SADASHIV PRASAD SINGH
v.
HARENDAR SINGH & ORS.
(Civil Appeal No.161 of 2014)

JANUARY 8, 2014

[A.K. PATNAIK AND JAGDISH SINGH KHEHAR, JJ.]

Auction:

Auction sale – Rights of auction purchaser in the property purchased – Held: Cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion – In the instant case, there was no allegation of fraud or collusion as regards auction purchase by a third party – It was no body's case that at the time of auction purchase, the value of the property purchased by him was in excess of his bid – Besides, no objection was raised to attachment proclamations and notices in newspapers for auction – Auction sale was confirmed and possession of property was handed over to auction purchaser – Mutation proceedings were finalized – Challenge raised by first respondent ought to have been rejected on the ground of delay and laches — Interference by High Court even on ground of equity was clearly uncalled for — Impugned order passed by High Court is set aside — Right of appellant-auction purchaser in plot in question is confirmed – Delay/ laches – Equity.

A partnership firm comprising three partners, including the brother of respondent no. 1, obtained a loan of Rs.12.70 lac from Allahabad Bank after mortgaging certain properties. Since the loan amount was not repaid, the Bank, in 1998, preferred Original Application before the Debt Recovery Tribunal for recovery of its dues. The application was allowed on 21.11.2000 and a direction

A was issued for the recovery of Rs.75,75,564/- from the firm. During the pendency of the recovery proceedings, plot No.722 was attached which was in the ownership of the brother of respondent no. 1, who had died meanwhile. On 10.6.2004, respondent no. 1 filed an objection before B the Recovery Officer stating that the attached property did not belong to the judgment debtors, but had been purchased by him from his brother under an unregistered agreement of sale dated 10.1.1991. He, however, chose to abandon the proceedings. The Recovery Officer C passed an order dated 5.5.2008, for the sale of the property by way of public auction. As the appellant turned to be the highest bidder, the Recovery Officer ordered the sale of the property in his favour on 28.8.2008. On 27.11.2009, the appellant filed a writ petition before the D High Court assailing the order dated 5.5.2008 passed by the Recovery Officer. The High Court dismissed the writ petition. However, in the Letters Patent Appeal filed by respondent no. 1, the Division Bench of the High Court, besides adjudicating the matter on its merits, finally concluded that the proceedings before the Recovery E Officer were in flagrant violation of the provisions of r.11(2) of the Income Tax (Certificate Proceedings) Rules, and set aside the proceedings conducted by the Recovery Officer, including the sale of the property by public auction.

F

Allowing the appeal, the Court

HELD: 1.1. 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 G on grounds of fraud or collusion. [para 12] [264-F]

Ashwin S. Mehta & Anr. vs. Custodian & Ors. 2006 (1) SCR 56 = (2006) 2 SCC 385; *Janatha Textiles & Ors. vs. Tax Recovery Officer & Anr.* 2008 (8) SCR 1148 = (2008) 12

H

SCC 582, *Nawab Zain-Ul-Abdin Khan v. Mohd. Asghar Ali Khan,* **(1887-88) 15 IA 12;** *Janak Raj vs. Gurdial Singh* **1967 SCR 77 = AIR 1967 SC 608;** *Gurjoginder Singh vs. Jaswant Kaur,* **1994 (1) SCR 794 = (1994) 2 SCC 368;** *Padanathil Ruqmini Amma vs. P.K. Abdulla* **1996 (1) SCR 651 = (1996) 7 SCC 668;** *Velji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited & Ors.* **2008 (12) SCR 1 = (2008) 9 SCC 299 – referred to.**

1.2. In the instant case, there is no allegation of fraud or collusion. Therefore, irrespective of the merits of the lis between the rival parties, namely, the Allahabad Bank and the partners of the borrower firm, it is not open for anyone to assail the purchase of the property made by the auction purchaser in the public auction held in furtherance of the order passed by the Recovery Officer on 28.8.2008. In this view of the matter, this Court is of the view that the High Court clearly erred while setting aside the auction ordered in favour of the auction-purchaser-appellant. [para 13] [265-D-F]

