

(2009) 04 GAU CK 0028

Gauhati High Court

Case No: Writ Petition (C) No's. 555, 841, 1779, 1789, 3020 of 2008 and Miscellaneous
Case No. 1765 of 2008 in WP (C) No. 555 of 2008

Joy Dev Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: April 1, 2009

Acts Referred:

- Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 - Rule 14, 15, 16, 17, 20
- Constitution of India, 1950 - Article 226

Citation: (2010) 4 GLR 579

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: D. Das, I. Lahiri and S. Khandm, for the Appellant; K.N. Choudhury, N. Dutta, R. Chakraborty and J. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari, J.

By this common judgment and order, I propose to dispose of these five writ petitions, namely, WP(C) Nos. 555/2008, 841/2008, 1779/2008, 1789/2008 and 3020/2008 and also Misc. Case No. 1765/2008, inasmuch as all the writ petitions and the said miscellaneous case are closely interlinked with each other and decision, in any of these writ petitions, would have a bearing on the outcome of the remaining writ petitions.

2. I have heard Mr. D. Das, learned Counsel for the petitioner in WP(C) Nos. 555/2008, 841/2008 and 1779/2008, and Mr. K.N. Choudhury, learned Additional Advocate General, Assam, appearing on behalf of the State respondents. I have also heard Mr. N. Dutta, learned senior counsel, appearing, on behalf of the private respondent in WP(C) Nos. 555/2008, 841/2008 and 1779/2008 aforementioned and, on behalf of the petitioner, in WP(C) Nos. 1789/2008 and 3020/2008, the petitioner,

in WP(C) Nos. 1789/08 and 3020/2008, being the private respondent in the remaining writ petitions as mentioned hereinbefore.

3. The material facts, which have given rise to these writ petitions, may, in brief, be set out as follows:

(i) Kukurmara Sand mahal was, on 4.1.2007, settled, for the period 2006-08, in favour of Shri Nayan Chandra Teron, i.e., the private respondent in WP(C) Nos. 555/2008, 841/2008 and 1779/2008, and petitioner in WP(C) Nos. 1789/2008 and 3020/2008 ("the settlement holder"), at Rs. 1,18,50,000. An agreement, in writing, was accordingly executed, on 18.4.2007, stipulating therein the due dates of payment of installments, (i.e., kist money). On the request made by the settlement holder, namely, Nayan Chandra Teron, the schedule for payment of kist money, from 2nd to 8th kist, was modified. The due date for payment of 4th kist money fell on 17.1.2008. The settlement holder did not, however, pay the said kist money and consequently, a notice for re-sale, at the risk of the settlement holder, was issued, on 28.1.2008, by the Divisional Forest Officer, West Kamrup Division, fixing 12.2.2008 as the last date for receiving tenders. Pursuant to the said notice of re-sale, Joydev Das, [i.e., the petitioner in WP(C) Nos. 555/2008, 841/2008 and 1779/2008 and who is hereinafter referred to as the "tenderer"] submitted his tender. However, on 11.2.2008, [i.e., one day before the last date, (i.e., 12.2.2008) fixed for submission of tenders], the settlement holder deposited Rs. 5,00,000 as part payment of the 4th kist money. Following the deposit so made, Divisional Forest Officer, Kamrup West Division, extended, on 12.2.2008, the date for receiving tenders from 12.2.2008 to 29.2.2008. Aggrieved by the extension of the last date fixed for submission of tenders, Joydev Das, (i.e., the tenderer aforementioned) filed, on 14.2.2008, a writ petition under Article 226 of the Constitution of India, which gave rise to WP(C) No. 555/2008 aforementioned. In the meanwhile, and to be more precise, on 18.2.2008, the settlement holder further deposited a sum of Rs. 3,25,000. While issuing notice of motion, on 27.2.2008, in WP(C) No. 555/2008, the court passed an order directing the State respondents not to finalize the tenders pursuant to the resale notice, dated 12.2.2008. The settlement holder, then, deposited, on different dates, diverse sums of money and, eventually, on 28.2.2008, on receiving the balance amount of the 4th kist money, Divisional Forest Officer, Kamrup West Division, allowed the settlement holder to operate the mahal till the next date on which the 5th kist money would fall due, i.e., until 17.4.2008. This was followed by a notice, dated 28.2.2008, issued by the Divisional Forest Officer, Kamrup West Division, withdrawing the re-sale notice, dated 28.1.2008 (whereby the date for submission of tenders had been extended from 12.2.2008 to 29.2.2008).

