AIR 1993 SC 935 : AIR 1992 SC 935 : (1992) 2 BLJR 1365 : (1993) 78 CompCas 1 : (1992) 2 CompLJ 89 : (1992) 2 JT 326 : (1992) 2 LW 708 : (1993) 1 PLJR 90 : (1992) 1 SCALE 388 : (1993) 2 SCC 279 : (1992) 1 SCR 616 : (1992) 2 UPLBEC 1333

Supreme Court of India

Case No: Civil Appeal No. 4503 of 1990

Mahesh Chandra — APPELLANT

Vs

Regional Manager, U.P. Financial Corporation and others — RESPONDENT

Date of Decision: Feb. 12, 1992

Acts Referred:
Constitution Of India, 1950 â€" Article 38, 39, 43, 136#State Financial Corporation Act, 1951 â€" Section 3, 24, 25(1)(g), 29, 29(1), 29(4), 37#Transfer Of Property Act, 1882 â€" Section 52

Citation: AIR 1993 SC 935 : AIR 1992 SC 935 : (1992) 2 BLJR 1365 : (1993) 78 CompCas 1 : (1992) 2 CompLJ 89 : (1992) 2 JT 326 : (1992) 2 LW 708 : (1993) 1 PLJR 90 : (1992) 1 SCALE 388 : (1993) 2 SCC 279 : (1992) 1 SCR 616 : (1992) 2 UPLBEC 1333

Hon'ble Judges: R. M. Sahai, J; K. Ramaswamy, J

Bench: Division Bench

Advocate: R.K. Jain, P.N. Lekhi, P.K. Jain, S. Markandeya and C. Markandeya, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Ramaswamy, J.
The appellant, Managing Partner of M/s. Shiva Rice Mill situated at Nagina, Distt. Bijnor in Uttar Pradesh, owned two

plots bearing Nos. 208 and 220/2 admeasuring 18 and 8 Bishwas respectively purchased under a single sale deed. In plot No. 208 in an extent of

2,700 sq. yards abutting Highway, near Railway Goods Shed and one furlong to the Railway Station, a strategic location of importance, the rice

mill was constructed by the partnership firm. The plot bearing No. 220/2 remained vacant and was not even valued as an asset of the partnership

firm while hypothecating the rice mill to the U.P. Financial Corporation for short ''the Corporation''. A loan of Rs. 4,28,000, was sanctioned in

1979 and Rs. 3,70,660 was alone disbursed in 1980 which was repayable in eleven annual installments upto 1991. The appellant repaid a sum of

Rs. 9000 in December, 1981. Non-cooperation of the other partners and lack of working capital, due to failure to release the balance loan, landed

the running mill into rough weather and defaults in payment were committed. While finding that interest was getting mounted, the appellant wrote

repeated letters to the Corporation requesting to release plot No. 220 so as to enable him to negotiate for private sale of it along with his two more

plots to pay off the debt. It is his case that, pursuant to his letter dated December 22, 1983, on oral promise to release the plot, he paid a sum of

Rs. 65,000 and was received by the corporation. He also promised to pay Rs. 50,000. The Corporation did not release it. According to him, in

his letter dated February 10, 1986, Annexure 6, as on March 31, 1986 the simple interest payable was Rs. 1,93,670, the principal amount was

Rs. 3,70,660 and expenses was Rs. 3,835. After deducting Rs. 65,000 towards arrears of interest, the outstanding was Rs. 5,03,165 and he was

ready and willing to pay the same in full satisfaction under ""one time settlement scheme"", provided compound interest is waived. The record also

shows that in a meeting held in September, 1985 a decision to release the plot appears to have been reached by the corporation and the Regional

Manager was asked to be contacted. Ultimately, the Corporation did not accede to that request but had taken possession of the hypotheca and

got valued at Rs. 3,28,717.97 and published for sale inviting tenders. It is necessary to point out at this juncture that as per the plan filed on record

which is not disputed that (a) Plot No. 221 faces the road, Plot No. 220 is in the middle and 219 is in the end towards north. They are contiguous,

(b) The appellant in his letter submitted that the mill could not run due to lack of running capital and non-cooperation of other partners; and (c)

Sketch plan clearly shows that plots Nos. 219 and 221 could be used to carve out housing plots only if 220 was released, and that might have

fetched good price to enable the appellant to clear off the arrears. Yet it was not accepted, because according to the affidavit of the corporation

the appellant could have sold other two plots. Several letters written by the appellant, thus, received no response. Instead recovery proceedings

were initiated.

