A RAKESH KUMAR GOEL ETC.

v.

U.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. & ORS.

(Civil Appeal No. 5177 of 2010)

B JULY 8, 2010

[S.H. KAPADIA, CJI., AND AFTAB ALAM, J.]

Land laws:

C *U.P. Zamindari Abolition and Land Reforms Rules, 1952 – r. 285-D – Auction sale – Allottees of Government land in arrears of land revenue – Recovery of government dues – Auction sale of Government plots in favour of highest bidders – Set aside by High Court on the ground of violation of r. 285-*
D *D – On appeal, held: Law under which the auction sale proceedings were held was deficient – Auction proceedings appear to be full of anomalies – On the contrary, bidders did not deposit twenty five percent of the bid amount immediately after the auction and there was no receipt showing payment*
E *immediately after the auction – Regarding one plot, sale was confirmed and sale certificate was issued in favour of the bidder even without payment of full price of the plot – In the guise of recovery of government dues, said bidders in collusion with their abettors in government departments tried*
F *to grab government lands – Thus, auction sale of plots in favour of the said bidders was illegal, bad and malafide – Bidders directed to pay Rs. 2 lakhs each as exemplary costs – There is need to update UPZALR Act and UPZALR Rules since they are completely deficient for dealing with land*
G *holdings in highly urbanised and industrialised regions – U.P. Zamindari Abolition and Land Reforms Act, 1950 – s. 279 – Cost – Legislation.*

The two pieces of government land-A and B, were

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allotted to BSPL and SAPL respectively. Both BSPL and SAPL were in arrears of land revenue. For the recovery of the government dues, the said lands were auctioned. The auction sale of two pieces of land was made in favour of the appellants. The High Court set aside the auction sale. It held that the auction sale of the two plots was a nullity because the appellants did not deposit one fourth of their bid accounts immediately on the conclusion of the auction but deposited the requisite amounts on the following day.

In appeal to this Court, the respondents-BSPL and SAPL contended that no auction was ever held and the whole thing was mere paper work.

Dismissing the appeal, the Court

HELD: 1. It is evident that the law under which the auction sale proceedings were held was itself quite deficient. But the enumeration of the shortcomings and the lacunae in the provisions of an archaic law is not to say that the auction proceedings of the two plots were otherwise fair and proper and suffered from some irregularities only due to the flaws in the law. On the contrary, there is no doubt that the auction sale of the two plots in favour of the appellants was illegal, fraudulent and collusive. In the guise of recovery of the government dues, the two appellants in collusion with their abettors in the government departments were trying to grab government lands and they almost succeeded but for the interference by the High Court. Though the High Court set aside the auction sale of the two plots on the technical ground of violation of Rule 285-D, on a consideration of the overall facts and circumstances, the auction sale was bad and malafide and was a blatant attempt to grab the public land. [Paras 25, 32 and 39] [241-B-C; 245-E; 249-B]

2. The disposal of public property partakes the

A **character of trust and the government or the public authorities are obliged to make all attempts to obtain the best available market price while disposing of public properties. [Para 37] [248-E-F]**

B *Ram and Shyam Co. vs. State of Haryana* **(1985) 3 SCC 267;** *V. Purushotham Rao vs. Union of India* **(2001) 10 SCC 305;** *Aggarwal and Modi Enterprises (P.) Ltd. vs. New Delhi Municipal Council* **(2007) 8 SCC 75;** *Meerut Development Authority vs. Association of Management Studies*, **(2009) 6 SCC 171;** *Anil Kumar Srivastava vs. State of UP* **(2004) 8** C **SCC 671 – referred to.**

3.1 Under the U.P. Zamindari Abolition and Land Reforms Rules, 1952 the only mode for advertisement of auction-sale is by affixation of the Sale Proclamation at D **a conspicuous place in the village where the property is located and by beat of drum. There is no provision of advertisement in the newspapers or by any other means to spread the information about the proposed auction on a large scale. There is no provision in the U.P. Zamindari** E **Abolition and Land Reforms Act, 1950 or the 1952 Rules for fixation of reserve price before the property is put up for auction sale. However, the Collector of the District regularly notifies "circle rate" for different types of land and different locations. This circle rate is primarily used** F **for computation of stamp duty for registration of document. In 2007 instructions were given to confirm sale only above the market price. There is also no provision enabling the authorities to bar someone with a criminal record or against whom there are tax dues or government dues of any other kinds from taking part in** G **the sale of land by the government. [Paras 23 and 24] [240-D-H; 241-A]**

3.2 In the departmental enquiry, the version given by HS-AWBN that the auction proceedings with respect to H **SAPL and BSPL were not held in the Tehsil office but**

papers were prepared at the residence of the ADM, appears to be highly probable. The documents concerning the auction sale of the two plots in the government record taken at their face value, the auction proceedings of the plots appear to be full of anomalies. No notice or information about the attachment or sale of the two plots was given to the UPSIDC. No attention was paid to the claim of the Canara Bank that it had the first charge over plot no.2/1 which was given in mortgage to the bank as security for the loan advanced by it to BSPL. The Sale Proclamations did not indicate the area of the plots or the nature of the rights therein that would be the subject matter of the sale. There was practically no public advertisement (no newspaper publication or any thing of that sort) to give wider information to the general public about the auction. The only public announcement was done by the process server going to the site and calling out loudly that the two plots would be put to auction sale on the specified date for non-payment of government dues and asking the people to come for the auction in large numbers. No reserve price for the plots in question was indicated either in the Sale Proclamations or even in the Memos of Auction. The information about the stay order passed by he High Court was completely ignored. There is nothing to show that after the government dues were satisfied, the balance of the sale price was refunded to the land holders, the two private respondents BSPL and SAPL. [Paras 16 and 17] [234-F-H; 235-B-H; 236-A-B; 237-B-D]

