

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

CIVIL REVISION PETITION NO.539 OF 2015

BETWEEN:

SRI. R. RAGHU
S/O RAJANNA AVADHANI
AGED ABOUT 44 YEARS
TRUSTEE
VED VIGNAN MAHA VIDYA PEETH,
UDAYAPURA, 21ST K.M.,
KANAKAPURA ROAD,
BENGALURU SOUTH TALUK,
BENGALURU - 560062.

...PETITIONER

(BY SRI. S.S.NAGANANDA, SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

AND:

1. SRI. G.M. KRISHNA
S/O LATE MARIGANGAIAH,
AGED ABOUT 60 YEARS,
RESIDING AT NO.7700,
TREYMANE PLACE, NO.101,
MCLEAN, VIRGINIA, 22102
UNITED STATES OF AMERICA

ALSO AT

STERLING RESIDENCY, NO.403-A,
A BLOCK, 5TH MAIN, 7TH CROSS,
RAJMAHAL 2ND STAGE,
BENGALURU - 560094

2. M/S KARNATAKA STATE FINANCE CORPORATION
 A STATUTORY CORPORATION
 INCORPORATED UNDER
 THE PROVISIONS OF STATE FINANCIAL
 CORPORATIONS ACT, 1951
 HAVING ITS OFFICE AT
 NO.1/1, THIMAIAH ROAD,
 NEAR CANTONEMENT RAILWAY STATION,
 BENGALURU - 560052.

...RESPONDENTS

(BY SRI. BRIJESH M. SINGH, ADVOCATE FOR RESPONDENT
 NO.1;

SRI. BIPIN HEGDE, ADVOCATE FOR RESPONDENT NO.2)

THIS CRP IS FILED UNDER SECTION 115 OF THE CODE
 OF CIVIL PROCEDURE, 1908 AGAINST THE ORDER DATED
 28.09.2015 PASSED IN MISC NO.157/2014 ON THE FILE OF
 THE I ADDL. DISTRICT JUDGE, BENGALURU RURAL DISTRICT,
 BENGALURU, ALLOWING THE PETITION FILED UNDER SECTION
 47 OF CPC.

THIS PETITION HAVING BEEN HEARD AND RESERVED
 FOR ORDER ON 26.07.2023 AND COMING ON FOR
 PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE
 FOLLOWING:-

ORDER

This revision petition is filed challenging an order
 dated 28.09.2015 passed by the I Additional District
 Judge, Bengaluru Rural District, Bengaluru (henceforth
 referred to as 'District Court') in Misc.No.157/2014, by
 which it set aside the auction sale of an immovable

agricultural land in Sy.No.67 of Agara village, Kengeri Hobli, Bengaluru South Taluk, on the ground that the auction purchaser had played fraud upon the Court.

2. The facts are though short and simple but the proceedings are long drawn and elaborate. Thus, to avoid undue verbosity, the facts collated from concluded proceedings are sewn and summed up as follows:

3. An execution petition in Execution Petition No.33/2000 was filed by Karnataka State Financial Corporation (henceforth referred to as 'KSFC') to execute an order in Misc.No.52/1996 to recover a sum of Rs.2,61,28,017-57. An agricultural land measuring 5 ½ acres in Sy.No.67 of Agara village, being one of the properties shown in the schedule to the execution petition, was brought for sale. A sale at the spot was purportedly held, where the bid of an individual (Petitioner) was the highest at Rs.15,05,000-00. The Court felt the bid to be very less having regard to the potentiality of the land as it lay very close to Bengaluru City. A sale in the Court was

held soon thereafter and the individual at the spot sale (petitioner) was the only bidder. When the Court expressed the inadequacy of the price, he offered to enhance his bid by a sum of Rs.3,00,000-00, which was accepted and the sale was declared. The petitioner deposited 25% of the bid on 19.04.2003 and the remaining 75% on 27.05.2003. An application was filed in the execution petition by "Ved Vignan Maha Vidyapeeth Charitable Trust" (henceforth referred to as "Trust") for issuance of a sale certificate and the affidavit was sworn to by the petitioner himself, who claimed that the Trust had purchased the land. The executing Court allowed the application and a sale certificate was issued in favour of the petitioner on 09.09.2005. The judgment debtor (respondent No.1 herein) filed an application for setting aside the sale on various grounds, which was rejected by the executing Court on 16.01.2006 and confirmed by this Court in MFA No.7981/2006 on 18.04.2007 and Special Leave to Appeal (Civil) Nos.15832-15834/2007 were dismissed on 14.09.2007. In the meanwhile, the judgment

debtor (respondent No.1 herein) conveyed land in a few other survey numbers to his wife Smt.Arathi Krishna, in terms of a gift deed dated 28.01.2006. Later, he initiated proceedings for survey and identification of those lands on the ground that the boundaries mentioned in the sale certificate issued by the executing Court comprised of not only Sy.No.67 that was sold in execution but also other survey numbers namely Sy.No.71/2A, 179 that were not sold. The attempt at survey of Sy.No.67 was spurned but the survey of other survey numbers was kept open in W.P.No.2173/2006. Later an attempt to survey Sy.No.71/2A met with initial success, in as much as the surveyor found that boundaries mentioned in the auction sale certificate encompassed not only Sy.No.67 but also Sy.No.71/2A and the Tahsildar directed the petitioner to handover 4-34 acres of land to the respondent No.1 and his wife. This was challenged by the petitioner in W.P.No.52691/2014 and W.P.No.54468/2014 and this Court directed the parties to approach the Civil Court,

which was confirmed by the Division Bench in W.A.Nos.1094/2015, 1096/2015 and 2175/2015.

4. Later, the judgment debtor (respondent No.1 herein) filed a petition (Misc.No.157/2014) under Section 47 of CPC before the District Court contending that (i) the actual purchaser was not the petitioner but the Trust which played fraud on the Court, by propping up the petitioner to purchase at the Court auction to avoid the prohibition contained in Sections 79A, 80 of the Karnataka Land Reforms Act, 1961 (henceforth referred to as Act, 1961), which prohibited it from buying agricultural land (ii) that the records in the execution petition disclosed that the property to be auctioned was never identified and therefore, sale of such unidentified property was illegal. The District Court, found the contentions urged by the judgment debtor (respondent No.1 herein) to be true and consequently passed the impugned order setting aside the sale and the confirmation of the sale as well as the sale certificate.

