

(2011) 11 MAD CK 0057

Madras High Court

Case No: W.A. No. 2452 of 2010

Sri Anbalayam Textiles Private
Ltd.

APPELLANT

Vs

The Chairman cum Managing
Director, No. 692, Tamil Nadu
Industrial Investment
Corporation Ltd., Anna Salai,
Nandanam, Chennai 35, The
Branch Manager, Tamil Nadu
Industrial Investment
Corporation Ltd., No. 405/1,
Perundurai Road, Erode 11 and
Palaniappan

RESPONDENT

Date of Decision: Nov. 25, 2011

Acts Referred:

- State Financial Corporations Act, 1951 - Section 29, 29(1), 29(4)

Citation: (2011) 6 CTC 858 : (2012) WritLR 45

Hon'ble Judges: K.K. Sasidharan, J; D. Murugesan, J

Bench: Division Bench

Advocate: C. Prakasam, for the Appellant; K.V. Sundararajan, for R-2, Mr. K. Ramu, for R-3
and No appearance for R-1, for the Respondent

Final Decision: Allowed

Judgement

K.K. Sasidharan, J.

The legality and correctness of the sale of mortgaged property made by the State Finance Corporation for an amount less than the market value indicated in the Valuation Certificate prepared by the Registered Valuer, without fixing the reserve price, rejecting the request made by the borrower to pay the amount quoted by the successful bidder even before the payment of 90% of the balance consideration and

thereafter, belatedly accepting the balance amount from the successful bidder without forfeiting the earnest money in accordance with the auction condition, is the core question involved in this writ appeal.

CONSPECTUS OF FACTS :

2. The appellant was granted financial assistance by the Tamil Nadu Industrial Investment Corporation [hereinafter referred to as "the Corporation"] during the year 1994. The immovable property which is the subject matter of the present litigation was given as security. The appellant was running a spinning mill and due to market recession, they sustained severe loss and as a result, the loan installments were not paid as per the agreement. The Corporation agreed to settle the account by way of one time settlement. As per the terms of settlement, the unit was expected to pay the entire amount by 1 January 2004. Since one time settlement was not honored in its entirety, the Corporation took possession of the unit on 4 December 2006. The Corporation, through an authorized valuer, valued the property. The valuer fixed the market value at Rs. 156.43 lakhs. Subsequently, the property was sold in favour of third respondent for an amount below the market value.

3. The appellant approached the Corporation to pay the bid amount quoted by the successful bidder. However, the request was turned down. The third respondent failed to pay the balance consideration less EMD within the mandatory period of thirty days as stipulated in the auction notification and the order of confirmation. Even then, the successful bidder was permitted to pay the balance of 90% after 92 days and sales certificate was issued. The value of the property was more than Rs. 2.50 crores as on the date of sale. Therefore, the appellant was constrained to file the writ petition challenging the sale proceedings. The successful bidder was given possession of the property subject to the result of writ petition.

4. Before the writ court, the Corporation filed a counter wherein it was contended that ample opportunity was given to the appellant to settle the matter. The Corporation showed sufficient indulgence to the appellant by granting waiver. Even then, no action was taken to pay the agreed amount. Therefore, the Corporation was constrained to take over the unit u/s 29 of the State Financial Corporation Act. Thereafter, the property was sold in public auction. The Corporation denied the allegation regarding collusion, as according to them, only by way of a transparent procedure, the property was sold. The auction purchaser remitted the entire bid amount on 2 February 2010 and the unit was handed over to him on 13 February 2010.

5. The third respondent (auction purchaser) filed a counter wherein it was contended that he was a bona fide purchaser for value and consideration. He has also deposited the amount due to the Sales Tax Department besides incurring an expenditure of Rs. 12,00,000/-for registration of sale deed. According to the third

respondent, the Corporation has not committed any illegality in the matter of sale.

6. The learned single Judge negative the contentions primarily on the ground that the appellant has not repaid the amount within the time granted by the Corporation and as such, it was not open to them to challenge the auction proceedings. The challenge regarding the failure to fix the minimum upset price was negative on the ground that the same is not likely to be fetched in the auction, meaning thereby, it is not an essential requirement. Accordingly, the writ petition was dismissed. It is the said order, which is impugned in this writ appeal.