3.3 Rule 285-D of the UPZALR Rules requires the highest bidder to deposit immediately twenty five percent of the amount bid by him. This was one of the conditions mentioned in the Auction Memos. In the two Auction Memos it was stated that the highest bidders for the two plots, namely RK and ML had deposited one fourth of their respective bid amounts immediately after the

A auction. But the payment recorded in the Auction Memos is proved to be wrong and incorrect by reference to the Government Records. From entries 39 and 40 in the Register, where the payments were entered, it is clear that twenty five percent of the bid amounts for the two plots
B in question were deposited on June 16 and not immediately after the auction held on June 15, 1992 as claimed by the appellants. The counsel appearing for the appellants kept telling this Court for days on end the appellants had receipts in their possession showing that
C the deposits were made on June 15 itself. Notwithstanding the fact that the receipts were not filed in the High Court and neither were those enclosed with the SLP at the time of its filing, the counsel was allowed as much time as he wanted for producing those receipts.
D In the end he said that the receipts were misplaced and the appellants were not able to find them out. There is no doubt that all the time the counsel was wrongly briefed by the appellants. No receipts were produced in court because there were, in fact, no receipts showing payment
E immediately after the auction. The entries in Register no.4 shows that the balance seventy five percent of the bid (Rs.6,30,000/-) for plot no.2/1 of BSPL was never deposited at all. In other words, the sale of plot no.2/1 was confirmed and sale certificate was issued in favour of the appellant even without payment of the full price of
F the plot. [Paras 26, 27 and 28] [241-D-F; 242-E-H; 243-A-B]

3.4 The appellants and their abettors inside the revenue department of the government were so far able
G to show that for recovery of the Government dues the plots of land of BSPL (2/1) and SAPL (2/2) were put to auction on June 15, 1992 in which the two appellants were the highest bidders. The next stage was the confirmation of the sale after dealing with the objections.
H Even before the date of the auction the concerned

authorities were given information about the stay order passed by the High Court in respect of plot no.2/1. At that time they paid no heed to it but later on certified copies of the order were produced. On June 18, 1992 certified copies of the stay order passed by the High Court were submitted before the Tehsildar, Dadri, both by the private respondent and the Canara Bank. This was a real impediment to overcome before the sales could be confirmed and the appellants and their abettors inside the government could succeed in their designs. The High Court order was put away in a highly disingenuous way. A note was put up in which referring to the cause title of the writ petition, where the address of the writ petitioner, M/s Bramic Suri Pvt. Ltd. was shown as "Gyani Border, Post Office Chikambarpur, District Ghaziabad", it was declared that the High Court Order was with respect to some other property, situate at the site of the address given in the writ petition. On June 30, 1992 the note was perused by the District Magistrate and on the same date it was approved by the ADM (F & R). No one cared to see that Annexure 1 to the writ petition was a photostat copy of the very same Sale Proclamation on the basis of which the auction sale of plot no.2/1 was held and in the writ petition the prayer was to quash the Sale Proclamation at annexure 1 and in the stay petition the prayer was to stay its operation. It is not known whether this matter was brought to the notice of the High Court and whether the High Court took any action in the matter. It can only be said that this is one of the crudest manipulations coming to the notice of this Court [Para 29] [243-B-H; 244-A-B]

3.5 The plot no.2/2 was put up for auction sale for recovery of the demand of Central Excise dues raised by the Excise Superintendent. Against the adjudication order giving rise to the demand an appeal, along with a petition for stay-cum-waiver, was filed before the tribunal. The appeal and the stay petition were still pending before the

A tribunal when the recovery proceedings were started in which the plot in question was put up for auction sale. In those circumstances, in this matter also, the private respondents approached the High Court with a writ petition which was disposed of by the High Court. [Para B 30] [244-B-D]

3.6 In the counter affidavit filed on behalf of the private respondents it is stated that a copy of the High Court order was served upon the District Magistrate on July 15, 1992. In the Government record, however, there C is no trace of the High Court order and there is no discussion about it in any of the notes. On the contrary on the same day (July 15, 1992) Sale Certificates were issued under the signature of the ADM (Finance), in favour of the appellants and were sent for registration. D [Para 31] [245-C-D]

3.7 In the counter affidavit filed by the UPSIDC it was alleged that ML and his brother RK are notorious land grabbers in the districts of Ghaziabad and Gautam Budh E Nagar and they had misappropriated about Rs.1125 crores. [Para 33] [245-F-G]

3.8 Against the auction sale of the plots, both the private respondents and UPSIDC filed their respective objections before the Commissioner, Meerut Division, F but their objections were rejected by the Commissioner. The UPSIDC filed review petition before the Commissioner which too was dismissed on the ground that the objection petition was dismissed on merits by a speaking order. Against the order passed by the G Commissioner, both the private respondent and the UPSIDC filed revisions before the Board of Revenue, Lucknow. Even while the revision of the private respondent was pending, the revision filed by the UPSIDC was dismissed by the Board of Revenue. H Unfortunately, such a gross case could not be corrected

even at the highest level of the State Administration. [Para 36] [245-F-G] A

3.9 At one stage, this Court considered asking the CBI to investigate the instant case as also other cases of auction sale and alienation of land by the Revenue Department of the State Government in the District of Ghaziabad. However, this Court refrains from doing so since the CBI is already overburdened and the matter is about 20 years old. The officers posted at Ghaziabad would no longer be there, some of them might even have retired. [Para 40] [249-C-D] B C

3.10 This Court is not for manipulators, speculators and land grabbers. The exemplary cost of Rs.2 lakhs is imposed on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the cost is not filed within the stipulated time, the amounts of cost would be realised from the appellants as fine under the provisions of the Code of Criminal Procedure. [Para 41] [249-E-G] D E

4. The existing provisions of the UPZALR Act and the UPZALR Rules are out of date by three quarters of a century. Those were designed to deal with agriculture holdings in a rural area. Even for that purpose the provisions appear to be far from satisfactory. But they have become woefully inadequate and completely deficient for dealing with land holdings and other immovable properties in highly urbanised and industrialised regions of the State. There is, therefore, an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones. [Para 42] [249-H; 250-A-B] F G

Case Law Reference:

(1985) 3 SCC 267 Referred to. Para 37 H

A	**(2001) 10 SCC 305**	**Referred to.**	**Para 37**
	(2007) 8 SCC 75	**Referred to.**	**Para 37**
	(2009) 6 SCC 171	**Referred to.**	**Para 37**
	(2004) 8 SCC 671	**Referred to.**	**Para 37**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5177 of 2010.

