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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

MAHAVAR COLD STORAGE AND ICE FACTORY — Appellant

Vs.

BOARD OF REVENUE AND OTHERS — Respondent

(Before : Shri Narayan Shukla, J)

Writ Petition No. 2352 (M/S) of 2004

Decided on : 09-01-2013

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 54
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 279, Section 281, Section 282, Section 282, Section 286, Section 327, Section 341, Section 341
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 235, Rule 236, Rule 246, Rule 282, Rule 283, Rule 285A, Rule 285D, Rule 285E, Rule 285G

A. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Sections 279, 286, 341 — Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rules 246, 282, 283, 285A, 285D, 285E, 285G, 285I — Civil Procedure Code, 1908 — Order 21, Rules 54, 58, 59, 66 — Auction Sale of Immovable Property — Recovery of Arrears of Land Revenue — Mandatory Procedure — Sale Proclamation and Notice — Due Process — Violation of Statutory Provisions — A writ petition challenging the rejection of objections against an auction sale of a cold storage and ice factory, conducted for recovery of electricity dues as arrears of land revenue — Key issues include improper service of notice (ZA Form 74), absence of estimated property value in sale proclamation, lack of notice for settling proclamation terms, insufficient clear notice period (30 days) for postponed/cancelled auctions, pendency of civil suit challenging the dues, and non-disposal of objections before auction — It is held

that the auction sale suffers from fundamental errors and violations of mandatory statutory provisions, rendering it unsustainable; the impugned orders by the Additional Commissioner and Board of Revenue are quashed. (Paras 6, 17, 21, 23, 29-37, 43-49)

B. Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285A — Auction Sale — Notice Period — Postponement vs. Cancellation — Fresh Proclamation — The Rule mandates at least thirty days between the issuance of the sale proclamation and the date of sale — Where an initial auction is cancelled (not merely postponed) due to inadequate prices, a fresh proclamation with the full thirty-day notice period is required for a subsequent auction — Failure to adhere to this timeframe constitutes a clear violation of the Rule. (Paras 44-45)

C. Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 282, 283 — Auction Sale — Sale Proclamation (ZA Form 74) — Estimated Value — Mandatory Contents — The sale proclamation (ZA Form 74) must include the estimated value of the property calculated in accordance with the Revenue Manual — Failure to mention the estimated value in the sale proclamation is a violation of mandatory procedure. (Paras 43, 49)

D. Civil Procedure Code, 1908 — Order 21, Rule 54(1A), 66(2) — Auction Sale — Notice to Judgment Debtor — Setting Terms of Proclamation — Mandatory Requirement — Before settling the terms of the proclamation for sale of immovable property, a judgment debtor must be served with a notice to attend court — This is a mandatory and fundamental part of the procedure; its omission renders further action and sale void, unless service is waived. (Paras 17, 43, 49)

E. Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 246 — Service of Notice — Personal Service vs. Agent Service — Reasons for not serving personally — Service on an agent is permissible only if personal service on the defaulter is not possible — The process server must record the reasons why personal service could not be effected — Absence of such recorded reasons invalidates service on an agent. (Paras 20, 47)

F. Civil Procedure Code, 1908 — Order 21, Rule 59 — Auction Sale — Objections to Sale — Stay of Sale — Disposal of Objections — If an objection to attachment or proposed sale of immovable property is filed, the property should not be sold pending adjudication of that objection — Proceeding with

the auction without disposing of a pending objection amounts to a serious procedural irregularity. (Paras 12, 20, 23, 43, 48)

G. Auction Sale — Electricity Dues as Arrears of Land Revenue — Priority of Recovery Modes — Under Section 286 of the U.P.Z.A. & L.R. Act, sale of immovable property for recovery of arrears of land revenue is permitted only if other modes of recovery (as mentioned in clauses (a) to (c) of Section 279) are not possible — Failure to demonstrate attempts at other recovery modes before resorting to auction of immovable property indicates a procedural flaw. (Paras 41-42, 49)

H. Civil Feud — Pendency of Suit — Stay Order — Impact on Recovery Proceedings — Where a civil suit challenging the legality of electricity dues is pending and a stay order directing authorities to adopt other legal recovery procedures without arrest or stalling business is in force, proceeding with an auction sale for the same dues can be seen as violating the civil court's order. (Paras 13-14, 23, 38-40, 49)

I. Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285D, 285E — Auction Sale — Deposit of Bid Amount — Timeliness — The requirement to deposit 25% of the bid amount immediately and the remaining 75% within fifteen days is mandatory — While minor delays in the 75% payment might be plausible with valid reasons, continued procedural irregularities can still invalidate the entire sale. (Paras 11, 19, 49)

J. Writ Jurisdiction — Article 226 of the Constitution of India — Scope of Review — In a writ petition challenging orders related to an auction sale, the High Court has a wide scope to consider all questions, even those not raised before the revisional authority, if they are substantial in nature and have a vital impact on the proceedings. (Para 37)

JUDGMENT

Shri Narayan Shukla, J.

Heard Mr.S.K.Mehrotra, learned counsel for the petitioner as well as Mr.V.C.Mishra, learned Senior Advocate assisted by Mr.S.N.Tangri, learned counsel for the respondent No.4 and learned Standing Counsel.

Through the instant writ petition the petitioner has challenged the order dated 29.8.2002, passed by the Additional Commissioner (Judicial), Agra Division, Agra, whereby the objection raised by him against the auction sale, has been rejected as also the order dated

14.5.2004, rejecting the revision, passed by the Board of Revenue, by upholding the order of the Additional Commissioner.

The property of auction is a Cold Storage and Ice Factory runs in the name of Mahavar Cold Storage and Ice Factory being situate at Industrial Area Mathura.

The petitioner is a lease holder of the plot, over which the factory is situated, granted by the U.P. State Industrial Development Corporation.

Shorn of unnecessary details, the facts material for adjudication of the present case may be stated, thus that the Executive Engineer, Electricity Distribution Division (II), U.P. State Electricity Board (now named as U.P. Power Corporation), Mathura issued a citation of demand of Rs.7,16,231/ on 26.10.1999.

The petitioner disputed the said demand as he found it highly exaggerated and inflated.

On 18.7.2001 the same authority issued another citation of demand of Rs. 9,47,669/.

The Tehsildar, Mathura published an auction notice fixing the date of auction i.e. 8.3.2002 of the proposed site C60 Industrial Area, SiteA, Mathura.

It is stated that earlier the auction was proposed on 15.2.2002, however, it was cancelled by the SubDivisional Officer, Mathura on 4.3.2002 and he fixed another date of auction on 8.3.2002. The date of auction was published by notice dated 5.3.2002 in Daily News Paper "Dainik Jagaran."

It is further stated that the notice was issued in composite form as another property was also shown to be auctioned. Thus, no sale proclamation in ZA form74 was issued. The auction was finalized in favour of opposite party No.4 on his highest bid of Rs. 31,30,000/.