1.3. The High Court in ignoring the vested right of the appellant in the property in question, after his auction bid was accepted and confirmed, subjected him to grave injustice by depriving him of the property which he had genuinely and legitimately purchased at a public auction. It is nobody's case that at the time of the auction-purchase, the value of the property purchased by him was in excess of his bid. Since it was nobody's case that the highest bidder at the auction conducted on 28.8.2008, had purchased the property in question at a price lesser than the prevailing market price, there was no justification whatsoever to set aside the auction-purchase made by him on account of escalation of prices thereafter. In the considered view of this Court, not only did the Division Bench of the High Court in the matter ignored the sound, legal and clear principles laid down by this Court in

A respect of a third party auction purchaser, it also clearly overlooked the equitable rights vested in the auction-purchaser during the pendency of a lis. [para 14] [266-C-E]

B 1.4. Even otherwise, the objections of respondent no. 1 have no substance. The claim of respondent no. 1 in his objection petition was based on an unregistered agreement to sell dated 10.1.1991, which would not vest any legal right in his favour. Further, it is apparent that it may not have been difficult for him to have had the said C agreement to sell notarized in connivance with his brother. Secondly, it is apparent from the factual position that respondent no. 1 despite his having filed objections before the Recovery Officer, had abandoned the contest raised by him and, as such, it was not open to him to have D re-agitated the same by filing a writ petition before the High Court. Thirdly, a remedy of appeal was available to him in respect of the order of the Recovery Officer u/s 30. Fourthly, respondent no. 1 could not be allowed to raise a challenge to the public auction held on 28.8.2008 E because he had not raised any objection to the attachment of the property in question or the proclamations and notices issued in newspapers in connection with the auction thereof. All these facts cumulatively lead to the conclusion that after 26.10.2005, F respondent no. 1 had lost all interest in the property in question and had remained a silent spectator to various orders which came to be passed from time to time. He had, therefore, no equitable right in his favour to assail the auction-purchase made by the appellant on 28.8.2008. G Finally, the public auction under reference was held on 28.8.2008. Thereafter the same was confirmed on 22.09.2008. Possession of the property was handed over to the auction-purchaser on 11.3.2009. The auction-purchaser initiated mutation proceedings in respect of the H property in question. Respondent no. 1 did not raise any

objections in the said mutation proceedings, which were also finalized in favour of the applicant. [para 15] [267-A-E; 268-A-E]

1.5. The challenges raised by respondent no. 1 ought to have been rejected on the grounds of delay and latches, especially because third party rights had emerged in the meantime. More so, because the auction purchaser was a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicized public auction, interference by the High Court even on ground of equity was clearly uncalled for. The impugned order passed by the High Court is set aside. The right of the appellant in plot in question is confirmed. [para 15] [268-E-H; 269-A-B]

Case Law Reference:

2006 (1) SCR 56	**referred to**	**para 12**
2008 (8) SCR 1148	**referred to**	**para 12**
(1887-88) 15 IA 12	**referred to**	**para 12**
1967 SCR 77	**referred to**	**para 12**
1994 (1) SCR 794	**referred to**	**para 12**
1996 (1) SCR 651	**referred to**	**para 12**
2008 (12) SCR 1	**referred to**	**para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.161 of 2014.

From the Judgment & Order dated 17.05.2010 of the High Court of Judicature at Patna in L.P.A No. 844 of 2010.

WITH

C.A. No. 162 of 2014.

S.B. Upadhyay, Amarendra Sharan, Santosh Mishra,

A Param Mishra, Alok Kumar, Vivek Singh, Somesh Chandra Jha, Rakesh K. Sharma, Sanjay Mishra, Sangeeta Chauhan, Gopal Singh, Chandan Kumar for the appearing parties.