From the Judgment & Order dated 07.09.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition C Nos. 3790 and 3799 of 2000.

V.A. Mohta, R.P. Bhatt, Ashok H. Desai, S.R. Singh, Shyam Diwan, Amit Sharma, Nilakanta Nayyar, Anupam Lal Das, Rakesh Uttamchandra Upadhyay, Reena Singh, Abhijeet D K., T.N. Singh, Rajeev K. Dubey, Kamlendra Mishra, Pawan S. Bindra, Kavita Wadia, R.P. Singh, Principal Secretary (Revenue)-In-Person for the appearing parties.

The Judgment of the Court was delivered by

E **AFTAB ALAM, J.** 1. Leave granted.

2. On the writ petitions filed by the UP State Industrial Development Corporation (respondent no.1) the Allahabad High Court set aside the auction sale of two pieces of land made in favour of the appellants. The High Court held that the F auction sale of the two plots was a nullity because in violation of rule 285-D of the UP Zamindari Abolition and Land Reforms (UPZALR) Rules, 1952 the appellants did not deposit one fourth of their bid amounts immediately on the conclusion of the auction, but deposited the requisite amounts on the following G day. Having thus held the auction sale legally untenable, the High Court did not advert to the other circumstances and the manner in which the auction sale was held.

3. The appellants came to this court taking the plea that H they had deposited one fourth of their bid amounts on the day

the auction was held and the decision of the High Court was based on a patent error of law. Even while challenging the judgment of the High Court, the appellants were anxious to not enlarge the issues and to confine the case to the very limited question whether or not the requisite amounts in terms of rule 285-D were deposited on the date of the auction. But, earlier in course of hearing of the case, we came across certain disturbing features that compelled us to ask the State Government to bring on record all the relevant materials concerning the auction sale of the two pieces of land in question. And now, the more we examine the facts of the case the more we feel dismayed and distressed. It is plainly a case of appropriation of large areas of public/government land by some very unscrupulous people both outside and inside the State Government acting in cahoots. And we have reasons to fear that this is not an isolated case.

4. The two pieces of land that are at the centre of the dispute are plot nos.2/1 & 2/2 situated in the Industrial Estate, Sahibabad, in the district of Ghaziabad, UP. The two plots are owned by the Uttar Pradesh State Industrial Development Corporation (UPSIDC). Plot no.2/1 was allotted by the UPSIDC to M/s Bramic Suri Private Limited (BSPL) and plot no.2/2 to M/s Suri Asbestos Private Limited (SAPL). These two plots were purported to be purchased by Rakesh Kumar Goel (one of the two appellants) and M/s Moti Board Industries Private Limited, represented by its Director, Moti Lal Goel (the other appellant) in an auction sale held by the revenue authorities of the State Government. In course of hearing of the case, on our direction, the State of UP (respondent no.3) produced all the documents concerning the auction proceedings in respect of the two plots. Those were taken on record as "Additional Documents- Vol. 8", (relating to plot no.2/1) and "Additional Documents- Vol. 9", (relating to plot no.2/2). The following narration of facts is on the basis of the documents as contained in the two volumes.

A 5. BSPL had dues of Rs.1,55,309.85 plus interest @ Rs.26.38 per day from January 12, 1991 under the Employees State Insurance Act, 1948. The Regional Director, ESI on December 13, 1991 sent a certificate to the Collector, Ghaziabad under section 5 of the Revenue Recovery Act for B recovery of the dues. In pursuance of the certificate the Additional Collector, Ghaziabad issued two proclamations on May 12, 1992, one for attachment under sections 284/286 of the UP Zamindari Abolition and Land Reforms Act, 1950 and the other restraining 'the defaulter' (BSPL) from selling or C transferring the plot in any manner to anyone or from creating any charge on it. The service report of the proclamations, scribbled in hand on their reverse sides, simply said that, on going to the site the firm was found closed. The chowkidar declined to take copies of the proclamations. The copies of the D proclamations were, therefore, affixed to the gate of the premises in presence of witnesses and it was announced in a loud voice that the premises, plot no.2/1 was under attachment for non payment of government dues. The next step in the proceedings was the issuance of the Sale Proclamation by the E Additional Collector. In the Sale Proclamation it was stated as follows:

"Permission has been granted for the sale of the above mentioned property under Section 284 (or Section 286) of the Uttar Pradesh Zamindari Abolition and Land F Reforms Act, 1950 on account of the arrears of Rs.1,29,048.35, hence it is hereby ordered that the sale of the aforesaid property will be held in the forenoon (or in the afternoon as the case may be) of 15.6.1992 at the Tehsil premises.

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Plot No. 2/1, Site No.4, [full plot along with road].

[Please write here that the land will be sold in an un-encumbered state or encumbered state under Section 284 and write such other particulars which the collector deems H necessary]"

6. The Sale Proclamation is undated but its service report, written in hand on its reverse, is dated June 5, 1992. The service of the Sale Proclamation was also effected in the same way as the earlier two proclamations, that is to say by affixing a copy of the proclamation to the gate of the premises and by making announcement in a loud voice that the property will be auction sold on the specified date and asking the people to come for the auction in large numbers.