It is stated that before auction no amount was deposited by the O.P.No.4, rather the Tehsildar, Mathura certified the deposition of 25% amount of bid i.e. Rs.7,85,000/ by O.P. no. 4 after the date of auction and balance 75% amount of bid i.e. Rs. 23,45,000/ on 26.3.2002.

The petitioner had filed a regular suit being Regular Suit No. 288/1995 along with the application for Temporary Injunction. The Civil Court on 31.5.1997 issued a temporary injunction staying the recovery proceeding.

It is stated by the petitioner that in view of temporary injunction, the auction is wholly illegal. The petitioner had also filed objection against the auction before the Sub Divisional Officer stating the aforesaid fact on 6.3.2002, which was ignored by the authority concerned.

It is stated that Section 341 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (in short U.P.Z.A.& L.R. Act) provides that the provisions of the Code of Civil

Procedure, 1908 (in short C.P.C.) shall apply to the proceedings under this Act. Order 21, Rule 54 CPC provides that the order of attachment of immovable property shall require the judgment debtor to attend court on specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale, but no such notice was issued to the petitioner calling upon him to attend the court. Moreover, the notice was served upon the authorized person.

It is further stated that Order 21, Rule 58 CPC provides that where any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to adjudicate upon the objection and Order 21, Rule 59 provides that pending the objection the property shall not be sold. Order 21 Rule 66 provides that the proclamation of sale shall be drawn up, after notice to the decree holder and the judgment debtor, however, the authority concerned auctioned the property without disposing the petitioner's objection against notice and thus he violated the provision of CPC.

The petitioner claims the flagrant violation of Uttar Pradesh Zamindari Abolition and Land Reforms Rules (in short Rules) also. It is stated that Rule 282 of the Rules provides that the proclamation of sale shall be in Z.A. Form 74, but no sale proclamation was ever issued. Rule 285A provides that no such sale shall take place until after the expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued, whereas in the instant case no proclamation of sale was issued, rather only a public notice was issued on 5.3.2002 in the daily news paper fixing the next date of auction on 8.3.2002, thus, the required notice of at least thirty days was totally absent. Rule 285G further provides that no sale after postponement under Rule 285A, 285D or 285E in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for original sale, whereas in the instant case no fresh proclamation was issued.

It is stated that Rule 285I permits to move an application before the Commissioner for setting aside the sale at any time within thirty days from the date of the sale, aggrieved petitioner filed an objection but the same has been rejected without adverting the questions raised, as above, and ignoring the statutory provisions of the Act and Rules framed thereunder. Aggrieved petitioner filed revision before the Board of Revenue challenging the order of learned Additional Commissioner, but the same has also been rejected.

The petitioner has raised the finger over the value of the property in question as evaluated by valuer and submitted that he had obtained a valuer's report from other reputed valuer who has reported its estimated value as Rs.61,99,500/, whereas the property has been auctioned at the rate of fifty per cent of the value i.e. Rs.31,30,000/, whereas the demand is still disputed before the Civil Court.

The respondent No.4 an auction purchaser has contested the matter with a counter affidavit stating therein that the orders passed by the Additional Commissioner, Agra and Board of Revenue are perfectly lawful and those do not warrant interference of this court. It is stated

that since the petitioner committed default in payment of electricity charges, therefore, the state respondents proceeded to recover the dues in accordance with law as arrears of land revenue and in furtherance thereof they auctioned the property in question which has been done in accordance with law.

It is further stated by the answering respondent that it is incorrect to say that the sale proclamation in Z.A. Form 74 was not issued, whereas the learned Additional Commissioner in his finding has recorded that the sale proclamation in ZA form 74 was served upon one Pyare Lal (Muneem). The service of Z.A. Form 74 upon one Shri Raj Vir Singh, who is the witness of service and has recorded his signature, has been recorded by the Additional Commissioner as well as Board of Revenue both, thus, there is concurrent finding of both the Courts below on this fact.

It is further stated that the auction held on 15.2.2002 was set aside due to inadequacy of sale price as it was only Rs,4,80,000/-. The respondent further stated that one of the conditions of auction that the highest bidder will have to deposit the amount of bid in lump sum on the close of the bid was in contravention of the statutory provisions of Rules, therefore, the same could not be enforced. The petitioner had never raised this plea of nondeposition of bid amount either before the Additional Commissioner or before the Board of Revenue but has raised this plea at first time before this court through the instant writ petition, which is not tenable. However, the respondent stated that he deposited 25% of the bid amount on the date of auction i.e. 8.3.2002 in cash and for deposition of balance 75% he went to office of Sub Divisional Officer on 23.3.2002 but since the local authorities were busy to control law and order situation in an incident took place at the distance of 15 k.m. away from city headquarters, he could not deposit the same on 23.3.2002. The next two days i.e. 24.3.2002 and 25.3.2002 were holidays being Sunday and barawafat, therefore, he could deposit 75% balance amount only on 26.3.2002, which was the next opening day of office.

On the point of stay order passed by the Civil Court the respondent submitted that the learned Civil Judge, Mathura on 31.5.1997 only provided that the plaintiff may not be arrested neither his business be stalled without following the rules relating to recovery. It is denied that the provisions of Rule 285G of the Rules are attracted in the instant case.

Respondent Nos.1 to 3 have also come forward to defend their action of auctioning the property in question with a counter affidavit, whereby they have tried to justify the auction proceedings.

It is stated by them that before auctioning the property, they issued a demand notice numbered as 1857 dated 20.6.1999, but since petitioner failed to satisfy the demand, a citation of demand was issued on 26.11.1999. It is further stated that thereafter form ZA71 was issued on 6.12.1999 to auction the petitioner's movable property, then on 18.8.2000 Form ZA73 was issued to auction the petitioner's immovable property. It is also stated that by supplementary demand letter dated 18.7.2001 the Collector, Mathura was requested to

recover dues amounting to Rs.9,47,687/ from the petitioner as arrears of land revenue. Thereafter a public auction was made in daily news paper on 2.2.2002 fixing the date for auction on 15.2.2002 but since the amount of bid as offered was lower than the minimum fixed price, it was cancelled on 4.3.2002 and the next date for auction was fixed on 8.3.2002 in which the bid of opposite party No.4 was highest, therefore, it was finalized in favour of opposite party No.4. They have denied the application of Rule 285G in the instant case.

The respondents have brought on record the valuer's report, whereby he has evaluated it worth Rs.22,50,482/. They have also asserted that the possession of the property had been handed over to the auction purchaser i.e. opposite party No.4.