2. According to the purchasers, though the Corporation did not assert, that no response was evoked from public for several tenders called for.

The last date to receive the tender in question was January 13, 1987. Deshbandhu Agarwal, the third respondent, per self, his wife (since died)

and his son, respondents Nos. 4 & 5, submitted the tender on March 25, 1987 for a sum of Rs. 2,00,000 which was on negotiation accepted at

Rs. 2,55,000. The Corporation agreed to receive 25% of the consideration, namely, Rs. 63,750 as initial payment and the balance consideration in

four years in equal half yearly installments. Before accepting the tender no notice nor an opportunity in this regard was given to the appellant. The

appellant, therefore, filed the writ petition in the Allahabad High Court which was dismissed by judgment dated February 9, 1990. This appeal

under Article 136 of the Constitution arises against that judgment.

3. When the matter came up for hearing, this Court suggested to the parties to have the matter settled amicably. They had taken sufficient time. The

purchasers reported that they entered into an agreement to sell plot No. 220, and the purchaser declined to rescind the contract with a threat to file

a suit for specific performance. They offered to pay Rs. 40,000 said to be the consideration therein but the appellant declined to accept the same.

The Corporation though filed an exhaustive counter affidavit, did not deny the offer made by the appellant in his letter dated February 10, 1986.

When we enquired, the counsel for the Corporation, on instruction, stated that they had informed the appellant that his proposal was not

acceptable to the Corporation, but no material has been placed on record of such communication. It was stated that as on the date of the sale a

sum of Rs. 8,61,969.57 was due from the appellant towards principal and interest @ 18%. The break-up has been given in a separate statement

filed by the counsel. Thus the proposed settlement had been fizzled out.

4. Mahatma Gandhiji, the father of the nation, in Swaraj at page 92, stated that, ""from the very beginning it has been my firm belief that agriculture

provides the only unfailing and perennial support to the people of this country. India lives in villages"". Villagers are poor and most of them are

unemployed or underemployed who need productivity which would add to the wealth of the nation. This vast human resources and man power

remain idle, since majority own little or marginal land holdings out depend on agriculture as their livelihood. Cottage, agro-based or medium

industries in rural areas give them economic status to the owner, employment potential for sustenance to the workmen and fair price to the

producer. The father of the nation laid, therefore, emphasis to establish cottage industries, ""to utilize the idle hours of the nation and bring work to

the people in their homes, particularly when they had no other work to do"". He further stated, ""I want the dumb millions of our land to be healthy. I

want them to grow spiritually. If we feel the need of the machine we certainly will have them. Every machine that helps an individual has a place"".

But he emphasised only on such industries which would be, ""self-sufficient, self-reliant and free from exploitation"". The founding fathers of the

Constitution in Article 43 directed that, ""the State shall endeavour to promote cottage industries on an individual and cooperative basis in rural

areas"". Without social progress and economic development, democracy and freedom would not take firm roots. Without social stability, it would

be impossible to achieve economic development. Without economic development there would be no social progress and without social progress it

would be impossible for the people to take the destiny in their own hands in a democracy. Our Constitution, therefore, accepted mixed economy

as the base and the economic policy and planning echo regeneration of social and economic justice. Articles 38 and 39 aim in that pursuit that the

ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the inequalities

in income should be minimised. Facilities and opportunities should be provided to eliminate inequalities in status and opportunity among the

individual and groups of people. Our Bharat needs simultaneously greater progress by building industries with modern technological advances on

all fronts and should create greater employment opportunities. To accelerate economic development the fiscal resources, human resources, their

abilities and expertise need harness. In the mixed economy the public undertakings as well as private sector need necessary assistance and

encouragement. The growth of the private sector should not be stifled, cribbed or cabined. The bureaucracy should adopt positive approach to

stimulate production and productivity in every sector of economy so as to increase the size of the national cake.