RIVAL SUBMISSIONS :

7. The learned counsel for the appellant would contend thus :

(i) The appellant has made substantial payments towards one time settlement and they were prepared at all point of time to pay interest for the delayed period. However the Corporation was not prepared to accept the payment subsequent to the expiry of the time prescribed under one time settlement.

(ii) The Valuer appointed by the Corporation fixed the market value of the property at Rs. 156.43 lakhs. However, the property was sold for a sum of Rs. 1.20 crores. Since the sale was made below the market rate, the same is liable to be set aside.

(iii) The Corporation was expected to indicate the reserve price in the sale notification. However, no such reserve price was fixed. (iv) The property was worth more than Rs. 2.50 crores as on the date of public auction. However, it was sold for a sum of Rs. 1.20 crores;

(v) There were only two bidders and it was in fact, a collusive sale and the same is evident from the difference of price quoted by the successful bidder and the other bidder. The difference was only a sum of Rs. 50,000/-.

(vi) The auction notification contains a mandatory clause regarding payment of sale consideration. As per the terms of auction, the bidder should pay the sale amount within thirty days from the date of confirmation, failing which, earnest money deposit would be forfeited. Notwithstanding the mandatory clause, payment was accepted from the third respondent belatedly without forfeiting the earnest money deposited by him.

(vii) Even before the payment of 90% of the amount by the successful bidder, the appellant has submitted a representation agreeing to pay the amount quoted by the third respondent. However, the application was rejected. It was only thereafter, the third respondent has deposited the amount, that too beyond the time prescribed in the order of confirmation. Therefore, the sale in favour of the third respondent was in violation of the auction conditions and as such, the same is liable to be set aside.

8. The learned Standing Counsel for the Corporation contended that sufficient opportunity was given to the appellant to repay the amount and it was only on

account of their failure to honor their commitment, the Corporation took possession of the property and it was sold later. According to the learned counsel, the Corporation followed the usual practice in selling the property without fixing the upset price. Therefore, there was no illegality in the sale. The amount quoted by the third respondent was the highest. Though the appellant submitted a representation, it was rejected in view of the past conduct of the appellant. The sale was a transparent one and as such, the same is not liable to be set aside.

9. The learned counsel for the third respondent justified the sale. According to the learned counsel, the third respondent has paid the bid amount of Rs. 1.20 crores and he has also discharged the sales tax arrears. Therefore, considering the amount paid to the Corporation, Registration duty paid to the Registration Department and the tax amount paid to the Commercial Tax Department, it cannot be said that the property was sold below the market price. According to the learned counsel, the property is now in the possession of third respondent and in case the sale is set aside at this point of time, serious prejudice would be caused to him. It was his further contention that the appellant has earlier taken steps to sell the property for a lesser amount and as such, it is evident that the sale price was the prevailing market value.

ANALYSIS :

10. There is no dispute that the Corporation has entered into a one time settlement with the appellant. The appellant agreed to pay the entire amount on or before 1 January 2004. It was only on account of their failure to pay one time settlement amount, the Corporation took possession of the unit, invoking Section 29 of the State Financial Corporation Act. The Corporation subsequently obtained a valuation report from their authorized valuer. The valuer fixed the market value of the property at Rs. 156.43 crores. The Corporation issued a sale notification dated 8 September 2009 and it was published on 16 September 2009.

11. The total extent of property is about 6.12 acres of land and 8722 sq. ft. of factory building besides a tiled roof office building measuring about 3931 sq. ft. Agricultural land to an extent of 0.825 hectares was the second item notified for sale. The auction was held on 1 October 2009.

12. The communication sent by the Corporation on 30 October 2009 to the appellant contained the market value of the property. However, the Corporation has not disclosed the fact that the property was sold on 1 October 2010 for a sum of Rs. 1.20 crores.

13. The auction notification does not contain either the market value or the upset price of the property. The auction was subject to certain conditions.