5. Being aggrieved by the impugned order, the petitioner has filed this Revision Petition on the following grounds.

- (i) That the Presiding Officer has passed the impugned order on 28.09.2015 after receiving the order of transfer dated 28.09.2015 which came into force with immediate effect. Thus, he contended that the impugned order is highly suspicious and questionable and being one without jurisdiction is liable to be set aside.
- (ii) That questions raised by the respondent No.1 in the Miscellaneous Petition were urged and decided against him in the earlier rounds of litigation, which culminated in the dismissal of the Special Leave Petitions on 14.09.2007. Therefore, he contended that the confirmation of the sale in the name of the petitioner as a trustee of the Trust was upheld by the executing Court and confirmed by this Court. Therefore, he

contended that the principles of *res judicata* is applicable and respondent No.1 cannot re-agitate the same issue in the Miscellaneous Petition. He contended that the principles of *res judicata* are applicable to execution proceedings and therefore, the District Court could not have gone into the questions that were already considered.

- (iii) That in view of the findings in Execution Petition No.33/2000, the respondent No.1 is estopped from re-agitating the issue.
- (iv) That the finding recorded by the District Court that the petitioner had played fraud was not based on any evidence but based on surmises and conjectures. He contended that the sale certificate was issued in the name of the petitioner as trustee of the Trust. He contended that the settled position of law is, the Trust is not a legal entity and has no legal status but it

has to act through its trustees. He contends that the petitioner being an agriculturist, is entitled to hold agricultural property in his name on behalf of the Trust. He contended that this Court in an earlier round of litigation had gone into the said contention and had rejected it on the ground that the bar under Sections 79A and 79B of the Act, 1961 cannot be gone into by the Civil Court and therefore, the District Court committed an act of judicial impropriety in rendering a finding contrary to the finding already recorded.

- (v) That the Miscellaneous Petition was highly belated as the period of limitation for an application under Section 47 of CPC is 3 years from the date of dispossession. That the sale in favour of the petitioner was confirmed on 27.08.2005 and the sale certificate was issued on 09.09.2005 and hence, the petition filed in

the year 2014 was hopelessly barred by the law of limitation.

- (vi) That the relief sought for in the Miscellaneous Petition is traceable to Article 127 of the Limitation Act, 1963 and the period prescribed is 60 days from the date of sale and hence, the Miscellaneous Petition is belated.
- (vii) That the District Court committed an error in glossing over the settled position of law that a Trust is an obligation annexed to the ownership of the property and the trustee is a legal owner of the property belonging to the Trust. Therefore, he contended that the petitioner was entitled to purchase the property as a trustee of the Trust.
- (viii) That the finding of the District Court that Rule 138 of the Karnataka Civil Rules of Practice was violated, was contrary to the records as Rule 138 concerned the conduct of the spot sale. He

contended that the spot sale took place on 08.04.2003 and the Court sale was held on 19.04.2003 and therefore, there was no violation of the Rule 138 of the Karnataka Civil Rules of Practice. He contended that the Court without noticing this had mixed up the issues regarding the spot sale and proclamation and erroneously declared the sale as null and void. He contended that the proclamation of sale was caused by tom-tom on 21.03.2003 and a brief note regarding the order of sale proclamation and sale warrant was published in the Hindu Newspaper and therefore, the finding of the District Court that the bailiff was unable to execute the proclamation as he could not identify the property is erroneous and contrary to the records.

- (ix) That in view of the explanation to Order XXI Rule 90 of CPC, any irregularity in the

attachment or proclamation does not vitiate a sale.

- (x) That the respondent No.1 had earlier invoked Order XXI Rule 90 and Sections 47 and 151 of CPC for setting aside the sale. Therefore, he cannot file a second application under Section 47 of CPC but the District Court committed an error in holding that the respondent No.1 had approached the Court under Section 47 of CPC after exhausting his remedy under Order XXI Rule 90 of CPC by erroneously relying upon a judgment of the Kerala High Court in ***G. Rajarethna Naikkan vs. P. Parameswara Kurup [AIR 1997 Kerala 361]***.
- (xi) That the District Court failed to notice the unreported judgment of a Co-ordinate Bench of this Court dated 09.04.2012 where it was held that the grounds urged in the affidavit should be examined to ascertain whether such grounds lie

within the scope of Order XXI Rule 90 of CPC or falls exclusively under Section 47 of CPC.

(xii) That though the respondent No.1 styled the application as one under Section 47 of CPC but yet, he had raised grounds falling under Order XXI Rule 90 of CPC.

(xiii) That the order accepting the bid of the petitioner dated 19.04.2003, the confirmation of the sale dated 27.08.2005 and the issuance of sale certificate dated 09.09.2005 were challenged by the respondent No.1 which was rejected by the executing Court by order dated 16.01.2006 which was confirmed by this Court on 18.04.2007 and by the Hon'ble Apex Court on 14.09.2007. Therefore, the order dated 16.01.2006 has merged in the order of the Hon'ble Apex Court. Consequently, the respondent No.1 was not entitled to raise a

ground in a Miscellaneous Petition though such ground had ceased to exist.

(xiv) That Miscellaneous Petition was therefore, a clear abuse of the process of law and against settled principles that there must be an end to litigation.

(xv) That the District Court committed an error in holding that the sale was illegal for want of compliance with the provisions of Order XXI Rules 66(1) and 66(2) of CPC and contended that this ground was urged by the respondent No.1 in the application filed under Order XXI Rule 90 of CPC and the executing Court, this Court as well as the Hon'ble Apex Court had rejected it. Therefore, the District Court committed an error in overreaching the orders passed by it, by this Court and the Hon'ble Apex Court.

(xvi) That the District Court committed an error in holding that the petitioner was unable to prove that he owned any agricultural lands. He contended that the issue was not regarding the petitioner holding agricultural land but the issue was that the petitioner had fraudulently claimed that he was an individual who had purchased. He therefore contended that the District Court had mixed up the issue and without proper application of mind has passed the impugned order.

(xvii) That the District Court had gone out of its way to protect the interest of the respondent No.1 by giving him another opportunity to make the payment due to KSFC. He contended that the District Court has not considered the rights that had accrued in favour of the petitioner consequent to the dismissal of the application under Order XXI Rule 90 of CPC which was confirmed by the Hon'ble Apex Court.