7. On June 9, 1992 a petition was filed on behalf of BSPL requesting the Tehsildar, Dadri (Ghaziabad) for grant of some time for payment of the government dues for the recovery of which the auction sale proclamation was issued. The petition submitted by the BSPL lies in the file of the auction proceeding but apparently no notice was taken of it. It seems that Canara Bank from where BSPL had taken a loan also got a wind of the auction proceedings concerning plot no.2/1. On June 10, 1992, the Canara Bank wrote a letter to the ADM (Finance), Ghaziabad stating that Site 4, plot no.2/1, Ghaziabad was mortgaged in its favour as security for the loan advanced to BSPL. The letter further stated that the bank had the first charge over the land in question and requested the ADM not to proceed with the proposed auction sale.

8. At this stage BSPL took the matter to the court and filed a writ petition (W. P. no.22295 of 1992) in the Allahabad High Court for quashing the Sale Proclamation fixing the auction sale of plot no. 2/1 on June 15, 1992. A photostat copy of the Sale Proclamation was annexed to the writ petition marked as Annexure 1. Along with the writ petition a stay petition was also filed in which a prayer was made in the following terms:

> "It is, therefore, MOST RESPECTFULLY PRAYED that this Hon'ble Court may very graciously be pleased to stay the operation of the impugned Auction Certificate (Annexure No.1 to the writ petition) issued by the respondent No.3— through which the date of auction has been fixed for

A 15.6.1992, during the pendency of the present writ petition before this Hon'ble Court ....."

9. On June 12, 1992 the High Court granted ad interim stay in favour of the writ petitioner, BSPL. (We may state here that on these facts being stated before us in course of hearing of B the case, we summoned the original record of the writ petition from the Allahabad High Court and verified the facts from the original record). A certified copy of the order was produced later on but there is sufficient evidence to show that before the date fixed for the auction, the revenue authorities at Ghaziabad C were informed about the stay order passed by the High Court through the lawyer's certificate.

10. At this stage, we may advert to the other plot no.2/2, which was allotted by the UPSIDC to SAPL. The material facts D and circumstances concerning the auction sale of this plot are very similar to what is stated above in respect of plot no.2/1. SAPL had dues of Central Excise amounting to Rs.4,53,541.92. For recovery of the dues, Superintendent of Excise, Range I, Sahibabad, issued a certificate to the Collector, Ghaziabad, E under section 11 of the Central Excise & Salt Act, 1944. The certificate gave rise to a proceeding and the Pargana Adhikari, Dadri, asked the Tehsildar to pass the attachment order for recovery of the government dues, writing as follows:

F "It is *heard* that the firm owns a Plot No. 2/2. *To my information there is no charge in respect of this property. The firm is closed since a long time. It is also heard* that the owner of the plot Sardar Jagjeet Singh S/o Harnam Singh wants to sell this plot. There is a small shed constructed in the said plot No.2/2. It is requested that G orders to attach the said property be given so that, Government arrears may be recovered. The estimated value of the Plot No. 2/2 is Rs. 20.00 Lacs."

(emphasis added)

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11. Next, proclamations were issued on May 13, 1992, one for attachment of the plot and the other prohibiting SAPL from selling, transferring or mortgaging the property in favour of any other person. The service of the proclamations was effected exactly in the same manner as in the case of the other plot (being plot no.2/1). The Pargana Adhikari then made a request to the Tehsildar, Dadri for issuing the order for auction sale of the property that was lying under attachment. The Tehsildar issued the Sale Proclamation (undated) fixing the auction sale of this plot too on June 15, 1992. The service of the Sale Proclamation was effected in the same way as in case of the earlier proclamations. A petition for grant of some time for payment of the government dues was filed before the Tehsildar on June 9, 1992 on behalf of SAPL also.

12. Thus, with a slight variation of dates in regard to the earlier proclamations, the two plots came to be fixed up for auction sale on the same date, June 15, 1992.

13. There are memos of auction in respect of both the plots showing that their auction took place on June 15, 1992. From the memo of auction for plot no 2/1, it appears that five (5) bidders, including the appellant, Rakesh Kumar Goel, took part in the auction. The appellant made the highest bid of Rs.6,30,000/- and his bid was finally accepted. The memo also recorded that one fourth of the bid amount was deposited in the Nazarat in Register No.4.

14. The memo of auction for plot no.2/2 shows that there were five (5) bidders, including Moti Lal Goel, representing the second appellant. He made the highest bid of Rs.6,20,000/- which came to be accepted. The memo recorded that one fourth of the bid amount was received, vide Receipt no.043560. We shall presently see that the statement in both the memos in regard to payment of one fourth of the bid amounts was quite false.

15. The memos of auction did not care to disclose the

A reserve amounts for the two plots but mentioned some terms and conditions subject to which the auction was held. Conditions 1 and 3 of the auction as stated in the auction memo for plot no.2/2 are relevant and may be reproduced here:

B "1. 1/4th of the bid amount shall be deposited by the highest bidder, just after the close of the Auction Proceedings. The remaining 3/4th of the bid amount shall be deposited within a period of 15 days. On failure, by the highest bidder, to deposit 3/4th of the bid amount within the aforesaid stipulated period of 15 days, the 1/4th of the C bid amount, already deposited by the said bidder shall be forfeited in favour of the State Government.

2. xxxxx

D 3. The auction shall be approved after the expiry of 30 days meant for receiving any objection from anyone against the auction proceedings. The file shall be forwarded to the competent authority for approval of the auction proceeding after the expiry of the said period.

