THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
P.DURGA PRASAD

W.A.No.1636 of 2002 & W.P.No.14136 of 2009

Date of Judgment: -12-2010

CT in W.A.No.1636 of 2002

Between

Ampro Packaging Industries Limited

..Appellant

And

1. Andhra Pradesh Industrial Development Corporation Limited, rep. by its Managing Director and others

..Respondents

The Court made the following Common Judgment:

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
P.DURGA PRASAD

W.A.No.1636 of 2002 & W.P.No.14136 of 2009

Common Judgment: (Per Hon'ble Sri Justice **A.Gopal Reddy)**

This appeal and writ petition filed questioning the sale of properties belonging to the guarantor under Section 29 of State Financial Corporations Act, 1951 (for short "the Act) were heard together and disposed of by this common judgment.

W.A.No.1636 of 2002 is directed against the order of the learned single Judge dismissing W.P.No.15713 of 2002 dated 13-09-2002 filed by Ampro Packaging Industries Limited (hereinafter called as "writ appellant"), sister concern of M/s.Ampro Acquatech Limited—petitioner in W.P.No.14136 of 2009. The appellant entered into bill discounting agreement with Merbanc Financial Services Limited—2nd respondent on

02-04-1997, whereby the 2nd respondent agreed to grant bill discounting facility to the appellant to the extent of 45 lakhs.
In that connection, M/s.Ampro Acquatech Limited (hereinafter called as "writ petitioner") offered 8.134 hectares (equivalent to Ac.20.10 cts.) situated in Nemam Village, Kakinada Rural Mandal towards collateral security in favour of 2nd respondent.

The Andhra Pradesh Industrial Development Corporation Limited (APIDC)—1st respondent—Corporation given bill re-discounting facility to a tune of Rs.2 crores in favour of 2nd respondent.

The 2nd respondent in turn re-discounted six bills to the tune of Rs.31,00,375/- of the writ appellant with the 1st respondent—Corporation by offering agricultural lands offered by the writ petitioner as collateral security in favour of 2nd respondent. When the 2nd respondent failed to make the payment to the 1st respondent—Corporation in terms of agreement between them towards the amount covered by six bills rediscounting, the 1st respondent—Corporation addressed a letter dated 06-11-1999 to the writ appellant informing about the same. Thereafter, the 1st respondent—Corporation addressed another letter dated

29-12-1999 to the writ appellant stating that it would take steps under Section 29 of the Act to sell the lands offered as collateral security. Since the writ appellant or the 2nd respondent failed to clear the dues of Rs.33,09,823/-, the 1st respondent—Corporation put the property, which was offered as collateral security, for sale exercising the powers conferred on it under Section 29 of the Act by publishing paper notifications dated

03-07-2000, 08-09-2000 and 22-03-2002. One K.Shiva Kumar and Associates made an offer for Rs.34,25,000/-. The Sale Negotiation Committee recommended to the 1st respondent—Corporation for accepting the offer of K.Shiva Kumar. The Board of 1st respondent—Corporation passed a resolution on

24-02-2002 accepting the offer made by K.Shiva Kumar followed by

letter dated 06-06-2002 intimating him about the acceptance of the Board for sale of the land in his favour and on the request made by K.Shiva Kumar four sale deeds were registered in favour of Penke Srinivas Baba on 07-10-2002. Meanwhile, W.P.No.15713 of 2002 was filed by the writ appellant challenging the sale of property offered as collateral security contending that the 1st respondent—Corporation acted *mala fide* against the interest of the writ appellant agreeing to sell the land offered by it as security at a price which would just about to clear the amount due to it (1st respondent) and "the 1st respondent—Corporation instead of giving wide publicity to the sale of property, has invited tenders from the interested parties thereby restricting the participation of the public and reducing the options available to it to maximize the amount realizable by sale of land". The 1st respondent—Corporation has also not got the property valued as any such effort would certainly have brought to its notice the prevailing market rates and would have enabled it to realize much better price.

The learned single Judge dismissed the writ petition at the admission stage holding that except reiterating what was averred in the affidavit filed in support of the writ petition no further information was given about the nature of publicity to be given by the 1st respondent—Corporation and the 1st respondent being the statutory Corporation in exercise of its statutory right sold the property towards the recovery of the amounts due to it. Hence, do not see any reason to interfere with the transaction.