5. Finance is the most important catalyst. The State of Uttar Pradesh constituted the Corporation u/s 3 of the State Financial Corporation Act

1951, Act 63 of 1951, for short, "the Act" which came into force from October 31, 1951. To promote industrialisation in the States by

encouraging small entrepreneurs to participate in economic growth of the country by giving them financial assistance for setting up medium and

small scale industries. Section 25(1)(g) of the Act provides that the Corporation may grant loans or advances to an industrial concern (rice mill is

an industrial concern) repayable within a period not exceeding 20 years from the date the loan was granted. Although the activity has multiplied,

capital has grown, field of operation has been widened but the disturbing state of affairs, which at times, surfaces, is complete lack of awareness of

principles on which these institutions are required to function. More distressing is unreasonable attitude adopted, often, by the Corporation while

exercising power u/s 29 to take over possession of the unit for default, in repayment of loan. Evil is still greater in transferring the unit as more often

the owner stands financially ruined the Corporation too does not gain much but the transferee comes out, either with a working unit or a unit ready

to go at throw away price, in easy installments giving rise to strong apprehensions that everything did not proceed reasonably and fairly.

6. Corporations deal with public money for public benefit. The approach has to be public oriented, helpful to the loanee, without loss to the

corporation. Section 24 of the Act itself required the Board ""to discharge its function on business principles, due regard being had to the interest of

industry, commerce and general public"". ''Business'' is a word of wide import. It has no definite meaning. Its perceptions differ from private to

public sector or from institutional financing to commercial banking. The financial corporations under the Act were visualised not as a profit earning

concerns but an extended arm of a welfare state to harness business potential of the country to benefit the common man.

7. The release of plot No. 220 for private sale along with other unem-cumbered two plots would have fetched the necessary amount to pay off the

debt. Even the offer to receive Rs. 5,00,000 in full quads would have salvaged the problem. Any prudent businessman with least acumen would

have agreed to the proposal of the release of the plot for sake of recovering its debts. Instead of agreeing to receive five lacks in lump sum, it

opted for two lacs fifty thousands, that too in four yearly installments. It was neither business principle, nor in the interest of commerce and

industry, nor good of general public. Any reasonable approach, which of course is not only desirable but necessary, while dealing with such

matters, would have immediately demonstrated that the Corporation by such step of releasing the plot, which was of no consequence to it, was

going to gain and perpetuated the objectives of the Act. Instead it adopted an attitude which was contrary to the spirit and scheme of Section 24 of

the Act. Did the Corporation gain from its" ultimate decision of taking over possession and transferring the unit ? Total loan disbursed was Rs.

3,78,660. The appellant paid in all Rs. 74,000 and if it is added to the amount paid by the appellant, it comes to Rs. 3,29,000 only. Whereas the

appellant was willing to pay Rs. 5,00,000 and odd in 1986 over and above the amount which he had paid, if plot No. 220 was released or one

time payment scheme was accepted. Similar offer was accepted in relation to mill at Meerut. It did not get back the interest. Even what it

disbursed was the borrowed public money. Of course, the transferee got a mill with project cost estimated at 6 lacks and odd in 1980 at Rs.

2,55,000 in 1986 when the value must have gone up instead of going down.

8. There is a theorem that the economic self-interest and profit motive induce entrepreneurs to reallocate resources among activities until they get

the same (approximately, if not exactly in practise) rate of return from different lines of activity. No body would like to lose money. No body

would like to miss an opportunity to make profit or to lose his money either. Resources allocation in a market economy, thus, primarily is a matter

of relative priority to different activities. The very process of economic growth implies continuous reallocation of resources to generate income to

plough it back and earn profit. One of the major causes to incur loss is the erosion of working capital fund which affects the day-to-day working of

the unit. Unless working capital is provided for, the industry is bound to get closed due to accumulated losses year after year. The terms of loans

are mainly to repay immediately after disbursement with commercial rate of interest together with annual on half yearly rests. Unless the unit starts

generating internal resources and earn profit, running the unit on industrial concern itself becomes difficult and the ability to repay principal or

interest get impeded. The result, therefore, is that it would commit default or breach of contract by default attracting penal interest for the period in

default. The industrial concern or unit, thereby, would be further burdened with additional cost of interest, panel interest and interest over interest.

