

Gian Chand
 v.
 Teja Singh

 Mehar Singh, J.

decree-holder that the finding in the first execution applications on the objection petitions of the judgment-debtor that he was not a tenant on the date of the sales is *res judicata* in the second objection petitions of the judgment-debtor in the second execution applications, really does not come in for consideration. The reason is simple, execution applications can only proceed if there are decrees to be executed, and as pointed out in this case, there are no decrees against Teja Singh, judgment-debtor, of which cognizance can be taken in the face of section 17-A of Punjab Act 10 of 1953. It follows that there can be no execution of non-existent decrees. Nothing that has happened affects the right of the tenant-purchaser, Teja Singh, judgment-debtor, under section 17-A of Punjab Act 10 of 1953 and under that provision he takes the lands under the sales to him unaffected by any right of pre-emption in any body and unaffected by any purported exercise of any such non-existent right. In this approach the conclusion reached by the learned District Judge in the two appeals before him is not open to exception.

The consequence is that these appeals of the decree-holder fail and are dismissed but in the circumstances of the case the parties are left to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh and Prem Chand Pandit, JJ.

NIRTA RAM,— *Appellant*

versus

THE ASSISTANT COLLECTOR, PATIALA AND OTHERS,—
Respondents

L.P.A. No. 79 of 1965

1965

 December 23rd.

Punjab Land Revenue Act (XVII of 1887)—Ss. 79 to 96—Auction-sale—Whether Collector can refuse to confirm on the ground that the price offered is not reasonable—Such a condition in the sale of proclamation—Whether valid.

Held, that sections 79 to 96 of the Punjab Land Revenue Act, 1887, deal with the procedure which has to be followed while selling the immovable property. All the conditions of a particular sale which have to be imposed by the Collector are not stated in any of these sections. For instance, if the bid has to be subject to a reserve price, that is not mentioned here. It cannot be suggested that no reserve price can be fixed by the Collector with regard to any particular property. It is impossible to believe that if the highest bid, due to some collusion amongst the bidders or otherwise is extremely low, the same has to be accepted and the bidder has got to be declared the purchaser under section 85. If the reserve price can be fixed by the Collector, a condition authorising the Collector to decide as to whether the price offered by the highest bidder is reasonable or not, can also be imposed. There is nothing in sections 79 to 96, which debar the Collector from imposing such a condition. It cannot be argued that these auction-sales are not subject to the ordinary law of contract. The bidders know what the conditions of sale are and in the instant case they fully knew that even if their bids were the highest, they would not necessarily be accepted by the Collector, because if the price offered by them was not reasonable, they were liable to be rejected. At the utmost, the bids offered by the appellants were merely offers for the purchase of these properties and it was for the Collector to accept them or not. It is only on the acceptance of the bid that the sale contract will become complete. The Collector under section 90 would only report that sale to the Commissioner, which was complete. In the instant case, since the Collector had not accepted the bids, the sale transactions had not become complete and, therefore, there was no necessity for the Collector to report these sales to the Commissioner. A Collector of a District is a responsible officer and there is no harm in giving the power of deciding whether a particular bid is reasonable or not to him, because it is expected that he would exercise these powers in a judicial manner. If, however, in a particular case, it is shown that that power has been exercised in a *mala fide* manner, then that transaction can be assailed on that ground. But the fact that in some cases a certain power can be abused, is no ground in law to hold that the Collector should not be invested with such powers.

Letters Patent Appeal under clause X of the Letters Patent against the judgment, dated 11th November, 1964, delivered by Hon'ble Mr. Shamsher Bahadur in Civil Writ No. 1721 of 1963.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES, for the Appellant.

