SRI PRABIN RAM PHUKAN & ANR. A

v.

STATE OF ASSAM & ORS.

(Civil Appeal Nos. 662-663 of 2008)

DECEMBER 11, 2014 B

[M. Y. EQBAL AND ABHAY MANOHAR SAPRE, JJ.]

Assam Land and Revenue Regulation, 1886 – ss. 3(b), 70, 72 – Land revenue – Non-payment, by appellants-land holders – Auction sale of property of appellant for realization of Rs. 731.70/- – State purchased the land/estate for Rs. 1 in the auction proceedings – Board set aside the auction and sale proceedings and directed for restoration of land to the appellant as also pay the appellants compensation amount deposited by IOC for allotted land – However, non-payment of compensation amount to the appellants – Single Judge directed the State to pay compensation amount to the appellants – However, Division Bench upheld the auction sale as also the transfer of land to the State – On appeal, held: High Court erred in interfering with the finding of the Board – Board rightly held that auction conducted was not made in conformity with the procedure prescribed in the Regulation; that no notice of either demand or/and sale of land was served on the appellants and High Court ought not to have interfered with this finding of fact; that the High Court exceeded its jurisdiction and reversed the factual finding; and the writ court did not assign any cogent reason as to why the factual finding of the Board was wrong – Thus, the auction held by the State neither legal and nor in conformity with the requirements contained in the Regulation and rightly set aside by the Board – Impugned judgment set aside and that of the Board restored – State directed to pay the amount of compensation deposited by IOC for the land allotted to them to the appellants along with interest as also restore the C D E F G H

A *possession of the remaining land – Constitution of India, 1950 – Arts. 227 and 300A.*

Notice – Non-service of notice and a notice though served but with some kind of procedural irregularities in serving – Distinction between – Explained.

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Allowing the appeals, the Court

HELD: 1.1 The finding of the High Court cannot be concurred with. The High Court should not have interfered with the finding of the Board which rightly held C **that auction conducted to recover the outstanding arrears of land revenue (Rs.731.70) from the appellants was not made in conformity with the procedure prescribed in the Regulation and was, therefore, bad in law. [Para 23][198-E-F]**

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1.2 In the first place, the well reasoned finding of fact recorded by the Board in favour of the appellants (landholders) on the question of non-service of notice of the demand for payment of defaulted amount of arrears of land revenue of Rs. 731.70 and non-service of notice E **of sale of land was binding on the writ court, being a pure finding of fact and more so, when it was based on proper appreciation of facts. The High Court exceeded its jurisdiction when it proceeded to examine this factual issue like an appellate court and reversed the factual** F **finding. Assuming that the High Court could go into this issue in its writ jurisdiction, yet mere perusal of the finding of the High Court would go to show that no proper service much less effective service of notice of demand and sale of land was made on the appellants. In** G **other words, reading of reasoning and discussion of the High Court cannot allow to reach to a conclusion that the appellants were duly served of the notices. Rather it would take to a conclusion that the appellants were not properly served. The writ court did not assign any cogent**

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reason as to why the factual finding of the Board on this issue was wrong and hence, call for interference. On examination of the issue of notice independently in the light of the requirement of s. 72 read with Rules 133, 134, 136 and 136-A which deals with the mode of effecting service on the defaulting landholder, then there is no hesitation in recording a finding that no notice was served on the appellants as contemplated under the aforementioned provisions and the High Court ought not to have interfered with this finding of fact for holding otherwise. [Paras 24, 25][198-G-H; 199-A-E; 200-A] A B C

1.3 There lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of non-service is proved whereas in the case of later category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action "illegal" whereas in the case of later, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making service of such notice on him. If a person has a knowledge of the action proposed in the notice, then the action taken thereon cannot be held as being bad in law by finding fault in the manner of effecting service unless he is able to show substantial prejudice caused to him due to procedural lapse in making service on him. It, however, depends upon individual case to case to find out the nature of procedural lapse complained of and the resultant prejudice caused. The instant case falls in former category of case. [Para 26][200-A-F] D E F G H

A 1.4 It is mandatory on the part of the State to serve a proper notice to a person, who is liable to pay any kind of State's dues strictly in the manner prescribed in the Regulation. It is equally mandatory on the part of the State to give prior notice to the defaulter for recovery of B dues before his properties-moveable or/and immoveable) are put to sale in the manner prescribed in the Regulation. [Para 27][200-F-G]

1.5 The appellants were deprived of the land without following the procedure prescribed in law because the C so-called auction was conducted by the State behind their back and without their knowledge. The action of the State was thus, clearly violative of the appellants' Constitutional right guaranteed under Article 300-A and hence, such action cannot be sustained in law. [Para 29] D [201-C-D]

1.6 There is nothing on record to show as to why the extreme step to recover a small sum of Rs.731.70 paisa was required to be taken for sale of the estate E under Section 70 and why arrears of Rs.731.70 paisa could not be recovered by sale of any moveable belonging to the appellants. It is inconceivable to think that the appellants did not own moveable which would not have even fetched Rs.731/- on sale or would have F fetched less amount. The auction held by the Deputy Commissioner for realization of dues by sale of land under s.70 was bad in law being held in contravention of s.70(1) and was thus, not sustainable. [Paras 33, 34] [202-C-E]