(ii) The notice, dated 28.2.2008, aforementioned, whereby the said resale notice was withdrawn, came to be challenged by the tenderer, namely, Joy dev Das, by way of another writ petition, which gave rise to WP(C) 841/2008. As the extension of the re-sale notice, which was subject-matter of challenge in WP(C) No. 555/2008, was

pending and yet, without permission of the court, the said re-sale notice had been withdrawn rendering thereby the writ petition, [i.e., WP(C) No. 555/2008] infructuous, the learned Additional Advocate General, Assam, on 24.3.2008, sought for leave of the court to allow Divisional Forest Officer, Kamrup West Division, to withdraw the notification, dated 28.2.2008, whereby the earlier re-sale notice had been withdrawn. The leave, so sought for, on behalf of the State respondents, was not resisted, on behalf of the tenderer, namely, Joydev Das, and the court accordingly granted leave to the Divisional Forest Officer, Kamrup West Division, to withdraw the notice, dated 28.2.2008. By a notice, dated 29.4.2008, the withdrawal of the resale notice, which had been published on 28.2.2008, was withdrawn. Consequently, the re-sale notice, dated 28.1.2008, which had been extended, on 12.2.2008, till 29.2.2008, came into force once again. Thus, WP(C) No. 841/2008, which had put to challenge the withdrawal of the re-sale notice, became infructuous.

(iii) Before the notice, dated 29.4.2008, withdrawing the withdrawal notice of re-sale, was published, the settlement holder had deposited Rs. 50,000 as part of 5th kist money, but did not, admittedly, deposit, within due date, the balance amount of the 5th kist money. A re-sale notice, dated 2.5.2008, was, then, issued by the Divisional Forest Officer, Kamrup West Division, putting the said mahal on re-sale. This new re-sale notice, dated 2.5.2008, has been challenged by the tenderer, namely, Joydev Das, on the ground that when the re-sale notice, which was initially issued on 28.1.2008, had still not been finalized, the issuing of re-sale notice, once again, as has been done, is illegal. This writ petition has given rise to WP(C) No. 1779/2008, whereby the writ petitioner, namely, Jaydev Das, (i.e., the tenderer) has sought to get set aside the second re-sale notice, dated 2.5.2008, and also to get the process of re-sale, which had been initiated with the publication of the notice, dated 28.1.2008, completed.

(iv) While issuing notice of motion, on 9.5.2008, in WP(C) No. 1779/2008, the court suspended the second re-sale notice, dated 2.5.2008, with further direction that the status quo, as on the date of passing of the said order, shall be maintained by the parties concerned as regards the said sand mahal. However, before the directions, as indicated here before, were passed, on 9.5.2008, in WP(C) No. 1779/2008, the Divisional Forest Officer, Kamrup West Division, withdrew, on 3.5.2008, the second re-sale notice, dated 2.5.2008. Thus, the WP(C) No. 1779/2008 too has become infructuous.

(v) Before, however, the court entertained the writ petition, and passed the interim order, on 9.5.2008 as aforementioned hereinabove, the settlement holder too filed a writ petition, which gave rise to WP(C) No. 1789/2008, whereby he sought for directions to be issued to the State respondents to allow him, (i.e., the settlement holder) two months' time, w.e.f. 17.4.2008, to pay the 5th kist money of Rs. 17,04,178 and also to permit him to operate the mahal without any disturbance on

the ground, inter alia, that he had not been able to operate the mahal effectively as some permit holders had also been extracting sand from the said mahal. In this writ petition, i.e., WP(C) No. 1789/2008, no specific order has been passed. The settlement holder has filed yet another writ petition, which has given rise to WP(C) No. 3020/2008, whereby he has sought for directions to be issued to the Divisional Forest Officer, Kamrup West Division, to receive the balance amount of the 5th kist money and allow him, (i.e., the settlement holder) to operate the mahal, the grievances of the settlement holder being that some unknown persons as well as some permit holders had been extracting sand from the said sand mahal and, consequently, he had not been able to extract sand. This writ petition was directed to be listed along with other writ petitions for disposal. Thereafter, by making a miscellaneous application, in WP(C) No. 555/2008, which has given rise to Misc. Case No. 1765/2008, Divisional Forest Officer, Kamrup West Division, has sought for leave of this Court to withdraw the re-sale notice, dated 28.1.2008, aforementioned, contending, inter alia, that since the settlement holder, (i.e., Nayan Chandra Teron) had paid the balance amount of the 4th kist money, the re-sale notice, dated 28.1.2008, needs to be withdrawn and, in terms of the provisions of Rule 17 of the Assam Sale of Forest Produce Coupe and Mahal Rules, 1977 ("the said Rules"), the settlement holder needs to be given a fair consideration and, therefore, the settlement holder needs to be allowed to operate the mahal. This miscellaneous application has been resisted by the tenderer, i.e., Joy dev Das.