6. Per contra, the respondent No.1 stated in his objections as follows:

- (i) Though the property was purchased in Court auction by the Trust out of the Trust funds, the petitioner consistently took a false stand in Execution Petition No.33/2000 and proceedings arising therefrom that the auction purchaser is an individual and not Trust. The executing Court, accepting the false stand of the petitioner dismissed I.A.No.IV filed by the respondent No.1 for setting aside the sale on that ground. That in the application filed for confirmation of sale, the auction purchaser was shown as a Trust represented by the petitioner as trustee but the averments of the affidavit in support of I.A.No.III were ambiguous without clearly stating whether the auction purchaser was a Trust or individual. However, in W.P.No.47527/2014, the petitioner himself conceded that the auction purchaser was a

Trust. It is therefore, contended that the petitioner played fraud on the Court.

- (ii) The insinuation against the Presiding Officer that he had passed the impugned order after receiving the transfer orders were uncalled for. The impugned order was neither passed in haste or hurry as the petitioner entered appearance on 17.01.2015 and after taking repeated adjournments, objections were filed on 04.04.2015. After recording that there is no oral evidence, arguments were heard and by 29.07.2015, the arguments were concluded in full. At the request of the petitioner, the case was adjourned to 06.08.2015. However, on that day an application under Order VII Rule 11 of CPC was filed. The Court heard arguments on both the application as well as on the main petition till 17.08.2015 and on conclusion of arguments, it was posted to 19.08.2015 for orders. However, at the

request of the petitioner, the case was deferred to enable him to furnish citations. Thereafter on 21.08.2015 and 25.08.2015, the arguments of the petitioner were heard and the case was posted to 27.08.2015 for further arguments. At that stage, the petitioner who had filed W.P.No.36169/2015 challenging the action on the part of the Court in not considering the application for rejection prior to considering the petition on merits submitted that the proceedings were stayed. Consequently, the case was adjourned from time to time awaiting orders of this Court. This Court dismissed the petition on 23.09.2015 which was brought to the notice of the District Court on the next hearing date i.e., 26.09.2015. The petitioner submitted his arguments once again and after conclusion, the case was posted for orders on 28.09.2015. He contended that once the case was reserved

for orders, then it was prerogative of the Court to pronounce it on any date.

- (iii) That the contention that the petition is barred by *res judicata* and issue estoppel, is misconceived as the question of fraud played on the Court was never subject matter of the earlier proceedings but such fraud came to light only in the year 2014 when the petitioner admitted in W.P.No.47527/2014 that the auction purchaser was the Trust and that he was only a name giver. In any event, fraud unravels everything and notwithstanding the dismissal of an application under Order XXI Rule 90 of CPC, a petition under Section 47 of CPC would still lie for a declaration that the sale is null and void on the ground of fraud.
- (iv) That the contention that the Trust is not a legal entity but has to act through its trustees and therefore, the purchase of the property by the

Trust in the name of the trustees is neither unlawful nor illegal, is an afterthought which does not efface false statement made by the petitioner.

- (v) That the period of limitation for filing a petition under Section 47 of CPC is 3 years from the date of knowledge of the fraud committed and therefore, the petition is not barred.
- vi) That the proceedings under Section 47 of CPC are summary in nature and do not require recording of evidence. When the allegation of fraud is based on undisputed Court records, the question of leading oral evidence to establish the fraud does not arise.
- vii) That the contention that there was no violation of Rule 138 of the Karnataka Civil Rules of Practice is misconceived as the Court bailiff, who was entrusted with the execution of an attachment warrant in respect of the subject

property, had returned it unexecuted with an endorsement that the property could not be identified without surveyor making measurement and sketch. Likewise, the Registry of the executing Court had recorded on 30.09.2000 as *"As per shara of Bailiff, P.O. unexecuted for want of identity of property which was not possible by Dhr."* No steps were taken for identification of the property, which was to be brought for sale and therefore, sale of an unidentified property is inconceivable in law and the sale is void and nullity.

- viii) That the petitioner had encroached into the adjacent Sy.Nos.179, 71/2A and 70/1st Block under the guise of false boundaries mentioned in the sale certificate.

7. Elaborating on the grounds urged in support of the petition, the learned Senior Counsel representing the petitioner submitted that,

(a) The respondent No.1 is attempting to resuscitate issues that are decided in earlier proceedings and as principles of *res judicata* are applicable to execution proceedings, the respondent No.1 is strictly barred from again raising the same issues. He relied upon the following judgments in support of his contentions:-

- (i) *Mohanlal Goenka vs. Benoy Krishna Mukherjee and others* [AIR 1953 SC 65]
- (ii) *Habibur Rahman vs. Vijay Charan Abhay Charan Dubey and Bros.* [AIR 1959 Pat 31]
- (iii) *Jambu Anna vs. Shri. Bapu* [AIR 1972 Bom 141].

(b) He contended that in view of the findings recorded in Execution Petition No.33/2000 on the grounds urged in the Miscellaneous Petition now filed, the respondent No.1 is estopped from re-agitating the issues. In this regard, he relied upon the following judgments:-

- (i) *Siddagangaiah (Dead) Through legal representatives vs. N.K.Giriraja Shetty*

*(Dead) Through legal representatives
[(2018) 7 SCC 278]*

*(ii) Hope Plantations Ltd. v. Taluk Land
Board, Peermade and another [(1999) 5
SCC 590]*

(c) He contended that the instant Miscellaneous Petition is a gross abuse of process of Court in as much as the auction sale that was brought about on 19.04.2003 was though unsuccessfully challenged before the executing Court and this Court as well as the Hon'ble Apex Court, the respondent No.1 has now raised a similar contentions which is a clear abuse of process of law. In this regard, he relied upon the following judgment:

*(i) In Re: Smt. Roma Roy Chowdhury
(1996) 2 Calcutta L.J. 58*

(d) He contended that an application under Section 47 of CPC can be filed only once and the respondent No.1 having already exhausted it by filing an application under Order XXI Rule 90 read with Section 47 of CPC cannot now

file a petition under Section 47 of CPC. In this regard, he relied upon the following judgment:-

(i) *R.P.A. Valliammal vs. R. Palanichami Nadar*
[AIR 1997 SC 1996]

(e) He contended that the order of the executing Court rejecting the application filed by the respondent No.1 for setting aside the auction sale has merged in the judgment of the Hon'ble Apex Court in SLP (Civil) Nos.15832-15834/2007 and therefore, the impugned order passed by the District Court runs contrary to the earlier judgments, which is impermissible. In this regard, he relied upon the following judgment.