TERMS AND CONDITIONS OF AUCTION :

14. The auction notification contains the mandatory conditions. Clause 11 of the auction notification deals with terms of payment which reads thus :-

II Terms of payment, delivery etc. Outright payment basis :

1. The highest tenderer/bidder will have to deposit 10% of his tender/ bid as advance on the same day of the auction, in the form of cash/D.D./Pay order payable to the TIIC Ltd., at the place where the auction is held. The balance amount is payable as given below.

2. The balance 90% is payable within 30 days from the date of receipt of confirmation of sale from the Corporation. In case the 10% advance is not paid on the same day, the amounts till then paid will be forfeited. In case after paying the 10% advance, the balance 90% is not paid, then the amounts till then paid will be forfeited. In either of the two circumstances, the Corporation will be at liberty to act as per para III (16).

3. If the entire amount of the bid is paid to the Corporation in the manner stipulated, then the Corporation shall execute and register a sale deed in favour of the highest bidder for the land and building (expenses on bidder's account) and shall execute a delivery note for the plant and machinery and also hand over possession of the assets.

15. Consequences on account of non-remittance of balance amount of 90% was indicated in condition No. III (16) which reads thus :

In case the stipulated amounts are not paid within the stipulated time or the land, building and/or plant and machinery are not taken possession by the successful tenderer/bidder within three months after receipt of the confirmation of sale, the sale confirmation in his favour will be set aside and the amount paid till then will be forfeited without reference to the purchaser. In such an event, the Corporation shall have the option of negotiating with and accepting the offer of the second highest bidder. In such an event also, the amounts till then paid by the highest bidder will be forfeited.

16. The requirement that the entire 90% of the balance consideration should be deposited within a period of thirty days from the date of confirmation was essentially a mandatory condition. Since the consequences for non payment of the sale amount within thirty days was indicated in the sale notification, it should be considered as an essential term of contract. The said condition is mandatory in nature.

17. The auction was on 1 October 2009. There were only two bidders. The third respondent quoted Rs. 1.12 Crores as against the offer of Rs. 1,01,50,000/ quoted by the other bidder. The sale was confirmed in the name of the third respondent on 2 November 2009.

18.The third respondent initially quoted a sum of Rs. 1,12,00,000/-and it was enhanced later and he has agreed to pay a sum of Rs. 1.20 crores.

CONFIRMATION :

19.The order of confirmation dated 2 November 2009 reads thus :-

In the tender-cum-public auction sale held at our Office on 01.10.2009 in respect of the subject company's land, building thereon and scrap machinery you have quoted a sum of Rs. 112.00 lakhs as your highest bid on outright payment basis and subsequently enhanced to Rs. 120.00 lakhs (Rupees One crore and twenty lakhs only). Now our Corporation has decided to accept your offer and you are hereby advised to remit the balance bid amount of Rs. 108.00 lakhs along with the sales tax amount for the machinery of Rs. 9760/-totalling to Rs. 1,08,09,760/-after adjusting the 10% bid amount paid by you as detailed below.

Sl. No.	Receipt No.	Date	Amount (Rs.)
1	5239	1/10/09	100000
2	5241	1/10/09	1020000
3	5261	26.10.2009	80000
		Total	1200000

The above amount should be paid within 30 days from the date of this letter. On failure in remittance of the above amount within the stipulated time, the 10% bid amount already remitted by you will be forfeited without any further notice.

20. The confirmation proceedings dated 2 November 2009 indicates that the third respondent has to pay the entire amount within thirty days from the date of confirmation. Therefore, the third respondent was expected to pay the entire amount on or before 2 December 2009.

21. In the meantime, the appellant submitted a representation on 2 November 2009 and in the said representation, a request was made to the Corporation to permit them to pay the amount quoted by the third respondent and release the document thereafter. The said representation was received by the Corporation on 10 November 2009. However, the Corporation rejected the said request as per their communication dated 17 November 2009.

22. The third respondent failed to deposit the amount on or before 2 December 2009 as per the conditions of the auction notification and the order of confirmation. The auction notification does not contain any indication that the Corporation has reserved their right to extend the time for payment. The notification very specifically stated that the entire amount has to be paid within thirty days from the date of

confirmation, failing which, earnest money deposit would be forfeited. The confirmation letter also contains a similar clause indicating that the condition is mandatory.