4. Mr. D. Das, learned Counsel for the tenderer, namely, Joydev Das, has submitted that under the provisions of Rule 17 of the said Rules, if a tenderer fails, inter alia, to pay any of the installments within due date, it is obligatory, on the part of the State, to cancel the sale of the mahal and the mahal shall, then, be re-sold for the remaining part of the settlement period at the risk of the person, who had been granted the settlement. There is, contends Mr. D. Das, no provision, in the said Rules, empowering the State Government to grant extension of time for payment of installments. In such circumstances, the Government, according to Mr. Das, has no discretion to extend the period of deposit of installments.

5. Reacting to the submissions noted above, Mr. K.N. Choudhury, learned Additional Advocate General, Assam, contends that under Rule 17, the word "shall", which appears, under the expression, "the sale of the cope or mahal shall be liable to be cancelled and the coupe or the mahal shall be resold", should be read as "may"; otherwise, according to the Additional Advocate General, it would cause great injustice. Learned Additional Advocate General points out. that there may be a case, wherein, for reasons beyond the control of the settlement holder, he may not have been able to pay the installment on due date and, in such circumstances, it would be unjust and unfair not to grant extension of time for payment of the installment. In order to strengthen the submissions, so made, learned Additional Advocate General points out that even Rule 20 empowers the State Government to withdraw any mahal from sale at any time before issuance of final order of acceptance of tender.

6. Lending support to the submissions made on behalf of the State, Mr. N. Dutta, learned senior counsel, appearing on behalf of the settlement holder, has submitted that the expression "mahal shall be liable to be cancelled" and the "mahal shall be re-sold" carry two different meaning. According to Mr. Dutta, while the expression, "mahal shall be liable to be cancelled", leaves the State Government with the discretion not to cancel a settlement if the situation so demands, the expression, "mahal shall be re-sold", conveys that when the sale of the mahal is cancelled, the mahal shall be re-sold. Mr. Dutta further contends that at any rate, under Rule 20, the Government has the power to withdraw a mahal from sale at any time before issuance of final order of acceptance of the tender and, hence, in such circumstances, the Government should be held to have the discretion to accept an installment paid beyond the due date and thereby allow the operation of the mahal to be continued by settlement holder.

7. Controverting to the submissions made on behalf of the State respondents and the settlement holder, Mr. Das reiterates that when there is no provision for extension of the due date of payment of installment, the Government cannot extend the due date of payment of installment and the State is duty bound to cancel the sale of the mahal and put the same to re-sale if the settlement holder does not pay any installment within the due date prescribed therefor.

8. As regards the question as to whether a settlement holder can ask for extension of the due date of payment of installments, the Rules are, admittedly, silent; whereas, there is specific provision for granting extension to a settlement holder, who has not been able to operate mahal for reasons beyond his control, though such extension cannot be for a period longer than, in all, three months.

9. From the narration of the facts, as noted above, and the submissions made by the learned Counsel for the parties, what needs to be decided, in this set of writ petitions, is as to where the Government has, under the Rules, the power to extend the period of deposit of installment. For the purpose of reaching a correct answer, a careful survey of the relevant provisions of the Rules, in question, is necessary. The relevant provisions of Rules 14, 15, 16, 17, 20 and 21 are, therefore, quoted hereinbelow:

14. Security deposit - The tenderer whose tender has been finally accepted shall be informed by the Divisional Forest Officer about the amount of security to be adjusted from his fixed security deposit for the coupe or mahal.

(2) The amount of such security shall be at the amount at which the coupe or the mahal is sold, subject to a minimum of Rs. 10.

(ii) 5 per cent on the amount in excess of the first 2,000 subject to a minimum of Rs. 200.

(iii) In case of a tenderer belonging to any of the Scheduled Caste/Scheduled Tribes or Other Backward Classes, the amount of Security deposit mentioned in Sub-rule 2 above shall be reduced to 50%.