D. N. AWASTHY WITH B. S. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

PANDIT, J.—This judgment will dispose of six connected appeals under Clause 10 of the Letters Patent (Letters Patent Appeals Nos. 79 to 84 of 1965) against the judgment

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Nirta Ram of a learned Single Judge of this Court by which he dismissed six writ petitions under Article 226 of the Constitution.
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The firm Messrs Ralla Ram-Jai Gopal was a debtor of the State Bank of Patiala to the extent of Rs. 6,36,802-7-6. Since this Bank could not recover its dues, it obtained a recovery certificate for this sum under the provisions of the Patiala Recovery of State Dues Act, 2002 BK. and the same was sent to the Collector, Patiala, for the realisation of the amount. It entrusted the recovery proceedings to Shri Tejwant Rai, who was described as the "Collector, Recovery of State Bank of Patiala Dues, Patiala". It is common ground that this amount was "State Dues" as defined in the Act and it could be recovered under section 5 of the same as arrears of land revenue. In pursuance of the recovery proceedings, the properties of the debtor-firm were attached on 7th April, 1962. A proclamation for sale under section 79 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act) was then issued and it was provided in the sale-proclamation that the sanction of the Commissioner had been obtained under section 75 of the Act on 9th November, 1962. After the description of the properties, which were to be sold, the following three conditions were appended:—

- (1) The last bidder shall be required to deposit one-fourth of the total amount at the time of close of the bid.
- (2) The Collector will have the right to cancel the auction and order re-auction if the above-mentioned property fetches less than the reasonable price.
- (3) The bidder shall be required to deposit the whole amount within fifteen days of the bid."

The sale was advertised for 11th February, 1963 and had to be made in accordance with the provisions of the Act. On this date, these properties were auctioned and the highest bids were given by the appellants in these six appeals. They were Rs. 1,000, Rs. 2,400, Rs. 5,700, Rs. 2,800, Rs. 1,000 and Rs. 1,700. In each case, 25 per cent of the highest bid was deposited by the auction-purchasers on that very day and they were willing to deposit the balance amount as well. It appears that the General Manager of the State Bank of Patiala brought to the notice of Shri Tejwant

Rai that the auction was a managed show by the debtor and reasonable bids had not been offered. After a personal discussion with the Manager, he recorded a note, dated 12th February, 1963 and accordingly made a report on 18th December, 1963 to the Collector, Patiala, to the effect that the sales should not be confirmed, but should be postponed and one-fourth of the auction-money be returned to the auction-purchasers. This report was accepted by the Collector by his order, dated 15th March, 1963, and he directed re-auction of the properties on some other date. In the re-auction, the first four properties fetched Rs. 5,000, Rs. 6,200, Rs. 8,000 and Rs. 4,000, respectively. The other two properties had not been re-auctioned. Thereupon, the appellants filed writ petitions in this Court under Article 226 of the Constitution praying that the auctions, which had taken place on 11th February, 1963, could not be re-opened because the same had been made in accordance with law and the proceedings for resale of the properties were illegal.

These writ petitions were heard by Shamsheer Bahadur, J., who dismissed the same by one judgment on 11th November, 1964. It was contended before the learned Judge that since the sanction for the sale of these properties had been given by the Commissioner and the highest bids had been given by the appellants, they had become purchasers of their respective properties under section 85 of the Act and the auction-sales in their favour could not be set aside, unless an application was made in this respect under section 91 and the same was accepted by the Commissioner under section 92 of the Punjab Land Revenue Act. This contention was repelled by the learned Judge, who held that the provisions with regard to sale in the Land Revenue Act were subject to the conditions of sale to which the prospective purchasers assented by their participation in auction-bidding. The deposit of 25 per cent of the purchase money was at best a conditional deposit and it was open to the Collector, as indeed it was for the auction-purchasers, to withdraw their bids before they were confirmed. The appellants, in the opinion of the learned Judge, did not acquire any rights by the deposit of 25 per cent of the sale price and, consequently, the writ petitions were not maintainable, when no substantial injustice had been shown to have accrued. Against this decision, the present Letters Patent Appeals have been filed.