23. The third respondent without making payment issued cheques in favour of the Corporation on 30 November 2009. Along with the cheques, he has also given a letter requesting the Corporation not to present the cheques till instruction is given by him. Therefore, it is evident that the third respondent was not having the necessary funds with him to pay the balance consideration.

24. Though the third respondent has given cheques for a sum of Rs. 98 lakhs, the cheques were not presented by the Corporation in view of the request to that effect. Subsequently, on 29 December 2009, the third respondent deposited a sum of Rs. 70 lakhs. However, he requested the Corporation not to present the remaining cheques as he was not having the funds in his account. The payment of Rs. 70 lakhs on 29 December 2009 itself was beyond the prescribed period. It was delayed by 27 days, excluding thirty days time given to make the payment. Subsequently, he has made payment on various dates and the last payment was on 2 December 2010. Therefore, even according to the Corporation, there was a delay of 92 days in making payment. However, very strangely, the Corporation condoned the delay and issued the sales certificate.

25. The issue is whether the auction sale was a nullity. The further question is whether the Corporation was justified in condoning the delay by not taking steps to forfeit the earnest money deposit made by the third respondent in view of the mandatory conditions as contained in the auction notification and the subsequent order of confirmation.

26. The auction notification was very specific that the entire payment should be paid within thirty days. In case the auction notification contains an indication that the time for payment of balance 90% would be extended by the Corporation, there would be more people to take part in the auction. The conditions in the auction notification was reproduced in the order of confirmation also. Since consequence of non-compliance was also indicated, the condition has to be treated as mandatory and not directory.

27. In [Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others](#), the Supreme Court observed that in case the consequence of violation of a condition is indicated, the word "shall" should be construed as mandatory.

28. In [State of Jharkhand and Others Vs. Ambay Cements and Another](#), the Supreme Court held that when a particular act is to be done in a particular manner and the penalty for failure to comply with the requirement also is indicated, such requirement will be mandatory. The Supreme Court said:-

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

29. In [Indian Banks' Association, Bombay and Others Vs. Devkala Consultancy Service and Others](#), the Supreme Court observed that "it is well settled that when a procedure has been laid down, the Statutory Authority must exercise its power in the manner prescribed or not at all".

30. The third respondent was having time only till 3 December 2009 to pay the balance consideration. Since he has not paid the balance sale consideration of 90% on or before 2 December 2009, the Corporation was bound to cancel the sale and forfeit the earnest money paid by him.

31. The third respondent in his counter affidavit made a futile attempt to justify the delay by contending that it was only on account of the writ petition filed by the appellant, payment was delayed. The said contention is nothing but false. The file contains the letters given by the third respondent as well as the remarks made by the Corporation and those materials clearly indicate the falsity of the case pleaded by him.

REQUEST NOT TO ENCASH CHEQUES :

32. The letter sent by the third respondent to the Corporation on 30 November 2009 enclosing five cheques clearly establishes the fact that he was not in possession of funds to pay 90% of the bid amount within the stipulated period of thirty days and therefore, he wanted the Corporation not to present the cheques till he gives permission. The letter reads thus :-

From

S. Palaniappan,
S/o. P. Sengodan,
117, Thillai Nagar,
Erode 638001

To

The Branch Manager,
The Tamil Nadu Industrial Investment Corporation Ltd.,
Erode

Sirs,

Sub : Submission of cheques in Bank.

We have given to you five cheques for an amount of Rs. 98,09,760/-of Axis Bank Ltd., Erode. Details as follows :

1.	Cheque No. 057634/30-11-09	Rs. 25,00,000/-
2.	Cheque No. 057635/30-11-09	Rs. 25,00,000/-
3.	Cheque No. 057636/30-11-09	Rs. 25,00,000/-
4.	Cheque No. 057637/30-11-09	Rs. 23,00,000/-
5.	Cheque No. 057638/30-11-09	Rs. 9760/-

Hereby we request your good self to present all these cheques only after getting permission from our side. And also we agree to pay the interest for the days up to the realization of these cheques.