(iv) If the whole amount of fixed deposit is adjusted against the security of a particular coupe or mahal and if the security exceeds the fixed deposit, the amount fell short and the amount of fixed deposit shall have to deposited before communication of the final order of acceptance of tender.

15. Instalment. - The sale value of the mahal or coupe shall be paid by the mahalder or contractor in the following manner.

(i) Where the mahal or coupe period is for one year, in four equal installments at a interval or not more than 3 months each at the first installment falling within 15 days from the date of issue of order of final acceptance of the tender.

(ii) Where the mahal or coupe period is for less than one year in two equal installments falling due on the same period as mentioned in Sub-rule (1) above and the third installments not less than one month before the expiry of the mahal or coupe period.

(iii) Where the mahal or the coupe period is more than one year the total amount payable for each year shall be paid in four equal installments at an interval of not more than 3 months each, the first installment of the first year falling due within the period as mentioned in Sub-rule (1) above and the first installments in succeeding year falling due at the beginning of each year.

16. Agreement -An agreement as in form in Appendix shall be executed within one week of the payment of the first installment and security as mentioned in Rule 15 by the mahalder or contractor whose tender has finally been accepted by the competent authority.

17. Cancellation and re-sale for failure to pay Security installments and to execute agreement - If the tenderer whose tender has been accepted fails to pay the security or to pay the installments on the due dates mentioned in Rule 5 or to execute agreement mentioned in Rule 16, the sale of the coupe or mahal shall be liable to be cancelled and the coupe or the mahal shall be re-sold for the remaining part of the coupe or mahal period at the risk of such tenderer as regards the loss to Government and if the proceeds on re-sale are less than the value at which it originally sold, the difference shall be realizable from him, and further the earnest money shall be forfeited and the whole of the fixed security deposit or part thereof as may be necessary, shall be adjusted against the dues.

20. Right of withdrawal of any coupe or mahal from sale - Government in Forest Department and the authority competent to accept tender shall have the right to withdraw any coupe or mahal from the sale at any time before issue of final order of acceptance of tender or otherwise by negotiation.

21. Term of Mahal - (1) The mahal shall be allowed to be operated strictly for the period as advertised in the Notice inviting tender and the Sale Notice. However, the term of Mahal shall automatically expire in case the stipulated quota is exhausted before the expiry of the mahal period.

(2) As regard the stipulated quota of the mahal materials, any quantity remaining unextracted within the mahal period shall automatically belong to the Government after expiry of the advertised mahal period and no claim of the settlement holder on the same shall be entertained.

(3) In case the settlement holder is not able to operate Mahal for certain periods within the settled term of the Mahal, for reasons beyond his control, such periods may be provided to him in addition the Mahal period, but not exceeding a total of 3 months, by the Principal Chief Conservator of Forests. The Mahalder, in every such case shall apply to the Divisional Forest Officer concerned within 7 days of each occurrence. The Divisional Forest Officer shall submit a report in the matter through the concerned Conservator of Forests for consideration.

10. From a bare reading of the provisions of Rule 14, what transpires is that a tenderer, whose tender has been finally accepted, shall be informed by the Divisional Forest Officer about the amount of security to be adjusted from his security deposit for the coupe or the mahal. The amount of such security shall be at the amount at which the coupe or mahal is sold subject, however, to a minimum of Rs. 10.

11. Rule 15 provides the manner in which the sale value of the mahal has to be paid by way of installments, by the settlement holder or the mahaldar. Broadly speaking, according to Rule 15, the sale value of the mahal or the coupe shall be paid by the mahaldar, (i.e., the settlement holder) every year in four equal installments at an interval of not more than three months each. There is, admittedly and as already indicated above, nothing, in express words, in any of the Rules, permitting extension of due date of payment of installment.

12. Rule 16 makes it necessary that an agreement, as prescribed in the form, given in the Appendix, shall be executed within one week of the payment of the first installment and the security as mentioned in Rule 15.

13. Pausing here for a moment, it may be pointed out that though Sub-rule (3) of Rule 21 permits extension of the period of settlement, such extension cannot be granted beyond a period of three months and that it can be granted only when the settlement holder has not been able to operate the mahal for reasons beyond his control. Sub-rule (3) of Rule 21 makes it clear that whether a settlement holder, eventually, sustains loss or profit is not material; what is material is that the Government must be convinced that the settlement holder has not been able to operate the mahal for reasons beyond his control and, if the State Government is so satisfied, it can, at best, extend the period of the settlement by a total period of

three months. Rule 21(3) also makes it clear that for every such reason, which disables a settlement holder from operating a mahal, the settlement holder shall apply for extension of the period of settlement to the Divisional Forest Officer concerned and that each such reason shall be considered for extension of the period of settlement, but the total period of extension cannot be beyond three months.