In reply the petitioner has denied the service of forms ZA71 and 73 either upon him or on his representative and has stated the demand of electricity dues as well as the procedure for auction as illegal. The petitioner further states that the condition for deposition of lump sum amount just after auction was also illegal being violative of Rules 285D and 285E of the Rules, nevertheless the opposite party No.4 failed to fulfil it. It is also stated that form ZA 74 was neither issued in accordance with law nor was served upon the petitioner or his authorized representative. He has denied the authority of Pyare Lal, (Muneem) to receive the same, rather it is stated that Sri Pyare Lal and witnesses have acted in collusion with the opposite party No.4.

Through the supplementary affidavit the petitioner has brought on record the copies of the plaint of the Regular Suit No.288/95, objection filed under Rule 285I of the Rules and certain other documents. It is stated that the report of Tehsildar shows that the opposite party No.4 deposited 25% of the bid amount i.e. Rs.7,85,000/ on the date of auction i.e. 8.3.2002 but balance 75% of the bid amount was deposited by him after fifteen days of auction on 26.3.2002 which was against the provisions Rule 285E of the Rules.

The recital of the plaint establishes that the petitioner has disputed the amount of electricity charges. The objection against the auction impugned filed before the Commissioner shows that the petitioner had clearly stated that before auction no notice in the form ZA 74 was personally served upon him. He also disputed the notice of auction published on 5.3.2002 in daily news paper "Dainik Jagran" that neither it contained description of property nor the details of dues nor the value of the property as evaluated by valuer. The petitioner further pointed out before the learned Commissioner the property in question was mortgaged with State Bank of Banaras. The bank notified it also therefore it could not be auctioned. Further, the land on which the cold storage is established was leased out by Uttar Pradesh Industrial Development Corporation and since the Corporation is the title holder of the land, therefore, the land could not be auctioned. He also pointed out the fact that he has already instituted a civil suit against the recovery which is pending adjudication, in which stay order has been passed. He further pointed out regarding objection filed against auction notice before the Sub Divisional Officer and copy sent to Tehsildar. It was asserted by him

that the form ZA 74 was neither pasted on the proposed property of auction nor was pasted on the notice board of Tehsil. He raised the question of valuation of the property, as according to him, land and building were required to be evaluated separately for proper estimation of the value as the factory is situated within the building, but it was not done.

The learned Additional Commissioner examined the matter and observed that Form ZA 74 was served upon one Sri Pyare Lal, Munim in the presence of Jaipal Singh and the petitioner had neither denied the authority of Pyare Lal to receive the notice nor the relationship of Jaipal Singh with the firm. So far as the plea raised by the petitioner regarding the mortgage of the property with State Bank of Banaras is concerned he observed that this plea could be raised by the Bank only, who never raised such plea, therefore, the petitioner has no locus to raise such plea. He further observed that the lease of property was no impediment to auction the property as the auction purchaser shall get the same right as of the lease holder. Regarding the bid amount he observed that the property was auctioned for about Rs.32 lac, whereas the basic price was fixed only Rs.6 lac, therefore, in this time the price can not be said to be inadequate.

The petitioner raised the same grounds before the Board of Revenue as were raised before the learned Commissioner, except the plea of pendency of civil suit. The Board of Revenue considered the matter and observed that instead of filing the suit the petitioner could question the assessment of electricity dues before the departmental authority as well as before the Board of Revenue. He further observed that as he understands, the dues as assessed by the electricity department is correct. The filing of suit before the civil court is an effort of the petitioner to delay the recovery proceeding and the civil court has exempted the petitioner only from arrest. The petitioner is presumed to be aware with the recovery proceeding and form ZA 74 was served upon his Muneem. It was also observed by him that the auction notice was published in daily news paper "Dainik Jagran". He also answered the question of mortgage in the same very manner as answered by the Additional Commissioner and thus expressed his agreement with the finding of the Additional Commissioner.

In order to understand the controversy involved in the matter it is apposite to reproduce the relevant provisions of the Act and Rules, which are reproduced as under:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950

Section 279. Procedure for recovery of an arrear of land revenue.(1) An arrear of land revenue may be recovered by any one or more of the following processes

- (a) by serving a writ of demand or a citation to appear on any defaulter,
- (b) by arrest and detention of his person,
- (c) by attachment and sale of his movable property including produce,

- (d) by attachment of the holding in respect of which the arrear is due,
- (e) [by lease or sale] of the holding in respect of which the arrear is due,
- (f) by attachment and sale of other immovable property of the defaulter, [and],
- (g) by appointing a receiver of any property movable or immovable of the defaulter.]

[(2) The costs of any of the processes mentioned in subsection (1) shall be added to and be recoverable in the same manner as the arrear of land revenue.]

280. Writ of demand and citation to appear.(1) As soon as an arrear of land revenue has become due, a writ of demand may be issued by the tahsildar on the defaulter calling upon him to pay the amount within a time to be specified.

(2) In addition to or in lieu of a writ of demand, the tahsildar may issue a citation against the defaulter to appear and deposit the arrears due on a date to be specified.

281.Arrest and detention.Any person who has defaulted in the payment of arrear of land revenue may be arrested and detained in custody up to a period not exceeding 15 days unless the arrears [including cost, if any, recoverable under subsection (2) of section 279], are sooner paid:

Provided that no woman or minor shall be liable to arrest or detention under this section:

[Provided further that no person shall be liable to arrest or detention for an arrear in respect of a holding of which he is not the bhumidhar [***] merely because of his joint responsibility for the payment of land revenue under section 243].

282.Attachment and sale of movable property.(1) The Collector may, whether the defaulter has been arrested or not, attach and sell his movable property.

(2)Every attachment and sale under this section shall be made according to the law in force for the time being for the attachment and sale of movable property in execution of a decree of a civil court.

(3)In addition to the particulars mentioned in clause (a) to (o) of [the proviso to subsection (1) of section 60] of the Code of Civil Procedure, 1908, articles set apart exclusively for the use of religious worship shall be exempted from attachment and sale under this section.

286.Power to proceed against interest of defaulter in other immovable property.(1) If any arrears of land revenue cannot be recovered by any of the processes mentioned in clauses (a) to (c) of section 279, the Collector may realise the same [by attachment and sale of the interest of the defaulter] in any other immovable property of the defaulter.

(2) Sums of money recoverable as arrears of land revenue but not due in respect of any specific land, may be recovered [by process under this section from any immovable

property of the defaulter [including any holding of which he is a bhumidhar[***] or asami].

327. Mode of service of notice. Any notice or other document required or authorised to be served under this Act may be served either

(a) by delivering it to the person on whom it is to be served, or

(b) by leaving it at the usual or last known place of abode of that person, or

(c) by sending it in a registered letter addressed to that person at his usual or last known place of abode, or

(d) in case of an incorporated company or body by delivering it or sending it in a registered letter addressed to the Secretary or other principal functionary of the company or body at its principal office, or

(e) in such other manner as may be laid down in the Code of Civil Procedure, 1908.