(i) *M/s Gojer Brothers (Pvt) Ltd. vs Shri Ratan Lal Singh* [(1974) 2 SCC] 453

(f) He contended that the Miscellaneous Petition was filed on the basis of alleged fraud and the Court was bound to record oral and documentary evidence, without which the Court could not have rendered a finding. In support of this contention, he referred to the following judgments:-

- (i) *A.C.Anantha Swamy and others. vs. Boraiah (dead) by LRs [(2004) 8 SCC 588]*
- (ii) *Gayatri Devi and others vs. Shashi Pal Singh [(2005) 5 SCC 527]*

(g) He contended that the Miscellaneous Petition is clear abuse of process of law and Court as the respondent No.1 was trying to resuscitate the questions which are concluded and decided. In support of this contention, he relied upon the following judgments.

- (i) *Ravinder Kaur vs. Ashok Kumar and another [(2003) 8 SCC 289]*
- (ii) *Ramrameshwari Devi and others vs. Nirmala Devi and others [(2011) 8 SCC 249]*

(h) He contended that judicial discipline and comity requires the Court to follow the earlier decisions passed *inter-partes* concerning the same subject matter. He contended that the question whether there were other survey numbers lying within the boundaries mentioned in the sale certificate were the subject matter of W.P.Nos.2173/2006, 52691/2014 and 54468/2014 and

therefore, the executing Court could not have rendered any contra finding. In support of this contention, he relied upon the following judgments:

- (i) *Safiya Bee vs. Mohd. Vajahath Hussain Alias Fasi [(2011) 2 SCC 94]*
- (ii) *U.P. Gram Panchayat Adhikari Sangh and others vs. Daya Ram Saroj and others [(2007) 2 SCC 138]*

(i) He further contended that even if a wrong decision is handed down by the Courts, the same are binding upon the parties and they cannot wriggle out of it. In support of this contention, he relied upon the following judgment:-

- (i) *Vaijinath s/o Yeshwanta Jadhav deceased by legal representatives and others vs Afsar Begum w/o Nadimuddin, deceased by legal representatives and others [(2020) 15 SCC 128]*

(j) The learned Senior counsel contended that principles of constructive *res judicata* are applicable in the present case and the respondent No.1 having given up his

claim in respect of the auction property which was noticed by the Division Bench of this Court in W.A.Nos.1025/2007 and 3763/2011, cannot now renew the challenge on precisely the same grounds which were urged in the earlier rounds of litigations. He drew support from the following judgment:-

(i) *State of U.P. Vs. Nawab Hussain [(1977) 2 SCC 806]*

(k) He contended that the respondent No.1 could not have raised similar contentions that were already decided and that this Court under Section 115 of CPC is entitled to undo the mistake committed by the Lower Court. In this regard, he relied upon the following judgments:-

(i) *Food Corporation of India and Another vs Yadav Engineer & Contractor [(1982) 2 SCC 499]*

(ii) *Madan Mohan Kotal vs Gobinda Kotal and another [(2002) 9 SCC 457]*

(l) He contended that the possession of the property in Sy.No.67 lying within the boundaries mentioned in the

sale certificate dated 09.09.2005 was handed over to the petitioner and therefore, the boundaries prevail over the survey number and the extent. Therefore, the respondent No.1 cannot now contend that there were other survey numbers lying within the boundaries mentioned in the sale certificate. In support of this contention, he relied upon the following judgment:-

- (i) *Subbayya Chakkiliyan vs. Maniam Muthaiah Goundan and another [AIR 1924 MADRAS 493]*
- (ii) *Palestine Kupat AM Bank Co-operative Society Ltd., vs. Government of Palestine [AIR 1948 PC 207]*
- (iii) *Dr. Jayasheela Venu and another vs A.J.F.D'souza, represented by Lrs and Others [(2021) SCC Online KAR 165]*

(m) He claimed that the grounds that are available for setting aside an auction sale are unavailable in a petition under Section 47 of CPC. He contended that the claim of the respondent No.1 that the auctioned property was not identified before it was sold, was the ground

available for setting aside the sale and not in a petition under Section 47 of CPC. In support of this contention, he relied upon the following judgments:-

- (i) *S.A.Sundararajan vs A.P.V.Rajendran* [(1981) 1 SCC 719]
- (ii) *K. Jayarajan and others vs Sambasivan* [(2022) 1 KLJ 789]

8. He relied upon an order passed by the Division bench of this Court in W.A.Nos.1094/2015, 1096/2015 and 2175/2015, wherein the respondent No.1 and his wife had challenged the order dated 03.02.2015 passed by the learned Single judge of this Court in W.P.Nos.52691/2014, 54468/2014 and contended that the issue that petitioner is in possession of larger extent of land was considered by this Court and therefore, this Court should not again go into questions which are settled.

9. Per contra, the learned counsel for respondent No.1 contended that in response to the application filed by respondent No.1 under Order XXI Rule 90 of CPC, which contained a ground namely that the property was

purchased by the Trust and not the petitioner, the petitioner replied,

"The allegation that the auction purchaser is a public Trust is once again an irresponsible statement without verifying the fact. The auction purchaser is an individual by name R. Raghu, who is an agriculturist and the sale certificate is also issued in the name of an individual named Sri. R. Raghu."

He contended that based on the above, the District Court in terms of the order dated 16.01.2006 held,

"Thus, as already discussed supra, as the auction purchaser is an individual and not a Trust, as the sale deed is also issued in favour of the individual, I.A.No.IV and VIII are liable to be dismissed."

He contended that when the above order was challenged in MFA No.7981/2006, where the Trust was arrayed as a party, the petitioner filed an application to implead himself as a respondent in his individual capacity and sworn to an affidavit where he claimed,

"The three Annexures produced by me categorically manifest that, I am of the Auction

Purchaser, the Sale Certificate having been issued in my favour and I.A.No.VII filed by me is allowed and I have taken possession of the property. The Ved Vignan Maha Vidya Peeth, the second respondent in the above writ petition is nothing to do with the property as I have purchased in my individual name and I am the Trustee of the said Organization. The petitioner has not made me the party even though I am the necessary and property party in the writ petition”.