The Judgment of the Court was delivered by

B **JAGDISH SINGH KHEHAR, J.** 1. On 11.9.1989, The Allahabad Bank (hereinafter referred to as 'the Bank') sanctioned a loan of Rs.12.70 lac to M/s. Amar Timber Works, a partnership firm having three partners, Jagmohan Singh, Payam Shoghi and Dev Kumar Sinha. The above loan was C sanctioned to M/s. Amar Timber Works, after its partners had mortgaged certain properties to secure the loan amount. Since the loan amount was not repaid in compliance with the commitment made by M/s. Amar Timber Works, nine years later, in 1998, the Bank preferred Original Application No.107 D of 1998 before the Debt Recovery Tribunal for the recovery of the Bank's dues. The above Original Application was allowed on 21.11.2000. Accordingly, a direction was issued for the recovery of Rs.75,75,564/- from M/s. Amar Timber Works. For the execution of the order passed by the Debt Recovery E Tribunal, the Bank initiated recovery proceedings on 28.11.2000. During the pendency of the recovery proceedings, Jagmohan Singh, one of the partners of M/s. Amar Timber Works, died (on 27.1.2004). On 16.4.2004, the Recovery Officer attached plot No.722, located at Exhibition Road, P.S. F Gandhi Maidan, Patna (hereinafter referred to as 'the property') measuring 1298 sq.ft. It would be pertinent to mention that the aforesaid plot was in the ownership of Jagmohan Singh, one of the partners in M/s. Amar Timber Works.

2. On 10.6.2004, Harender Singh, brother of Jagmohan G Singh, filed an objection petition before the Recovery Officer alleging, that the attached property did not belong to the judgment debtors, but had been purchased by him from his brother Jagmohan Singh, by executing an agreement of sale dated 10.1.1991, which was duly notarized though not H registered. It would be relevant to mention, that Harender Singh

pursued the objection petition filed by him before the Recovery Officer till 26.10.2005, but chose to abandon the proceedings thereafter. The order passed by the Recovery officer when the Objector was represented for the last time on 26.10.2005 is being extracted below:

> "Ld. Advocate of Bank and objectors appears. Objector reiterated his points and invited attention towards Section 53 of TP Act. Counsel of the bank submits that he had to say nothing more than what was said/submitted earlier. He also submits that D.Drs. was guarantor also in this case hence his properties attached. Put up on 28.12.08 for further hearing.
>
> Sd/- Illegible
>
> I/C R.O."

3. The recovery proceedings referred to above remained pending for a further period of more than two years. Finally, the Recovery Officer passed an order dated 5.5.2008, for the sale of the property by way of public auction on 4.7.2008. The Recovery Officer fixed Rs.12.92 lacs as the reserve price, and also fixed 28.8.2008 as the date of its auction. At the auction held on 28.8.2008, Sadashiv Prasad Singh, was the highest bidder. Accordingly, the Recovery Officer ordered the sale of the property in his favour on 28.8.2008. On 22.9.2008, the Recovery Officer, in the absence of any objections, confirmed the sale of the property in favour of Sadashiv Prasad Singh. The Recovery Officer also ordered, the handing over of physical possession of the property to the auction purchaser. Sadashiv Prasad Singh, the auction purchaser, took physical possession of the property on 11.3.2009.

4. In furtherance of the proceedings initiated through Mutation Case No.295/2/09-10, the land in question was mutated in favour of the auction purchaser. It would be relevant to mention that the application for mutation filed by the auction

A purchaser, Sadashiv Prasad Singh, was supported by letter dated 14.10.2008 of the Ministry of Finance, Government of India, Realization Authority, Patna. It would be relevant to mention, that no objections were filed in the mutation case preferred by Sadashiv Prasad Singh, by or on behalf of
B Harender Singh, before the Mutation Officer.