G 1.7 Taking recourse to auction proceedings for sale of defaulter's immovable property for realization of the State dues is an extreme remedy. It is also discernable in the facts of this case on reading Sections 69, 70 and Rule 155. It has been held by this Court that once the H State take recourse to a remedy of disposing of the

defaulter's property by means of public auction as provided in Regulation for realization of State dues then its dominant consideration should always be to secure the best price for the property put to sale. This can, however, be achieved only when there is maximum public participation in the process of sale and every one has an opportunity to offer the best offer to purchase the property. The reason is that the public auction held after adequate publicity ensures participation of every person interested in purchasing the property and in that process, the State and, in turn, the defaulter gets the best price of his property which was put to auction sale. [Para 36][202-F-H; 203-A-B]

Chairman and Managing Director, SIPCOT, Madras and Others v. Contromix Pvt. Ltd. **1995 (1) Suppl. SCR 415 : (1995) 4 SCC 595;** *Haryana Financial Corporation and Another v. Jagdamba Oil Mills and Another* **2002 (1) SCR 621 : (2002) 3 SCC 496 – relied on.**

1.8 The auction was not held by the Deputy Commissioner in conformity with the said principle. It seems that the auction was held only on papers to show compliance of the Rules to enable the State to invoke Rule 141 and acquire the land for Rs.1/- as provided therein. As a matter of fact, no efforts were made by the State to file any document to prove that adequate publicity was given on all adjourned dates and despite such publicity no bidder participated in the auction. It is indeed inconceivable that a land in the district when put to auction sale despite publicity would go unnoticed and no person would come forward to bid for such land. It appears that the State had decided to allot the land to the IOC, who were interested to use the land for their own purpose and hence recourse to remedy of disposal of land by auction as provided in s.70 followed by

invocation of Rule 141 was taken to acquire the land on payment of Rs.1/- by the State and then its major part was allotted to the IOC on payment of yearly premium and further payment of compensation by the IOC. [Para 37][203-C-G]

1.9 The auction held by the State was neither legal and nor in conformity with the requirements contained in the Regulation. It was, therefore, rightly set aside by the Board. The impugned judgment is set aside and that of the Board restored. [Paras 38, 39][203-G-H; 204-A]

1.10 The State-respondent no. 1 is directed to pay the amount of compensation deposited by the IOC for the land allotted to them to the appellants along with interest on the said amount at the rate of 6 % payable from the date of deposit till paid to the appellants. The State is also directed to restore the possession of the remaining land. [Para 40][204-B-C]

Case Law Reference:

1995 (1) Suppl. SCR 415	relied on	Para 36
2002 (1) SCR 621	relied on	Para 36

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 662-663 of 2008.

From the Judgment and Order dated 06.05.2005 of the High Court of Gauhati in W. A. No. 512 of 2002 and W. P. (C) No. 5628 of 2004.

Brijendra Chahar, Sr. Adv., Anshuman Sinha, Vijay Kumar Pandey, Ms. Sangeeta Joshi, Pravir Choudhary for the Appellants.

Ms. Vartika Sahay Walia (for M/s. Corportae Law Group), Renjith for the Respondents.

The following Judgment of the Court was delivered:

JUDGMENT

1. Leave granted

2. These civil appeals arise out of common judgment dated 06.05.2005 passed by the Division Bench of the High Court of Guwahati in W.A. No. 512 of 2002, which in turn, arises out of judgment dated 26.02.2001 passed by the learned Single Judge in W.P. No. 2234 of 2000 and W.P. (Civil) No. 5628 of 2004 arising out of order dated 23.02.1998 passed by the Board in Case No. 42RA(K) of 1996.

3. By impugned judgment, the Division Bench allowed the writ appeal and writ petition filed by the State of Assam, in consequence, set aside the order dated 23.02.1998 passed by the Board at Guwahati impugned in the writ petition and also set aside the order dated 26.02.2001 passed by the learned Single Judge in W.P. No. 2234 of 2000.

4. The question arises for consideration in these appeals is whether the High Court was justified in allowing the writ appeal and the writ petition filed by the State thereby was justified in setting aside the order of the Board impugned in the writ petition?

5. In order to appreciate the issue involved in these appeals, it is necessary to state the facts in detail infra.

6. The dispute relates to the agricultural land measuring 59 Bighas 1 Katha 14 Leacha covered by Dag Nos. 435, 437, 376, 433, 434, 438, 439, 358, 361, 1348, 343 and 836 bearing patta Nos. 284 (new)/269(old) situated at Village Betkuchi in Mouza Beltola in the District of Kamrup. The appellants were the co-land holders of this land which is an "estate" as defined under Section 3(b) of the Assam Land And Revenue Regulation, 1886 (hereinafter referred to as "The Regulation"). Their names were also duly entered in the revenue records as "recorded land holders" as defined in Section 3(i) of the Regulation, all through. This land is subjected

A to payment of land revenue as per the provisions of the Regulation.