With the result they cannot come out from the red, nor generate internal resources. Many a time the corporation takes over possession and sell

thereof. The genuine and enthusiastic entrepreneur with no previous business experience would get exposed to this hazard (the pretenders to make

quick money would maintain concerted conduits and the officers too would be solicitous to them). Therefore, the Corporation as a policy of wise

investment should map out payment schedule in disbursing the loan to see that the unit starts functioning and its working capital is maintained. It is

common knowledge that due to apathy or indifference or for reasons best known or hidden that the disbursements would be delayed resulting in

delay in completion of the project or to start working or loss of running capital, which would give cause for default in payment of the installments;

accumulation of the liabilities and the ultimate closure of the unit or the industrial concern, defeating the objectives of the Act and the Constitution.

9. This case demonstrates that in spite of reminding the corporation that due to lack of working capital, the appellant was unable to run the mill.

The corporation did not release the balance loan and no explanation came forth. Dr. Malcolm S. Adiseshaiah, the noted Economist, in his ''The

Why, What and Whither of the Public Sector Enterprise at page 42 under the caption ''Problem of Loss-Making Units in the Public Sector,

Erosion of Working Capital and its Results'' stated that, ""I was informed that the best course would be to get money as loan and not as equity.

Anyhow we have to run the industry, margin money was provided as loan on the same terms and conditions regarding interest and repayment. So,

on this question also, rethinking is needed. Since margin money has to come from the owner, and since the Government is the owner of the public

sector, it should consider margin money released as equity"". At page 43 it is stated that, ""a drastic change in policy is needed to make those units

viable and to enable them to stand on their own legs. The rehabilitation programme is going on (we do not call it ""modernization"", though in the

government the term ""modernization"" is used).... For losing concerns, even the payment of interest adds to their woes in finding necessary working

capital...by way of equity, so that these units are able to overcome the difficulty and start standing on their own legs"". With regard to the problems

with the bank at pages 45 and 46 it was stated thus: ""If the banks take a helpful attitude in normally sanctioning the respective limits as announced

by the committee for working capital, it will be quite helpful for the public sector-may be even for the private sector"".

10. Thus a helping attitude on the part of the Corporation to constantly monitor the working of the industrial concern or units (it may even charge

the overhead expenses on this account) would subserve the purpose of the loan, object of the Act, and the constitutional objective of economic

justice to the needy. Equally employment and better working conditions to the workmen are assured and the unit gets established and starts

yielding returns for repayment of principal amount and interest payable thereon. The facts in this case do demonstrate that non-cooperation by the

partners and depletion of working capital are causes to close the mill and the consequential default in the payment of the principal amount and the

interest accrued thereon. The corporation acted indifferently.

11. Let us turn to Section 29 for the scheme of dealing with taken over sick unit. Section 29(1) of the Act says that if an industrial concern makes

any default in repayment of any loan or advances or any installment thereof, the Corporation shall have the right to take over the management or

possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the debt from the property pledged,

mortgaged, or assigned to the Corporation.

12. Sub-section 4 postulates that in the absence of any contract to the contrary, the amount received ""be laid by"" the corporation ""in trust"" firstly in

the payment of cost, charges and the expenses and secondly in discharge of the debt due to the Corporation and the residue, if any, shall be paid

to the defaulter or the persons entitled thereto.

13. The Corporation has been given statutory right to take over possession and management of the defaulting unit or hypotheca or both including

the right to sell and realise the loan or advance due from the unit or debtor. The Corporation is an instrumentality of the State. The Corporation or

its employees or officers are bound to act reasonably and fairly in dealing with the property of the debtor. The exercise of the power or discretion

in its dealing would be subject to the same constitutional or public law limitation as the government. The Corporation also equally must conform its

action with the same standard that meet the test of justness, fairness, reasonableness and relevance. In Kasturilal Laxmi Reddy v. State of J. & K.,

[1980] 3 SCR 1338, this Court held that when any Government''s action fails to satisfy the test of reasonableness and public interests are found to

be wanting in quality of reasonableness or lacking in the quality of public interest, it would be liable to be struck down as invalid. It must follow as a

necessary corollary, that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would

not be both unreasonable and contrary to public interest.

14. The law consists of body and soul. The letter of the law is the body and the sense and reason of its is the soul, quia ratio legis est enema legis.

In other words, like a nut the letter of the law represents the shell and sense and the purpose of its Kernal. The law intends to serve the purpose.

Justice is both the cause and effect, the origin and the legitimate end of law. One will receive no benefit from the law, if the ratio and the letter of

law defeats its purpose.