5. On 27.11.2009, CWJC No.16485 of 2009 was filed by Harender Singh before the High Court of Judicature at Patna (hereinafter referred to as the 'High Court'). In the aforesaid writ petition, Harender Singh assailed the order of the Recovery
C Officer dated 5.5.2008, whereby, the property had been ordered to be sold by public auction in discharge of the debt owed by M/s Amar Timber Works to the Allahabad Bank. Vide its order dated 23.3.2010, the High Court ordered the auction purchaser, i.e. Sadashiv Prasad Singh to be impleaded as a
D party-respondent. On 27.11.2010, the High Court dismissed the above writ petition by accepting the objections raised on behalf of the Bank, as well as, the auction purchaser by holding as under :

E "The above facts do weigh with the Court in not interfering with the sale or the proceeding where it has been reached. The petitioner has no satisfactory explanation for not approaching the Court well within time challenging such a decision or the subsequent proceedings or orders of the
F Recovery Officer at an appropriate time. The conduct of the petitioner by itself has precluded and prevented this Court from passing any order in his favour at this belated stage.

The writ application has not merit. It is dismissed
G accordingly."

6. Dissatisfied with the order dated 27.4.2010 whereby the writ petition filed by Harender Singh was dismissed by a Single Bench of the High Court, he preferred Letters Patent Appeal
H No.844 of 2010. Before the Letters Patent Bench, Harender

Singh, brother of Jagmohan Singh, asserted that his brother Jagmohan Singh had availed a loan of Rs.14.70 lacks. As against the aforesaid loan amount, the Bank had initiated proceedings before the Debt Recovery Tribunal for the realization of a sum of 75,75,564/-. The property under reference was sold by way of public auction to Sadashiv Prasad Singh for a sum of Rs.13.20 lacs. As against the aforesaid sale consideration paid by the auction purchaser, Harender Singh, offered a sum of Rs.39 lacs before the Letters Patent Bench. In the order passed by the Letters Patent Bench disposing of Letters Patent Appeal No.844 of 2010, it stands noticed that the Bank had accepted to finally settle the matter on being paid a sum of Rs.45 lacs, subject to the condition that the Harender Singh pays a sum of Rs.15 lacs immediately, and the balance amount of Rs.30 lacs within a period of two years in a phased manner. Even though the learned counsel representing the appellant, Harender Singh was agreeable to proposal of the Bank, the rival parties could not amicably settle the matter. It is, therefore, that the letters patent Bench went on to adjudicate the matter on its merits. The above factual position has been noticed for the reason that it has a nexus to the final order which was eventually passed by the Letters Patent Bench disposing of LPA No.844 of 2010. In fact, it would be in the fitness of matters to extract paragraph 8 from the impugned judgment rendered in LPA No.844 of 2010 in order to appreciate the niceties of the matter. The aforesaid paragraph is, accordingly, being extracted herein :

> "8. At this juncture, we may state that the brother of the appellant had availed a loan of Rs.14.70 lacs. The said aspect is not disputed by Mr. Ajay Kumar Sinha, learned counsel for the Bank. The Bank had initiated a proceeding before the Tribunal for realization of approximately a sum of Rs.75.75 lacs. The property has been sold for Rs.13.20 lacs. It is submitted by Mr. Ojha that the prices have gone up and he is being offered more than 39 lacs for the same. It is not in dispute that the price, the auction-purchaser has

A tendered, is Rs.13.20 lacs. On the earlier occasion, a suggestion was given whether the Bank would accept Rs.45 lacs in toto to settle the dispute. Mr. Sinha, learned counsel for the Bank has obtained instructions that the Bank has no objection to settle the same, if the appellant B pays Rs.15 lacs immediately so that the same can be paid to the auction-purchaser and Rs.30 lacks should be paid within a period of two years in a phased manner. Mr. Choubey, learned counsel for the appellant submitted that the appellant is agreeable to pay the same. Mr. Ojha C submitted that he has instructions not to accept the suggestion."