This is for your kind information.

Thanking you,

Yours faithfully,

33. In the subsequent letter sent by the third respondent on 29 December 2009, again his difficulty to pay the balance amount, less the amount paid on that date was indicated.

From

S. Palaniappan,
S/o. P. Sengodan,
117, Thillai Nagar,
Erode 638001

To

The Branch Manager,
The Tamil Nadu Industrial Investment Corporation Ltd., Erode

Sirs,

Sub : Auction repayment regarding.

Ref : SRI ANBALAYAM TEXTILES P LTD.

Today we have made one RTGS to your good self for an amount of Rs. 70/-lakhs instead of our earlier cheques which we have given to you for an amount of Rs. 98 lakhs. The RTGS UTI Number is attached for your kind reference.

Kindly do not present the cheques which are in your hand and the balance will be settled very soon.

This is for your kind information.

Thanking you,

Yours faithfully,

34. The remittance made by the third respondent is found recorded in page 157 of the auction file, as below :-

Date of receipt	V.NO	Amount	Date of realization	
1/10/09	5239	100000	Cash	
1/10/09	5241	1020000	5/10/09	
26.10.2009	5261	80000	28.10.2009	
30.11.2009	5310	1000000	4/12/09	
29.12.2009	5346	7000000	29.12.2009	RTGS
5/1/10	5354	9760	8/1/10	
28.01.2010	5396	188000	30.01.2010 (D.D.)	
28.01.2010	5397	1692000	30.01.2010 (D.D.)	
28.01.2010	5398	120000	30.01.2010 (D.D.)	
1/2/10	5404	950000	Cash	
2/2/10				
		12159760		

35. The mala fides on the part of the Corporation is writ large. The offer made by the appellant at the earliest point of time was rejected on 17 November 2009 simply by saying that the request is unacceptable at this juncture. Thereafter, payments were accepted from the third respondent belatedly by condoning the delay on the ground that the highest bidder expressed his inability to mobilize the funds in time.

36. The sale in question was a first sale. Therefore, it was not a distress sale. Valuer has fixed the market value of the property at Rs. 156.43 lakhs. The Corporation was expected to fix the upset price to indicate that the property would not be sold below the said price. The sale was not made by way of tender. It was a public auction. Therefore, the primary requirement was to fix the reserve price and the auction should start only from the indicated price. This essential condition of sale has not been followed by the Corporation. Therefore, sale proceeding is liable to be set aside on this ground also.

37. The appellant having found that the Corporation has agreed to sell the property for a sum of Rs. 1.20 crores, immediately submitted a representation on 2 November 2009 agreeing to pay the said amount. It is also a matter of record that the confirmation order was also given on the said date. The Corporation rejected the request made by the appellant on flimsy reasons. It is an admitted position that the third respondent has not paid the balance sale consideration as on the date on which the request of the appellant was rejected by the Corporation. The Corporation was more interested in concluding the sale in favour of third respondent. That appears to be the reason for the rejection of request made by the appellant to pay the amount quoted by the third respondent and at the same time in extending the time to the auction purchaser to pay the balance amount. The very fact that the Corporation accepted the payment 92 days after the expiry of the period prescribed

in the auction notification and the order of confirmation clearly indicates the mala fides and the collusive nature of sale. When there were only two bidders and the amount quoted by them was far below the market value and it was by forming a cartel, the Corporation should have postponed the auction taking into consideration the fact that it was a first sale and that they could make one more attempt to get better price. The Corporation wanted to sell the property at a throw away price and thereafter, to claim the balance amount from the appellant. The said modus operandi is self evident. The Corporation has now initiated proceedings against the appellant before the learned District Judge, Erode, claiming a sum of Rs. 4,79,95,256/-being the balance amount due from them.

38. The learned counsel for the Corporation contended that the appellant has agreed to the valuation made by the Bank and as such, it is not open to them to contest the sale proceeding on the ground of under valuation.