7. It appears, as being an undisputed fact, that a sum of Rs.731.70 was found payable by the appellants towards land revenue on the aforesaid land (estate) and since the appellants B did not pay the said amount, the Deputy Commissioner registered a case being Case No. 3/13 of 1976-77 for recovery of Rs. 731.70 from the appellants. The Deputy Commissioner after making efforts to realize the dues by sale of moveable of the appellants put the aforesaid land for auction sale on C 29.06.1978 for realization of Rs.731.70 as per the provisions of the Regulation. However, no bidder participated in the auction proceedings held on few adjourned dates and hence, the State stepped in and purchased the entire land/estate for Rs.1/- in the auction proceedings as provided under Rule 141. D Thereafter, the State allotted 40 Bighas of land out of total land to the Indian Oil Corporation (IOC) on payment of yearly premium of Rs. 26,000/- per Kattha. In addition, the State also directed the IOC to deposit Rs.38,50,600/- towards compensation with the State Government. The IOC, E accordingly, deposited the sum as directed.

8. The appellants (land holders) claiming to be completely unaware of the aforesaid proceedings and on coming to know of the same filed Case No. 42/RA(K) of 1996 F on 02.04.1996 before the Board at Guwahati under Rule 149 of the Regulation.The challenge to the entire proceedings was on the grounds *inter alia* that firstly, the sale/auction proceedings undertaken by the Deputy Commissioner for realization of Rs.731.70 as arrears of land revenue for the land G in question were *per se* without jurisdiction and against the mandatory procedure prescribed in the Regulation for recovery, attachment and sale of estate. Secondly, the appellants were not given any notice of demand for payment of Rs. 731.70 and nor any notice was served prior to sale/auction proceedings as provided in the Regulation. Thirdly, the so called auction, H

even if held, was no auction as contemplated in the Regulation because no publicity was given to enable any bidder to participate in the auction proceedings and in fact no bidder participated in the said auction and lastly, in such circumstances, the auction sale made in favour of the State for Rs.1/- as per Rule 141 was illegal and liable to be set aside, entitling the appellants to seek restoration of land.

9. The Board, by order dated 23.02.1998, allowed the appeal filed by the appellants and held that no notice of either recovery of arrears of land revenue or/and auction proceedings was served on the appellants much less served as per the procedure prescribed in the Regulation, that attachment and sale of the so called moveable of the appellants and also of the land in question was not done as per the procedure prescribed in the Regulation, that a valuable land whose market value was around 50 lacs approximately should not have been put to sale for realization of Rs.731.70 as it caused extreme hardship to the appellants and lastly, no sincere attempt was made to sell either moveable properties of the appellants as provided in Section 69 for realization of dues prior to the auction or to sell the land in question as provided in the Regulation. The Board, after recording these findings, set aside the auction and the sale proceedings and directed the State to restore the land to the appellants on their paying outstanding land revenue and other dues, if any, as per law. It was further directed that since in the meantime, out of total land, some portion of the land, i.e., (40 Bighas or so) was already allotted to the IOC for consideration and hence, instead of restoring the possession of the land allotted to the IOC, the amount of compensation deposited by the IOC for allotted land was directed to be paid to the appellants after working out their actual share in the land. In this way, the appellants got around 19 Bighas of land and also became entitled to receive the compensation amount deposited by the IOC whereas the IOC was allowed to retain the allotted land in lieu of compensation paid by them for such land.

A 10. In compliance of the said order, the Deputy Commissioner raised a demand (KRM 28/96/16) dated 15.02.1999 for Rs.1092/- towards land revenue and Rs.273/- towards local tax from the appellants in relation to the land in question. On 16.02.1999, the appellants deposited the sum B so demanded. Since the State was not paying the compensation amount to the appellants in terms of the directions of the Board, the appellants filed Writ Petition No. 2234 of 2000 before the High Court seeking mandamus against the State and the concerned State Authorities to pay/ C release the compensation amount to the appellants.

11. Learned single judge, by order dated 26.02.2001, allowed the appellants' writ petition and by issuing a mandamus directed the

D State to pay the compensation amount to the appellants in terms of order of the Board within three months. Feeling aggrieved by the said order, the State filed review petition being R.P. No. 4 of 2002. By order dated 11.01.2002, the Review court dismissed the review petition.

E 12. Challenging the order dated 26.02.2001 in W.P. No. 2234 of 2000, the State filed intra court appeal being W.A. No 512 of 2002 before the High Court. The State also filed an application for condonation of delay in filing the appeal since it was filed beyond the period of limitation of around 496 days.

F 13. The High Court, by order dated 27.05.2003, dismissed the appeal as being barred by limitation. It was held that no sufficient cause had been shown by the State to condone the delay in filing the appeal. Feeling aggrieved by the dismissal of their appeal, the State filed SLP (C) No. 874 G of 2004 before this Court. By order dated 03.09.2004, this Court granted leave and allowed the appeal and remanded the case to the Division Bench for its decision on merits in the appeal.