15. Section 29 confers very wide power of the Corporation to ensure prompt payment by arming it with effective measure to realise the arrears.

But the simplicity of the language is not an index of the enormous power stored in it. From notice to pay the arrears, it extends to taking over

management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far reaching reperoussion, has

inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good

the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more

strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have

to be tested on the touchstone of fairness and justice. That which is not fair . and just is unreasonable. And what is unreasonable is arbitrary. An

arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising

discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in

discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to

have acted contrary to reason. Power u/s 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act

cautiously, honestly, fairly and reasonably. Default in payment of loan may attract Section 29. But that alone is insufficient either to assume

possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any

guideline framed by the Corporation was placed, yet the basic philosophy enshrined in Section 24 has to be kept in mind. Rationale of action and

motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over

and transfer invalid. Unfortunately the Corporation was guilty of not acting in accordance with law either at the stage of take over or in transferring

the unit. Admittedly the entire loan was not disbursed. Need of the capital in the last stages cannot be doubted. If the Corporation refused to

release the amount at a time when the unit is nearing completion or is ready to start functioning, then it falls short of capital and it is bound to land

itself in trouble. This is what happened in this case. The partners did not cooperate and the Corporation without any explanation refused to release

the full amount. Result was the appellant stood pressed on one hand from absence of capital and on the other by recovery proceedings. The

Corporation, therefore, should honour their commitments of releasing entire loan timely except for very good reasons which should be intimated

beforehand to enable the unit holder to comply with shortcoming if any. In its absence of its completion, the proceedings for recovery u/s 29 may

not be justified. Similarly various situations may arise which may hamper start of the unit-delay in electric supply or delayed delivery of machinery

vital for the functioning of the unit. Such difficulties do require rescheduling of payment of installment because, if the unit, for reasons beyond the

control of unit holder, could not start, then how will the amount be repaid. Endeavour should be to adjust and accommodate as business

considerations require the unit to function for benefit, both, of the general public and the Corporation. It is not mandatory, as a matter of law, to

observe the process of taking over strictly. But if there is no option left out and the unit is taken over then its transfer require not only sincere effort

but to act reasonable and fairly.

16. Equally Sub-section 4 of Section 29 treated the Corporation ""to be a trustee"" of the debtor or person claiming title through him. It saddles the

Corporation or the officer concerned with inbuilt duties, responsibilities and obligations towards the debtor in dealing with the property and entails

him to act as a prudent and reasonable man standing in the shoes of the owner. According to Prof. Issac, a noted author on Trusts, trusteeship has

become a readily available tool for everyday purpose of organisation financing, risk shifting, credit operations, settling disputes and liquidation of

business affairs. Maitland, the other renowned writer on Equity, observed that one of the exploits of equity; the largest and the most important, is

the innovation and development of the trust. Thus, trust has been and is being applied for all purposes mentioned by Prof. Issac and many others as

device to accomplish different purposes. Trusteeship is an institution of elasticity and generality. The broad base of the concept of property or its

management vested in one person and obligation imposed for its enjoyment by others is accepted in Hindu jurisprudence. Therefore, when the

property of the debtor stands transferred to the Corporation for management or possession thereof which includes right to sell or further mortgage

etc., the Corporation or its officers or employees stands in the shoes of the debtor as trustee and the property caste que trust. In N. Swyanarayan

Iyer''s Indian Trust Act, Third Edition, 1987 at page 275 in Section 37 it is stated that, ""Where the trustee is empowered to sell any trust

property...by public auction or private contract and either at one time or at several times..."" the duty of trustee is to obtain the best price. He

should, therefore, use reasonable diligence in inviting competition to that end. Where a contract of sale has been entered into bona fide by a trustee

the court will not allow it to be rescinded or invalidated because another purchaser conies forward with a higher price. It would, however, be

improper for the trustee to contract in circumstances of haste and improvidence. Where in a trust for sale and payment of creditors the trustee sold

at a gross under valuation showing a preference to one of the creditors, he was held guilty, of breach of trust. If the purchaser is privy of the fraud

the property itself can be recovered from him.