7. During the course of appellate proceedings, the High Court referred to Chapter V of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred D to as the Debt Recoveries Act) and particularly to Section 29 which is being extracted hereunder:

"**29. Application of certain provisions of Income-tax Act.**—The provisions of the Second and Third Schedules E to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead F of to the Income-tax :

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act."

G The High Court while interpreting Section 29 extracted above, concluded that certain provisions of the Income Tax Act and Income Tax (Certificate Proceedings) Rules would be applicable mutatis mutandis in the matter of recovery of debts under the Debt Recoveries Act. The High Court then referred H to Rule 11 of the Income Tax (Certificate Proceedings) Rules

and arrived at the conclusion that sub-rule (2) of Rule 11, had not been complied with by the Recovery Officer, inasmuch as, the objection raised by Harender Singh had not been adjudicated upon. As such, the High Court finally concluded that the proceedings before the Recovery Officer were in flagrant violation of the provisions of Rule 11(2) of the Income Tax (Certificate Proceedings) Rules. Having so concluded, the High Court set aside the proceedings conducted by the Recovery Officer, including the sale of the property by public auction. In order to appreciate the basis of the order passed by the High Court, Rule 11 of the Second Schedule of the Income Tax Act, 1961, is being extracted herein:

"Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that-

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

A (b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

B (4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in truest for him or in the occupancy of a tenant or other person paying C rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax D Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the E property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

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(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit G (if any), the order of the Tax Recovery Officer shall be conclusive."

8. Having dealt with the controversy in the manner expressed in the foregoing paragraphs, the Division Bench of H the High Court was of the view that the matter in hand ought to

be settled by working out the equities between the parties. Accordingly, the High Court disposed of the matter in the following manner:

> "12. Though we have held the same could not have been sold in auction, yet equities are to be worked out. Regard being had to the fact that the respondent-purchaser has deposited Rs.13.20 lac between 28.8.2008 to 22.9.2009 and thus the amount is with the Bank for almost more than one year and 10 months and thereafter there had been challenge to the order in the writ petition and after dismissal of the writ petition the present L.P.A. has been filed in quite promptitude and that the amount of the respondent-purchaser was blocked, it will be obligatory on the part of the appellant to compensate the respondent-purchaser at least by way of payment of interest at the Bank rate. We are disposed to think that if a sum of Rs.17 lacs is paid to the auction-purchaser, it would sub-serve the cause of justice and house of the appellant shall be saved and, accordingly, it is directed that the appellant shall deposit a sum of Rs.17 lacks within a period of four weeks from today in the Bank. After such deposit, the Bank shall hand it over to the purchaser by way of a bank draft. The same shall be sent by registered post with acknowledgment due. Thereafter the appellant shall deposit a further sum of Rs.32 lacs within a period of two years; sum of Rs.16 lacs by 25th March, 2011 and further sum of Rs.16 lacs by 25th March, 2012. Needless to say pro-rate interest shall accrue in favour of the Bank for the said period.
>
> 13. After the amount is paid to the purchaser, it would be the duty of the Recovery Officer to hand over the possession to the appellant."

9. Sadashiv Prasad Singh, the auction purchaser, has assailed the impugned order passed by the Division Bench of the High Court in LPA No.844 of 2010 praying for the setting

A aside of the order by which he has been deprived of the property purchased by him in the public auction held on 28.8.2008, which was subsequently confirmed by the Recovery Officer of the Debt Recovery Tribunal on 23.9.2008. This challenge has been made by Sadashiv Prasad Singh by filing
B Special Leave Petition (C) No.23000 of 2010. The impugned order passed by the High Court on 17.5.2010, has also been assailed by Harender Singh by preferring Special Leave Petition (C) No.26550 of 2010. The prayer made by Harender Singh is, that order passed by the Division Bench places him
C in the shoes of the auction purchaser, and as such, he could have only been asked to pay a sum of Rs.17 lacs. Requiring him to pay a further sum of Rs.32 lacs is unsustainable in law, and accordingly, deserved to be set aside.