341. Application of certain Acts to the proceedings of this Act. Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870, the Code of Civil Procedure, 1908 and the [Limitation Act, 1963] [including section 5 thereof] shall apply to the proceedings under this Act."

U.P. Zamindari Abolition and Land Reforms Rules, 1952

Rule 235. Section 294(1). (1) Process against a defaulter being or having property in a district other than that in which the arrears fell due, can be issued against him or against such property only upon a certificate under section 3 of the Revenue Recovery Act, 1890.

(2) Land Revenue realized upon such a certificate shall not, if the district of issue of the certificate and the district of realization are both within Uttar Pradesh, be remitted to the treasury of the district in which it is realized and an intimation to the effect that the amount has been realized shall be sent to the officer who issued the certificate. The latter shall then have the fact of realization noted in the accounts of his district, while in the district in which the amount was realized, the amount shall be credited as realized on behalf of the demand of the district from when the certificate was issued.

(3) When the district of issue of the certificate is not within Uttar Pradesh, the amount so recovered shall in the first instance be paid into the treasury of the district in which it is realized. At the end of the month, all sums so credited shall be withdrawn and remitted to the District Officer by whom the certificate was issued. Sums exceeding Rs.15 shall be remitted by remittance transfer receipt and sums of Rs.15 or less by postal money order, the money order commission being debited to the contract contingencies of the District Officer making the remittance.

(4) A register in Z.A. Form 67 shall be maintained by District Officer for the record of certificates of recovery of land revenue issued to and received from other districts.

Rule 236. Writs, citations, warrants of arrest and warrants of attachment of movable property shall be in the Z.A. Forms 68, 69, 70 and 71. They shall be signed by the issuing officer and sealed with his official seal.

Rule 246. (1) Service of the writ or citation shall, if possible, be made on the defaulter personally, but if service cannot be made on the defaulter, it may be made on his agent. If the defaulter or his agent cannot be found or if there is more than one defaulter against whom a writ or citation has been issued a copy of the writ or citation may be fixed at a prominent place on or adjacent to the defaulter's residence.

(2) Personal service shall be made by delivery to the defaulter or his agent of the foil of the writ or citation. The other portion shall be brought back to the tahsil by the process server and attached to the counterfoil. When returning this portion, the process server shall report to the officer whom the tahsildar may appoint for the purpose, the date of service, the manner in which the writ or citation was served, and if it was not served on the defaulter personally, the reason why it was not served. The official receiving the report shall note the particulars on the process, if this has not been done already.

(3) With the sanction of the Collector, writs of demand may also be served by registered post. In such cases, the post office receipt shall be attached to the counterfoil.

282. The proclamation of sale shall be in Z.A. Form 74.

283. In proclamation for sale under Section 286, the Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual.]

285A. Every sale under sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday, or until after the expiration of at least thirty days from the date on which the proclamation under rule 282 was issued.

The Collector may from time to time postpone the sale.

285D. The person declared to be purchaser shall be required to deposit immediately twentyfive per cent of the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold and such person shall be liable for the expenses attending the first sale and any deficiency of price which may occur on the resale which may be recovered from him by the Collector as if same were an arrear of land revenue.]

285E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any subtreasury and in case

of default the deposit, after the expenses of the sale have been defrayed therefrom shall be forfeited to Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property, or to any part of the sum for which it may be subsequently sold.

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

285I.(i) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.]

(ii) [***]

(iii) The order of the Commissioner passed under this rule shall be final.

The Code of Civil Procedure, 1908

Order XXI.

Rule 54. Attachment of immovable property.(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgmentdebtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

[(1A) The order shall also require the judgmentdebtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Courthouse, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

Rule 58.Adjudication of claims to, or objections to attachment of property.(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained

- (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or
 - (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.
- (2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.
- (3) Upon the determination of the questions referred to in subrule (2), the Court shall, in accordance with such determination,
- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
 - (b) disallow the claim or objection; or
 - (c) continue the attachment subject to any mortgage, charge of other interest in favour of any person; or
 - (d) pass such order as in the circumstances of the case it deems fit.
- (4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.
- (5) Where a claim or an objection is preferred and the Court, under the proviso to subrule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.]

Rule 59. Stay of sale. Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may

- (a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or
- (b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.]

Rule 66.Proclamation of sales by public auction. (2)Such proclamation shall be drawn up after notice to the decreeholder and the judgmentdebtor 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];"

The learned counsel for the parties also cited some decisions which cover some points, which are disputed in the instant case.

On the question of service of demand notice of sale proclamation, the learned counsel for the petitioner cited the following decisions:

State of Uttar Pradesh and others versus Swadeshi Polytex Limited and others, reported in (2008) 12 SCC 596. In this case after considering the various provisions of the U.P. Zamindari Abolition and Land Reforms Act as well as Rules framed thereunder, in the light of the provisions of Rule 246 of the Rules, the Hon'ble Supreme Court expressed the opinion "that the notice can be served on the agent only if it is not possible to serve it on the actual defaulter. In the present case, we find that no attempt whatsoever had been made to serve the notice on the actual defaulter and had been served on the chowkidar at the very initial stage."

He further cited another decision of the Hon'ble Supreme Court i.e. Desh Bandhu Gupta versus N.L.Anand & Rajinder Singh, reported in (1994) 1 SCC 131, in which the Hon'ble Supreme Court considered the provisions of Order 21, Rules 66(2) and 54(1A) of the Code of Civil Procedure and observed as under:

"10.Above discussion indicates a discernible rule that service of notice on the judgmentdebtor is a fundamental part of the procedure touching upon the jurisdiction of the Execution Court to take further steps to sell his immovable property. Therefore, notice under Order 21 Rule 66(2), unless proviso is applied (if not already issued under Order 21 Rule 22), and service is mandatory. It is made manifest by Order 21 Rule 54(1A) brought on statute by 1976 Amendment Act with peremptory language that before settling the terms of the proclamation the judgmentdebtor shall be served with a notice before settling the terms of the proclamation of sale. The omission thereof renders the further action and the sale in pursuance thereof void unless the judgmentdebtor appears without notice and thereby waives the service of notice."

On the question of estimation of value he submitted that before proceeding for sale it is a mandatory requirement of determination of estimated value to be intimated in the sale proclamation in Form ZA No.74 and in support of his submission, he cited the following decisions:

State of Uttar Pradesh and others versus Swadeshi Polytex Limited and others (Supra). In the said case the sale proclamation was issued without any valuation of the properties and

only the area of the vacant land was specified, which was deemed as clear violation of Rules 283 and 285 of the Rules. Relevant paragraphs 30, 31 and 32 of the aforesaid judgment are reproduced hereunder:

"30. There is yet another circumstance which indicates that the procedure for sale had not been followed. It appears from the record that the notice of citations for appearance and demand had been issued on 11.1.2005 and on 1.4.2005, the SubDivisional Magistrate had passed an order for the valuation of the properties as well as for wide publicity of the auction and sale of the property in question and the Tahsildar, Ghaziabad had been appointed as the auction officer and the auction had been fixed for 2.5.2005. It is clear from the record that the sale proclamation had been issued on 1.4.2005 without any valuation of the properties and only the area of the vacant land had been specified therein and it was this notice that had been served on the chowkidar on 21.4.2005 and publication had been made in the newspaper Amar Ujala on 22.4.2005. There has, thus, been a clear violation of Rules 283 and 285 (sic 282 ad 283) *ibid*.