39. We have perused the file produced by the learned counsel for the Corporation.

40. The representation given by the appellant does not contain any material as indicated by the learned counsel for the Corporation. The appellant has only stated that the Bank has received the amount from the auction purchaser which was more than the amount shown in the one time settlement and as such, the Bank can consider releasing the remaining property. The appellant has nowhere accepted the market value as indicated in the valuation certificate or the price fetched in the auction. In fact, there are series of correspondence in the file to show that the appellant has challenged the sale as collusive. Therefore, we reject the contention that the appellant has consented to the sale.

41. The third respondent has taken up a defense that possession of the property was given to him and as such, the sale should not be set aside. The memorandum evidencing handing over the property contains a specific clause that the property was given subject to the outcome of the writ petition filed by the appellant. Therefore, the third respondent was fully aware of the writ petition and as such, he cannot now plead equity on the ground that he is in possession of property.

42. The Corporation was dealing with the property of a third party. Merely because the unit was sick and it was taken over by the Corporation, it would not enable them to sell the property for a pittance. It was a first auction and as such, the Corporation was not obliged to sell the property immediately. Since large extent of property and a factory building was involved in the matter, they could have postponed the sale to a later date expecting better offers. The Corporation has not taken earnest efforts to collect the market value of the property as shown in the valuation certificate issued by the authorized valuer of the Corporation. The appellant is fully justified in their contention that the Corporation officials colluded with the third respondent and sold the property for a lower amount and accepted the payment even after the expiry of the time stipulated in the order of confirmation.

CONCEPT OF RESERVE PRICE :

43. The Supreme Court in [Anil Kumar Srivastava Vs. State of U.P. and Another](#), considered the concept of valuation and upset/reserve price and observed thus :-

11. Before coming to the above challenge, we would like to examine the concepts of "valuation" and "upset/reserve price". In the case of *Mc Manus v. Fortescue*¹ it has been held by the Court of Appeal that in a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact, that the sale is subject to a reserve, that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that amount is equal to or higher than the reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the upset/reserve price. That he could refuse the bid which is below the upset price.

12. The aforesaid ruling explains the meaning of the term "reserve price". It indicates the object behind fixing the reserve price viz. to limit the authority of the auctioneer. The concept of reserve price is not synonymous with "valuation of the property". These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin.

13. Valuation is a question of fact. This Court is reluctant to interfere where valuation is based on relevant material. (See *Duncans Industries Ltd. v. State of U.P.*) The difference between valuation and upset price has been explained in the case of *B. Susila v. Saraswathi Ammal* in which it has been held that fixation of an upset price may be an indication of the probable price which the land may fetch from the point of view of intending bidders. However, notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside. That the fixation of the reserve price does not affect the rights of the parties. Similarly, in the case of *A.U. Natarajan (Dr.) v. Indian Bank* it has been held that the expressions "value of a property" and "upset price" are not synonymous but have different meanings. That the term "upset price" means lowest selling price or reserve price. That unfortunately in many cases the word "value" has been used with reference to upset price. That the sale has to commence at the higher price and in the absence of bidders, the price will have to be progressively brought down till it reaches the upset price. That the upset price is fixed to facilitate the conduct of the sale. That fixation of upset price does not preclude the claimant from adducing proof that the land is sold for a low price.

44. In [Gajraj Jain Vs. State of Bihar and Others](#), the Supreme Court indicated that the absence of valuation report and reserve bid would vitiate the very sale. The Supreme Court said ::

14. In the present case, it has been urged that absence of valuation report and the reserve bid does not vitiate the sale. We do not find merit in this argument. In the case of S.J.S. Business Enterprises (P) Ltd. it has been held that the financial corporation, in the matter of sale u/s 29, must act in accordance with the statute and must not act unreasonably. In this case, the Corporation fails on both the counts. It has neither complied with the provisions of sub-sections (1) and (4) of Section 29, nor has it acted fairly. The test of reasonableness has been laid down in the above judgment in which it is held that reasonableness is to be tested against the dominant consideration to secure the best price. Value or price is fixed by the market. In the case of a going concern, one has to value the assets shown in the balance sheet (Datta, S.: Valuation of Real Property, p. 198). In our view, if the object of Section 29 of the Act is to obtain the best possible price then the Corporation ought to have called for the valuation report.