Aggrieved by the dismissal of writ petition the writ appellant filed the above writ appeal. Later he filed W.A.M.P. No.1843 of 2008 to implead Penke Srinivasa Baba as third respondent to the writ appeal

stating that there is no contract between the 1st respondent—Corporation and the appellant.

The lands belonging to the guarantor were offered as collateral security; therefore, it is not permissible to proceed against the said property offered as collateral security except by filing a suit against the 2nd respondent. At no point of time the properties of the guarantor were mortgaged in favour of the 2nd respondent except the properties of the principal borrower. Hence, the 1st respondent—Corporation cannot proceed against the properties of a guarantor. The implead petition was ordered on

05-03-2009.

M/s.Ampro Acquatech Limited (guarantor) filed W.P.No.14136 of 2009 on 14-07-2009 questioning the sale *inter alia* contending that creditor and debtor relationship existed between the writ appellant and the 2nd respondent on one hand and the 1st respondent—Corporation and 2nd respondent on the other hand. As far as petitioner is concerned, it is not indebted to the respondents 1 and 2 in the capacity of principal borrower and it was only a guarantor who offered its properties by way of collateral security to the bills discounted initially by the 2nd respondent and later by the 1st respondent—Corporation.

The writ petitioner was not served with any notice by the 1st respondent—Corporation about proposing sale of its properties and 1st respondent—Corporation went ahead with the auction in pursuance of the sale notification dated 03-07-2000 and got certain offers from the interested parties. As those offers are not accepted, another notification was issued on

22-03-2002. In response to such notification it appears that the 1st respondent—Corporation received an offer for Rs.34,25,000/- from K.Shiva Kumar. The Sale Negotiation Committee participated by Managing Director and Vice Chairman of the

1st respondent—Corporation found that the offer made by K.Shiva Kumar is feasible and placed it before the Board of Directors and on approval of the same, the 1st respondent—Corporation appears to have issued a letter dated 06-06-2002 confirming the sale in favour of K.Shiva Kumar at whose request the property was registered in favour of the 3rd respondent by executing four sale deeds dated 07-10-2002. Therefore, the entire action of the 1st respondent—Corporation in selling the lands of the writ petitioner by invoking the provisions of Section 29 of the Act as illegal, arbitrary and unsustainable in view of law declared by the Supreme Court in ***KARNATAKA STATE FINANCIAL CORPORATION v. NARASIMAHAIAH***[1], wherein it was clearly held that the properties of a guarantor cannot be brought to sale by invoking Section 29 of the Act and only remedy available to the creditor is to proceed under Section 31 of the Act. It was specifically pleaded in para-8 of the affidavit that petitioner's sister concern viz., M/s.Ampro Packaging Industries Limited (Writ appellant) has already filed W.P.No.15713 of 2002 questioning the sale of property. On dismissal of the said writ petition, W.A.No.1636 of 2002 has been filed. The writ petitioner was under the *bona fide* impression that since the action of the 1st respondent—Corporation is questioned by its sister concern (writ appellant), which is the principal borrower, there is no need to file a separate writ petition. The writ petitioner after obtaining detailed legal opinion in this respect, wherein it was advised that unless it questions the action of the 1st respondent—Corporation it cannot get the relief in

the pending writ appeal. There is no negligence or acquiescence on the part of the petitioner and the petitioner was advised that there is no limitation for filing the writ petition and this Hon'ble Court has discretion to entertain the writ petition even after a considerable period basing upon the facts of the case, extent of rights involved and the injustice meted to the aggrieved party. Hence, the sale notification is liable to be set aside.

A detailed counter affidavit has been filed by the 1st respondent—Corporation stating about extending of bill discounting facility to the 2nd respondent for a sum of Rs.2 crores. As security for the said facility extended by the 2nd respondent, the principal debtor/borrower (writ appellant) offered the properties belonging to the writ petitioner. The bills discounted by the principal borrower with the 2nd respondent were in turn re-discounted by the 2nd respondent with the 1st respondent—Corporation to a tune of Rs.31,00,378 and the 2nd respondent sub-mortgaged the said property as security for the bills of the principal borrower re-discounted with the 1st respondent—Corporation. The said security was created pursuant to the letter addressed by the writ petitioner, who is the owner of the said property, on 13-06-1997 to the 1st respondent—Corporation agreeing and authorizing the 2nd respondent to offer the said property as security to the extent of Rs.40 lakhs against not only the bills drawn by the principal borrower discounted by the 2nd respondent and re-discounted by the 1st respondent—Corporation but also any other bills re-discounted by the 2nd respondent with the

1st respondent—Corporation within the limit of Rs.40 lakhs.