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14. Challenging the order dated 23.02.1998 passed by the Board which had allowed the appeal filed by the appellants, the State filed petition being W.P. No. 5628/2004 before the High Court. The Division Bench clubbed writ appeal of the State (WA No. 512/2002), which was remanded by this Court to the High Court for its disposal on merits with Writ Petition No 5628 of 2004 filed by the State because both the cases had arisen out of the same order of the Board and pertained to the same land.

15. By impugned order, the Division Bench allowed the writ appeal and the writ petition. The High Court held that notice of demand and sale of land were served on the appellants as per the procedure prescribed in the Regulation and that the auction held by the Revenue Authorities was legal and was held in conformity with the procedure laid down in the Regulation. It was also held that no direction could be issued by the Board to pay compensation to the appellants for the land which was rightly purchased by the State for Rs.1/- in the auction sale as per Rule 141. The High Court thus upheld the auction sale as also the transfer of land to the State as provided in Rule 141 for Rs.1/-. Against this order, the landowners filed these appeals by way of special leave before this Court.

16. Assailing the legality and correctness of the order, learned Counsel for the appellants mainly contended five points that are:

(i) that the High Court erred in allowing the writ appeal and the writ petition filed by the State thereby erred in quashing the order of the Board. According to him, the well-reasoned findings of fact recorded by the Board was binding on the writ court while deciding the writ petition filed under Article 227 of the Constitution and otherwise also the findings were beyond challenge because they were legal and proper calling no interference in the writ proceedings;

A (ii)that none of the mandatory procedure prescribed under the Regulation and especially, the procedure prescribed for, (1) effecting service of notices on the defaulting landholders for recovery of land revenue payable on their estate (2) sale of properties/estate
B of the landholders for realization of unpaid land revenue and (3) the manner as to how the auction sale is to be conducted for disposal of the properties/estate were complied with by the revenue authorities;

(iii)that when there was no notice served on the appellants
C of the auction proceedings, no publicity was given to such proceedings and no bidder participated in the so-called auction proceedings then in such circumstances, it was beyond anybody's comprehension as to on what basis, the sale/auction
D could be held and if held, the same could be held as being legal.

(iv)that in no case, the land whose market value was more than Rs.50 lacs (approx.) could directly be put to
E auction sale for realization of such meager sum of Rs. 731.70 as arrears of land revenue unless all other modes of recovery provided in the Regulation had been exhausted which in this case was not done and assuming that it was done yet it was not done in
F conformity with the procedure prescribed in the Regulation;

(v) that in any event, such valuable land could not have been restored or/and sold to the State for Rs.1/- by taking recourse to Rule 141 on the ground that no
G bidder participated in the auction proceeding unless entire procedure prescribed in Section 69 for recovery of arrears by sale of moveable was followed in the first instance and on failure to recover by such mode, the steps should have been taken to auction or/and

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re-auction the land to enable the bidders to participate in the auction proceedings which again was not done and lastly, the appellants in the event of their success in these appeals would be satisfied, if they are allowed to withdraw the compensation amount deposited by the IOC for 40 Bighas of land and are further allowed to retain the remaining land.

17. In contra, learned counsel for the State supported the impugned judgment and contended that it should be upheld as it does not call for any interference.

18. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned counsel for the appellants.

19. Before we consider the factual issues arising in this case, it is apposite to take note of the relevant Sections/Rules of the Regulation, which have a bearing over the controversy.

20. The Regulation consists of two parts. Part I consists of Sections whereas Part II consists of the Rules. The provisions of the Regulation applies to all lands by virtue of Section 4 except the lands which are specified in Section 4(a), i.e., the land which is included in any forest constituted a reserved forest under the law for the time being in force and (b), i.e., any land which the State Government may by notification exempt from operation of the Chapter. The relevant provisions are extracted hereinbelow:

Sections

3. Definitions — In this Regulation, unless there is something repugnant in the subject or context,

(b) "estate" includes –

(1) any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into;

A (2) any land subject to the payment of, or assessed with a separate amount as land revenue, although no engagement has been entered into with the Government for that amount;

B (3) any local area for the appropriation of the produce or products whereof a license or farm has been granted under rules made by the State Government under section 155, clause (e) or clause (f);

C (4) any char or island thrown up in a navigable river which under the laws in force is at the disposal of the Government.

(5) any land which is for the time being entered in the Deputy Commissioner's register of revenue free D estates as a separate holding;

(6) any land being the exclusive property of the Government of which the State Government has direct the separate entry in the registers of revenue—paying and revenue-free estates E mentioned in Chapter I.

3(i) "Recorded proprietor", "recorded land holder" "recorded sharer" and "recorded possession" mean any proprietor, land holder, sharer or F possession, as the case may be, registered in the general registers prescribed in Chapter IV;

63. Liability for land-revenue etc. - Land-revenue payable in respect of any estate shall be due jointly and severally from all persons who had been in G possession of the estate or any part of it during any portion of the agricultural year in respect of which that revenue is payable.

69. Attachment and sale of moveables (1) The Deputy Commissioner may, for the recovery of an H

arrear, order the attachment and sale of so much of a defaulter's moveable property as will as nearly as may be defray the arrear.