It is of immense importance to note that the request for extension of the period of lease shall be made within 7 days of the reason, which prevented a settlement holder from operating the mahal. Rule 21(3) comes into play only when the settlement holder has, pursuant to the settlement granted, already made the security deposit as required under Rule 14, paid the first installment in terms of Rule 15 and has executed the agreement as envisaged by Rule 16. If the security deposit has not been paid within the time as prescribed or the first installment has not been paid within the time as prescribed or if the agreement, as envisaged by Rule 16, is not executed within the prescribed period, Rule 21(3) would not come into play. Rule 21 cannot, therefore, be taken recourse to for the purpose of extending the period of making security deposit, the due date for payment of first installment or the due date for execution of the agreement aforementioned. The fact, that Rule 20 empowers the Government to withdraw any mahal from sale at any point of time before the final order of acceptance has been issued, cannot, as a corollary, be said to have vested, in the Government, the power to extend the period of making security deposit or the due date for making payment of first installment or the period for execution of the agreement. If Rule 20 cannot be resorted to in order to extend the period of making payment of security deposit, the period of making of the first installment and/or the period for execution of agreement, it is impossible to hold that when there is a default in making payment of any installment, subsequent to the payment of any of the first installment, Rule 20 can be taken resort to.

14. Bearing the above limitations, in mind, when one reverts to Rule 17, what becomes clear, as correctly contended by Mr. Dutta, is that the expression, "if the tenderer, whose tender has been accepted, fails to pay the security or to pay the installment on the due dates mentioned in Rule 5 or to execute agreement mentioned in Rule 16, the sale of the coupe or mahal shall be liable to be cancelled", means that the cancellation, as envisaged by Rule 17, is not automatic. This power of cancellation, to my mind, cannot be exercised without giving notice to the person, who has defaulted, in making security deposit within time or paying installment within time or in executing agreement within time. If the power of cancellation cannot be exercised without giving notice, it logically follows that if a person assigns good reasons for not being able to deposit the security or pay the installment or execute the agreement within due date, the Government has the discretion not to cancel the sale. In such circumstances, the sale of mahal will not take place, but when the Government finds no good reason for accepting the belated deposit of security or belated payment of installment or belated execution of agreement, the

Government must cancel the sale of the mahal and the mahal shall, then, be resold for remaining part of the settlement period at the risk of the tenderer in terms of Rule 17. Thus, the power to accept belatedly made deposit of security or belatedly made payment of installment or belated execution of agreement is impliedly present in the body of Rule 17 itself. Ordinarily, on the failure of a tenderer to deposit, within the prescribed period, requisite security or within the prescribed period, to pay installment or to execute agreement within the prescribed period, the sale of mahal must take place. Hence, it is only in rare and exceptional cases that belatedly made deposit of security or belatedly made payment of installment or belatedly executed agreement would be permissible.

15. The question, therefore, is as to whether in the facts and attending circumstances of the present case, the State Government has any good reason for accepting the 4th kist money and allowing the settlement holder to operate the mahal?

16. The field of operation of Rule 21 is quite different from Rule 17 inasmuch as Rule 21 comes into play, as already indicated above, when a settlement holder shows to the satisfaction of the State Government that he has, for reasons beyond his control, not been able to operate the mahal for certain period; whereas Rule 17 relates to cancellation of the settlement if, amongst others, installments are not paid within due date. If a person does not pay installment within due date and the due date for making payment of installment is not extended, the settlement would have to be cancelled. The fact, that a person has not been able to operate a mahal for certain period, can only entitle him to operate the mahal. The fact, that he has not been able to operate the mahal, has nothing to do with the extension of the due date of payment of installment, i.e., kist money. The installments have to be paid within due date and if it is not paid, the Government shall cancel the mahal after giving notice to the settlement holder. If pursuant to such a notice, the settlement holder shows that though he had the means and intention to pay the installment within due date, yet, due to some unforeseen circumstances, such as, the fact that on account of a strike by the employees of the bank, it had become impossible for him to deposit the installment within due date, and if the State Government considers such a reason acceptable, the State Government may extend due date of payment of installment. If, however, for non-payment of installment within due date, the settlement holder contends that he had not been able to operate the mahal and, therefore, he could not make the payment within due date, such a reason cannot be a valid reason, under the scheme of the Rules, to accept a belated payment of installment. At the cost of re-petition, I must make it clear that the fact that a settlement holder has not been able to operate a mahal for reasons beyond his control can only entitle him to seek extension of the period of operation of the mahal and that too, such extension shall not be for a period longer than three months. The fact that a settlement holder has not been able to operate the mahal, cannot, I must hasten to add, entitle the settlement holder to deposit kist money

after expiry of the due date of payment of installment nor will such a reason entitle the State Government or any of its functionaries to either belatedly accept such payment of installment or allow extension of the due date of payment of installment.