15.... In any event, in this case, we are concerned with the conduct of the Corporation which was required to act in accordance with Section 29 of the 1951 Act and not unreasonably. In this connection, it may further be pointed out that under the public notice inviting tenders, the Corporation was obliged to call for matching offers from the Directors/ promoters/guarantors. The Corporation did not call for such offers as its object was to keep out all counter-offers.

SUPREME COURT ON SALE CONDITIONS :

45. The question as to whether the Recovery Officer was justified in granting extension of time beyond the period for payment of balance amount came up for consideration before the Supreme Court in Himadri Coke & Petro Ltd. v. Sonelco Developers (P) Ltd., (2005) 12 SCC 364. The Supreme Court observed that unless there is a specific clause in the auction notification, it is not open to the Recovery Officer to extend the time beyond the prescribed period. The relevant observation reads thus :-

9. As far as Respondent 1 is concerned, we are of the view that it was bound by the terms and conditions of sale as was the authority concerned. It was not up to them to extend the dates for submission of the balance price when there was no clause in the terms and conditions of the sale allowing the authority to extend the time beyond the period specified in the advertisement for making the initial deposit or the balance price.

(Emphasis supplied)

46. In M/s. Shilpa Shares and Securities and others vs. The National Cooperative Bank Ltd. and others 2007 (6) Scale 545, auction was conducted under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. Rule 107(11)(g) of the Rules mandates that 15% of the price of immovable property has to be deposited by the auction purchaser at the time of purchase and the remaining 85% of purchase amount has to be paid within fifteen days from the date of sale. Since the purchaser

has not paid 85% of the purchase money before the prescribed period of fifteen days, the Supreme Court observed that non payment of the amount would render the sale proceedings a complete nullity. The Supreme Court observed ::-

5. In [Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another](#), it has been held that in such circumstances there is no sale at all if the balance purchase money is not paid within 15 days. It is not a mere irregularity. Non-payment of the said amount renders the sale proceedings a complete nullity.

6. In [Balram Vs. Ilam Singh and others](#), it has been held that the obligation of the purchaser to deposit the full purchase money within time is a mandatory requirement and non-compliance with the Rule renders the sale a nullity and not a mere irregularity.

7. In view of the above, we are of the opinion that the auction-sale of the appellants' property was a nullity, and there was no valid auction-sale.

THE OTHER AUTHORITIES :

47. The need to secure best price in public auction was emphasized by the Supreme Court in [Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director \(Finance\) Seetharaman, Madras and another](#), The relevant paragraph reads as follows:-

12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, the other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price.

48. The Supreme Court in [S.J.S. Business Enterprises \(P\) Ltd. Vs. State of Bihar and Others](#), indicated the need for transparent sale. The Supreme Court said ::

17. We are of the view that the sale effected in favour of Respondent 6 cannot be sustained. It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probalilise the abuse of that power. In such event it is for the officer

concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. (See *Pannalal Binraj v. Union of India*, AIR at p. 409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers u/s 29 of the State Financial Corporations Act, as prescribed in *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.* are no longer in place in view of the subsequent decision in *Haryana Financial Corpn. v. Jagdamba Oil Mills*. However, in overruling the decision in *Mahesh Chandra* this Court has affirmed the view taken in *Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd.* and said that in the matter of sale u/s 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. (SCC p. 601, para 12)

49. The Supreme Court in *Bharat Sanchar Nigam Ltd. vs. Telephone Cables Ltd.* 2010(3) Scale 36, emphasized the need for the Public Sector Undertakings to ensure fairness in their transaction. The Supreme Court said::

A public undertaking is required to ensure fairness, non-discrimination and non-arbitrariness in their dealings and decision making process. Their action is open to judicial review and scrutiny under the Right to Information Act, 2005.

50. The Supreme Court in [Navalkha and Sons Vs. Ramanuja Das and Others](#), in the context of "confirmation" of sale observed that it is the duty of the Court to satisfy itself that having regard to the market value of the property, the price offered is reasonable. The Supreme Court said :

6.The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion.