(2) Every such attachment and sale shall be conducted according to the law for the time being in force for the attachment and sale of moveable property under a decree of a Civil Court, subject to such modifications thereof as may be prescribed by rules framed by the State Government for proceedings under the Assam Land and Revenue Regulation.

(3) Nothing in this section shall authorise the attachment and sale of necessary wearing apparel, implement of husbandry, tools of artisans, materials of houses and other buildings belonging to and occupied by agriculturists, or of such cattle or seed-grain as may be necessary to enable the defaulter to earn his livelihood as an agriculturist.

70. When estate may be sold - When an arrear has accrued in respect of a permanently-settled estate or of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner may sell the estate by auction:

Provided that —

(1) Except when the State Government by general order applicable to any local area or any class of cases, or by special order, otherwise direct, an estate which is not permanently-settled shall not be sold unless the Deputy Commissioner is of opinion that the process provided for in section 69 is not sufficient for the recovery of the arrear;

(2) If the arrear has accrued on a separate account opened under Section 65, only the shares or lands

A comprised in that account shall in the first place be put up to sale; and, if the highest bid does not cover the arrear, the Deputy Commissioner shall stop the sale, and direct that the entire estate shall be put up for sale at a future date, to be specified by him; B and the entire estate shall be put up accordingly and sold;

(3) No property shall be sold under this section —

(a) For any arrear which may have become due in C respect thereof while it was under the management of the Court of Wards, or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force; or

D (b) For any arrear, which may have become due while it was under attachment by order of a revenue authority.

72. Notice of sale (1) If the Deputy Commissioner proceeds to sell any property under Section 70, he E shall prepare a statement in manner prescribed, specifying the property which will be sold, the time and place of sale, the revenue assessed on the property and any other particulars which he may think necessary.

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(2) A list of all estates for which a statement has been prepared under sub-section (1) shall be published in manner prescribed, and the copy of the statement relating to every such estate shall be G open to inspection by the pubic free of charge in manner prescribed.

(3) If the revenue of any estate for which a statement has been prepared under sub-section (1) exceeds five hundred rupees, a copy of the statement shall H be published in the official Gazette.

74. Sale by whom and when to be made (1) Every sale under this Chapter shall be made either by the Deputy Commissioner in person or by an officer specially empowered by the State Government in this behalf.

(2) No such sale shall take place on a Sunday or other authorised holiday, or until after the expiration of at least thirty days from the date on which the (list of estates) has been published under section 72.

Rules

133. Notices of demand under section 68 of the Regulation shall ordinarily be issued by, and the signature and seal of, the following officers:—

(a) By the Deputy Commissioner with respect to all estates situated within the Sadar Subdivision of a district and not included within the limits of any tahsil or mauza.

(b) By the Subdivisional Officer with respect to all estates situated within the limits of a mufassil sub-division, and not included within the limits of any tahsil or mauza.

(c) Tahsildar with respect to all estates situated within the limits of this Tahsil, or by the Sub-Deputy Collector or other officer invested with the power under section 68 of the Regulation.

134.A notice of demand under rule 132 shall be served by delivering to the person to whom it is directed a copy thereof attested by the Revenue Officer who issues it, or by delivering such copy at the usual place of abode of such person to some adult male member of his family or, in case it cannot be so served, by pasting such copy upon some

A conspicuous part of the usual or last known place of abode of such person. In case such notice cannot be served in any of the ways hereinbefore mentioned it shall be served in such way as the officer issuing the notice may direct.

B 135. Sale proclamation - The statement and list of estates to be prepared under section 72(1) and (2) of the Land and Revenue Regulation, in respect of property to be sold under section 70, shall be prepared in the language of the district and may, if
C the Deputy Commissioner thinks fit be recorded in a book prepared for this purpose, to be called the sale Statement Book. When published in the Gazette, the statement shall also be published in the vernacular of the district and in English.

D 136. Publication of list of estates - The list of estates referred to in the foregoing rule shall be published –

(a) In the Court of the Revenue Officer by whom it
E has been prepared;

(b) At the office of the Sub-Deputy Collector in whose circle the estate is situated

(c) At the office of the Tahsildar or house of the
F mauzadar within whose tahsil or mauza defaulting estate lies; and

(d) Where gaonburas are employed, on the signboard of the gaonbura within whose charge the defaulting estate falls;

G (e) At the offices of the Gaon Panchayat and the Anchalik Panchayat.

136A. Serving of sale statement - The sale statement mentioned in rule 135 shall be served

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under subsection (4) of section 72 of the Regulation on the defaulter or, if he can not be found, it shall be pasted on a conspicuous part of the estate.

141. Purchase of defaulting estates by the State Government –When a defaulting estate is put up for sale for arrears of revenue due thereon, if there be no bid, the Revenue Officer conducting the sale may purchase the estate on account of the State Government for one rupee or, if the highest bid be insufficient to cover the arrear due, may purchase the estate on account of State Government at the highest amount of bid.

154. Order to sell property - Should the defaulter, after attachment of moveable property, still fail to pay in the arrear with costs, the Deputy Commissioner or Sub-divisional Officer shall, on receiving a report to that effect from the mauzadar, issue an order to the Nazir, to sell the property attached if the arrear is not paid before the date fixed for sale.