17. In the case at hand, respondent No. 4, who represents the State Government, has sought for directions, as already indicated above, in Misc. Case No. 1765/2008, to allow him to withdraw the re-sale notice, dated 28.1.2008 on the ground that the settlement holder has already paid the installment, i.e., the 4th kist money. In this regard, it needs to be noted that though it has been averred, in his affidavit by the respondent No. 4, that the settlement holder has paid his third installment, the fact of the matter remains that even the 3rd installment was not paid on due date. Each of the installments was of Rs. 17,03,178. The due date for the 3rd kist money or 3rd installment was 17.10.2007; whereas the 3rd installment was paid on 22.10.2007 and, for making such belated payment, no convincing and acceptable reason has been assigned.

18. Be that as it may, the 4th installment was, admittedly, not paid on due date and only a sum of Rs. 5,00,000 was paid on 12.2.2008. The settlement holder has merely submitted reasons as to why he could not operate the settlement holder. The failure to operate the settlement holder, as I have already indicated above, may entitle a person to seek extension of the period of settlement, but it would not permit extension of the due date of payment of installment. For failure to pay installment within due date, some reasons, other than the reason that the settlement holder has not been able to operate the mahal, has to be assigned. The extension of the due date of installment would arise only when the settlement holder is ready and willing to make the payment, but, for reasons beyond his control, he has not been able to make the payment within due date, say for instance, when, as already pointed out above, the bank, due to strike or otherwise, is not ready and willing to accept the deposit. Where the settlement holder does not have the money or the means to make the payment of installment, the question of giving him further time does not arise at all, for, if it is interpreted otherwise, it would lead to anomalous situation inasmuch as the maximum period of extension of lease is three months, but there is no outer limit for extension of due date for payment of installment.

19. In the present case, there is nothing in the writ petitions, which have been filed by the settlement holder, or in the affidavit, which has been filed by the State respondents, or, in the miscellaneous application, which has been filed by the State respondents to show that the settlement holder had the means and also the will to make payment of installment within due date, but, for reasons beyond his control, he could not make the payment. Situated, thus, the mere fact, that the settlement holder has deposited the installment belatedly, cannot entitle him to operate the mahal. When the settlement holder had not even assigned any cogent and acceptable reason for not depositing the installment within due date, the

respondent No. 4 ought to have cancelled the sale of the mahal, which had been made in favour of the settlement holder.

20. Though I have held that before sale of a mahal is cancelled, a notice must be given to the settlement holder directing him to show cause as to why the settlement shall not be cancelled, it needs to be pointed out, in this regard, that, in the present case, though no specific notice was issued to the settlement holder, the settlement holder received more than adequate time and opportunity to assign any such reason, which could have led to extension of the due date of payment of installment. In such circumstances, the fact that no formal notice had been given to the settlement holder, before the mahal was put to re-sale, cannot be treated as a ground for not cancelling the sale inasmuch as the settlement holder has failed, despite sufficient time and opportunity having been received even after the writ petitions were filed, to show that he was, otherwise, ready and willing to deposit the kist money, but failed for reasons beyond his control. Hence, on the basis of the part payment made, by the settlement holder, subsequent to the issuance of the re-sale notice, the re-sale notice could not have been withdrawn.

21. In the result, and for the reasons discussed above, the State respondents are hereby directed to process the tenders, which have been received pursuant to the re-sale notice, dated 28.1.2008, and do the needful in accordance with the law.

22. As the settlement holder has not assigned any such reason, which would entitle him, as discussed above, to the extension of the due date of payment of installment, the writ petitions filed by him cannot be allowed.

23. Because of what have been discussed and pointed out above, while the Writ Petition No. 555/2008 is allowed, the remaining writ petitions and the miscellaneous case No. 1765/2008 are hereby dismissed.

24. No order as to costs.