

M/S. JAGAN SINGH & CO.

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v.

LUDHIANA IMPROVEMENT TRUST & ORS.

(Civil Appeal No.371 of 2022)

SEPTEMBER 02, 2022

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**[SANJAY KISHAN KAUL, S. RAVINDRA BHAT
AND M.M. SUNDRESH, JJ.]**

*Land Acquisition – Compensation – Execution proceedings –
Auction sale – Setting aside of Auction Sale – Civil Procedure
Code, 1908 – O. XXI R. 17, 66, 54, 66, 89, 90(3) and s.151 – C
Respondent no. 1 (Respondent Trust) acquired the land and failed
to give the compensation as determined by the Land Acquisition
Tribunal – In the first round of execution proceedings, the property
bearing khasra no. 271 and 272 of Respondent Trust was attached
and sold to the appellant by way of auction for 22.65 lakhs – D
Respondent Trust filed application before the Court of the Senior
Sub Judge to set aside the ex-parte attachment and auction of the
Trust's property – The executing Court dismissed the objections and
upheld the sale – SLP filed before Supreme Court – The Court set
aside the impugned orders and remitted the matter to the Executing
Court for deciding the application u/O. XXI R. 90 de novo – E
In the Second round of Execution Proceedings – Executing Court
dismissed the objections, raised against the auction sale, on the
ground of material irregularities and substantial injury caused to
the Respondent Trust – First Appellate Court also confirmed the
decision of Execution Court – High Court set aside the judgments
of the executing Court and the First Appellate Court on the ground
that there were glaring irregularities in the auction sale – F
The property auctioned consisted of Khasra nos. 271 and 272, whereas the list
of property was only in reference to the land in khasra no 272 –
Appellant in appeal before the Supreme Court – Held : No doubt
originally Khasra No. 271 was not mentioned and only Khasra No.
272 was mentioned but that would have been relevant if there was a
problem in identification of the property and the ownership of the
property – And, there was no problem in such identification – G
The property is clearly described in site plan – Order XXI of the Code is
exhaustive – It is clearly stated in O. XXI Rule 90(3) that no
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- A *application to set aside a sale on grounds of irregularity or fraud under the Rule can be entertained on any ground which the applicant would have taken on or before the date on which the proclamation of sale was drawn up – The Explanation to the Rule further says that mere absence of or defect in attachment of the property sold should not by itself be a ground for setting aside the sale under this Rule – The Judgment Debtor/Respondent Trust failed to avail any of these opportunities at different stages – The dual test of material irregularity of fraud and substantial injury is not satisfied in the present case – Thus, auction sale is confirmed.*

C **Allowing the appeal, the Court
HELD :**

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 - 1. **The dragging of the proceedings for three decades have been a grave injustice to the Appellant, who have been deprived of the enjoyment of the property despite having paid the full auction price 30 years back. Merely because the Respondent No. 1 is an Improvement Trust does not give it a licence to take a citizen's right for a ride. [Para 29][759-B-C]**
 - 2. **In the view of this Court, there is no irregularity or discrepancy in identification of the property when the site plan was filed with it. This Court has reproduced the site plan so as to make it explicitly clear how the bounded property was clearly described. No doubt originally Khasra No.271 was not mentioned and only Khasra No.272 was mentioned but that would have been relevant if there was a problem in identification of the property and the ownership of the property. This was not so. [Para 32][759-G-H; 760-A]**
 - 3. **The Court fails to understand how the dual test of material irregularity of fraud and substantial injury is satisfied in the present case. In fact, neither part of the dual test is satisfied. The Respondent Trust cannot be permitted to say that merely because the property was auctioned there is some substantial injury. No doubt there were some structures shown in the site plan itself, however, they were merely basic structures of a godown and a quarter. [Para 34][760-A]**
 - 4. **The Executing Court and the First Appellant Court duly supported the reasoning based on various failures of the**

Judgment Debtor: (a) did not file objections at the time of presentation of execution petition; (b) did not file any objections at the time of order of attachment; (c) no objections filed when proclamation under Order XXI Rule 66 of the said Code was made; (d) no objections filed even at the time of public auction being actually conducted. [Para 35][760-H; 761-A] A