31. Rule 283 provides for the estimated value of the property to be determined under the provisions contained in Chapter XV of the Revenue Manual. The said Chapter specifies the procedure for valuation of the property in terms of other similar properties. It is, however, clear from the record that the figure Rs.27 crores, the value of the property which is mentioned in the advertisement in Amar Ujala, appears to have picked up without any basis as it is not the case of UPSIDC that the property had been valued in accordance with the provisions of the Revenue Manual or by a valuer or expert in the field.

32. Moreover, Rule 273A makes the provisions under Order 21 Rule 54 CPC applicable to proceedings for attachment and subrule (1A) of Rule 54 specifically provides for the judgmentdebtor to attend court on a specified date to take notice of the date which is fixed for settling the terms of the proclamation of the sale. Concededly, this procedure had not been followed."

In the case of *Desh Bandhu Gupta versus N.L. Anand & Rajinder Singh* (Supra) the Hon'ble Supreme Court has held that the proclamation for sale is an important part of the proceedings and details should be ascertained and noted with care. This will remove the basis for many a belated objections to the sale at a later date. It is not necessary to give at proclamation of sale the estimate of the value of the property. The Hon'ble Supreme Court further observed that the proclamation should include the estimate, if any, given by either judgmentdebtor or decreeholder or both the parties. The Judgmentdebtor should have an opportunity to give his estimate of the property. The estimate of the value of the property is a material fact to enable the purchaser to know its value. It must be verified as accurately and fairly as possible so that the intending bidders are not misled or to prevent them from offering inadequate price or to enable them to make a decision in offering adequate price.

It further observed that it is made manifest by Order 21 Rule 54 (1A) brought on statute by 1976 Amendment Act with peremptory language that before settling the terms of the

proclamation the judgmentdebtor shall be served with a notice before settling the terms of the proclamation of sale.

The relevant paragraph 12 of the judgment of Desh Bandhu Gupta (Supra) is reproduced hereunder:

"12. The contentions of S/Shri Madhava Reddy and Gujral that the appellant had not given his valuation and that, therefore, it is not open to him to raise the objections after the sale is unacceptable. Since the court had not given any notice to the appellant which is mandatory, the need to submit his valuation did not arise. Order 21 Rule 54, subrule (1A) brought in by 1976 Amendment Act mandates that the court should require the judgmentdebtor to attend the court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale. Form 24 of Appendix 'E' second para and the Court Rules also envisage the mandate. It is a reminder to the court that it has a statutory duty to issue notice to the judgmentdebtor before settlement of the terms of proclamation of sale. Then only the proviso to Rule 66(2) comes into play dispensing with multiplicity of notices and not dispensation of mandatory compliance of notice to the judgmentdebtor. Had it been a case where notice was served and the appellant lay by, without objecting to the valuation given by the decreeholder, certainly that would be put against the appellant to impugn the irregularities after the sale or the undervaluation settled by the court in the proclamation of sale. The further contentions of both the counsel that merely because there is no order under Rorder 21 Rule 66(2), it cannot be construed that the Execution Court had not applied its mind in settling the terms of the proclamation of sale, is one of desperation. Except giving a schedule of dates for conducting the sale the Execution Court totally abdicated its duty to scrupulously comply with the mandatory procedure and did not apply its mind to the mandatory duty cast on it by Order 21 Rule 66 to settle the terms of proclamation of sale, and proper publication under Rule 67. After April 20, 1979, the court had merely ensured its publication on the court notice board and o the site at the respective dates and no further. This Court in Shalimar Cinema v.Bhasin Film Corporation, reported in (1987) 4 SCC 717 held that the court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. It is incumbent on the court to be scrupulous in the extreme. No action of the court or its officer should be such as to give rise to the criticism that it was done in a casual way. Therefore, a proclamation of sale drawn casually without compliance of the mandatory requirement and a sale held in furtherance thereof is not a sale in the eye of law. We are of the considered view that the procedure adopted by the court in noncompliance of Order 21 Rules 66 and 67 is in flagrant breach of the mandatory provision. It is a nullity ab initio."

He further cited another decision of the Division Bench of this Court i.e. Bimal Kumar Sharma versus District Magistrate, Gautam Budh Nagar and others, reported in 2009 (27) LCD 383, relevant paragraphs 16 and 17 of which are reproduced hereunder:

"16.The estimate of the value of the property is a material fact to enable the purchaser to

know its value. It must be verified as accurately and fairly as possible so that the intending bidders are not mislead or to prevent them from offering inadequate price or to enable them to make a decision in offering adequate price. (Vide: *Desh Bandhu Gupta v.N.L.Anand and Rajinder Singh*, (1994) 1 SCC 131 and in *S.S. Dayananda v. K.S.Nagesh Rao & Ors.*, (1997) 4 SCC 451.

17. A similar view has been reiterated in *Gajraj Jain v. State of Bihar & Ors.* (2004) 7 SCC 151."

The learned counsel for the petitioner also emphasized his argument on the pendency of his objection moved before holding the auction and submitted that the same must have been decided before proceeding to hold the auction, In support of his submission he further relied upon the case of *State of U.P. Versus Swadeshi Polytex Limited and others* (Supra).

In support of his submission that clear 30 days notice for holding the auction sale after issuance of sale proclamation was required, he further relied upon the aforesaid decisions as in the case of *State of U.P. Versus Swadeshi Polytex Limited and others*, in which the Hon'ble Supreme Court held that wide publication and notice of the proposed sale should be given as per Rule 285A which postulates the notice of 30 days between the date of issuance of sale proclamation and the date of auction. It further held that it can hardly be over emphasized that the proper valuation of the property and wide publicity of the proposed auction is intimately linked with the price that the auction fetches.

He further cited another decision of Hon'ble Supreme Court i.e. *Rao Mahmood Ahamd Khan through their L.R. versus Ranbir Singh and others*, reported in 1995 Supp (4) SCC 275, in which the Hon'ble Supreme Court has held that no sale after the postponement under Rule 285D in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale.