E 4. xxxxx"

16. According to the private respondents (BSPL & SAPL), no auction was ever held and the whole thing was mere paper work. Our attention was also drawn to certain facts coming to F light in course of a departmental enquiry later held in the matter. In the departmental enquiry One Harbeer Singh, AWBN stated that auction proceedings with respect to SAPL and BSPL (lands) were not held in the Tehsil office but papers were prepared at the residence of the ADM. In the morning of June G 15, 1992 he was called there. At the residence of the ADM, the Amin, Ram Kumar was writing the proceedings on one of the files and he was asked to write the proceedings on the other file. Harbeer Singh said that the auction proceedings at pages 40-41 were written by him and he wrote about the payment of

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one fourth of the bid amount on the instruction of the Naib Tehsildar who was his superior officer. A

17. In the overall facts of the case (which have only partly unfolded so far) the version given by Harbeer Singh appears to be highly probable. But even if we discount that and take the documents concerning the auction sale of the two plots in the government record at their face value, the auction proceedings of the two plots appear to be full of anomalies some of which may be enumerated as follows: B

i. No notice or information about the attachment or sale of the two plots was given to the UPSIDC which is undeniably their owner. C

ii. No attention was paid to the claim of the Canara Bank that it had the first charge over plot no.2/1 which was given in mortgage to the bank as security for the loan advanced by it to BSPL. D

iii. The Sale Proclamations did not indicate the area of the plots or the nature of the rights therein that would be the subject matter of the sale; whether the auction would be in regard to proprietary interests in the two plots or only leasehold rights? In case of latter what would be the limitations and conditions of the leasehold rights? E F

iv. There was practically no public advertisement (no newspaper publication or any thing of that sort) to give wider information to the general public about the auction. The only public announcement was done by the process server going to the site and calling out loudly that the two plots would G H

be put to auction sale on the specified date for non-payment of government dues and asking the people to come for the auction in large numbers.

v. No reserve price for the plots in question was indicated either in the Sale Proclamations or even in the Memos of Auction.

vi. Even though no reserve price was mentioned in the Sale proclamations and the Auction Memos, from the other materials on record it appears that reserve prices were actually fixed for the two plots in question. The reserve price for plot no.2/1 was fixed at Rs.25 lakhs and for plot no.2/2 Rs.20 lakhs. Now, this gives rise to two questions. First, how could the reserve prices be so low? In the Additional Affidavit filed by the State in compliance with the order dated July 7, 2009 it was admitted that "the valuation of the properties were not computed in accordance with the procedure as prescribed under the aforesaid Chapter-XV of the Revenue Manual and were fixed without any basis". In this connection it is worthy to note that plot no.2/1 has an area of 27,800 Sq. yards and plot no.2/2, 35,700 Sq. yards; both the plots are situate in the industrial area, Sahibabad adjoining Delhi. According to the private respondents, the market value of those plots in 1992 would be in crores. We are inclined to think that the value of the two plots would be nearer the figure quoted by the respondents than the paltry amounts of Rs.25 lakhs and Rs.20 lakhs. The second and the far more important question is how the bids

of Rs.6,30,000/- and Rs.6, 20,000/- could be accepted for plot nos.2/1 and 2/2 when their reserve prices were Rs.25 lakhs and Rs.20 lakhs respectively? If the highest bid was much lower than the reserve price, the normal procedure is to reject all bids and to hold a re-auction on a later date.

vii. The information about the stay order passed by he High Court was completely ignored.

viii. There is nothing to show that after the government dues were satisfied, the balance of the sale price was refunded to the land holders, the two private respondents BSPL and SAPL.

18. At this stage, in fairness to all sides, it may be stated that a number of the anomalies in the auction proceedings as indicated above were possible only due to the grave flaws and lacunae in the relevant provisions of the law. The auction proceedings were held under the provisions of the UP Zamindari Abolition and Land Reforms Act, 1950 and UP Zamindari Abolition and Land Reforms Rules, 1952. Section 279 of the Act lays down the procedure for recovery of an arrear of land revenue and in so far as relevant for the present, provides as follows:

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

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxx

A (d) by attachment of the holding in respect of which the arrear is due;

(e) by lease or sale of the holding in respect of which the arrear is due;

B (f) by attachment and sale of other immovable property of the defaulter, and,

(g) xxxxxxxxxxxxxx

C (2) The costs of any of the processes mentioned in sub-section(1) shall be added to and be recoverable in the same manner as the arrear of land revenue."

19. Section 284 empowers the Collector (which includes an Assistant Collector of the first class, authorized by the State D Government to discharge the functions of the Collector) to attach the holding of the defaulter, to give it on lease for a period of up to 20 years or to sell the holding free from all encumbrances and appropriate the proceeds in satisfaction of the arrears and refund the excess, if any, to the defaulter. Section 286 gives E power to the Collector to proceed against the interests of the defaulter in other immovable properties. Section 341 provides for the application of the provisions of the CPC unless expressly barred by any of the provisions of the UPZALR Act.

F 20. Coming now to the provisions of the UPZALR Rules, the relevant provisions, dealing with attachment and proclamation of sale, are contained in rules 273, 273-A and 282 which are as follows:

"273. Where any land is attached in pursuance of the G provisions of clause (d) or (f) of Section 279 or sub-section (1) of Section 284 or of Section 286 or is let out under sub-section (2) of Section 284, a proclamation in Z.A. Form 73, shall be affixed at a conspicuous place in the village in which the land is situate, and it shall also be notified by H beat of drum.

273A. The attachment of holing or other immovable poperty under clause (d) or (f) of section 279 or under section 284 or section 286, shall be effected in the manner prescribed in Order XXI, Rule 54 of the Code of Civil Procedure, 1908 and the order to the defaulter shall be issued in Z.A. Form 73-D.