5. It is clearly stated in the Order XXI Rule 90(3) of the said Code that no application to set aside a sale on grounds of irregularity or fraud under the Rule can be entertained on any ground which the applicant would have taken on or before the date on which the proclamation of sale was drawn up. The Explanation to the Rule further says that mere absence of or defect in attachment of the property sold should not by itself be a ground for setting aside the sale under this Rule. The Judgment Debtor/Respondent Trust failed to avail any of these opportunities at different stages. [Para 36][761-B-C] B

6. The impugned judgement of the High Court dated 06.03.2018 is set aside and the view taken by the Executing Court and the Appellate Court is sustained. The Court grants costs to the Appellant against Respondent No. 1 quantified at Rs. 1 lakh. The Appeal is allowed. [Para 40][764-C-D] C D

Trust, Ludhiana v. Ujagar Singh and Others (2010) 6 SCC 786; Saheb Khan v. Mohd. Yousufuddin and Others (2006) 4 SCC 476 ; Sadashiv Prasad Singh v. Harendar Singh (2015) 5 SCC 574 : [2014] 1 SCR 249; Sugandhi (Dead) by LRs. & Ors. v. P. Rajkumar (2020) 10 SCC 706 ; Chilamkurti Bala Subrahmanyam v. Samanthapudi Vijaya Lakshmi & Anr. (2017) 6 SCC 770 : [2017] 3 SCR 826 - referred to E F

Case Law Reference

| | | | |
|-------------------|-------------|---------|---|
| (2010) 6 SCC 786 | referred to | Para 1 | G |
| (2006) 4 SCC 476 | referred to | Para 21 | |
| [2014] 1 SCR 249 | referred to | Para 26 | |
| (2020) 10 SCC 706 | referred to | Para 28 | |
| [2017] 3 SCR 826 | referred to | Para 38 | H |

- A CIVIL APPELLATE JURISDICTION : Civil Appeal No.371 of 2022.

From the Judgment and Order dated 06.03.2018 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No.815 of 2016 (O&M).

- B P. S. Patwalia, Sr. Adv., Ms. Natasha Dalmia, Gagandeep Singh Sirphikhi, Jitendra Kumar, Advs. for the Appellant.

Neeraj Kumar Jain, Sr. Adv., Sudhir Walia, Ms. Niharika Ahluwalia, Arpit Sharma, Dr. Abhishek Atrey, Shubham Bhalla, Sumir Ahuja, Ms. Akansha Gulati, R. K. Rathore, Mukesh Berry, Ms. Ranjeeta

- C Rohatgi, Ms. Samten Doma, Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

- D 1. The dispute about the non-payment of acquired land under the Land Acquisition Act, 1984 (hereinafter referred to as the ‘LA Act’) has spanned over more than three decades.

2. Respondents no. 2 to 5 were the original owners of the land, measuring 8 Kanals and 11 ½ Marlas, which was acquired by Ludhiana Improvement Trust, Respondent no.1 (hereinafter referred to as “the Respondent Trust”).

- E 3. The compensation determined by the Respondent Trust was not acceptable to the land owners, thus, reference was sought in terms of Section 18 of the LA Act. The Land Acquisition Tribunal made an award enhancing the compensation to the owners by determining the compensation as Rs.4,27,068/- along with future interest at 9%, per

- F annum, from the date of the application. The Respondent Trust, however, did not pay the amount while it continued to enjoy the land.

- G 4. It appears from the list of dates that despite all requests to the owners, the Respondent Trust did not oblige, leaving the owners with little option but to file an execution petition in the year 1991. The Execution Petition was, however, dismissed as unsatisfied on 21.09.1991.

- H 5. A perusal of the order, however, shows no reason for the same except mere sentence of the decree, holding the execution petition as unsatisfied. On 27.09.1991, the owners filed the second execution application for recovery of the compensation amount, along with interest, seeking to make the recovery through attachment of property. The details

of the property, which was sought to be attached, were more specifically described by a site plan, which was filed in the proceedings and has been placed before us. The site plan shows a triangular piece of land i.e. field on one side, Pakhowal Road towards Ludhiana on the second side and the railway line on the hypotenuse side.