He further claimed that on the date of acceptance of the bid i.e., on 19.04.2003, the petitioner represented before the executing Court as a purchaser in his individual capacity and the same is evident from the order dated 19.04.2003, which is extracted below:-

“Sale is held in open Court. There is no other bidder before the court except the highest bidder at the spot by name Sri. R. Raghu who claims to be agriculturist and a trustee of Ved Vignan Maha Vidya Peeth, Bengaluru. When the Court expressed that the sale price bid by him may be insufficient, the said bidder Sri. R. Raghu expressed that he is prepared to bid for a higher price of Rs.18,50,000/-. The learned counsel for bidder Sri. Rajashekar Kanavi, who files a vakalath also for the bidder submits that the valuation of the market price for the

State Government for the purpose of registration in Bangalore Urban District is Rs.2.5 lakhs per acre of agricultural land in Agara Village.

In the circumstances of the case, the highest bid of Rs.18.5 lakhs for 5 acres of land brought for sale is accepted subject to deferring the confirmation of sale till the claim petition of State Bank of Mysore is decided.

The sale is declared in favour of Sri. R. Raghu in open court for a sum of Rs.18.5 lakhs in respect of the properties brought for sale. The deposit shall be made in accordance with law. Confirmation of the sale is deferred till the decision of the claim petition under Order 21 Rule 58 CPC in Misc.Petition No.23/2003."

He contended that contrary to the above, W.P.No.47527/2014 was filed by the petitioner challenging a survey notice dated 01.10.2014, where he pleaded as:

"The Trust had purchased agricultural land bearing Survey No.67, situated at Agara village, Kengeri Hobli, Bangalore South Taluk in a court auction held on 19.04.2003. The court auction was conducted in Execution Case No.33/2000 filed by the Karnataka State Financial Corporation against one G.M. Krishna".

Further, he contended that even in the objection filed by the petitioner to the present petition, it was stated,

"In the instant case, it is relevant to mention herein that the property has been purchased by the Trust from out of the Trust funds in the name of its trustee and it is evident from the sale certificate in favour of the respondent No.2 and the application made by respondent No.2 for confirmation of sale".

He therefore, contends that the aforesaid made it more than clear that the property was purchased by the Trust out of its funds and therefore, the auction purchaser was the Trust and not the petitioner. He submits that if only the petitioner had participated in the auction as the trustee of the Trust, the Court would not have accepted the bid as the Court cannot be a party to violation of Section 80 of the Act, 1961. He submitted that the allegations made against the Presiding Officer were uncalled for. He contended that though the petitioner entered appearance in Miscellaneous Petition No.157/2014 on 17.01.2015 but objections were filed on 04.04.2015. He contended that the Court held that there is no oral

evidence and called upon the parties to address arguments and by 29.07.2015, the arguments of the petitioner and respondents were concluded. However, at the request of the petitioner, the case was adjourned to 06.08.2015 on which day, the application under Order VII Rule 11 of CPC was filed. He contended that thereafter the arguments were heard on the main petition as well as application till 17.08.2015 and the case was posted to 19.08.2015 for orders on the application and the main petition. Though the case was posted for orders, it was deferred so as to enable the petitioner to furnish citations in support of the case and the case was heard on 21.08.2015 and 25.08.2015 and posted for further arguments on 27.08.2015. The petitioner thereafter furnished copy of an order in W.P.No.36169/2015 and the case was adjourned awaiting the orders of this Court. He submitted that W.P.No.36169/2015 was dismissed on 23.09.2015 which was brought to the notice of the District Court on 26.09.2015. He contended that the learned counsel for the petitioner addressed arguments once again and the

case was posted on 28.09.2015 on which date, the impugned order was passed. He contended that this Court in W.P.No.36169/2015 has noticed the dilatory tactics indulged in by the petitioner and imposed cost of Rs.25,000/-. He contended that the question of *res judicata* or issue of estoppel do not arise as fraud played on the Court gives raise to a cause of action to challenge any order or proceeding even in collateral proceeding. He submitted that the fraud played by the petitioner came to the knowledge of respondent No.1 only in the year 2014 when an assertion was made in W.P.No.47527/2014 and therefore, the petition could not be dismissed on the ground of limitation. He submitted that the order sheet in Execution Petition No.33/2000 disclosed that the bailiff could not identify the property at the time of sale proclamation and no effort was made to identify the properties even on the date of declaration of sale namely, 19.04.2003. He therefore, contended that the sale of an unidentified property in Court auction is inconceivable in law and hence, the sale dated 19.04.2003 is null hence,

void. He submitted that unless the sale proclamation was made, no spot sale could be held at the property. He submitted that this Court in ***Madappa vs. Lingappa [1986 (2) Kar.LJ 52]*** had held that the act of affixing the sale proclamation and attaching the property and holding a spot sale at the spot are mandatory and any absence would render the sale void. He submitted that the respondent No.1 after exhausting his remedy for setting aside the sale was entitled to file an application under Section 47 of CPC and mere mentioning of the provision of law as Section 47 read with Order XXI Rule 90 of CPC does not take away the right of the respondent No.1. He therefore, contended that the grounds urged in support of the revision petition are superfluous and are liable to be rejected.

10. The learned counsel for the respondent No.1 relied upon the following judgments:-

(a) Finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.

- (i) *S.P.Chengalvaraya Naidu (Dead) by LRS vs Jagannath (Dead) by LRS and another* [(1994) 1 SCC 1]
- (ii) *Hamza Haji vs State of Kerala and another* [(2006) 7 SCC 416]
- (iii) *A.V.Papayya Sastry and others vs Govt. of A.P. and others* [(2007) 4 SCC 221]
- (iv) *Meghmala and others vs G. Narasimha Reddy and others* [(2010) 8 SCC 383]
- (v) *Arun Lal and others vs Union of India and others* [(2010) 14 SCC 384]
- (vi) *Narayan Bhimji Vadangale and another vs Hukumchand Chunilal Thole and another* [(1992) 1 SCC 497]
- (vii) *Mannem Peda Narisi Reddi vs. Maddivenkayya died and others* [AIR 1977 AP 234]
- (viii) *Narayan Bhimji Vadangale and another vs. Hukumchand Chunilal Thole and another* [AIR 1992 SC 503]

(b) That Rule 138 of the Karnataka Civil Rules of Practice is inviolable and mandatory and non-compliance should result in invalidation of sale.

(i) *Channabasappa vs Nanjundappa [ILR 1986 KAR 3536]*

(c) That a party who has received a benefit under an erroneous order of the Court must restore it to the other party.