The said letter was also filed along with the counter. As the principal borrower did not pay the amounts due pursuant to the letter dated 06-11-1999, the 1st respondent—Corporation addressed a letter dated 29-12-1999 to the 2nd respondent as well as the principal borrower (writ appellant) informing them that a sum of Rs.33,09,823/- is due as on 30-11-1999. In spite of the said letter dated 29-12-1999 there was no response from the principal borrower or from the 2nd respondent. Therefore, another letter was addressed on

10-04-2000 to the 2nd respondent, principal borrower and also to the writ petitioner calling upon them to pay the amount of Rs.35,91,903/- due as on 31-03-2000. If the said amount is not paid within 10 days from the date of receipt of the said letter, the 1st respondent—Corporation would be constrained to invoke the provisions of Section 29 of the Act and sell the property.

The said letters have been returned with postal endorsement "*addressees have left without leaving any instructions*". Therefore, the 1st respondent—Corporation requested the 2nd respondent to furnish the correct address of the writ petitioner and accordingly the 2nd respondent through its letter dated

04-05-2000 furnished the address of M.Srinivasa Rao, who is Director/Promoter on the Board of both the principal debtor/borrower as well as the writ petitioner. On furnishing the address, the 1st respondent—Corporation once again dispatched copy of the letter dated 10-04-2000 to the principal debtor/borrower and the writ petitioner on 12-05-2000 to the address furnished by the 2nd respondent. But the said letters were returned with postal

acknowledgement "*addressees have refused to receive the same*". The said letters were also filed along with the counter. Thereafter, the 1st respondent—Corporation in exercise of power under section 29 of the Act seized the property on 07-06-2000 under a seizure panchanama and issued sale notification dated 03-07-2000 in Economic Times and Eenadu news papers inviting offers. Pursuant to the said notification, two offers were received for Rs.20,10,000 and Rs.30,50,250/- from S.Veerabhadra Rao and A.Bulli Abbayi Reddy respectively and the Sale Negotiation Committee after negotiations with the tenderors/participants, the offers were improved to Rs.31,15,500/- and 32,00,000/- respectively. Thereafter, further tender notification was issued and pursuant to the same the 1st respondent—Corporation received highest offer of Rs.34,25,000/- from K.Shiva Kumar. Once again Sale Negotiation Committee negotiated with Mr.K.Shiva Kumar, who deposited the sale consideration and requested the

1st respondent—Corporation to register the property in the name of 3rd respondent and accordingly sale deeds were executed in favour of 3rd respondent, who in turn leased out the property by creating third party rights and huge amounts have been spent for development of the said property, as stated by him in the counter filed in W.A.No.1636 of 2002, and the writ petitioner is not entitled to any relief as he slept over for 7 long years. Further, it is contended that the Government of India issued a notification (mistakenly stated as resolution) extending the provisions of the Act to the 1st respondent—Corporation duly empowering it (Corporation) to recover its dues under the provisions of the Act. The said notification dated 11-12-1986 was filed along with counter.

The 3rd respondent filed a separate counter stating that he is

a *bona fide* purchaser of the land under four sale deeds. The 1st respondent—Corporation issued paper publication for sale of land in Economic Times and Eenadu on 03-07-2000. Further publication was made on 08-09-2000 in Economic Times. As required offers were not received, advertisement was again made in Eenadu and Hindu on 21-03-2002 and 22-03-2002 respectively. The principal borrower and guarantor did not deliberately respond to the auction notice. The principal borrower challenged the sale in W.P.No.15713 of 2002, which was dismissed. On dismissal of said writ petition, sale deeds were executed in favour of 3rd respondent on 07-10-2002 and only after pronouncement of judgment of the Supreme Court on 13-03-2008 in ***KARNATAKA STATE FINANCIAL CORPORATION v. NARASIMAHAIAH*** (1 supra) the present writ petition is being filed on 13-07-2009 for setting aside the sale deeds. The 3rd respondent being the *bona fide* purchaser developed the land by investing huge money and for further development leased out the property in the year 2006 and gifted away some of the lands in the year 2010 by creating third party rights. Therefore, the above writ petition, which was filed with seven years delay, cannot be entertained and prays for dismissal of writ petition.