17. The sale may be either by public auction or private contract. In either case the trustee has to keep in mind that he must obtain the most

advantageous price. Kerr on Receivers 17th Edition, at page 208 stated that ""a receiver, however, is not expected any more than a trustee or an

executor to take more care of their property entrusted to him than he would have as a reasonably prudent man of business"". In Halsbury''s Law of

England, 4th Edition, Vol. 39, at para 919 it is stated that the ""'receiver will be compelled to show that he has acted with perfect regularity and has

used such degree of prudence as would be expected from a private individual in relation to his own affairs"". The trustee or a receiver is, therefore,

duty bound to protect and preserve the property in his possession and the standard of conduct expected of him, in dealing with the property or

sale thereof, is as a prudent owner would exercise in dealing with his own property or estate. The degree of care expected of him in handling

property taken possession of is measured by the degree of care expected of a person acting as trustee, executors or assignees. The object and

endeavour should also be to secure maximum advantage or price in a sale of the property in lots or as whole, as exigencies warrant.

18. The Corporation or its officers or servants as trustee are bound to exercise their power in good faith in selling or dealing with the property of

the debtor as an ordinary prudent man would exercise in the management of his own affairs to preserve and protect his own estate. Therefore, the

acts of the officer or servant of the corporation should be reasonable, just and fair which must meet the eye and the offer accepted must be of

competitive and every attempt should be made to secure as maximum price as possible to liquidate the liabilities incurred by the industrial concern

or the debtor under the Act.

19. In Fertiliser Corporation Kamgar Union (Regd.), Sindri & Ors. v. Union of India & Ors., [1981] 2 S.C.R. 52, this Court clearly said that, ""we

want to make it clear that we do not doubt the bona fides of the Authorities, but as far as possible sales of public property, when the intention is to

get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at

least get satisfied that the Government has put all its cards on the table."" In Ram & Shyam Co. v. State of Haryana, [1985] Supp. 1 S.C.R. 541

this Court held that unilateral offer summarily made, not correlated to any reserve price made by the forth respondent after making full settlement in

the matter was accepted without giving an opportunity to the appellant to raise the bid, as also inadequacy of his bid, it was held that the State

failed to discharge its administrative functions fairly and unfair treatment was meted out to the appellant violating the principles of fair play in action.

In Sachinand Pandey v. State of West Bengal, [1987] 2 S.C.R. 223 this Court held that :-

On a consideration of the relevant cases cited at the bar the following proposition may be taken as well established; State owned or public owned

property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public opinion is

the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell

the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where

there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be

suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of

bias, jobbery or nepotism.

20. In Haji T.M. Hassan v. Kerala Financial Corporation, [1988] 1 S.C.R. 1079 this Court further held thus:-

The public property owned by the State or by any instrumentality of the state should be generally sold by public auction or by inviting tenders. this

Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the state and

public authorities. They should undoubtedly act fairly. There actions should be legitimate. There dealings should be above board. There

transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives

an impression of bias, favourtism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders.

21. In Lakshmanasami Gounder v. C.I.T., Selvamani & Ors., [1991] 2 SCALE 956 this Court, by a bench to which one of us (K. Ramaswamy,

J. was a member) in the context of sale of debtor''s property for recovery of the Government dues, held that sale officer has statutory duty and the

responsibility to have the date and place of sale mentioned in the notice and given due publication in terms of the Act and the Rules. Public Auction

is one of the mode of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public

authorities or the sales officers who should act fairly, objectively and kindly. Their actions should be legitimate. Their dealing should be free from

suspicion. The fair and objective public auction would relieve the public authorities or sale officers from the charge of bias, favourtism, nepotism or

else beset with suspicious feathers and of their non-accountability.

22. The sale by public auction or tender or private negotiation should be bona fide action. First is universally recognised to be the best and most

fair method. It is expected to fetch best competitive price and is beyond reproach. Second would be resorted to rarely only if first is an

impossibility. Generally tenders should be calling quotation to execute public work or to award contracts etc. And third should always be avoided

as it cannot withstand public gaze. It casts reflection on Corporation and its officials and is against social and public interest. In case transfer cannot

be effected by public auction and it is necessary to resort to sale by tender it is both fair and necessary to inform the unit holder, if unit has been got

valued for purposes or transfer of the estimated value for sale as he is as much interested as the Corporation. Sale of public property by calling

tenders escape attention of many an intending participants. Every endeavour should, therefore, be made to give wide publicity and to get the

