which it has been used and the purpose for which the statute using the word was enacted. That being so it goes without saying that in the instant case the rule casts an obligation on the purchaser

to deposit 25 per cent of the bid amount immediately and if he fails to do so the property shall be re-sold forthwith.

10. Further the Rule 285-D provides resale of the property forthwith on the failure of the purchaser to deposit 25 per cent of the bid amount. The meaning of the word 'forthwith' is synonymous of the word immediately which means with all reasonable quickness and within a reasonably prompt time. It, therefore, necessarily follows that the intention of the Legislature is that as soon as it becomes known that the purchaser has failed to deposit 25 per cent immediately after he is declared as purchaser, the property shall be put to re-sale forthwith without any loss of time or postponement of the date of re-sale. The provision has been made mandatory because if the property is not re-sold forthwith and on the same day but later on after a day or two, the sufficient number of purchasers may not be forthcoming and the property may not fetch adequate and fair price to the prejudice of the judgment debtor. There is yet another reason for making this provision mandatory and it is this that if on the failure of the purchaser to deposit 25 per cent of the bid amount immediately and on the day the person is declared to be purchaser then the sale of the property will have to be postponed to some other date and according to the provisions contained in Rule 25-G re-produced in para 6 above, no sale after the postponement under Rule 285-D in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale. It is to avoid this situation and the delay in the sale that a provision under Rule 285-D has been made mandatory and on the failure of compliance of the same the sale becomes a nullity.

11. The controversy whether the provisions of Order 21, Rule 84, 85 and 86 are mandatory or not has been set at rest by this Court. The provisions of Order. Rule 84, 85 and 86 of the Code of Civil Procedure, as said earlier, are almost similar in terms to the provisions contained in Rule 285-D and 285-E of the Land Re-form Rules. This court in the case of Mani Lal Mohan Lal v. Syed Ahmad A.I.R. 1954 S.C. 349 ruled as under:-

"Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of the opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances was no sale and of the present case there was no sale and the purchasers acquired no rights at all."

12. Thus, it is settled law that the Provisions of Order 21, Rule 84, 85 and 86 of the Code of Civil Procedure are mandatory and the provisions of Rules 285-D and 285-E being similar in terms of the aforementioned corresponding provisions of the Code of Civil Procedure and in view of the aforesaid discussion there is no escape from declaring the sale a nullity if Rule 285-D is not complied with.

13. The question now remains to be considered is whether the deposit of 25 per cent of the bid amount by the purchaser respondent No. 1 herein by cheque instead of cash would be a valid deposit within the meaning of Rule 285-D of the Rules. Admittedly the respondent No. 1 was declared purchaser of the property in question on 18.10.1973. According to the learned counsel for the appellants neither the deposit of 25 per cent of the bid amount was made in cash nor by cheque on 18.10.1973 as the cheque was encashed on 22.10.1973. While according to the learned counsel appearing for the auction purchaser respondent No. 1 the cheque was tendered on 18.10.1973 itself which was encashed on 22.10.1973 and the amount was deposited in the Government treasury on 22.10.1973. The question is whether such a payment by cheque could be regarded as a valid deposit within the meaning of Rule 285-D. As discussed above Rule 285-D is a mandatory rule according to which if 25 per cent of the bid amount is not deposited immediately the land shall forthwith be again put up and sold. In other words on the failure of the purchaser to deposit 25 per cent of the bid amount immediately the land shall be re-sold immediately the land shall be re-sold imme-

diately after such failure the very same day. If for instance the 25 per cent of the bid amount is accepted by cheque and subsequently the purchaser changes his mind and advises his banker not to encash the cheque or there is no amount in the account of the purchaser in the bank and the cheque is bounced, the purpose of Rule 285-D would be frustrated and thus the mandatory provision would be rendered nugatory. The result would be that neither the authorities would be in a position to forfeit any amount of the purchaser nor the authority would be in a position to defray the expenses of the sale as contemplated by Rule 285-E. The other consequence that will follow is that the re-sale of land will have to be delayed and a fresh proclamation for sale has to be issued as provided by Rule 285-G. It, therefore, appears to us that Rule 285-D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory rule 285-D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule. This was also the view taken by a Division Bench of the Allahabad High Court in the case of Hira Lal (supra) and the Learned Single Judge was not right in ignoring the said view by observing that it was obiter. The High Court of Madhya Pradesh in *M/s. Progressive Industrial Enterprises v. Bank of Baroda* - A.I.R. 1989 M.P. 177 also expressed the view that deposit of 25 per cent of the bid amount by cheque which was not encashed on the date on which the person was declared purchaser but on a later date, there was no compliance of Order 21 Rule 84 (C) C.P.C.

14. The learned counsel for the auction purchaser, respondent No. 1 placing his reliance on *Kirloskar Bros. Ltd. v. LT. Commissioner* - A.I.R. 1952 Bombay 306; A.I.R 1954 S.C. 429 - *LT. Commissioner v. M/s. Ogale Glass Work Limited*; A.I.R.1966 Madras 435 - *Mohidden Bi v. Khatoon Bi* and some other decisions vehemently urged that deposit of 25 per cent of the bid amount made by cheque was

a valid deposit and in compliance of Rule 285-D. We have carefully gone through the decisions relied on by the learned counsel for the respondent No. and find that the same do not relate to the consideration of the provisions of Rule 285-D or any other provision which may be regarded as *pari-materia* to Rule 285-D. The said decisions do not cover the situation at all with which we are concerned in the present appeal and the same are quite distinguishable on facts *a.*-, well as on law. The said decisions are, therefore, not helpful in the present case.

15. In the facts and circumstances discussed above the impugned order of the High Court could not be sustained. The appeal is therefore allowed, The impugned order of the High Court dated 2.1.1992 passed in C.M.W.P. No. 9589 of 1985 is set aside and the sale is declared as nullity. The parties are left to -bear their respective costs.