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6. In the application filed under Order XXI Rule 66 of the Code of Civil Procedure, 1908 (hereinafter referred to as '*the said Code*') read with Section 151 of the said Code, a proclamation of the sale of the property, comprised of Khewat No.867, Khatauni No.971, Khasra No.272, as per Jamabandi for the year 1988-89, Village Jawaddi, Hadbast No.160, Tehsil and District, Ludhiana, was sought. It may be noted that in the site plan, there is an ear marking of the godown and the chowkidar room and the remaining land has been shown as vacant. The tentative cost of the property, as stated in the application, is about Rs. 8 lakhs which was sufficient to cover the recovery of Rs.4,27,068/- along with interest at the rate of 9% per annum.

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7. Once again, the notice was served upon the Respondent Trust on 12.05.1992, but elicited no response from the Respondent Trust. The Court of Civil Judge, Senior Division, Ludhiana, issued a warrant for sale of the attached property on 25.05.1992. Consequently, the attached property, measuring 7000 sq. yards approximately, bearing Khasra nos.271 and 272, was sold to the Appellant by way of auction conducted by the Court Auctioneer on 12.08.1992 for a consideration of Rs.22.65 lakhs.

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8. The Respondent Trust apparently woke up only thereafter and on 26.09.1992 filed an application before the Court of the Senior Sub Judge, Ludhiana, under Order XXI Rule 90 of the said Code to set aside the *ex parte* attachment and auction of the Trust's property. It may be noted that even during this period of time it is not as if the payments were made to the land owners.

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9. A perusal of the objection shows that it is pleaded that there was no valid or proper service of notice though it is not disputed that there was a service of notice. There were certain other technical objections also raised, *inter alia*, alleging that no mandatory notice under Order XXI Rule 66 of the said Code was issued or served, no proclamation of sale by auction has been made or published, the property in question, is not capable for attachment and sale as it is part of development scheme, which stands already allocated for allotment under Punjab Improvement

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- A Act read with Land Disposal Rules framed thereunder. It was, thus, sought to be claimed that the Judgment Debtors did not have saleable interest in the property. The factum of the earlier execution proceeding was dismissed for non satisfaction of motion. This application was contested by the Appellant, as auction purchaser, pointing out that the warrants for attachment of the property were filed by order dated 03.10.1991. The warrant for attachment was issued on 01.04.1992, Munadi was effected on 03.04.1992 and the property was attached on the same date, thereafter notice under Order XXI Rule 66 of the said Code was served on 12.05.1992, which was duly received by the Judgment Debtor on the same date along with the copy of the execution.
 - B The sale warrants were issued on 25.05.1992, Munadi was effected on the spot on 17.07.1992 and the auction took place on 12.08.1992. The decree holder also contested proceedings to challenge the auction.

10. After hearing learned counsel for the parties, the Executing Court decided Execution no. 93/1991 post framing of issues on 11.02.1993

- D and recording evidence while dismissing the objections on 05.06.1993 and upholding the sale of the land to the Appellant.

11. A perusal of the proceedings shows that Respondent Trust, as objector, produced no evidence despite repeated opportunities nor even filed the list of witnesses. This is recorded in the proceedings on

- E 17.04.1993, 08.05.1993, 29.05.1993 (and was called on more than one occasion). The Executing Court noticed that no specific fraud or misrepresentation has been mentioned in the objections by the objector nor any substantial irregularities have been pointed out. The objector has neither deposited the decreetal amount nor the amount equal to 5% of the purchase amount for payment to the auction purchaser as is

F required under Order XXI Rule 89 of the said Code. Thus, the objections were not even maintainable. In view of the said provision, no sale could be set aside unless the Court is satisfied that the applicant has sustained substantial injury by reason of irregularity or fraud in completing or conducting the sale. For convenience, Order XXI Rule 90 of the said Code is reproduced as under:

“ORDER XXI
EXECUTION OF DECREES AND ORDERS

EXECUTION OF DECREES AND ORDERS

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execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

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(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

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(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

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Explanation.- The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.”