(i) *Kavita Trehal and another vs. Valsara Hygiene Products Ltd., [AIR 1995 SC 441]*

(ii) *T. Ramachandra and others vs. N. Ranganatha Chettiar [2003 4 Kant.LJ 467]*

(d) That the admission made in pleadings is the best proof and in the present case, the petitioner had himself stated in W.P.No.47257/2014 that the Trust was the purchaser. He therefore contends that there was no need for any oral evidence. In this regard, he relied upon the following judgments:

i) *Nagindas Ramdas vs. Dalpatram Iocharam [AIR 1974 SC 471]*

*ii) Ajodhya Prasad Bhargava vs. Bhawani
Shanker Bhargava and another [AIR
1957 ALL 1]*

11. At the conclusion of the hearing, this Court queried the learned Senior counsel for the petitioner whether the three portions measuring 36 guntas, 1-24 acre and 3 acres in Sy.No.67 of Agara village, which were the subject matter of the execution petition, lay adjacent to each other and whether the area of land lying within the boundaries mentioned in the sale certificate was 5-20 acres or more?

12. The learned Senior counsel submitted that the petitioner is in possession of entire extent of land lying within the boundaries mentioned in the sale certificate. Even after being repeatedly asked whether the area in possession of petitioner is 5-20 acres or more, he stoically claimed that he was not in a position to answer whether the extent of land was 5-20 acres of land or more but claimed that the petitioner is in possession of land lying

within the boundaries mentioned in the sale certificate. Therefore, this Court felt that the learned Senior counsel was unwilling to answer a pertinent question and deliberately failed to assist the Court. The petition was then reserved for "Orders".

13. In order to get a grip of the facts, the records in Misc.No.52/1996 and Execution Petition No.33/2000 and Misc.No.157/2014 were secured. On going through the records in Execution Petition No.33/2000, it was found that the petitioner herein had failed to deposit 75% of the sale price within 15 days as mandated under Order XXI Rule 85 of CPC and in view of the Judgment of the Hon'ble Apex Court in the case of ***Manilal Mohanlal Shah and others vs. Sardar Sayed Ahmed Sayed Mahmud and another [AIR 1954 SC 349]***, where it was held,

"If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit and there the discretion ends; but the obligation of the Court to resell the property is imperative. A further consequence of

non-payment is that the defaulting purchaser forfeits all claim to the property."

14. Likewise, in the case of **Sardara Singh (dead) By Lrs and another vs. Sardara Singh (dead) and others [(1990) 4 SCC 90]**, the Hon'ble Apex Court held,

"It is clear from the above observations that this Court came to the conclusion that both the initial deposit and the subsequent payment of the purchase money within the time allowed are mandatory under Rules 84 and 85 of Order XXI CPC and the Court is bound to re-sell the property in the event of there being a default as the sale is non-est. Where there is no sale in the eye of law, there can be no question of applying for setting aside the sale on the ground of material irregularity. Non-payment of the balance amount had the effect of rendering the entire sale null and void."

15. This is also the law declared by the Hon'ble Apex Court in **Balram, S/o Bhasa Ram vs. Ilam Singh and others [AIR 1996 SC 2781]**, **Shilpa Shares and Securities and others vs. National Cooperative Bank**

Ltd., and others [(2007) 12 SCC 165] and **Nirmal Singh by Lrs. vs. Bhatia Safe Works and another** [(2016) 6 SCC 397].

16. In a judgment reported in **ILR 20 Bombay 745** in the case of **Motiram Raghunath by LRs. and others vs. Bhivraj Valad Khevraj**, it was held,

"Now the question to be determined in the case is whether the annual vacation to the Court can be considered as a holiday under Section 307 of the Code of Civil Procedure?"

"We agree with the Subordinate Judge that the time during which a Court is closed for the vacation is not a holiday within the meaning of Section 307, Code of Civil Procedure. Days on which the office is open and the purchase money could have been paid are office days."

17. The learned Senior counsel contended that the Court sale was held on 19.04.2003, which was the last working day for the Court as it closed from 20.04.2003 for Summer Vacation and the balance 75% was deposited on 27.05.2003 after the re-opening of the Court, which was permitted by the executing Court. He contended that this

question was already considered by the executing Court in Execution Petition No.33/2000 and this Court in MFA No.7981/2006 and therefore, this Court cannot take a contrary opinion.

18. Per contra, the learned counsel for the judgment debtor (respondent No.1 herein) contended that the executing Court had no discretion to extend the time and the office of the Court is not closed and the petitioner could have deposited the balance 75% within 15 days. He contended that the sale is void and cannot be resurrected.

19. I have given by anxious consideration to the contentions urged by the learned Senior counsel for the petitioner as well as the learned counsel for the respondent No.1. I have also perused the records in Misc.No.52/1996 as well as Execution Petition No.33/2000 as well the impugned order passed by the District Court.

20. Before, I consider the case on merits, it is appropriate to first consider the allegation made against the District Court that the Presiding Officer even after

receiving the order of his transfer on 28.09.2015 had passed the impugned order on the same day and therefore, it was suspicious and questionable.

21. The records in Miscellaneous Petition No.157/2014 disclose that the respondent No.1 was a resident in the United States of America. It further discloses that after objections were filed, the respondent No.1 stated that he had no oral evidence and hence, the case was listed for arguments. The respondent No.1 claimed that he was leaving India on 30.03.2015 and that he was suffering from cancer and therefore requested that the case be heard on day today basis (*refer order sheet dated 26-03-2015*). Nonetheless, the District Court posted the case on 04.04.2015. The case was first listed for arguments on 15.04.2015 on which date, written submissions were submitted by the counsel for respondent No.1. At the request of the counsel for petitioner, the case was adjourned to 18.04.2015 on which day too, adjournment was sought for and the case stood posted to