On the question of payment of auction sale price within the time stipulated by the statutory provisions, he further drew the attention of this court towards the case of *State of U.P. Versus Swadeshi Polytex Limited and others* (Supra), of which relevant paragraph 38 is reproduced hereunder:

"38. There is yet another circumstance which vitiates the sale. Rule 285D of the Rules provides that 25% of the amount of the auction money shall be deposited at the fall of the hammer and the remaining 75% within 15 days. The case of the appellants is that the bank draft for Rs.7.80 crores had been deposited by the auctionpurchasers on 2.5.2005 i.e. the date of auction but the learned Single Judge has found that as the auction had been completed at 1.30 p.m., it would not have been possible to have received the bank daft from Kanpur, 460 km away on that date. This finding appears to be correct. We also find that the balance 75% of the amount that had been deposited by various bank drafts on 18.5.2005 was also beyond the 15 days permissible and the finding of the learned Single Judge based on the record is that though the drafts were dated 14.5.2005 but they had, in

fact, been handed over to the authority concerned only on 18.5.2005. This Court in *Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud*, reported in AIR 1954 SC 349, has held as under : AIR pp.35152, para11)

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

For this additional reason as well, the auction sale cannot be maintained."

He cited another decision at this stage i.e. *Rao Mahmood Ahmad Khan through their L.R. Versus Ranbir Singh and others* (Supra), the relevant paragraphs 7, 9, 10 and 11 of which are reproduced hereunder:

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

9. Further Rule 285D provides resale of the property forthwith on the failure of the purchaser to deposit 25 per cent of the bid amount. The meaning of the word 'forthwith' is synonymous with the word 'immediately' which means with all reasonable quickness and within a reasonably prompt time. It, therefore, necessarily follows that the intention of the

legislature is that as soon as it becomes known that the purchaser has failed to deposit 25 per cent immediately after he is declared as purchaser, the property shall be put to resale forthwith without any loss of time or postponement of the date of resale. The provision has been made mandatory because if the property is not resold forthwith and on the same day but later on after a day or two, the sufficient number of purchasers may not be forthcoming and the property may not fetch adequate and fair price to the prejudice of the judgmentdebtor. There is yet another reason for making this provision mandatory and it is this that if on the failure of the purchaser to deposit 25 per cent of the bid amount immediately and on the day the person is declared to be purchaser then the sale of the property will have to be postponed to some other date and according to the provisions contained in Rule 25G reproduced in para 6 above, no sale after the postponement under Rule 285D in default of payment of the purchase money shall be made until a fresh proclamation has been issued as prescribed for the original sale. It is to avoid this situation and the delay in the sale that a provision under Rule 285D has been made mandatory and on the failure of compliance of the same the sale becomes a nullity.

10. The controversy whether the provisions of Order 21, Rules 84, 85 and 86 are mandatory or not has been set at rest by this Court. The provisions of Order 21, Rules 84, 85 and 86 of the Code of Civil Procedure, as said earlier, are almost similar in terms to the provisions contained in Rule 285D and Rule 285E of the Land Reforms Rules. This Court in the case of *Manilal Mohanlal Shah v. Sayed Ahmad*, reported in AIR 12954 SC 349 Ruled as under:

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

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

He further submitted that the sale could be confirmed only by the Collector of the District, who has only been held competent authority to confirm the sale under Rule 285J of the Rules. He also drew the attention of this court, in support of his submission, towards a case decided by the Division Bench of this court i.e. Ram Awadh Tiwari versus Sudarshan Tiwari and others, reported in 2009 (27) LCD 663, relevant paragraphs 23 and 24 of which are extracted below:

"23. The subsequent notification dated 17.1.1976 contains the same scheme empowering the Assistant Collector first class, who is incharge of the division, to exercise the functions of the Collector under Section 286 of the said Act in respect of any holding of a defaulter of which he is a bhumidhar, Sirdar or Assami, subject to the condition that such sales are approved by the Collector. Thus, the empowerment of the Assistant Collector qua the powers under Rule 286 by notification dated 17.1.1976 is hatched by a condition that Sub Divisional Officer shall exercise all the powers except the power to approve the sale, which shall be done by the Collector.

24. There is inconsistency in the various notifications referred to above. The notification dated 17.1.1976 does not alter the position as it was continuing, except with regard to approval of sale. It has been specifically provided that the same would be exercised by the Collector. The notification dated 17.1.1976 read with Rule 285J thus makes it clear that power to approve the auction sale vest in the Collector alone."

He further submitted that the noncompliance with the mandatory provisions of the Act as well as the Rules framed thereunder renders the sale in nullity and in supply of his submission he further cited the decisions of State of U.P. Versus Swadeshi Polytex Limited and others (Supra) and Bimal Kumar Sharma versus District Magistrate and others (Supra).

On the other hand learned counsel for the respondents raised some technical objections against the maintainability of the writ petition including the arguments on merit and submitted that the questions raised by the learned counsel for the petitioner before this court were not raised before the courts below and the petitioner cannot be permitted to go beyond the pleadings raised before the courts below as this court is not exercising its original jurisdiction under Article 226 of the Constitution of India, rather this court has to examine the correctness of the orders passed by the courts below in exercise of power provided under Article 226 of the Constitution of India. In support of his submission he cited a decision of the Hon'ble Supreme Court i.e. Mohinder Singh Gill versus Chief Election Commission, reported in AIR 1978 SC 851, in which the Hon'ble Supreme Court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. He further submitted that the respondents are answerable only to the questions/arguments raised before the courts below and the order passed by the Commissioner in exercise of power provided under Rule 285I of the Rules is final one, which was not revisable before the Board of Revenue. He further submitted that

through the instant writ petition the petitioner has sought the relief for issuing a writ of certiorari to quash the order dated 29.8.2002, passed by the Additional Commissioner (Judicial), Agra as well as the order dated 14.3.2004, passed by the Board of Revenue, U.P., Lucknow. He further submitted that the jurisdiction of this court must be confined to the pleadings of the objections raised under Rule 285I of the Rules. The aforesaid objection was filed by the petitioner on 20.3.2002 challenging the auction dated 8.3.2002. However, the Collector has approved the same on 23.9.2002 and on the same date the sale certificate duly signed by the Sub Divisional Officer, Tehsildar and Naib Tehsildar was issued. He further submitted that under Rule 283, there is no requirement to notify the amount of demand as well as the valuation of the property. The learned counsel for the respondents much emphasized on the second part of Rule 285I and submitted that though the application for setting aside the sale is permitted to be made to the Commissioner, on the ground mentioned therein, but the sale shall not be set aside unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by a reason of such irregularity or mistake, whereas in the present case the petitioner has failed to point out any substantial injury caused to him due to alleged illegality or mistake committed in auction sale. He further submitted that since he has not been able to point out any illegality or mistake, there was no occasion for him to file revision before the Board of Revenue particularly when no such remedy is provided under the statute. He further submitted that after perusal of the grounds of revision, it is apparent that the petitioner dropped most of the objections taken before the Additional Commissioner at the stage of revision filed before the Board of Revenue as he did not press the point of pendency of Civil suit challenging the recovery proceedings. He further submitted that after issuance of sale certificate, only the remedy available to the petitioner is to file a civil suit before the Civil Court.