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12. A certificate of sale dated 15.06.1993 was issued by the Court under Order XXI Rule 94 of the said Code confirming the sale.

13. On the Respondent Trust assailing the Executing Court’s order, Additional District Judge, Ludhiana, rejected the same vide order dated 04.03.1994 and the High Court also dismissed the Revision Petition. The matter finally came up before this Court in SLP filed by the Respondent Trust, being SLP (Civil) No.22328/2004. Leave was granted and the said appeal was decided by the judgment dated 09.06.2010 in *Improvement Trust, Ludhiana v. Ujagar Singh and Others*, reported at (2010) 6 SCC 786. A reading of the order shows that what weighed this Court was that the negligence of the counsels should not be blamed on the parties, as the matter has been prosecuted after having gone unrepresented. The impugned orders were set aside and the matter was remitted to the Executing Court for deciding the application under Order XXI Rule 90 of the said Code at an early date. However, being conscious of the fact that the Appellant had been put to inconvenience and had already deposited a huge amount of Rs.22.65 lakhs in 1992 but has not been able to get the fruits thereof, Rs.50,000/-, as costs, were imposed on the Respondent Trust. Thus, the first round itself reached a culmination after more than 15 years of acquisition of land but once again starting the process almost *de novo* on the Executing Court taking up the proceedings again.

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- A 14. It is pleaded on behalf of the Respondent Trust that the *ex parte* proceedings earlier initiated, which resulted in the order for auction of the property, were without valid or proper service of notice, no former proclamation for attachment of Judgement Debtor's property, as required under Order XXI Rule 54 of the said Code, was made and no mandatory notice under Order XXI Rule 66 of the said Code was either issued or served to Respondent Trust.

B 15. The question of land being part of Development Scheme was again contended. In substance what was pleaded was that the objections, which were pleaded earlier in the execution, were once again urged.

C While contending on the dual principle of; (A) the sale was conducted with gross material irregularities and (B) the Respondent Trust has sustained substantial injury to their rights.

D 16. The objections were once again rejected by the Executing Court on 10.11.2012. A perusal of the order shows that the Executing Court observed that the Respondent Trust, as Judgement Debtor, has not denied that the property bearing Khasra no.271 and 272 was the same, which was shown by way of boundaries in the site plan, and no discrepancy or distinction between the properties attached and sold was made out.

E 17. On the issue of valuation raised under Order XXI Rule 66 of the said Code, the Executing Court opined that the Judgment Debtor has chosen not to protest the settlement terms and the Court had no objection but to go by the valuation report of the decree holder. For convenience, Order XXI Rule 66 of the said Code is reproduced as under:

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“ORDER XXI

EXECUTION OF DECREES AND ORDERS

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G 66. **Proclamation of sales by public auction.**—(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.

H (2) Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold, [or, where a part of the property would be sufficient to satisfy the decree, such part]; A

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the government;

(c) any incumbrance to which the property is liable; B

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property: C

[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment debtor by means of an Order under rule 54, it shall not be necessary to give notice under this rule to the judgment debtor unless the court otherwise directs: D

Provided further that nothing in this rule shall be construed as requiring the court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.]