22.04.2015. Again on 22.04.2015, time was sought by petitioner which was objected by respondent No.1 who had come down from Washington. The case was adjourned to 24.04.2015 on which day too, adjournment was sought for and the case was adjourned to 09.06.2015. This continued on 12.06.2015, 17.06.2015, 26.06.2015, 15.07.2015, 27.07.2015. The counsel for petitioner therein (respondent No.1 herein) was heard and the case was adjourned to hear the respondent No.2 therein (petitioner herein) to 06.08.2015. On that day, the respondent No.2 therein, who had already concluded his arguments, mischievously filed an application under Order VII Rule 11 of CPC to reject the petition. The Court heard the application and posted the case to 13.08.2015 for further arguments and on the said date, arguments were heard and the case was adjourned to 17.08.2015 for reply of respondent No.2 therein. On 17.08.2015, the case was heard in full and was posted for orders on the main petition as well as on the application on 19.08.2015. On the request of the counsel for respondent No.2 therein, passing "orders", was

deferred till 21.08.2015. Taking advantage of this, the counsel for respondent No.2 therein addressed arguments and the case was listed on 25.08.2015 to hear the respondent No.2 therein. Again on 25.08.2015, the counsel for respondent No.2 therein addressed arguments and the case was adjourned to 27.08.2015. On 27.08.2015, the counsel for respondent No.2 therein filed a memo stating that the proceedings were stayed by this Court in W.P.No.36169/2015. The District Court posted the case on 08.09.2015, 14.09.2015, 19.09.2015, 26.09.2015 awaiting further orders from this Court. On 26.09.2015, it was reported that W.P.No.36169/2015 was dismissed with exemplary cost of Rs.25,000-00. This Court had castigated the respondent No.2 therein (petitioner herein) for not only delaying the proceedings but also for not bringing to the notice of the District Court about the filing of W.P.No.36169/2015 and hence, imposed exemplary cost and directed the District Court to conclude the hearing within seven days and to dispose off the case by 17.10.2015. Accordingly, the further arguments were

heard and the case was posted on 28.09.2015 for "orders". No doubt, the Presiding Officer was transferred with effect from 28.09.2015 but by that time, the "orders", which perhaps was ready, as pronounced on that day. There is nothing to show that the order transferring the Presiding Officer was intimated to him before he passed the impugned order. Therefore, the allegation made against the Presiding Officer is extremely uncharitable and hence the contention of the learned Senior counsel that the District Court committed an error in passing the impugned order is liable to be rejected.

22. The contentions urged by the learned Senior counsel for the petitioner and the counsel for the respondent No.1 throws up the following questions, which need to be answered:

- (i) *Whether, the actual purchaser of the land was "Ved Vignan Maha Vidya Peeth" and not the petitioner? If yes, whether this amounted to playing fraud on the Court ?*

Whether this question was urged, argued before the Courts in the earlier rounds of litigation and answered and therefore the respondent No.1 is barred from re-agitating it ? Whether the petition under Section 47 of CPC was not maintainable and whether it was barred by the law of limitation?

- (ii) What would be the consequences in view of the claim of the petitioner that "Ved Vignan Maha Vidya Peeth" and not he, was the purchaser of the land in question ?*
- (iii) Whether the sale in favour of the petitioner for non-deposit of 75% of the auction price within 15 days, was void by virtue of Order XXI Rule 86 of CPC ?*
- (iv) Whether, the executing Court committed an error in not getting the boundaries of the land fixed, even after the Court Bailiff and Decree Holder reported that the*

property could not be identified and whether the executing Court fell in error in not considering an application filed by Decree Holder for appointment of "Cadastral Surveyor" as a Commissioner to identify the property before further steps were taken to bring the property for sale ?

(v) Whether, the Courts are empowered to correct the mistakes committed by it or whether the Courts can put a party at peril due to a mistake committed by it ?

23. Before answering the aforesaid questions, it is imminent to first underscore the fact that this Court is conscious that the challenge to the auction sale held by the Court was turned down by the executing Court by an order dated 16.01.2006 which was upheld by this Court in MFA No.7981/2006 in terms of the order dated 18.04.2007 and a petition for Special leave filed before the Hon'ble Apex

Court in SLP (Civil) Nos.15832-15834/2007 were dismissed on 14.09.2007. Therefore, there cannot be any doubt that the respondent No.1 cannot raise the same questions that were concluded in the earlier round of litigation. To that extent, the contention of the learned Senior counsel for the petitioner that the principles of *res judicata* are applicable even in execution proceedings deserves to be accepted, subject of course to the caveat, that the Court always retains the power in that proceeding or in any collateral proceeding to undo any order obtained fraudulently by any party to the proceeding. The Judgment of the Hon'ble Apex Court in **A.V.Papayya Shastri**, *supra*, is apposite and the relevant paragraphs are extracted below:-

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

22. *It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non-est in the eye of law. Such a judgment, decree or order - by the first Court or by the final Court - has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."*

24. Similarly in **S.P. Chengalvaraya Naidu**,
supra, the Hon'ble Apex Court held as follows:-

"The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

25. In **Meghmala**, supra, the Hon'ble Apex Court summed up the power of Court to undo fraudulent acts, where it held as follows:

"28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay (1956) 1 All ER 349(CA)), the Court observed without equivocation that (QB p.712) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

26. The learned Senior Counsel for the petitioner did not dispute these settled principles of law but contended that there was no fraud committed by the petitioner warranting setting aside the auction sale and the consequent sale certificate. However, this contention would be dealt with while answering with the first question.

27. Now coming to the first question, the proceedings in Execution Petition No.33/2000 disclose that the petitioner was the auction purchaser at the spot and in the Court. After the sale was declared by the Court in favour of the petitioner, an application under Order XXI Rule 94 of CPC was filed on 21.03.2005 in Execution Petition No.33/2000, by "Ved Vignan Maha Vidya Peeth" to be impleaded in the case and it sought the issuance of a sale certificate confirming the sale of Sy.No.67. In the affidavit accompanying this application, the petitioner herein himself claimed,

"1. That I am representing the impleading institution in my official capacity as one of its Trustees and also being an agriculturist, am intending buyer and being conversant with the facts of the case I am deposing hereto.

2. That the petition schedule properties are the adjacent landed properties of the Ashram, which is proposing to enter herein as a intending purchaser of the schedule properties put up for sale.

3. That on 19-04-2003, we were declared as the highest bidders to the schedule land for Rs.18,50,000-00"

28. This application filed by "Ved Vignan Maha Vidya Peeth" was allowed and the auction was confirmed on 27.08.2005 and a sale certificate dated 09.09.2005 was issued in favour of the petitioner. The respondent No.1 in his application for setting aside the sale under Order 21 Rule 90 of CPC claimed that the auction purchaser was a Trust and not the petitioner and therefore, the petitioner had played fraud to overcome Sections 79A and 80 of the Act, 1961. In the objections filed by the petitioner to this application, he claimed that he was a trustee of the Trust but did not disclose that the purchase was made for the Trust or on its behalf but contrarily claimed as follows:

"The allegation that the Auction Purchaser is a Public Trust is once again an irresponsible statement without verifying the facts. The Auction Purchaser is an individual by name Sri.R.Raghu who is an agriculturist and the Sale Certificate is also issued in the name of the individual Sri.R.Raghu".