In reply of his arguments, the learned counsel for the petitioner submitted that the proceedings taken under Rule 285I of the Rules by the Commissioner are judicial in nature and the order passed by the Commissioner will be amenable to the revisional jurisdiction of the Board of Revenue under Section 333 of the U.P.Z.A. And L.R.Act. In support of his submission he cited a decision of Full Bench of this court rendered in the case of Ram Swaroop versus Board of Revenue and others, reported in 1990 (8) LCD 253. The operative finding of the court is extracted below:

"20.Accordingly, we are of the view that the Commissioner while deciding the objection under Rule 285I of U.P.Z.A. And L.R. Rules will be a 'court' as such and the proceedings taken before him will be deemed judicial proceedings as such and the Commissioner who otherwise is a court under U.P.Z.A. And L.R.Act will be deemed to be a court. We are accordingly of the view that the cases of Indu Engineering (supra) and Nihal Singh (Supra) were not correctly decided and are overruled."

At this stage the learned counsel for the petitioner moved an application seeking permission to raise the plea of lack of inherent jurisdiction of the learned Commissioner

and submitted that the objection regarding any material illegality in publishing or conducting the same can be entertained and decided only and only by the Commissioner as has been held by this court in the case of Yakoob versus State of U.P., 2005 AWC 159 and therefore, the order passed by the Additional Commissioner is nullity as has been held by the Hon'ble Supreme Court in the case of Kiran Singh versus Chaman Paswan, reported in AIR 1954 SC 340, in which the Hon'ble Supreme Court has held that it is a fundamental principle that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and whenever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.

In reply the learned counsel for the answering respondents submitted that the cases cited, as above, are of no help of the petitioner as this court in the case of Ram Kumar and others versus Board of Revenue, U.P., Lucknow and others, reported in 2003 (1) JCLR 827 (All) (LB) has held that the order passed by the Additional Commissioner shall always be deemed as an order passed by the Commissioner. He further submitted that this court in the cases of Ghanshyam Singh and others versus Divisional Commissioner, Vindhyachal Division, Mirzapur and others, reported in 2006(2), JCLR 444 (All), Prithvipat versus State of U.P. And others, reported in 1997 (2) JCLR 954 and in the case of Arvind Kumar vs. SDO Foolpur, Azamgarh, reported in 2003 JIR 42, has specifically held that the Commissioner hearing any objection under Rule 285I is a court and not an administrative officer, therefore, its power may be delegated to the Additional Commissioner also. Further in the case of Ramesh and others Versus Deputy Director of Consolidation, Gautam Budh Nagar and others, reported in 2012 (1) JCLR 868, this court has held that the Commissioner at a divisional level includes the Additional Commissioner.

After perusal of the aforesaid judgments though I find that the Commissioner is inclusive of the Additional Commissioner, however, since the petitioner did not raise this plea of lack of jurisdiction either before the learned Additional Commissioner or before the Board of Revenue, at this stage I do not feel it appropriate to permit him to raise such a plea for the reason that he faced the proceedings before the Additional Commissioner without raising any objection against his jurisdiction, in such circumstances the Hon'ble Supreme Court has held that once the parties permit the court concerned, who has no jurisdiction to deal with the case and accept the order passed by him, the order passed by the said court shall not be without jurisdiction and they shall not be permitted to raise such a plea at the subsequent stage. Therefore, I proceed to decide the case on merit as the order passed by the Additional Commissioner is well within his jurisdiction.

The learned counsel for the respondents has raised the question against the maintainability of the revision, on the ground that the order passed by the Additional Commissioner in exercise of power provided under Section 285I of the Rules is final one and that is not revisable in the light of the decision of the Full Bench of this court rendered in the case of Ram Swaroop versus Board of Revenue and others(Supra), whereas I am of the view that the order passed by the Additional Commissioner is revisable, therefore, the revision filed

by the petitioner was well maintainable.

The learned counsel for the respondents contended that the petitioner has raised some new pleas, which were not raised either before the learned Commissioner or before the Board of Revenue.

Upon perusal of the objection filed by the petitioner under Rule 285I of the Rules, I find that through the objections the petitioner has raised the question of service of notice in Form ZA 74. He also raised the objection that in the sale proclamation the description of property as well as its estimated value was not mentioned. He also raised the plea that the property in dispute was already mortgaged with the State Bank of Banaras and was notified as such by the Bank on 11.5.2001. He also raised the plea that he had already instituted a suit in the civil court against recovery proceedings, in which the civil court has passed the stay order. He also raised the plea that pursuant to the publication dated 5th of March, 2002 notifying the next date of auction as on 8th of March, 2008, he filed objection before the Sub Divisional Officer, Mathura, which was received by him on 7th of March, 2002, but the property was auctioned illegally on 8th of March, 2002. He also raised the plea that only the part of the property in proportion of the amount of recovery should have been auctioned and the land as well as the Factory should have been estimated separately.

On the point of service of notice in Form ZA 74, the learned Commissioner has treated the service of notice sufficient as it was served upon one Pyarey Lal (Muneem) in presence of Jai Pal Singh. He further observed that the point of mortgage of the property with the Bank should have been raised only by the Bank itself, thus he did not find any substantial injury caused to the petitioner with the proceeding of the auction.

Upon perusal of the memo of revision filed before the Board of Revenue, I find that the petitioner raised question of non service of Form ZA 74 as well as the question of mortgage of the property with the State Bank of Banaras and valuation of the property as well as the auction of property proportionate to the amount of dues, definitely he did not raise the question of pendency of suit against the recovery proceedings as well as the stay order passed therein, but I assume that once this court deals with the matter in exercise of power provided under Article 226 of the Constitution of India, it has a wide scope to deal with all the questions either raised before the original authority or the revisional authority. The court is not supposed to close its eyes on the questions, which were not raised before the revisional authority, though those are substantial in nature and have forceful impact over the proceeding.

So far as the question of pendency of suit before the civil court and stay order is concerned, I find that it has not been dealt with properly by the courts below. The petitioner has also raised one question that he filed objection against the sale notice, but during the pendency of the same, the auction Officer proceeded to auction the property. All these questions are very material and have vital significance on the matter, therefore, this court has no reason to ignore it. The pendency of suit against the recovery proceeding before the Second

Additional Civil Judge, S.D., Mathura, being Civil Suit No.288/1995 is not disputed. In the suit the Civil Judge on 9th of April, 1996, passed the order directing the defendants not to disconnect the electricity connection, on the basis of impugned demand. He further passed the next stay order on 31.5.1997 as under:

"Pratiwadi ko Adeshit Kiya Jata Hai Ki Vai Swayam Ya Apne Agent Key Madhyam Se Recovery Ki Anya Vaidhanik Prakriyayen Amal Main Laye Bina Wadi Ko Na To Giraftar Karen Aur Na Hi Uske Karobar Ko Band Karayen."