The mauzadar's report under this rule shall be stamped with court-fee stamps equivalent to the process fees required by the rules issued under section 155 (b) of the Regulation.

155. Sale defaulting estates - If the mauzadar is of opinion that the process provided for in these rules is not sufficient for the recovery of the arrear, he may, if the arrear has accrued in respect of an estate in which the settlement-holder has a permanent heritable and transferable right of use and occupancy, apply to the Deputy Commissioner to order the attachment under section 69A, or the sale of the estate itself, subject to the provisions of section 74 of the Land and Revenue Regulation:

Provided the arrear has accrued not earlier than in the two revenue years referred to in the provisions to rules 152 and 156 and, where action under section 69 of the Assam Land and Revenue Regulation is taken by or at the instance of the mauzadar, the application is made within three months of the termination of the proceedings under section 69."

21. After setting out the relevant provisions of the Regulation, which essentially deals with the sale of land, it is now apposite to first reproduce the relevant finding of the Board which held the auction sale of estate/land as being illegal and not in conformity with the procedure prescribed in the Regulation.

"The case record shows that prior to the sale of the land, attempt was made for recovery of arrears through attachment and sale of movables. But it has been denied by the appellants that any such attempt was actually made. The Jarikarak stated that he had gone to the residence of the defaulter but he failed to serve the notice and for that reason he hanged the notice in the office of the mauzadar. He also stated that he failed to recover the arrear as the defaulters were not found and other members of the family were not willing to make the payment. The report of the Jarikarak was not properly endorsed by any witness. The attachment and sale of movables is required under the note below Rule 147 to be witnessed by at least two respectable persons of the locality. But the report of the Jarikarak was not endorsed by such persons and nothing was stated by him regarding attachment and sale of movables. Therefore, the authenticity of the report on attempts made by the Jarikarak for realization of the arrears through

attachment of movables is doubtful. Further, it is also seen that the notice was not duly served in the (illegible) officer. The service of the notice, therefore, cannot be regarded as being adequate and properly done.

After perusal of the sale record, it is also seen that there was procedural irregularity at the time of holding the auction sale. The Jarikarak had stated that no bidder was found at the time of holding the auction sale. But the report of the Jarikarak was not endorsed by any witness. All these would raise some suspicion as to the authenticity of holding the auction sale. As such the sale cannot be regarded as being done in full conformity with the provisions of the Rule. Therefore, injustice has been caused to the pattadars of the land in question.

The total area of land in question is 59 bighas 1 Katha 14 leachas, the market Value of which is over fifty lakhs rupees. Therefore, the sale of the said land for a sum of Rs. 732.00 has definitely caused great hardship to the Appellants/Petitioners who are the actual pattadar of the land in question.

I am, therefore, fully satisfied that the sale has caused injustice as well as hardship to the Appellants/Petitioners. The sale, therefore, deserves to be set aside.

Under Executive Instruction No. 133 annulment is to be resorted to only as an alternative to other means of realization through attachment and sale of movables as well as sale of the estate and when all these fail or are held to be in effective then only the provision for annulment can be resorted to. Again after annulment not only that the record correction is to be made but also steps should have

A been taken under Rule 150 of the Rules under the Regulation after issuing notice to the pattadars to hand over possession. This was also apparently not done. In the parawise comments submitted by the learned Addl. Deputy Commissioner, Kamrup
B nothing in detail has been stated in support of the sale and the annulment of settlement.

In view of the above discussions, the impugned order of sale and annulment of settlement, can not be allowed to sustain. Accordingly, the impugned
C order of sale dt. 28.6.77 is set aside and the endorsement making correction of the land records as made on 29.6.78 is struck down. The patta shall be restored to the Appellants pattadars and the land be restored on payment of the arrears revenue and
D other dues as usual as per law. It also appears from the records that after the order of sale and annulment of settlement by the Deputy Commissioner, Kamrup, land measuring 40 Bighas, out of the total land in question, have been
E acquired and transferred by the Govt. of Assam to Indian Oil Corporation (Assam Oil Division) and the said Corporation has already paid necessary compensation for the said land and occupied the land on possession being handed over by the
F authority concerned. It also appears that there were tenants on the land transferred to Indian Oil Corporation and their share of compensation was already paid keeping the balance amount of compensation for the Pattadars. During the course
G of hearing of this appeal, learned advocate for the Appellants has submitted that the Appellants will be satisfied if they receive the compensation money instead of their land already transferred to the Indian Oil Corporation. As the compensation

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money has already been paid by the Indian Oil corporation and the same is kept in the Govt. (illegible) after working payment of the share of the compensation money may be paid to the Appellant and the land will remain with the Indian Oil Corporation."

22. The aforesaid finding of Board was reversed and set aside by the High Court in its writ jurisdiction in the impugned order for sustaining the auction sale. It is also apposite to reproduce the finding of the writ court infra.