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Learned counsel submitted that, admittedly, the bids given by the appellants were the highest and they had also deposited 25 per cent of the amount of their bids. Consequently, under section 85 of the Act they had to be declared the purchasers of those properties. The sale could only be set aside under section 91 if an application in this respect was made to the Commissioner within 30 days from the date of the sale on the ground of some material irregularity or mistake in publishing or conducting it. Such an application had not been filed in the present cases and on the expiry of this period, the Commissioner was bound to confirm the sale. Condition No. 2, which provided that the Collector would have the right to cancel the auction and order re-auction, if the properties fetched less than the reasonable price, was invalid, since this condition was contrary to the provisions of the Act and thus could not be imposed. He also submitted that the decision given by a Division Bench of the Andhra Pradesh High Court in *Raghunandan Reddy v. State of Hyderabad* (1), relied on by the learned Single Judge, had no application to the facts of the present case. It was conceded by the learned counsel for the appellants that he would succeed only if he could show that condition No. 2 mentioned in the proclamation of sale could not be imposed and the same was invalid. He submitted that the provisions of the Act did not warrant the imposition of such a condition. Besides, unlimited powers had been given to the Collector under it and he could misuse those powers by merely saying that in a particular case the highest bid was not reasonable.

There is no merit in this contention. In the first place, this precise argument was not raised before the learned Single Judge. Secondly, sections 79 to 96 of the Act deal with the procedure in sales. Section 79 relates to the proclamation of the intended sale; which is issued by the Collector on receipt of the sanction of the Commissioner to the sale of any immovable property, section 81 with the publication of the proclamation of sale and section 82 with the time and conduct of sale. Under section 83 power is given to the Collector to postpone the sale.

(1) A.I.R. 1963 A.P. 110.

Section 84 deals with the stay of sale under certain contingencies. Section 85, on which emphasis has been laid by the learned counsel for the appellants, runs thus:—

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“Section 85. When the highest bid at the auction has been ascertained, the person who made that bid shall, on the requisition of the officer conducting the sale, pay to that officer a deposit of twenty-five per centum on the amount of his bid, and shall, on payment thereof, be declared to be the purchaser subject to the provisions of this Chapter with respect to the exercise of any right of pre-emption.”

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Section 86 mentions the consequences of the failure to pay the deposit by the highest bidder. Section 88 talks of the time for the payment of the full amount of the purchase money. Section 89 then narrates the result of the non-payment of the full amount of the purchase money. Under section 90, every sale of immovable property has to be reported by the Collector to the Commissioner. An application to set aside the sale is made under section 91, which is as follows:—

“Section 91. (1) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.

(2) But a sale shall not be set aside on that ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake.”

The order confirming or setting aside the sale is made under section 92, which says—

“Section 92. (1) After the expiration of thirty days from the date of the sale, if such application as is mentioned in the last foregoing section has not been made, or if such application has been made and rejected, the Commissioner shall make

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an order confirming the sale, and, if such application has been made and allowed, the Commissioner shall make an order setting aside the sale.

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(2) An order made under this section shall be final."

Section 93 deals with the refund of purchase money when sale is set aside. Section 94 talks of the proclamation after the postponement of the sale or on resale. Section 95 says that on the confirmation of sale, possession and sale certificate would be granted to the purchaser. Section 96 deals with the manner in which the proceeds of sale have to be applied. All these sections, as would be seen, deal with the procedure which has to be followed while selling the immovable property. All the conditions of a particular sale which have to be imposed by the Collector are not stated in any of these sections. For instance, if the bid has to be subject to a reserve price, that is not mentioned here. It cannot be suggested that no reserve price can be fixed by the Collector with regard to any particular property. It is impossible to believe that if the highest bid, due to some collusion amongst the bidders or otherwise is extremely low, the same has to be accepted and the bidder has got to be declared the purchaser under section 85. If the reserve price can be fixed by the Collector, I do not see any reason as to why condition No. 2, which only authorises the Collector to decide as to whether the price offered by the highest bidder is reasonable or not, cannot be imposed. There is nothing in sections 79 to 96, which debars the Collector from imposing such a condition. It cannot be argued that these auction-sales are not subject to the ordinary law of contract. The bidders know what the conditions of sale are and in the instant case they fully knew that even if their bids were the highest, they would not necessarily be accepted by the Collector, because if the price offered by them was not reasonable, they were liable to be rejected. At the utmost, the bids offered by the appellants were merely offers for the purchase of these properties and it was for the Collector to accept them or not. It is only on the acceptance of the bid that the sale contract will become complete. The Collector under section 90 would only report that sale to the Commissioner, which was