282. Section 286- The proclamation for sale shall be in Z.A. Form 74"

21. Further details in regard to the sale of a holding or other immovable property for recovery of arrear are provided under rules 285-A to 285-N. For a very brief summary of the way a sale is to be conducted, we may refer to rule 285-A that provides that no sale under sections 284 and 286 would take place until after the expiry of at least 30 days from the date on which the proclamation under rule 282 was issued; rule 285-C lays down that there would be no sale in case, before the date fixed for the sale, the defaulter pays the arrears in respect of which the land was to be sold. Rules 285-D and 285-E are relevant for the present and are reproduced below:

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

285-E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any sub-treasury and in case of default the deposit, after the expenses of sale have been defrayed therefrom, shall be forfeited to Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claims to the property,

A or to any part of the sum for which it may be subsequently sold."

22. Rule 285-H and 285-I deal with applications/petitions that may be filed for setting aside the sale; rule 285-J provides for confirmation of sale on expiry of thirty days from the date of B the auction, provided no objection is filed under rules 285-H or 285-I or, if any filed, has been disposed of. If no application is made within 30 days rule 285-K bars all claims on grounds of irregularity or mistake in publishing or conducting the sale. Rule 285-M provides for putting the purchaser of the property in its C possession and the grant of the Sale Certificate to him.

23. It is, thus, to be seen that under the Rules the only mode for advertisement of auction-sale is by affixation of the Sale Proclamation at a conspicuous place in the village where D the property is located and by beat of drum. There is no provision of advertisement in the newspapers or by any other means to spread the information about the proposed auction on a large scale. Form ZA 73 (under Rule 273) and form ZA 73-D (under Rule 273-A) only provide the physical description E of the property and plot/house number and boundaries of the immovable property; Form 74 (rule 282) does not provide any description of the type of property (e.g., agricultural, homestead, industrial, etc.) or type of rights (e.g., lease and its term or freehold, etc.).

F 24. There is no provision in the Act or the Rules for fixation of reserve price before the property is put up for auction sale. We were, however, informed that the Collector of the District regularly notifies "circle rate" for different types of land and different locations. This circle rate is primarily used for G computation of stamp duty for registration of document. We were informed that in 2007 instructions were given to confirm sale only above the market price. There is also no provision enabling the authorities to bar someone with a criminal record or against whom there are tax dues or government dues of any

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other kinds from taking part in the sale of land by the government.

25. It is, thus, evident that the law under which the auction sale proceedings were held was itself quite deficient. But the enumeration of the shortcomings and the lacunae in the provisions of an archaic law is not to say that the auction proceedings of the two plots were otherwise fair and proper and suffered from some irregularities only due to the flaws in the law. On the contrary, we have no doubt in our mind that auction sale of the two plots was illegal, fraudulent and collusive and the appellants and their abettors in the revenue department of the State Government fully exploited the weaknesses of the law to their advantage. This would be evident as the facts of the case further unfold.

26. We have seen above that rule 285-D of the UPZALR Rules requires the highest bidder to deposit immediately twenty five percent of the amount bid by him. We also noted that this was one of the conditions mentioned in the Auction Memos. We have also seen that in the two Auction Memos it was stated that the highest bidders for the two plots, namely Rakesh Kumar Goel and Moti Lal Goel had deposited one fourth of their respective bid amounts immediately after the auction. But the payment recorded in the Auction Memos is proved to be wrong and incorrect by reference to the Government Records. All such payments are entered in Register no.4. In the Allahabad High Court where the auction sale of the two plots was challenged on grounds of violation of rule 285-D, the Register was produced by the Naib Tehsildar on being summoned by the Court. The High Court found that in Register no.4 there were only three entries at serial nos.39, 40 and 55 in respect of the auction sale of the two plots. These were as follows:

"39.	16.6.1992	1/4t part No.844499/ 16.6.1992 Immovable property of Ram Kumar SA, M/s Suri Asbestos	155000.00

A			Pvt. Ltd. through ML Moti Goel, Director, M/s.Moti Board Ind. Pvt. Ltd.	
	40.	16.6.1992	1/4th part No. 844500/ 16.6.1992 of Immovable Property M/s Bramic Suri Pvt. Ltd. through Rakesh Kumar S/o. Lajja Ram, R/o. Navyug Market, Ghaziabad.	157500.00
B				
C	55.	29.6.1992	3/4th part of No.846590/ 29.6.1992 of Immovable Property M/s Suri Asbestos property Pvt. Ltd through ML Moti Goel, Director, M/s. Moti Board Ind. Pvt. Ltd."	465000.00
D				

27. From entries 39 and 40 it is clear that twenty five percent of the bid amounts for the two plots in question were E deposited on June 16 and not immediately after the auction held on June 15, 1992 as claimed by the appellants. Mr. Mohta, learned senior advocate, appearing for the appellants kept telling us for days on end the appellants had receipts in their possession showing that the deposits were made on June 15 F itself. Notwithstanding the fact that the receipts were not filed in the High Court and neither were those enclosed with the SLP at the time of its filing, Mr. Mohta was allowed as much time as he wanted for producing those receipts. In the end he said that the receipts were misplaced and the appellants were not able to find them out. We have no doubt in our mind that G all the time Mr. Mohta was wrongly briefed by the appellants. No receipts were produced in court because there were, in fact, no receipts showing payment immediately after the auction.

28. The entries in Register no.4 show something else very H important. It appears that the balance seventy five percent of

the bid (Rs.6,30,000/-) for plot no.2/1 of BSPL was never deposited at all. In other words the sale of plot no.2/1 was confirmed and sale certificate was issued in favour of the appellant even without payment of the full price of the plot.