"An order of attachment of movable property was issued on 18.11.1976 for recovery of land revenue to the extent of Rs. 731.70, due from the pattadars Shri Suren Ram Phukan and Shri Prabin Ram Phukan. The aforesaid order was sought to be delivered to the defaulters but the same could not be executed and the process server submitted a report to the effect that the defaulters were in different places and, therefore could not be contacted and their legal heirs/representatives so contacted, had submitted that they do not know anything in the matter. The aforesaid endorsement of the Process Server was recorded in the presence of the two witnesses including a Gaonburah. On the said report, the Mouzadar, who had issued the order of attachment of moveable property, had recorded a note to the effect that even if 'Moveable' (appears to be wrongly recorded as immovable) is sold, nothing would accrue and, therefore, the revenue should be realized by auction sale of the land. Thereafter, it appears that the statement/list contemplated under Section 72 of the Regulation was prepared mentioning 21.6.1977 as the date on which the estate will be sold. The aforesaid list/ statement could not be served on the defaulter in

A **spite of 3-4 attempts. The mother and other relatives of the defaulters refused to accept the same and thereafter, a notice was pasted on the wall of the house of the defaulters in presence of neighbours as witnesses and the copy of the notice was also**
B **published in the office of the sub—Deputy Collector, Mouzadar and Gaonburah. Thereafter, it would appear from the order-sheet of the proceedings of sale that the sale was conducted on 21.6.1977, 22.6.1977, 23.6.1977, 24.6.1977,**
C **25.6.1977, 26.6.1977 and 28.6.1977, a bid of one rupee was offered on behalf of the State Government, which was accepted by the ofûcer conducting the sale. The amount of one rupee was deposited by a Treasury Challan dated 17th/18th**
D **August, 1977....."**

23. Having examined the entire controversy in the light of relevant Sections and the Rules, we are unable to persuade ourselves to concur with the finding of the High Court as, in our considered opinion, the High Court should not have interfered
E with the finding of the Board which rightly held that auction conducted to recover the outstanding arrears of land revenue (Rs.731.70) from the appellants was not made in conformity with the procedure prescribed in the Regulation and was, therefore, bad in law. This we say so on our independent
F examination of the entire case for more than one reason stated infra.

24. In our considered opinion, in the first place, the well reasoned finding of fact recorded by the Board in favour of the
G appellants (landholders) on the question of non-service of notice of the demand for payment of defaulted amount of arrears of land revenue of Rs. 731.70 and non-service of notice of sale of land was binding on the writ court, being a pure finding of fact and more so, when it was based on proper
H appreciation of facts. Secondly, the High Court exceeded its

jurisdiction when it proceeded to examine this factual issue like an appellate court and reversed the factual finding. Thirdly, assuming that the High Court could go into this issue in its writ jurisdiction, yet in our opinion, mere perusal of the finding of the High Court would go to show that no proper service much less effective service of notice of demand and sale of land was made on the appellants. In other words, reading of reasoning and discussion of the High Court cannot allow us to reach to a conclusion that the appellants were duly served of the notices. Rather it would take us to a conclusion that the appellants were not properly served. Fourthly, the writ court did not assign any cogent reason as to why the factual finding of the Board on this issue was wrong and hence, call for interference. Fifthly, when we, on our part, have examined the issue of notice independently in the light of the requirement of Section 72 read with Rules 133, 134, 136 and 136-A which deals with the mode of effecting service on the defaulting landholder, then we have no hesitation in recording a finding that no notice was served on the appellants as contemplated under the aforementioned provisions.

25. It is an admitted fact that there was no personal service of any notice effected on the appellants. It is on record that the process server said that he, therefore, displaced the notice in the office of Mauzadar. There is no evidence much less a conclusive one to prove that when the appellants could not be served personally then whether notices were served on any adult member of the appellants' family and, if so, what were the names of those adult members, what was their age, their relation with the appellants, whether they were living in the same house in which the appellants were residing. Whether notice was served in presence of any witness residing in area and who were those witnesses and why these details were not mentioned in the service report. In any case, in the absence of this material evidence, it was rightly held by the Board that no notice of either demand or/and sale of land was served on

A the appellants and the High Court ought not to have interfered with this finding of fact for holding otherwise.

26. In our considered opinion, there lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the B case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of non-service is proved whereas in the case of later category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not C served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action "illegal" whereas in the case of later, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making D service of such notice on him. If a person has a knowledge of the action proposed in the notice, then the action taken thereon cannot be held as being bad in law by finding fault in the manner of effecting service unless he is able to show substantial prejudice caused to him due to procedural lapse in making E service on him. It, however, depends upon individual case to case to find out the nature of procedural lapse complained of and the resultant prejudice caused. The case in hand falls in former category of case.

F 27. In our considered opinion, therefore, it is mandatory on the part of the State to serve a proper notice to a person, who is liable to pay any kind of State's dues strictly in the manner prescribed in the Regulation. It is equally mandatory on the part of the State to give prior notice to the defaulter for G recovery of dues before his properties (moveable or/and immoveable) are put to sale in the manner prescribed in the Regulation.

28. It is a settled principle of law that no person can be deprived of his property or any interest in the property save by

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authority of law. Article 300-A of the Constitution recognizes this constitutional right of a person, which was till 1978 recognized as the fundamental right of a citizen. Indeed whether fundamental or constitutional, the fact remains that it has always been recognized as a right guaranteed under the Constitution in favour of a citizen/person and hence no person cannot be deprived of this valuable right which Constitution has given to him save by authority of law.