10. Leave granted in both the Special Leave Petitions.

D

11. For the narration of facts, we have relied upon the pleadings and the documents appended to Special Leave Petition (C) No.23000 of 2010.

12. Learned counsel for the auction purchaser Sadashiv
E 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
F 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
G drawn to the following observations recorded therein :

> "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,
H a bona fide purchaser for value in an auction-sale is

treated differently than a decree-holder purchasing such properties. In the former 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) 15 IA 12)* The said decision has been affirmed by this Court in *Gurjoginder Singh v. Jaswant Kaur (1994) 2 SCC 368).*"

(emphasis is ours)

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 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. It is, therefore, that this Court in its ultimate analysis observed as under:

"**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."

(emphasis is ours)

A 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
B 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,
C 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
D 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
E some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

(emphasis is ours)

F 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.

G 13. It is imperative for us, to adjudicate upon the veracity of the sale of the property by way of public auction, made in favour of Sadashiv Prasad Singh on 28.8.2008. It is not a matter of dispute, that the lis in the present controversy was between the Allahabad Bank on the one hand and the partners of M/s. Amar Timber Works, namely, Jagmohan Singh, Payam Shoghi
H

and Dev Kumar Sinha on the other. Sadashiv Prasad Sinha was not a party to the proceedings before the Debt Recovery Tribunal or before the Recovery Officer. By an order dated 5.5.2008, the Recovery Officer ordered the sale of the property by way of public auction. On 4.7.2008, the Recovery Officer fixed Rs.12.92 lacs as the reserve price, and also fixed 28.8.2008 as the date of auction. At the public auction held on 28.8.2008, Sadashiv Prasad Sinha was the highest bidder, and accordingly, the Recovery officer ordered the sale of the property in his favour on 28.8.2008. In the absence of any objections, the Recovery Officer confirmed the sale of the property in favour of Sadashiv Prasad Sinha on 22.9.2008. Thereafter possession of the property was also handed over to the auction-purchaser on 11.3.2009. Applying the law declared by this Court in the judgments referred in the foregoing paragraphs irrespective of the merits of the lis between the rival parties, namely, the Allahabad Bank and the partners of M/s. Amar Timber Works, it is not open for anyone to assail the purchase of the property made by Sadashiv Prasad Sinha in the public auction held in furtherance of the order passed by the Recovery Officer on 28.8.2008. In the above view of the matter, especially in the absence of any allegation of fraud or collusion, we are of the view that the High Court clearly erred while setting aside the auction ordered in favour of the auction-purchaser, Sadashiv Prasad Sinha in the impugned order dated 17.5.2010.

14. A perusal of the impugned order especially paragraphs 8, 12 and 13 extracted hereinabove reveal that the impugned order came to be passed in order to work out the equities between the parties. The entire deliberation at the hands of the High Court were based on offers and counter offers, inter se between the Allahabad Bank on the one hand and the objector Harender Singh on the other, whereas the rights of Sadashiv Prasad Sinha – the auction-purchaser, were not at all taken into consideration. As a matter of fact, it is Sadashiv Prasad Sinha who was to be deprived of the property which came to be

A vested in him as far back as on 28.8.2008. It is nobody's case, that at the time of the auction-purchase, the value of the property purchased by Sadashiv Prasad Sinha was in excess of his bid. In fact, the factual position depicted under paragraph 8 of the impugned judgment reveals, that the escalation of prices had
B taken place thereafter, and the value of the property purchased by Sadashiv Prasad Sinha was presently much higher than the bid amount. Since it was nobody's case that Sadashiv Prasad Sinha, the highest bidder at the auction conducted on 28.8.2008, had purchased the property in question at a price
C lesser than the then prevailing market price, there was no justification whatsoever to set aside the auction-purchase made by him on account of escalation of prices thereafter. The High Court in ignoring the vested right of the appellant in the property in question, after his auction bid was accepted and confirmed,
D subjected him to grave injustice by depriving him to property which he had genuinely and legitimately purchased at a public auction. In our considered view, not only did the Division Bench of the High Court in the matter by ignoring the sound, legal and clear principles laid down by this Court in respect of a third party
E auction purchaser, the High Court also clearly overlooked the equitable rights vested in the auction-purchaser during the pendency of a lis. The High Court also clearly overlooked the equitable rights vested in the auction purchaser while disposing of the matter.