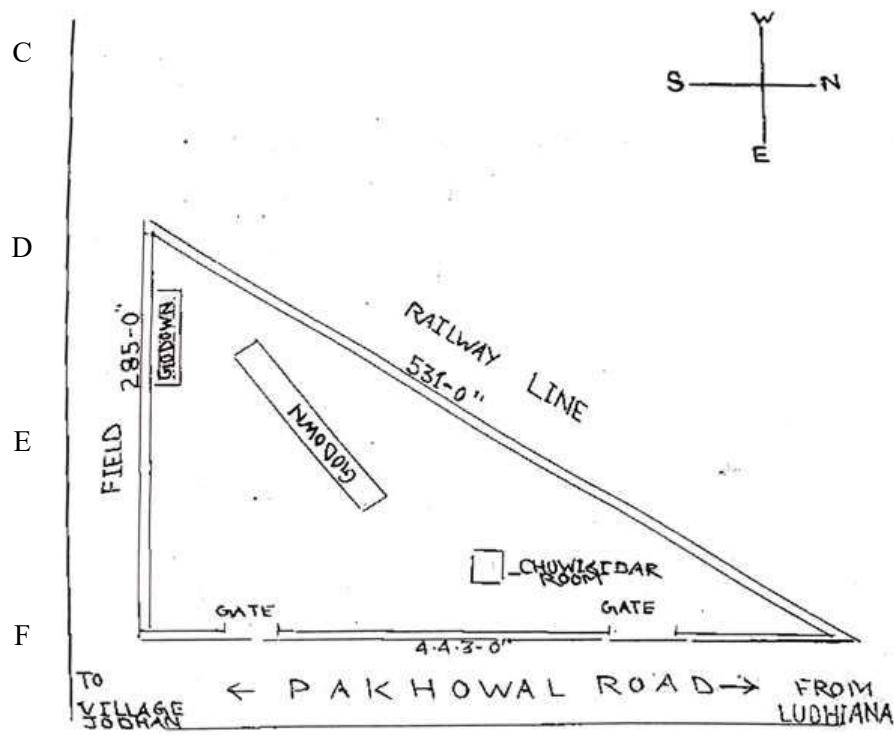
(3) Every application for an Order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation. E F

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.” G

18. As regards the objection relating to the conduct of auction proceedings, the Executing Court held that the auction purchaser had proved due proclamation and conduct of auction sale at the spot and, thus, drawing, signing and issuance of sale certificate is entirely under the domain of the Court. The property was described as “*plot/godown* H

- A situated at Pakhowal Road, near Railway Crossing, Ludhiana, shown as red in the site plan attached" with the sale certificate dated 15.06.1993. Thus, as the evidence show, the sale was not confirmed in reference to any Khasra number, therefore, the mention of Khasra number could not be inadvertent inclusion. The Court also upheld the objections raised by the Appellant that the objections have not been filed by the competent person and were, thus, invalid.
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19. To appreciate the locational aspect we reproduce the site plan as under:



Sd/-
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- G 20. The endeavour of the Respondent Trust to assail the aforesaid order was rejected by the First Appellate Court confirming the judgment of the Executing Court on 14.09.2015. Thereafter that matter went in Civil Revision no.815/2016 before the High Court filed by the Respondent Trust. It is relevant to note that one aspect of submission of the Appellant H was that in view of Order XXI Rule 90(3) of the said Code, the

Respondent Trust could not be heard at that stage as the grounds were available to the Trust before the proclamation of sale was done. In this behalf, a reference was made to the judgment in *Saheb Khan v. Mohd. Yousufuddin and Others*¹, opining that the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection. If the party can waive the objection, it amounts to irregularity and in case he cannot, it is a nullity.

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21. The High Court, however, in terms of the impugned judgment dated 06.03.2018 set aside the judgments of the Executing Court and the First Appellate Court. The impugned judgment is predicated on the reasoning that although there were glaring irregularities, yet the sale was confirmed. The property auctioned consisted of Khasra nos.271 and 272, whereas the list of property submitted by the decree holder was only in reference to the land in Khasra no.272.

22. On the issue of the compliance of the provisions of Order XXI Rule 17 and Order XXI Rule 66 of the said Code, the High Court observed that the Executing Court had failed to apply its mind since the statutory provisions mentioned clearly stipulate that the attached property's price must correspond to the decretal amount and the court must adjudicate upon whether the entire attached property or only a part of it is required to be sold to satisfy the decree.

23. A balance was required to be maintained between the rights of the Judgment Debtor and the auction purchaser under Order XXI Rule 90 of the said Code as the land projected was not a barren stand-alone land, but had a constructed building on it. The twin conditions referred to aforesaid was established and the auction sale was set aside.

24. The aforesaid judgment has been assailed before us and notice was issued on 24.07.2018 and the interim direction to the parties to maintain status quo as on date was issued. Leave was granted on 07.01.2022 while making the interim order absolute.