complete. In the instant case, since the Collector had not accepted the bids, the sale transactions had not become complete and, therefore, there was no necessity for the Collector to report these sales to the Commissioner. A Collector of a District is a responsible officer and there is no harm in giving the power of deciding whether a particular bid is reasonable or not to him because it is expected that he would exercise these powers in a judicial manner. If, however, in a particular case it is shown that that power has been exercised in a *mala fide* manner, then that transaction can be assailed on that ground. But the fact that in some cases a certain power can be abused, is no ground in law to hold that the Collector should not be invested with such powers. As I have already held, since the bids were not reasonable and the same were not accepted by the Collector, no sales had taken place in the instant case. As such, the question of reporting them to the Commissioner under section 90 did not arise. That being so, the stage of somebody applying to set aside those sales under section 91 also was not reached. Under these circumstances, these sales could not be confirmed under section 92.

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A Division Bench of the Andhra Pradesh High Court in *Raghunandhan Reddy v. State of Hyderabad* (1), held as follows:—

“Only when an offer is accepted that the contract is concluded and binds the parties. It is equally well settled that before an offer is accepted, the offerer can withdraw his offer, but if the acceptance is conditional or is not final, then there is no concluded contract. Generally, in a sale of auction, the auctioneer is the agent of the person whose property or rights are being auctioned. The agent invites offers and every bid is an offer and it is only binding on either side when it is assented to, that is, when the hammer falls at the third bid. Sometimes the owner reserves a right as part of the conditions of auction and even though the bid is the highest, it need not necessarily conclude the agreement. Before the final acceptance of the bid or before the hammer falls, it is always open

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to the bidder to withdraw his bid and the condition to the contrary in auction that the bid shall not be retracted has been held to be invalid."

This decision is fully applicable to the facts of the present case and supports the view that I have taken above. It has, therefore, been rightly relied upon by the learned Single Judge.

Similarly, a Bench of the Madras High Court in *Muthu Pillai v. Secretary of State* (2), observed—

"A house was put up for sale by Government and the auction was held by the Tehsildar on 15th July, 1915. 1st defendant was the highest bidder and the report of the sale was forwarded to the Collector for confirmation. But it was neither confirmed by the Collector nor cancelled until late in 1917. Finally in 1916 at his own request, 1st defendant was allowed to occupy the house on condition that he would quit it whenever required. The present suit was brought to recover possession from the 1st defendant, who refused to quit. The Government declined to confirm the sale in 1st defendant's favour, but he now contends that he is entitled to possession as the sale was completed.

Held, that there was no completed contract and that the transaction before the Tahsildar amounted to merely an offer and that there was no concluded contract on the 15th of July, when the auction took place and that the offer made by the first defendant was never accepted."

It may be mentioned that the Bench decision of this Court in *State of Punjab v. Raghunath Dass* (3), relied upon by the learned counsel for the appellants, has no application to the facts of the instant case.

In view of what I have said above, these appeals fail and are dismissed. In the circumstances of these cases, however, I will make no order as to costs.

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MEHAR SINGH, J.—I agree.

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(2) A.I.R. 1933 Mad. 582.

(3) LL.R. (1963)1 Punj. 148.