29. Let us now see how the sale of the two plots was confirmed. The appellants and their abettors inside the revenue department of the government were so far able to show that for recovery of the Government dues the plots of land of BSPL (2/1) and SAPL (2/2) were put to auction on June 15, 1992 in which the two appellants were the highest bidders. The next stage was the confirmation of the sale after dealing with the objections. It is noted above that even before the date of the auction the concerned authorities were given information about the stay order passed by the Allahabad High Court in respect of plot no.2/1. At that time they paid no heed to it but later on certified copies of the order were produced. On June 18, 1992 certified copies of the stay order passed by the Allahabad High Court were submitted before the Tehsildar, Dadri, both by the private respondent and the Canara Bank. Now, this was a real impediment to overcome before the sales could be confirmed and the appellants and their abettors inside the government could succeed in their designs. The High Court order was put away in a highly disingenuous way. A note was put up in which referring to the cause title of the writ petition, where the address of the writ petitioner, M/s Bramic Suri Pvt. Ltd. was shown as "Gyani Border, Post Office Chikambarpur, District Ghaziabad", it was declared that the High Court Order was with respect to some other property, situate at the site of the address given in the writ petition. On June 30, 1992 the note was perused by the District Magistrate and on the same date it was approved by the ADM (F & R). No one cared to see that Annexure 1 to the writ petition was a photostat copy of the very same Sale Proclamation on the basis of which the auction sale of plot no.2/1 was held and in the writ petition the prayer was to quash the Sale Proclamation at annexure 1 and in the stay petition the

A prayer was to stay its operation. It is not known whether this matter was brought to the notice of the High Court and whether the High Court took any action in the matter. We can only say that we find it one of the crudest manipulations coming to our notice.

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30. Coming now to plot no.2/2 which was put up for auction sale for recovery of the demand of Central Excise dues raised by the Excise Superintendent. Against the adjudication order giving rise to the demand an appeal, along with a petition for stay-cum-waiver, was filed before the Central Excise and Gold C Control Appellate Tribunal. The appeal and the stay petition were still pending before the Tribunal when the recovery proceedings were started in which the plot in question was put up for auction sale. In those circumstances, in this matter also, the private respondents approached the Allahabad High Court D with a writ petition which was disposed of by the High Court by order dated July 13, 1992 observing as follows:

> "Having considered the matter carefully, we find that there is a good deal of justification made by the petitioner. In the E circumstances, we consider it equitable and in the interest of justice to direct the respondents to stay their hands and not to proceed with the recovery proceedings till the stay-cum-waiver application is adjudicated by the tribunal. Accordingly, we direct the Central Excise and Gold Control F Appellate Tribunal, New Delhi to decide the stay-cum-waiver application, within a period of six weeks, a certified copy of this order is filed before it. The petitioner undertakes to file a certified copy of the order within ten days before the Tribunal. We further direct that for a period of two months or till the disposal of the stay-cum-waiver G application, whichever is earlier, recovery proceedings against the petitioner shall remain stayed and no further proceedings shall be taken in pursuance to sale proclamation, a copy of which has been filed as Annexure-3 to the writ petition. We however, make it clear that if the

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stay-cum-waiver application has already been decided or if the petitioner fails to file a certified copy of the order before the Appellate Tribunal as directed above, the stay of the recovery proceedings granted by this court by this order shall be of no avail to the petitioner and it shall be open to the respondents to proceed against the petitioner in accordance with law."

31. In the counter affidavit filed on behalf of the private respondents it is stated that a copy of the High Court order was served upon the District Magistrate on July 15, 1992. In the Government record, however, there is no trace of the High Court order and there is no discussion about it in any of the notes. On the contrary on the same day (July 15, 1992) Sale Certificates were issued under the signature of the ADM (Finance), a certain Ram Bahadur in favour of the appellants and were sent for registration.

32. In the facts and circumstances discussed above, we do not have the slightest hesitation in holding that the auction sale of the two plots in question was fraudulent, collusive, sham and mala fide. In the guise of recovery of the government dues, the two appellants in collusion with their abettors in the government departments were trying to grab government lands and they almost succeeded but for the interference by the Allahabad High Court.

33. It may also be stated here that in the counter affidavit filed by the UPSIDC it was alleged that Moti Lal Goel and his brother Rakesh Kumar Goel are notorious land grabbers in the districts of Ghaziabad and Gautam Budh Nagar and they had misappropriated about Rs.1125 crores. The counter affidavit gave a large extract from the affidavit of the Tehsildar (judicial), Ghaziabad, filed in the case before the High Court. In the Tehsildar's affidavit filed before the High Court very serious allegations were made against Moti Lal Goel. In view of the statements made in the counter affidavit of UPSIDC, this court on April 24, 2009 passed the following order:

A "……In this case serious allegations are made against the petitioner on the basis of petitioner indulging in land scam. An affidavit has been filled by the Deputy Manager, U.P. State Industrial Development Corporation Limited giving credentials of the petitioner with regard to the fraud
B allegedly committed of rupees more than one thousand crores. Several cases are pending before the Criminal Courts under Indian Penal Code as well as under Gangster Act. Although the present case arises from an auction sale, we want to know from the State of U.P. as to on what basis
C people with such credentials are allowed to take part in the auction and why is the State not responding to the Petition……"

Again on July 14, 2009, this court passed the order:

D "……It has been alleged and prima facie we are satisfied that over the years lands owned by State of U.P. are being alienated in the name of auction at an undervalued rate. It is also alleged that some of the alienations have taken place at gun point. These are very serious allegations.
E FIRs have been filed in this connection. We want the State of U.P., through its counsel, to submit a status report of cases filed against the Goel family allegedly involved in the aforesaid practices……"