maximum price. Bureaucracy feels that accountability is an impediment to efficient discharge of the duty. Accountability is no more and no less

than, the concept of accountability of a private concern to their shareholders. There is a distinction between prying into details of day to day

administration and of the legitimate actions or resultant consequences thereof. To enthuse efficiency into administration, a balance between

accountability and autonomy of action of management in public enterprises should be carefully maintained. Over emphasis on either would impinge

upon public efficiency. But undermining the accountability would give immunity or carte blanche power to deal with the public property or of the

debtor at whim or vagary. Whether the public authority acted bona fide and in the best interest as prudent owner in the given facts would do, be

gauged from impugned action and attending circumstances. The authority should justify the action assailed on the touchstone of justness, fairness,

reasonableness and as a reasonable prudent owner.

23. Keeping these various factors giving rise to conflicting interest the following directions are necessary to be issued to be observed by the

Corporation while exercising power u/s 29:

24. Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable:

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to

the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him.

And the arrears remaining thereafter should be rescheduled to be recovered in installments with interest after the payment of last installment fixed

under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary

buyer may not be available or the industry itself may be or such nature that by normal buyers may not be available. But before taking such steps

there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be

granted on condition that sale proceeds shall be deposited in loan account.

25. In the light of the above guidelines it becomes clear that though tenders were invited the 3rd respondent alone had given the tender for a sum of

Rs. 2 lacs. On negotiation it was said to have been raised to Rs. 2,55,000. But deferred payments, on initial deposit of 25% and balance payment

within four years of half yearly installments, were given. This solicitous attitude, at the expense of the appellant, appears to be unjust and unfair and

no reasonable prudent owner would accept such an offer. The appellant himself, long prior to sale, offered to pay Rs. 5 lacs and odd in full quads.

Section 29 does not exclude the application of the principles of natural justice. It is not a straight jacket formula. It depends on facts in each case.

Nothing prevented the Corporation to have given the appellant a chance for payment thereof at reasonable installments with interest thereon.

Nothing prevented them to release the open site, the subject of mortgage on condition that the entire sale price of the plots should be paid to

discharge the liability and it be a condition in the sale deed itself. Before accepting the tender of the third respondent, an opportunity should have

been given to the appellant as to why such an offer of the third respondent be not accepted. The appellant would have come forward to give his

own offer or brought third parties with higher offers. No such bona fide actions have been taken or attempted by the Corporation. Thus the acts

smacked of bona fides or responsibility or reasonableness as an ordinary prudent businessman/trustee/owner acting in or dealing with such trust.

Thus the sale of the property is vitiated by unjust and unreasonable act on the part of the Corporation or its officers or employees and is liable to

be set aside.

26. The possession given to the respondents 3 to 5 or L".Rs. of the respondent is illegal and immediately be resumed by the Corporation. The

third respondent claimed to have improved the mill or entered into an agreement of sale of open plot No. 220/2 with third parties. But this is

subject to litigation attracting the doctrine of lis pendens u/s 52 of the Transfer of Property Act. The appellant, therefore, is not bound by the sale

or the subsequent acts of the purchasers/persons claiming through them. One of the objections raised by the purchasers is that the appellant is one

of five partners and the others did not object to the sale. This is no ground to deny the relief to the appellant when injustice stares at the face. The

sale is accordingly set aside. The Corporation should immediately resume possession of the hypotheca sold. It is open to the appellant to pay the

entire liability and have the hypotheca redeemed as per contract. If it not possible, the respondent shall release plot No. 220 to enable the

appellant to do plotting along with plot Nos. 219 and 221. The release shall be made within four weeks from the date of the receipt of the copy of

this order or is produced before the respondent. The release shall be subject to payment of the entire sale price to the loan account. The

respondent shall grant six months" time from the date of release to the appellant to pay the entire arrears outstanding towards the loan. If he fails to

do so, the Corporation is directed to sell the same in open auction, after giving wide publicity in the press and by beat of drum/microphone in the

town and neighbouring area. The transferee would be entitled, if available at law, to proceed against the Corporation, for such f as is open to them

in law for damages.

27. The appeal is accordingly allowed. The writ of certiorari is issued quashing the sale. Mandamus is issued to the first respondent to immediately

resume possession of the hypotheca and implement the directions contained in the judgment. The parties would bear their own costs.