F 15. At the time of hearing, we were thinking of remanding the matter to the Recovery Officer to investigate into the objection of Harender Singh under Rule 11 of the Second Schedule to the Income Tax Act, 1961. But considering the delay such a remand may cause, we have ourselves examined
G the objections of Harender Singh and reject the objections for a variety of reasons. Firstly, the contention raised at the hands of the respondents before the High Court, that the facts narrated by Harender Singh (the appellant in Special Leave Petition (C) No.26550 of 2010) were a total sham, as he was actually the
H brother of one of the judgment-debtors, namely, Jagmohan

Singh. And that Harender Singh had created an unbelievable story with the connivance and help of his brother, so as to save the property in question. The claim of Harender Singh in his objection petition, was based on an unregistered agreement to sell dated 10.1.1991. Not only that such an agreement to sell would not vest any legal right in his favour; it is apparent that it may not have been difficult for him to have had the aforesaid agreement to sell notarized in connivance with his brother, for the purpose sought to be achieved. Secondly, it is apparent from the factual position depicted in the foregoing paragraphs that Harender Singh, despite his having filed objections before the Recovery Officer, had abandoned the contest raised by him by not appearing (and by not being represented) before the Recovery Officer after 26.10.2005, whereas, the Recovery Officer had passed the order of sale of the property by way of public auction more than two years thereafter, only on 5.5.2008. Having abandoned his claim before the Recovery Officer, it was not open to him to have reagitated the same by filing a writ petition before the High Court. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5.5.2008:

A B C D E

> "**30. Appeal against the order of Recovery Officer.**— (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.
>
> (2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under section 25 to 28 (both inclusive)."

F G H

A The High Court ought not to have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh. Fourthly, Harender Singh could not be allowed to raise a challenge to the public B auction held on 28.8.2008 because he had not raised any objection to the attachment of the property in question or the proclamations and notices issued in newspapers in connection with the auction thereof. All these facts cumulatively lead to the conclusion that after 26.10.2005, Harender Singh had lost all C interest in the property in question and had therefore, remained a silent spectator to various orders which came to be passed from time to time. He had, therefore, no equitable right in his favour to assail the auction-purchase made by Sadashiv Prasad Sinha on 28.8.2008. Finally, the public auction under reference was held on 28.8.2008. Thereafter the same was D confirmed on 22.09.2008. Possession of the property was handed over to the auction-purchaser Sadashiv Prasad Sinha on 11.3.2009. The auction-purchaser initiated mutation proceedings in respect of the property in question. Harender Singh did not raise any objections in the said mutation E proceedings. The said mutation proceedings were also finalized in favour of Sadashiv Prasad Sinha. Harender Singh approached the High Court through CWJC No.16485 of 209 only on 27.11.2009. We are of the view that the challenged raised by Harender Singh ought to have been rejected on the F grounds of delay and latches, especially because third party rights had emerged in the meantime. More so, because the auction purchaser was a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicized public auction, interference by the High Court even G on ground of equity was clearly uncalled for.

For the reasons recorded hereinabove, we are of the view that the impugned order dated 17.5.2010 passed by the High Court allowing Letters Patent Appeal No.844 of 2010 deserves H to be set aside. The same is accordingly set aside. The right

of the appellant Sadashiv Prasad Sinha in Plot No.2722, Exhibition Road, P.S. Gandhi Maidan, Patna, measuring 1289 sq.ft. is hereby confirmed. In the above view of the matter, while the appeal preferred by Sadashiv Prasad Sinha stands allowed, the one filed by Harender Singh is hereby dismissed. A

B

R.P. Appeal allowed.