Submissions:

Sri Vedula Srinivas, learned counsel for the appellant and writ petitioner made the following three submissions.

1. The 1st respondent—Corporation can invoke Section 29 of the Act for sale of property belonging to the principal borrower but not the guarantor.
2. Once the Board resolved to sell the property to K.Shiva

Kumar, execution of sale deeds in favour of 3rd respondent is invalid without there being any resolution for sale of said property in his favour.

3. The 1st respondent—Corporation (APIDC) is not a notified body under the Act for invoking Section 29 and the whole proceedings are *untra vires*.

In support of his contentions strong reliance is placed on the judgment of the Supreme Court in ***KARNATAKA STATE FINANCIAL CORPORATION v. NARASIMAHAIAH*** (1 supra). He further contends that in spite of specific plea taken that there is no Board resolution to sell the property in favour of 3rd respondent and the 1st respondent—Corporation cannot invoke the provisions of Section 29 of the Act, the same has not been repelled. Therefore, the *bona fide* purchaser (3rd respondent) is not entitled to any equity as held by the Gujarat High Court in ***NEETABEN U. CHOKSHI v. GUJARAT STATE FINANCIAL CORPORATION***[2] and ***NARAYANBHAI RAICHANDDAS PATEL v. MANAGING DIRECTOR***[3]. He also contends that mere delay does not bar the relief. For the said proposition reliance is placed on the judgments of the Supreme Court in ***RAMACHANDRA SHANKAR DEODHAR v. STATE OF MAHARASHTRA***[4] and ***STATE OF RAJASTHAN v. D.R.LAXMI***[5].

Sri Sriram Reddy, learned Standing Counsel for the 1st respondent—Corporation (APIDC) contends that sale was conducted in the year 2002; principal borrower filed W.P.No.15713 of 2002 questioning the sale, which was dismissed at the admission stage; only on 1st respondent—Corporation filing counter with regard to maintainability of writ petition without impleading the auction purchaser and only after delivery of the Supreme Court judgment in

NARASIMAHAIAH s case (1 supra), WAMP No.1843 of 2008 has been filed to implead the auction purchaser to over come the plea of the 1st respondent—Corporation. The writ petitioner suppressed all material facts stating that there is no privity of contract between the writ petitioner and 2nd respondent. In fact, the writ petitioner addressed a letter dated 13-06-1997 agreeing and authorizing the 2nd respondent to offer the said property as security to the extent of Rs.40 lakhs but in the affidavit filed in support of W.P.No.15713 of 2002, it appears that the 2nd respondent rediscounted the bills and sub-mortgaged the property offered by the writ appellant and the said affidavit has been signed by M.Srinivas Rao whereas the writ petition is filed by one of the directors of M/s.Ampro Aquatech Limited. The 1st respondent—Corporation (APIDC) is a notified financial institution and in exercise of power under sub-section (1) of Section 46 of the Act the Central Government extended the provisions of the Act to the 1st respondent—Corporation. Hence, it is always open for the 1st respondent—Corporation to invoke the provisions of the Act. For the said proposition reliance is placed on the judgments of the Supreme Court in ***HARYANA FINANCIAL CORPORATION v. JAGDAMBA OIL MILLS***[6] and ***PUNJAB SMALL SCALE INDUSTRIES & EXPORT CORPN. LTD. v. JHUJHAR SINGH***[7]. He further contended that restrictions placed on the power of SFCS under Section 29 in ***MAHESH CHANDRA v. REGIONAL MANAGER, UPFC***[8] have been overruled in ***HARYANA FINANCIAL CORPORATION v. JAGDAMBA OIL MILLS*** (6 supra). Therefore, the writ appeal was initially filed questioning the sale contending that the Corporation has not followed the procedure enumerated in ***MAHESH CHANDRA***' s case (8 supra) and only after pronouncement of Supreme Court judgment in

NARASIMAHAIAH's case (1 supra) knowingly that the grounds available to challenge therein is not available got filed the present writ petition through one of the Directors which is liable to be dismissed on the ground of laches. To support the same, reliance is placed on the judgments of the Supreme Court in ***PUNJAB SMALL SCALE INDUSTRIES & EXPORT CORPN. LTD. v. JHUJHAR SINGH*** (7 supra) and ***K.D.SHARMA v. SAIL***[9].