Submissions on behalf of the Appellant:

25. Mr. P.S. Patwalia, learned senior counsel for the Appellant urged that the Appellant was a *bona fide* successful auction purchaser having purchased the property in a public auction with the consideration amount of Rs.22.65 lakhs, duly deposited. The amount was paid between

¹ (2006) 4 SCC 476

- A 13.08.1992 and 24.08.1992. The sale certificate was also issued in the Appellant's favour on 15.06.1993 and despite this the Appellant has not been able to enjoy the property for 30 years due to pendency of this litigation. On a reading of Order XXI Rule 90(3) of the said Code, it was urged that the Respondent Trust as Judgment Debtor could not satisfy
- B the test by merely pointing out material irregularity but had to further establish to the satisfaction of the Court that the material irregularity or fraud has resulted in causing substantial injury to the Judgment Debtor. There was no ground to have reversed the concurrent findings of the courts below especially when the decree holder did not file any objections at the time of presentation of the execution petition or at the time of
- C order of attachment or when the issuance of proclamation under Order XXI Rule 66 of the said Code was issued. In fact they had chosen to absent themselves. It was urged that in light of Order XXI Rule 90 (3), no application to set aside a sale can be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. The objections of the decree holder could not be entertained at a belated stage.

26. Learned senior counsel sought to canvas that the *bona fide* purchaser for value in an auction sale is treated differently than a decree holder purchasing such properties and, in that behalf, relied upon the judgment of this Court in *Sadashiv Prasad Singh v. Harendar Singh*²
- E wherein it was opined that even if such a decree is set aside, the interest of the *bona fide* purchaser in an auction-sale is saved.

Submissions on behalf of the Respondents:

27. Mr. Neeraj Kumar Jain, learned senior counsel appearing for the Respondent Trust sought to support the impugned judgment on the ground that the High Court had found material irregularities and illegalities causing substantial injury to the Respondent Trust. The non-disclosure at the time of filing of the application under Order XXI Rule 66 of the said Code qua the land whereby the land comprised in Khasra No.271 had also been sold in the public auction was material as only the land
- F comprised in Khasra No.272 could have been sold.

28. On the delay of three decades a reference was sought to be made to the judgment of this Court in *Sugandhi (Dead) by L.Rs. & Ors. v. P. Rajkumar*³ to contend that mere delay in disposal of the case

² (2015) 5 SCC 574 (para 17 to 19)

H ³ (2020) 10 SCC 706

should not come in the way of the court to do justice between the parties. There had been procedural lapses on the part of the Respondents in following up the case but public property ought not to be auctioned for the errors committed by the errant officers.

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Conclusion:

29. We have given thought to the matter and the submissions of the learned counsel and have no doubt whatsoever that the dragging of the proceedings for three decades have been a grave injustice to the Appellant, who have been deprived of the enjoyment of the property despite having paid the full auction price 30 years back. Merely because the Respondent No. 1 is an Improvement Trust does not give it a licence to take a citizen's right for a ride.

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30. We may notice at the threshold itself that though the right in property is not a fundamental right, it is still a constitutional right under Article 300A of the Constitution of India. Thus, a person can be deprived of the rights of the property only in a manner known to law. The acquisition proceedings in respect of the land in question sought to deprive the owners of their land which had to be paid for in terms of the provisions of the LA Act. The amount of compensation was determined by the reference court under Section 18 of the LA Act and the matter was not taken further. Thus, both the owner and acquiring beneficiary agreed to the compensation as determined by the Tribunal. The next step should have been to immediately pay the amount to the owners which did not happen. On the other hand, the owners were made to run from pillar to post and ultimately the execution proceedings were filed six years after the amount had been so determined. This conduct of the Respondent Trust itself is not condonable and this is what resulted in the proceedings for execution, the auction and the matter being dragged on for decades.

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31. The fact of the first execution petition being dismissed as not satisfied will not, in our view, preclude filing of the second execution petition giving details of the property. In those proceedings also the Respondent Trust chose to absent itself. The execution proceedings have to proceed in accordance with the various stages as envisaged under Order XXI of the said code and those stages were duly followed.