51. The learned counsel for the Corporation placed reliance on the judgment of Supreme Court in [Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others](#), in support of his contention that

judicial review is very limited in the matter of public sale made by State Financial Corporation. However, in the very same judgment, the Supreme Court observed that in matters between the Corporation and its debtor, writ Court would interfere in case there is a statutory violation on the part of the Corporation and the Corporation has acted unreasonably and unfairly.

RECENT JUDGMENT :

52. In [Kerala Financial Corporation Vs. Vincent Paul and Another](#), the Supreme Court found that there were no guidelines in the matter of sale of property taken possession by the State Financial Corporation u/s 29 of the Act. The Supreme Court directed the Kerala State Financial Corporation to adhere to the following directions for sale of property :-

(i) The decision/intention to bring the property for sale shall be published by way of advertisement in two leading newspapers, one in vernacular language having sufficient circulation in that locality.

(ii) Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) by inviting tenders from the public; or

(c) by holding public auction; or

(d) by private treaty. Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

(iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction-sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.

(vii) Reserve price means the price with which the public auction starts and the auction-bidders are not permitted to give bids below the said price i.e. the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.

53. The circumstances indicated in the earlier paragraphs of this order would clearly indicate the collusion between the Corporation and the successful bidder. The Corporation acted very unfairly while dealing with the appellant. The request of the appellant to pay the amount quoted by the third respondent was rejected arbitrarily without even considering the fact that the auction purchaser himself has not deposited the money. Thereafter, violating the mandatory conditions of the auction notification, belated payment was accepted and sale certificate was issued to the third respondent. The terms and conditions of the notification is binding not only on the Corporation but also on the bidder. Since the notification does not contain any provision for relaxation or extension of time for deposit, the Corporation cannot extend the time. The act of the Corporation in accepting the payment after 92 days clearly caused prejudice to the appellant. The property value has increased considerably by the time the third respondent has deposited the balance amount. Therefore, we are of the view that there is a statutory violation on the part of the Corporation in selling the property to the third respondent and accepting the balance payment of 90% after the prescribed period. The Corporation has acted unreasonably to the appellant and as such, the very sale is liable to be set aside. Accordingly, the sale of property made in favour of the third respondent is set aside.

54. WHY THE SUBJECT SALE IS BAD :: REASONS IN BRIEF :

(i) The Corporation failed to fix the upset price;

(ii) The property was sold far below the market value fixed by the Authorized Valuer appointed by the Corporation;

(iii) The Corporation violated the mandatory sale consideration regarding deposit of balance consideration within a period of thirty days from the date of confirmation, by accepting 90% of the amount after 92 days;

(iv) The Corporation rejected the request made by the appellant to deposit the amount quoted by the successful bidder arbitrarily and long thereafter, accepted the balance amount from the auction purchaser.

55. The learned counsel for the appellant, during the course of his arguments, submitted that the appellant is prepared to deposit the entire amount paid by the third respondent forthwith. According to the learned counsel, the officials of the Corporation informed them that in case the amount is deposited, it would be adjusted in the loan account and the property would not be released until the entire amount is paid.

56. There is no question of permitting the appellant to pay the amount deposited by the third respondent and to release the property. Interest of the Corporation should also be safeguarded. The plaint filed by the Corporation before the learned District Judge Erode shows that a sum of Rs. 4,79,95,256/-is due from the appellant after adjusting the amount paid by the third respondent. Even according to the appellant, the value of the property has increased considerably and the third respondent was making attempt to sell the property for a sum of Rs. 10 crores. Therefore, there is no point in allowing the appellant to pay the amount deposited by the third respondent.

57. The learned counsel for the appellant while concluding his arguments submitted that the appellant is prepared to settle the entire matter in case concession is given by the Corporation in the matter of interest. It is for the appellant to approach the Corporation with a concrete offer, so as to enable the Corporation to consider it on merits and as per their guidelines.

DISPOSITION :

58. The Corporation is directed to take possession of the property from the third respondent on payment of amount deposited by him and to take steps to auction the property by resorting to a transparent procedure and more particularly by fixing the reserve price and after taking a fresh valuation certificate and in the light of the directions given by the Supreme Court in [Kerala Financial Corporation Vs. Vincent Paul and Another](#),

59. The writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.