Sri S.Ramachandra Rao, learned senior counsel appearing for the 3rd respondent (auction purchaser) contends that on dismissal of W.P.No.15713 of 2002 on 30-09-2002, the above writ appeal was filed and only after pronouncement of Supreme Court judgment in ***NARASIMAHAIAH*** s case (1 supra) on 13-03-2008, the present writ petition was filed on 13-07-2009 for setting aside the sale. In writ appeal, the appellant can canvas the correctness of the dismissal order made in W.P.No.15713 of 2002, which was mainly filed on the ground that wide publicity for sale of the property has not been given, which restricted participation of public, and the Corporation has not got the property valued to arrive the correct valuation.

In writ appeal, while impleading the auction purchaser the appellant cannot take new plea, which was not taken in the main writ petition. In the absence of any plea taken in W.P.No.15713 of 2002, which is the subject matter of writ appeal, that recourse under Section 29 of the Act cannot be taken by the Corporation to sell the properties of the guarantor, the appellant cannot be permitted to take such plea in the writ appeal. The 3rd respondent paid the entire bid amount and obtained sale deeds in his favour on 07-10-2002; therefore, valuable rights have been accrued to him. The writ petition is liable to be dismissed on the ground of laches. He also contended that even if

there is any illegality committed by the 1st respondent—Corporation (APIDC), the remedy of the writ petitioner, if any, is to work out its remedies by way of damages or other reliefs against the 1st respondent—Corporation but cannot seek to set aside the sale deeds and recovery of the possession. The learned senior counsel further contends that any order validly made will not become void or illegal by subsequent declaration of law. For the said proposition reliance is placed on the judgments of the Supreme Court in ***STATE OF A.P. v. T.G.LAKSHMAIAH SETTY & SONS***[10]***; UNION OF INDIA v. MADRAS TELEPHONE SC & ST SOCIAL WELFARE ASSN.***[11] and ***MAFATLAL INDUSTRIES LTD. v. UNION OF INDIA***[12]. He also contends that *delay/laches defeats equity*. For that reliance is placed on the judgments of the Supreme Court in ***STATE OF A.P. v. T.G.LAKSHMAIAH SETTY & SONS*** (10 supra); ***S.S.BALU v. STATE OF KERALA***[13]; ***OM PARKASH v. UNION OF INDIA***[14] and ***BOMBAY DYEING & MFG. CO. LTD. v. BOMBAY ENVIRONMENTAL ACTION GROUP***[15]. He lastly contends that mere violation of provisions of law does not automatically entitle to issuance of a writ. For the said proposition reliance is placed on the judgments of the Apex Court in ***E.P.ROYAPPA v. STATE OF TAMILNADU***[16]; ***NETAI BAG v. STATE OF W.B.***[17].

In the light of the above submissions, the points that arise for consideration in this writ petition are:

1. Whether the Corporation can proceed against the properties of the surety/guarantor under Section 29 of the Act.
2. Whether the writ petition filed with a delay of 7 years questioning the sale of the properties hypothecated by the guarantor is liable to be allowed by setting aside the sale

or not. If not the sale can be set aside by allowing writ appeal.

Point No.1:

The issue whether the properties of the guarantor can be sold in exercise of power under Section 29 of the Act is no more res integra. The Supreme Court in ***NARASIMAHAIAH***'s case (1 supra) affirmed the judgment and order of the Karnataka High Court dated 26-03-2003 holding that Section 29 of the Act nowhere states that the Corporation can proceed against the surety even if some properties are mortgaged or hypothecated by it. The right of the Financial Corporation in terms of Section 29 of the Act must be exercised only on a defaulting party. There cannot be any default as is envisaged in Section 29 by a surety or a guarantor. The liabilities of a surety or the guarantor to repay the loan of the principal debtor arise only when a default is made by the latter. After referring the legislative object and intent in enacting Section 29 held when a guarantee is sought to be enforced, the same must be done through a Court having appropriate jurisdiction. In the absence of any express provision in the statute, a person being in lawful possession cannot be deprived thereof by reason of default on the part of a principal borrower since sub-section (4) of Section 29 of the Act lays down appropriation of the sale proceeds only refers to “industrial concern” and not a “surety” or “guarantor”.

The principal borrower filed W.P.No.15713 of 2002 against which the present writ appeal arises. The only ground of challenge made to the sale was that the 1st respondent—Corporation did not give sufficient publicity for sale of the property and it took possession

for the default committed by the principal borrower. Obviously, the main ground of challenge was that the principles laid down in ***MAHESH CHANDRA'S*** case
(8 supra) have not been followed.