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32. In our view, there is no irregularity or discrepancy in identification of the property when the site plan was filed with it. We have reproduced the site plan so as to make it explicitly clear how the bounded property was clearly described. No doubt originally Khasra

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- A No.271 was not mentioned and only Khasra No.272 was mentioned but that would have been relevant if there was a problem in identification of the property and the ownership of the property. This was not so.

33. We may also notice that when the objections were filed by the Respondent Trust, issues were framed. On the basis of the issues framed B evidence had to be led. Despite various opportunities the Respondent Trust did not lead any evidence and we have dealt with this aspect factually in detail while referring to the proceedings before the Executing Court in the first round. The second round arose only on account of the benefit given by this Court in the first round of proceedings that the Respondent Trust should be able to assist the Court. In fact, the maximum indulgence C which could be shown was shown to them predicated largely on the fact that Respondent No.1 was an Improvement Trust. It is a fact that in the various stages of execution proceedings what was required to be done by the Respondent Trust was never done. It is not one single failure. In the execution petition itself the amount to be realised and the value of D the property were both mentioned. There was no objection by the Respondent Trust that the property was far more valuable and, thus, only a part of the property should be sold. If one may say, the Respondent Trust would have saved the day even at that time by depositing the amount due to the owners. It did not do so. The fact that ultimately the property fetched a larger price cannot be held against the Appellant who E participated in the process and offered the appropriate price, which was accepted. The Respondent Trust did not even comply with the requirement of Order XXI Rule 89 by depositing the decretal amount along with 5 per cent of the auction amount. The Respondent Trust behaved as if it had some superior right to appropriate the property of the owners without F paying for it contrary to the mandate of the LA Act. That would be hardly called a case of fraud in such a situation.

34. We also fail to understand how the dual test of material irregularity of fraud and substantial injury is satisfied in the present case. In fact, neither part of the dual test is satisfied. The Respondent Trust G cannot be permitted to say that merely because the property was auctioned there is some substantial injury. No doubt there were some structures shown in the site plan itself, however, they were merely basic structures of a godown and a quarter.

35. The Executing Court and the First Appellant Court duly supported the reasoning based on various failures of the Judgment Debtor: H (a) did not file objections at the time of presentation of execution petition;

(b) did not file any objections at the time of order of attachment; (c) no objections filed when proclamation under Order XXI Rule 66 of the said Code was made; (d) no objections filed even at the time of public auction being actually conducted.

A

36. Learned senior counsel for the Appellant rightly drew the attention of this Court to Order XXI Rule 90 (3) of the said Code to contend that it is clearly stated that no application to set aside a sale on grounds of irregularity or fraud under the Rule can be entertained on any ground which the applicant would have taken on or before the date on which the proclamation of sale was drawn up. The Explanation to the Rule further says that mere absence of or defect in attachment of the property sold should not by itself be a ground for setting aside the sale under this Rule. The Judgment Debtor/Respondent Trust failed to avail any of these opportunities at different stages.

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37. In *Sadashiv Prasad Singh*⁴ it was emphasised by referring to the earlier judicial precedents that a *bona fide* purchaser for value in auction sale is to be treated differently than a decree holder purchasing such property. It would be useful to set forth the relevant paragraphs as under:

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“17. The learned counsel for the auction purchaser Sadashiv Prasad Singh, in the first instance vehemently contended, that in terms of the law declared by this Court, property purchased by a third party auction purchaser, in compliance of a court order, cannot be interfered with on the basis of the success or failure of parties to a proceeding, if auction purchaser had *bonafidely* purchased the property. In order to substantiate his aforesaid contention, learned counsel representing Sadashiv Prasad Singh placed emphatic reliance, firstly, on a judgment rendered by this Court in *Ashwin S. Mehta & Anr. vs. Custodian & Ors.* (2006) 2 SCC 385. Our attention was drawn to the following observations recorded therein: (SCC p. 407, para 70)

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“70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former

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⁴ (supra)