29. In the case in hand, we find that the appellants were deprived of the land in question without following the procedure prescribed in law because the so-called auction was conducted by the State behind their back and without their knowledge. The action of the State was thus clearly violative of the appellants' Constitutional right guaranteed under Article 300-A and hence such action can not be sustained in law.

30. In our considered opinion, the action taken by the State for realization of arrears of land revenue dues from the appellants is also bad in law yet for another reason which neither the Board nor the High Court took note of it.

31. Section 69 empowers the Deputy Commissioner to recover the arrears of land revenue payable by any landholder by directing attachment and sale of so much of his moveable property as may be necessary to satisfy the dues.

32. We, however, find from the record that no attempt was made by the Deputy Commissioner to attach the appellants' any moveable property for realization of dues and even if he claimed to have made any such attempt yet there is nothing on record to show as to why he was compelled to take recourse to Section 70 for sale of land in question. Indeed such action on the part of Deputy Commissioner was in contravention of Section 70 (1) because no auction of estate (land) could be made unless he was of the opinion that process provided in Section 69 was not sufficient for the recovery of entire arrears. In other words, it was necessary for the State to

A have justified their action by showing that sincere attempt was made to first sell the appellants' moveable as per the procedure prescribed in Section 69 and when it was noticed that it was not possible to recover the arrears by sale of all attached moveables, the extreme step of recovery of arrears by sale of
B estate was taken by taking recourse to the procedure prescribed in Section 70.

33. There is nothing on record to show as to why the extreme step to recover a small sum of Rs.731.70 paisa was required to be taken for sale of the estate under Section 70
C and why arrears of Rs.731.70 paisa could not be recovered by sale of any moveable belonging to the appellants. It is inconceivable to think that the appellants did not own moveable which would not have even fetched Rs.731/- on sale or would have fetched less amount.

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34. We are, therefore, of the considered opinion that the auction held by the Deputy Commissioner for realization of dues by sale of land in question under Section 70 was bad in law being held in contravention of Section 70 (1) ibid and
E was thus not sustainable.

35. In our considered opinion there is yet another legal infirmity in conducting of the auction by the Deputy Commissioner for realization of dues which renders the auction sale bad in law.

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36. It is a trite law that taking recourse to auction proceedings for sale of defaulter's immovable property for realization of the State dues is an extreme remedy. It is also discernable in the facts of this case when we read Sections 69, 70 and Rule 155. Time and again this Court has held that
G once the State take recourse to a remedy of disposing of the defaulter's property by means of public auction as provided in Regulation for realization of State dues then its dominant consideration should always be to secure the best price for the property put to sale. This can, however, be achieved only

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when there is maximum public participation in the process of sale and every one has an opportunity to offer the best offer to purchase the property. The reason is that the public auction held after adequate publicity ensures participation of every person interested in purchasing the property and in that process, the State and, in turn, the defaulter gets the best price of his property which was put to auction sale. [See ***Chairman and Managing Director, SIPCOT, Madras and Others*** **vs.** ***Contromix Pvt. Ltd.***, (1995) 4 SCC 595 and ***Haryana Financial Corporation and Another*** **vs.** ***Jagdamba Oil Mills and Another***, (2002) 3 SCC 496]

37. Keeping this well settled principle in mind and applying the same to the facts of this case, we find that the auction was not held by the Deputy Commissioner in conformity with the aforesaid principle. It seems that the auction was held only on papers to show compliance of the Rules to enable the State to invoke Rule 141 and acquire the land for Rs.1/- as provided therein. As a matter of fact, no efforts were made by the State to file any document to prove that adequate publicity was given on all adjourned dates and despite such publicity no bidder participated in the auction. It is indeed inconceivable that a land in Kamrup district when put to auction sale despite publicity would go unnoticed and no person would come forward to bid for such land. It appears to us that the State had decided to allot the land to the IOC, who were interested to use the land for their own purpose and hence recourse to remedy of disposal of land by auction as provided in Section 70 followed by invocation of Rule 141 was taken to acquire the land on payment of Rs.1/- by the State and then its major part was allotted to the IOC on payment of yearly premium and further payment of compensation by the IOC.

38. In our considered opinion, therefore, the auction held by the State was neither legal and nor in conformity with the requirements contained in the Regulation. It was, therefore, rightly set aside by the Board.

A 39. In the light of the foregoing discussion, the appeals succeed and are hereby allowed. The impugned judgment is set aside and that of the Board restored. As a consequence, the writ appeal and the writ petition filed by the State stand dismissed.

B 40. We direct the State (respondent no. 1) to pay the amount of compensation deposited by the IOC for the land allotted to them to the appellants along with interest on the said amount at the rate of 6 % payable from the date of deposit till paid to the appellants. The State is also directed to restore C the possession of the remaining land, i.e., the land excluding the land allotted to IOC to the appellants within three months after making proper verification and demarcation of the land in question.

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Nidhi Jain Appeals allowed.