The guidelines issued in ***MAHESH CHANDRA's*** case
(8 supra) run counter to the view expressed subsequently in **U.P.** ***FINANCIAL CORPN. v. GEM CAP (INDIA) (P) LTD.*** ((1993) 2 SCC 299); ***U.P. FINANCIAL CORPN. v. NAINI OXYGEN & ACETYLENE GAS LTD.*** ((1995) 2 SCC 754) and ***KARNATAKA STATE FINANCIAL CORPN. V. MICRO CAST RUBBER & ALLIED PRODUCTS (P) LTD.*** ((1996) 5 SCC 65).

The view taken in ***MAHESH CHANDRA V. REGIONAL MANAGER, UPFC*** (8 supra) has not been accepted by the Supreme Court in ***HARYANA FINANCIAL CORPORATION v. JAGDAMBA OIL MILLS*** (6 supra) and held that Section 29 gives a right to Financial Corporation to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to Financial Corporation. The right accrues when the industrial concern, which is under a liability to Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. The guidelines issued in ***MAHESH CHANDRA' s*** case (8 supra) place unnecessary restrictions on the exercise of power by Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in

MAHESH CHANDRA*'s case* (8 supra) will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

Admittedly, in the present case sale notice was issued to the principal borrower, which was returned with postal endorsement "*addressee left without leaving instructions*".

After taking possession of the property on 07-06-2000 under a cover of panchanama, publication was made on 03-07-2000 for sale of the land in Economic Times and Eenadu followed by further publication dated 08-09-2000 in Economic Times and advertised the sale in news papers, viz., Eenadu and Hindu on 21-03-2002 and 22-03-2002 respectively. In response to publication, the 1st respondent—Corporation received two offers for Rs.20,10,000/- and 30,50,250/- from S.Veerabhadra Rao and A.Bulli Abbai Reddy and pursuant to the negotiations made by the Tender Negotiation Committee, the two tenderers improved their offer to Rs.31,15,500/- and Rs.32,00,000/-. Pursuant to last advertisement one K.Shiva Kumar offered 34,25,000/- and the same was approved by the Board after negotiations. In the absence of any pleading that procedure followed by the

1st respondent—Corporation is not transparent and acceptable in law, mere assertion that wide publicity of sale of property has not been given by inviting tenders from the interested parties itself is not sufficient to hold that the procedure adopted by the 1st respondent—Corporation is not transparent and acceptable in law. Having regard to the fact that 1st respondent—Corporation pursuant to sale notification

in the first instance received only two offers and on negotiation the tenderers agreed to improve their offer to Rs.31,15,500/- and Rs.32,00,000/-, as it was not acceptable, the Corporation again called for tender notification. Pursuant to the same, highest offer was received from K.Shiva Kumar for Rs.34,25,000/-, which is more than Rs.2,25,000/- with the earlier offer made, which itself shows that the 1st respondent—Corporation has taken all steps to receive the maximum price. Therefore, the procedure adopted by the 1st respondent—Corporation for sale of the property cannot be held to irrational or arbitrary. Point No.1 is accordingly answered.

Point No.2:

It is well settled that Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions. (See ***GHAN SHYAM DAS GUPTA v. ANANT KUMAR SINHA*** AIR 1991 SC 2251 = (1991) 4 SCC 379).

Section 34 of the Specific Relief Act, 1963 provides a remedy to obtain declaratory decrees when revenue sale is void.

Section 41A of the Act bars institution of suit against any action taken by the Corporation in pursuance of Section 27 or Section 32A only but the Act does not bar institution of a suit for setting aside the sale conducted without any authority under the Act.

Article 113 of the Limitation Act, 1963 provides three years limitation for institution of such suit.

The Supreme Court in ***STATE OF A.P. v. T.G.LAKSHMAIAH***

SETTY & SONS (10 supra) held any order validly made does not become void or illegal by subsequent declaration of law to reopen the assessment under the Sale Tax Act already made.

In ***MAFATLAL INDUSTRIES LTD. v. UNION OF INDIA*** (12 supra) the Supreme Court while considering the question of refund of excise and customs duty collected subsequently held to be contrary to law by virtue of decision of High Court or Supreme Court in para-79 held the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11-B of Central Excise and Salt act and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee.