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- A event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See *Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan* (1887-88) 15 IA 12) The said decision has been affirmed by this Court in *Gurjoginder Singh v. Jaswant Kaur* (1994) 2 SCC 368.”
- B (emphasis supplied),”
- C 18. On the same subject, and to the same end, learned counsel placed reliance on another judgment rendered by this Court in *Janatha Textiles & Ors. vs. Tax Recovery Officer & Anr.*, (2008) 12 SCC 582, wherein the conclusions drawn in *Ashwin S. Mehta's case* (*supra*) came to be reiterated. In the above judgment, this Court relied upon the decisions of the Privy Council and of this Court in *Nawab Zain-Ul-Abdin Khan v. Mohd. Asghar Ali Khan*, (1887-88) 15 IA 12; *Janak Raj vs. Gurdial Singh*, AIR 1967 SC 608; *Gurjoginder Singh vs. Jaswant Kaur*; (1994) 2 SCC 368; *Padanathil Ruqmini Amma vs. P.K. Abdulla*, (1996) 7 SCC 668, as also, on *Ashwin S. Mehta* (*supra*) in order to conclude, that: [Janatha Textiles case (*supra*) p. 586, para 18]:
- E “18. It is an established principle of law, that a third party auction purchaser's interest, in the auctioned property continues to be protected, notwithstanding that the underlying decree is subsequently set aside or otherwise.”
- E It is, therefore, that this Court in its ultimate analysis observed as under [*Janatha Textiles case* (*supra*) pp. 588-89, para 20]:
- F “20. Law makes a clear distinction between a stranger who is a bona fide purchaser of the property at an auction-sale and a decree-holder purchaser at a court auction. The strangers to the decree are afforded protection by the court because they are not connected with the decree. Unless the protection is extended to them the court sales would not fetch market value or fair price of the property.”
- G (emphasis supplied)
- H On the issue as has been dealt with in the foregoing paragraph, this Court has carved out one exception. The aforesaid exception came to be recorded in *Velji Khimji and Company vs. Official*

Liquidator of Hindustan Nitro Product (Gujarat) Limited & Ors., (2008) 9 SCC 299, wherein it was held as under:

“30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

31. In the present case, the auction having been confirmed on 30.7.2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case.”

(emphasis supplied)

19. It is, therefore, apparent that the rights of an auction-purchaser in the property purchased by him cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion.”

38. The mandatory nature of the twin conditions to be satisfied before an auction sale can be set aside as provided under Order XXI Rule 90(3) of the said Code which has been discussed by this Court in various judicial pronouncements. We may refer to two of them as under:

- i. In *Saheb Khan*⁵case, it was observed that satisfaction of only one of the two conditions was not sufficient. It was also observed that a charge of fraud or material irregularity must be specifically made with sufficient particulars and bald allegations would not do.
- ii. In *Chilamkurti Bala Subrahmanyam v. Samanthapudi Vijaya Lakshmi & Anr.*⁶, the aforesaid judgment was referred to with approval.

⁵ (supra)

⁶ (2017) 6 SCC 770

- A 39. We must note in the end that Order XXI of the said Code is exhaustive and in the nature of a complete Code as to how the execution proceedings should take place. This is the second stage after the success of the party in the civil proceedings. It is often said in our country that another legal battle, more prolonged, starts in execution proceedings
- B defeating the right of the party which has succeeded in establishing its claim in civil proceedings. This is exactly what has happened in the present case. The various stages of Order XXI of the said Code when violated cannot give right to some extra indulgence merely because the Respondent Trust is an Improvement Trust. There cannot be a licence to prolong the litigation ad infinitum.
- C 40. We have, thus, no hesitation in setting aside the impugned judgment of the High Court dated 06.03.2018 and sustain the view taken by the Executing Court in the order dated 10.11.2012 as sustained by the Appellate Court in its order dated 14.09.2015. We also grant costs to the Appellant against Respondent No.1 quantified at Rs.1 lakh. We only
- D hope that, at least, now the Appellant would be able to get the benefit of using the land they purchased three decades ago.

41. The appeal is accordingly allowed.

Ankit Gyan
(Assisted by : Rakhi, LCRA)

Appeal allowed.