F 34. In compliance with the order, an affidavit sworn by one Shri R.N. Upadhyaya, Special Secretary, Department of Revenue, Government of Uttar Pradesh was filed on July 25, 2009. In this affidavit, it is stated that Moti Lal Goel, Rakesh Kumar Goel and their family members were accused in sixteen (16) criminal cases in district Gautam Budh Nagar. Out of the
G sixteen (16) cases, three (3) were at the stage of investigation and one (1) was referred for inquiry to the CBI. In rest of the twelve (12) cases charge sheets were filed before the competent court in year 2005 and onwards. In the district of Ghaziabad, Moti Lal Goel, Rakesh Kumar Goel and their family
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members were accused in ten (10) criminal cases. Out of the ten (10) cases, two (2) were at the stage of investigation and two (2) were referred to the CBI. In rest of the six (6) cases charge sheets were filed before the competent court in year 2005 onwards. In the affidavit a long list was given of the cases against Moti Lal Goel and Rakesh Kumar Goel and their other family members pending in the two districts. From the list of cases it appears that almost all the cases were under sections 420, 467, 468, 469 and 472 of the Penal Code and the different provisions of the Prevention of Corruption Act. In the affidavit it was further stated that according to the report of the District Magistrate, Ghaziabad, Moti Lal Goel and his family members had got their name falsely and fraudulently entered in the revenue record in respect of land measuring about 129 hectares, the market value of which, in the year 2005, was approximately Rs.1100 crores. Similarly, from the report of the District Magistrate, Gautam Budh Nagar, it appeared that Moti Lal Goel and his family members had got their name fraudulently entered in the revenue records in respect of land measuring 252 hectares, the market value of which in the year 2005 was about Rs.400 crores. The affidavit also gave the list of the lands in regard to which Moti Lal Goel and his family members had got their names allegedly fraudulently recorded in the revenue records.

35. These, in short, are the credentials of the two appellants and the manner in which the two plots in question were put to auction sale purportedly for recovery of the government dues.

36. Against the auction sale of the plots in question both the private respondents and the UPSIDC, the owner of the plots, filed their respective objections before the Commissioner, Meerut Division, but their objections were rejected by the order dated November 5, 1998 passed by the Commissioner in objection letter Nos.19 and 25 of 1991-1992. The UPSIDC filed review petition before the Commissioner which too was dismissed on May 3, 1999 on the ground that the objection

A petition was dismissed on merits by a speaking order. Against the order passed by the Commissioner, both the private respondent and the UPSIDC filed revisions before the Board of Revenue, Lucknow. Even while the revision of the private respondent was pending, the revision filed by the UPSIDC was B dismissed by order dated October 11, 1999 passed by the Board of Revenue in Revision No.10(LR) of 1998-1999. We feel sorry that such a gross case could not be corrected even at the highest level of the State Administration.

C 37. Whatever little redemption the State Government was able to attain in this case was through Mr. Ashok Desai, senior advocate, who appeared on its behalf at the stage of the final hearing of the case. Mr. Desai, with great fairness, did not try to support the auction sale of the plots in question even for a moment. On the contrary, he submitted that the auction D proceedings broke all canons and principles laid down by this Court for the sale of government land by public auction. Mr. Desai invited our attention to a number of decisions of this Court where it is said that the disposal of public property partakes the character of trust and the government or the public E authorities are obliged to make all attempts to obtain the best available market price while disposing of public properties. [*Ram and Shyam Co. vs. State of Haryana*, (1985) 3 SCC 267 (paragraphs 5, 6 12 & 15); *V. Purushotham Rao vs. Union of India*, (2001) 10 SCC 305 (paragraph 26); *Aggarwal and* F *Modi Enterprises (P.) Ltd. vs. New Delhi Municipal Council* (2007) 8 SCC 75 (paragraph 23); *Meerut Development Authority vs. Association of Management Studies*, (2009) 6 SCC 171]. He also submitted that it was not open to the government or the public authority to dispose of public property G below the reserve price. In support of the submission he invited our attention to a decision of this court in *Anil Kumar Srivastava vs. State of UP*, (2004) 8 SCC 671.

38. He also took us through the relevant provisions of the UPZALR Act and the UPZALR Rules as referred to above in H

this judgment. We appreciate the assistance rendered by him to the Court. A

39. In the facts and circumstances of the case, we are satisfied that the so called auction sale of the two plots in favour of the appellants was thoroughly illegal. Though the High Court set aside the auction sale of the two plots on the technical ground of violation of Rule 285-D, on a consideration of the overall facts and circumstances, we are satisfied that the auction sale was bad and malafide and was a blatant attempt to grab the public land. We, thus, find no merit in the appeal. B C

40. At one stage we considered asking the CBI to investigate the present case as also other cases of auction sale and alienation of land by the Revenue Department of the State Government in the District of Ghaziabad. We, however, refrain from doing so for two reasons. One, the CBI is already overburdened and secondly, the matter is about 20 years old. The officers posted at Ghaziabad would no longer be there, some of them might even have retired. D

41. But this case certainly calls for exemplary costs to the appellants. We wish to make it absolutely clear that this Court is not for manipulators, speculators and land grabbers. The litigation in this Court is not like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would cost no more than the expenses of litigation. That is not the way of this Court. We, accordingly, impose cost of Rs.2 lakhs on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the cost is not filed within the time as directed, the amounts of cost shall be realised from the appellants as fine under the provisions of the Code of Criminal Procedure. E F G

42. Before parting with the records we feel obliged to say that the existing provisions of the UPZALR Act and the UPZALR Rules are out of date by three quarters of a century. Those were H

A designed to deal with agriculture holdings in a rural area. Even for that purpose the provisions appear to be far from satisfactory. But they have become woefully inadequate and completely deficient for dealing with land holdings and other immovable properties in highly urbanised and industrialised regions of the B State. There is, therefore, an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones.

43. In the result the appeal is dismissed with costs as indicated above. The dismissal of the appeal shall not stand in the way of the authorities to recover from the private respondents Government dues, if any, in accordance with law. We are also not expressing any opinion as to who would get possession over the two plots as the result of the setting aside of their auction sale. If the private respondents claim C possession over the two plots the UPSIDC will take a decision on their claim, in accordance with law.

N.J. Appeal dismissed.