In ***BOMBAY DYEING & MFG. CO. LTD. v. BOMBAY ENVIRONMENTAL ACTION GROUP*** (15 supra) the Supreme Court after referring to the earlier judgments in ***NAWAB ZAIN-UL-ABDIN KHAN v. MOHD. ASGHAR ALI KHAN*** (ILR (1888) 10 Allahabad 167 (PC) = (1887) 15 IA 12) ***GURJOGINDER SINGH v. JASWANT KAUR*** ((1994) 2 SCC 368) made distinction between the decree holder auction purchaser himself and third party bona fide purchaser in an auction sale and observed that "the ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the Court, as a matter of policy, will protect

honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit" and held the purchasers of the cotton textile mills of the NTC cannot be made to suffer for no fault on their part and, thus, the High Court committed a manifest error in allowing the writ petition. The Supreme Court while observing delay and laches on the part of the petitioner in the matter of granting relief in the writ petition quoted in approval of the observations made by it in ***R. AND M. TRUST*** **v.** ***KORAMANGALA RESIDENTS VIGILANCE GROUP*** ((2005) 3 SCC 91) and ***STATE OF MAHARASHTRA*** v. ***DIGAMBAR*** (1995) 4 SCC 683, wherein it was held under:

> "There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb a third party interest created on account of delay. Even otherwise also why should the court come to the rescue of a person who is not vigilant in his rights."
>
> "Where the High Court grants relief to a citizen or to any person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches, or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the state."

It is now fairly well settled that mere showing violation of statutory provisions party is not entitled to issuance of a writ in the absence of prejudice caused by not following the said statutory provisions.

In the absence of any specific allegation of *mala fides* attributed to the officials of the 1st respondent—Corporation in conducting the auction/negotiations mere violation of statutory provisions or safeguards issued by the Supreme Court subsequently does not entitle the petitioner for issuance of writ as held by the Supreme Court in ***E.P.ROYAAPPA v. STATE OF TAMILNADU*** (16 supra).

The Supreme Court in ***NETAI BAG v. STATE OF W.B.*** (17 supra) held the inaction of the appellants in approaching the Court almost after three years of the impugned lease deed is an additional circumstance to doubt their bona fides in challenging the impugned action and dismissed the appeal confirming the dismissal of writ petition by the High Court.

In the above case the Supreme Court further held appeal before the Division Bench of the High Court or in the Supreme Court being in continuation of the original proceedings in the form of writ petition cannot enlarge the scope of inquiry at that belated stage.

The writ petitioner absolutely has not shown any reasons for the delay in approaching the Court but contrary to the same he averred the principal borrower filed W.P.No.15713 of 2002 mainly on the ground that wide publicity for sale of the property has not been given, which restricted participation of public and the 1st respondent—Corporation has not got the property valued to arrive the correct valuation. In the implead petition it was pleaded that the 1st respondent—Corporation (APIDC) cannot take recourse under Section 29 of the Act to sell the properties of the guarantor. The appellant

cannot take such plea in the writ appeal.

Learned senior counsel, Sri S.Ramachandra Rao, was emphatic in his submission that the appellant should not be permitted to take the plea that guarantor's property cannot be sold in exercise of power under Section 29 of the Act after a period of 8 years.

We do not see any force in the above submission for the reason, the plea going to the root of the jurisdiction of the inferior tribunal which is based on a decision of the High Court or the Supreme Court, which was delivered subsequent of the filing of the writ petition, can be entertained. (See ***M.S.M. SHARMA v. SRI KRISHNA SINHA*** (AIR 1959 SC 395); ***A. ST. ARUNACHALAM PILLAI v. SOUTHERN ROADWAYS LTD.*** (AIR 1960 SC 1191) and ***BIRAJ MOHAN DAS GUPTA v. STATE OF ORISSA*** (AIR 1967 SC 158). But the High Court is under obligation to see whether equitable jurisdiction can be extended in all such cases or not.