The aforesaid order was operating on the date of auction, whereas the respondents proceeded to auction the property. The electricity dues were to be recovered as arrears of land revenue in accordance with the procedure provided under the U.P.Z.A.& L.R. Act, 1950 (in short U.P.Z.A.& L.R.Act) as well as the Rules made thereunder and further under the provisions of Order 21 Rules of the Civil Procedure Code, which is well applicable in the proceeding of the U.P.Z.A.& L.R.Act as is provided under Section 341 of the Act. Section 279 of the U.P.Z.A.& L.R.Act provides that the arrear of land revenue may be recovered by any one or more of the processes provided thereunder. It has provided number of modes for recovery viz. a writ of demand or a citation to appear, by arrest and detention, by attachment and sale of immovable property, by attachment of holding, by lease or sale of holding and the attachment and sale of other immovable property etc.

Section 286 of the U.P.Z.A.& L.R.Act provides that if any arrears of land revenue cannot be recovered by any of the processes mentioned in clauses (a) to (c) of Section 279, the Collector may realise the same [by attachment and sale of the interest of the defaulter] in any other immovable property of the defaulter. Thus, it also permits to sell the property particularly immovable property of the defaulter, only when recovery of revenue is not possible through any other mode.

In order to proceed for sale of immovable property under Section 286 of the U.P.Z.A.& L.R.Act, the procedure provided under Rule 283 onwards have to be followed. Rule 283 speaks that in proclamation for sale under Section 286, the Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the Rules in 'Chapter XV of the Revenue Manual, whereas the respondents have failed to indicate the estimated value of the property mentioned in the Form ZA 74.

Before publication of the proclamation for sale, the officer concerned is obliged to notice to the defaulter for settlement of terms of the proclamation, but no notice was issued to the petitioner calling upon him to attend the said proceeding and directly the sale proclamation was published. The petitioner's objection against the proclamation of sale, before holding the auction, filed before the authority concerned is not disputed. Order 21 Rule 59 CPC provides that during the pendency of such objection, the property shall not be sold. It is not in dispute that though pursuant to the notice of auction dated 15th of February, 2002, auction took place on 4th of March, 2002, but due to inadequate price, it was cancelled and just on the next day i.e. on 5th of March, 2002 the next date for auction was fixed for 8th of

March, 2002. Rule 285A provides that every sale under Sections 284 and 286 shall not take place until after expiration of at least thirty days from the date on which the proclamation under Rule 282 was issued.

The present case is not a case of postponement of auction, but it is a case of cancellation of auction, therefore, definitely it requires a fresh proclamation with a gap of not less than thirty days from the date of proclamation to the date of auction, whereas this exercise is missing, as admittedly after cancellation of auction held on 4th of March, 2002, due to inadequate price, a fresh notice of auction was issued on 5th of March, 2002 and the property was auctioned on 3rd day i.e. 8th of March, 2002, which shows clear violation of the Rule 285A.

It is also not in dispute that the property in question was mortgaged with the State Bank of Baranaras, who should have been noticed before proceeding with the auction as it would have got the chance to raise any objection against the auction proceeding after having knowledge of the said proceeding, but it is not the case of the respondents that the Bank was ever intimated regarding the auction proceeding.

The respondents have also failed to point out that before proceeding for auction sale, they have adopted any other mode of recovery, which is imperative for them, as has been held by the Hon'ble Supreme Court in the Cases of State of Uttar Pradesh and others versus Swadeshi Polytex Limited and others (Supra) and Desh Bandhu Gupta versus N.L.Anand and Rajinder Singh (Supra), referred hereinabove.

It is further observed that during the proceeding of the Civil Suit as well as existence of the stay order passed by the Civil Court, there was no occasion to proceed for auction sale. Order 21 Rule 59 (b) CPC provides that where before the objection was made, the property attached had already been advertised for sale, the court may, if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit. In the instant case, the petitioner filed objection even before the proceeding of sale, but the authority concerned did not dispose of the same, rather proceeded for auction sale.

So far as the service of notice upon the defaulter or his representative is concerned, Rule 246 of the U.P.Z.A.& L.R. Rules, provides that service of the writ or citation shall, if possible, be made on the defaulter personally, but if service cannot be made on the defaulter, it may be made on his agent. It also provides that if it was not served on the defaulter personally, the process server shall report to the officer, the reason why it was not served. In the case of State of Uttar Pradesh and others versus Swadeshi Polytex Limited and others (Supra) the Hon'ble Supreme Court has held that notice can be served on the agent only if it is not possible to serve it on the actual defaulter, for which the reasons have to be recorded by the process server.

Admittedly, the notice was served upon one Mr. Pyare Lal (Muneem), though the petitioner has denied his representative capacity, but even if I assume that he was a representative of the petitioner, I do not find anywhere in the record, the reasons recorded by the process server why it could not be served to the defaulter personally.

It is also not the case of the respondents that in the light of the order passed by the Civil Court, they adopted any other mode of recovery, as provided under Section 279 of the Act. Thus, they have also violated the order passed by the Civil Court.

The proper estimation of valuation of the property is a material fact to enable the purchaser to know its value, but it is quite missing in the present case. It is also not in dispute that the balance 75% amount of bid was deposited after statutory period of fifteen days as is provided under Rule 285E, but since the respondents have explained the reasons in not depositing the same within time due to some inevitable cause, therefore, I am of the view that the delay caused for three days in depositing the balance 75% amount of bid is plausible, but keeping in view the several irregularities committed in the auction, the same cannot be a reason to uphold the auction proceeding.

After considering the aforesaid facts and circumstances of the case, in conclusion, I am of the view that there was no proper service of auction notice issued i.e. the demand notice as well as Form ZA 74 upon the petitioner. No estimated value of the property was mentioned in the proclamation of sale. The petitioner was not noticed for estimation of valuation of the property as well as settlement of terms of proclamation before issuing the proclamation. There was no clear 30 days notice of auction after the cancellation of earlier auction. There was a clear stay order passed by the Civil Court to proceed for auction sale, rather the respondents were directed to adopt the other mode of recovery as is provided under the law. The respondents have failed to follow the same. The dues of electricity are still disputed and under adjudication before the Civil Court, therefore, there was no occasion to proceed for auction of the property unless the dues are determined finally.

Thus, in the light of the judgments of the Hon'ble Supreme Court, as above, I am of the view that the auction sale suffers from error. Therefore, the order impugned dated 29.8.2002, passed by the Additional Commissioner (Judicial), Agra Division, Agra, whereby the objection raised by petitioner against the auction sale, has been rejected as also the order dated 14.5.2004, rejecting the revision, passed by the Board of Revenue, by upholding the order of the Additional Commissioner are hereby quashed.

In the result, the writ petition is allowed.