The writ petitioner (guarantor) has not filed any reply controverting the fact that he had issued letter dated 13-06-2007, represented by its Managing Director, M.Srinivas Rao, to the Corporation agreeing and authorizing the 2nd respondent to offer their property as collateral security to the extent of 40 lakhs. Mr. Srinivasa Rao representing both the principal borrower (writ appellant) and guarantor (writ petitioner) as Director and Managing Director respectively addressed the said letter. Once W.P.No.15713 of 2002 is filed by the very same Srinivasa Rao and failed in his attempt to set aside the sale deed, filed the present W.P.No.14136 of 2009 by the petitioner through one of the Directors to take advantage of

subsequent declaration of law stating that the petitioner is advised to submit there is no limitation prescribed for filing a writ petition and this court has discretion to entertain the writ petition even after considerable period basing upon the facts of the case and injustice meted out to the aggrieved party. The very same Srinivas Rao filed WPMPNo.20804 of 2002 on

23-08-2002 to implead K.Shiva Kumar as 3rd respondent to the writ petition—W.P.No.15713 of 2002, but not pressed the same. Pending writ appeal, W.A.M.P.No.1843 of 2008 is filed through M.Janardhan Rao, one of the Directors, to implead Penke Srinivasa Baba (third party) as 3rd respondent to the writ appeal stating that the properties of the writ petitioner were offered as collateral security in favour of the 2nd respondent who in turn sub-mortgaged the lands which were offered to it as collateral security by a third party guarantor; the said transaction between the 2nd and 1st respondents was not within the knowledge of the writ appellant nor there is any privity of contract between the writ appellant and the 1st respondent—Corporation. The said WAMP was filed on 12-08-2008 but the present writ petition is filed on 14-07-2009 nearly after 11 months suppressing the fact of M.Srinivas Rao, Director or the Managing Director of writ petition—Company, presenting the letter dated 13-06-2007 offering the properties of the writ petitioner as collateral security to the 1st respondent—Corporation to the extent of 40 lakhs.

It is also to be noted that the 3rd respondent who invested Rs.34,25,000/- and obtained sale deeds with regard to immovable properties on 07-10-2002. It is common knowledge that value of immovable properties has phenomenally increased during the last

seven years i.e. from the date of execution of sale deed till the writ petition is filed almost 10 to 20 times.

The third respondent who invested the said amount cannot be deprived of the fruits of escalation in the value of the lands.

The petitioner, who has almost abandoned his right and only woke up to unsettle the settled rights after the Supreme Court declared that the properties of the guarantor cannot be sold in exercise of power under Section 29 of the Act, resorted in chance litigation, filed the present writ petition to take advantage of the law so declared. No doubt, when fundamental or statutory rights are violated by the executive fiat, the technicalities of limitation will not debar the High Court in exercising jurisdiction under Article 226 of the Constitution, but if any third party interest is created, the Court will be slow in exercise of equitable jurisdiction. In such cases, the proper course for the High Court is only to see whether the remedy of the writ petitioner under the common law is barred by limitation; in judging the delay and laches, the High Court in exercise of jurisdiction under Article 226 of the Constitution cannot ignore the law of limitation in granting the relief.

The Supreme Court in ***S.S.BALU v. STATE OF KERALA*** (13 supra) held that *delay defeats equity* and the same view was also taken in **OM *PARKASH v. UNION OF INDIA*** *(14 supra)*

Once the remedy of the writ petitioner to institute a suit for setting aside the revenue sale is barred by law of limitation, the High Court in exercise of jurisdiction under Article 226 of the Constitution cannot ignore the law of limitation in granting the relief.

In view of the same, we are not inclined to extend the

equitable jurisdiction to the writ petitioner and the writ petition filed by the petitioner 7 years after confirmation of sale is liable to be dismissed on the ground of laches. We accordingly do so.

In view of finding recorded on point No.1 that the procedure followed by the 1st respondent—Corporation in inviting tenders and negotiations with the highest bidder is not irrational or arbitrary and the reasons in dismissing the writ petition also holds good for dismissal of writ appeal. Point No.2 is accordingly answered.

In the result, both the writ petition and writ appeal are dismissed. The parties shall bear their own costs.

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A.GOPAL REDDY, J.

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P.DURGA PRASAD,J.

-12-2010

Murthy

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[1] (2008) 5 SCC 176 = 2008 (4) SCALE 82
[2] AIR 2010 GUJARAT 84
[3] AIR 2009 GUJARAT 24
[4] AIR 1974 SC 259
[5] (1996) 6 SCC 445
[6] (2002) 3 SCC 496
[7] (2008) 17 SCC 668
[8] (1993) 2 SCC 279
[9] (2008) 12 SCC 481
[10] 1994 Supp (2) SCC 386
[11] (2006) 8 SCC 662
[12] (1997) 5 SCC 536

[13] (2009) 2 SCC 479
[14] (2010) 4 SCC 17
[15] (2006) 3 SCC 434
[16] (1974) 4 SCC 3
[17] (2000) 8 SCC 262