29. The executing Court rejected the application filed by the respondent No.1 in terms of the order dated 16.01.2006 and *inter alia* held that the auction sale was not in favour of any Trust but was in favour of the petitioner, who was an individual and an agriculturist. It held that the sale certificate was also issued in favour of the petitioner. It held that any irregularity in attachment was not a ground for setting aside the sale. This was challenged before this Court in MFA No.7981/2006. This Court, with all humility and utmost respect to my learned predecessors, instead of answering the contention raised, held that any violation of Sections 79A, 80 of the Act, 1961, would be examined by the authorities concerned under the Act, 1961 and the Civil Court has no jurisdiction to deal with it.

30. It is rather unfortunate that the executing Court at that stage itself, must have applied its mind to the question whether the judicial process was misused to overcome a prohibition in law that a Trust cannot own or

possess agricultural land. The executing Court as well as this Court were oblivious of the fact that the respondent No.1 was not requesting them to initiate any action against purchase of the property by a Trust but on the contrary was attempting to contend that the petitioner had compelled the Court to violate a prohibition contained in law. If the purchaser at the auction had disclosed that he was representing a public Charitable Trust, the executing Court obviously would not have finalized the auction sale but on the contrary would have taken further steps to issue a fresh sale proclamation as there was only one buyer, namely the petitioner who was a front man of the Trust. Therefore, the question is whether the conduct of the petitioner in lending his name to the Trust to purchase the property and thereby avoid the consequences of Section 80 of Act, 1961 amounted to fraud. Unfortunately, with due respect to my learned predecessors, none of the Courts have gone into this question as at all times, the Courts were under the impression that the purchaser was

not the Trust but it was the petitioner in his individual capacity.

31. The petitioner perhaps apprehending that his subtle claim in the application under Order XXI Rule 94 of CPC in the Execution Petition that "*the Ashram was the intending purchaser of the land*", could result in serious consequences backtracked from his statement, when he filed an application in W.P.No.1723/2006 and MFA No.7981/2006 to come on record, where he stated as follows:-

"The Three Annexures produced by me categorically manifest that, I am the Auction Purchaser, the Sale Certificate having been issued in my favour and I.A.No.VII filed by me is allowed and I have taken possession of the property. The Ved Vignan Maha Vidya Peeth, the second respondent in the above writ petition is nothing to do with the property as I have purchased in my individual name and I am only the Trustee of the said organization".

32. However, the petitioner acknowledged the fact that the Trust was the purchaser and not him, when he

filed W.P.No.47527/2014 to challenge a survey notice dated 01.10.2014, where he claimed,

"Ved Vignan Maha Vidya Peeth", a Public Charitable Trust founded by His Holiness Sri. Sri. Ravishankar Guruji had purchased the agricultural land bearing Sy.No.67 situate at Agara Village, Kengeri Hobli, Bengaluru South Taluk in a court auction held on 19.04.2003."

33. It was in the backdrop of this categorical assertion in W.P.No.47527/2014, that a petition (Misc.No.157/2014) was filed by the respondent No.1 contending that (i) the auction purchaser was not the petitioner but it was the Trust and therefore, they had played fraud on the Court (ii) that he found from the records of the executing Court that the auctioned property was not even identified in view of the report of the bailiff that the property was not identifiable.

34. In reply to this, the petitioner herein contended as follows:

"The respondent No.2 has in all the proceedings before the courts maintained the

stand that he has purchased the said property in his individual name and in his capacity as a trustee of Ved Vignan Maha Vidya Peeth. The sale certificate issued by this Hon'ble Court categorically shows that the Schedule A property stands in the name of the respondent No.2 as a trustee of Ved Vignan Maha Vidya Peeth."

35. The District Court held that the petitioner had indeed played fraud on the Court and also held that the auctioned property was not identified and consequently set aside the auction, confirmation of sale and the sale certificate.

36. Even in the present Revision petition, it is averred as,

"In the said auction, the petitioner purchased the above property as Trustee of Ved Vignan Maha Vidya Peeth. The Petitioner, as a trustee of the Trust filed an application in the said proceedings for issuance of a sale certificate confirming the sale under Order XXI Rule 92 of CPC"

37. It is therefore writ large on the face of the record that the Trust, in order to purchase the land

propped up the petitioner to be a purchaser, which is obviously to avoid the prohibition contained in Section 80 of the Act, 1961, which reads as follows:

"80. Transfers to non-agriculturists barred.— 1(a)
No sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift or exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be lawful in favour of a person,—

- (i) who is not an agriculturist, or*
- (ii) who being an agriculturist holds as owner or tenant or partly as owner and partly as tenant land which exceeds the limits specified in section 63 or 64; or*
- (iii) who is not an agricultural labourer; or*
- (iv) who is disentitled under Section 79-A or section 79-B to acquire or hold any land:*

Provided that the Deputy Commissioner having jurisdiction over the area or any officer not

below the rank of an the Deputy Commissioner authorised by the State Government in this behalf in respect of any area may grant permission for such sale, gift, or exchange, to enable a person other than a person disentitled to acquire or hold land under Section 79-A or Section 79-B who bona fide intend taking up agriculture to acquire land on such conditions as may be prescribed in addition to the following conditions, namely:—

(i) that the transferee takes up agriculture within one year from the date of acquisition of land, and

(ii) that if the transferee gives up agriculture within five years, the land shall vest in the State Government subject to payment to him of an amount equal to eight times the net annual income of the land or where the land has been purchased, the price paid for the land, if such price is less than eight times the net annual income of the land.

(2) Nothing in sub-section (1) shall apply to lands granted under section 77."

38. Therefore, the Trust played fraud on the Court by setting up its trustee, who until the sale was declared, claimed that he was the purchaser but later he claimed

that the Trust was the purchaser. The contention of the learned Senior counsel that a Trust has no legal existence and is represented by its trustees and therefore, it could purchase the land in the name of its trustees is thoroughly misplaced, as a Trust could neither purchase agricultural properties in its name nor in the name of its trustees in view of the prohibition in law. In the present case, the admission in the pleadings on record, as extracted above, categorically indicate that the Trust had purchased the property from its funds but not in its name but in the name of the petitioner. Therefore, if the property was purchased not by the petitioner but was purchased by the Trust itself, the petitioner did play fraud upon the Court and the Court was unknowingly made a party to an illegality and to a benami transaction. A Court cannot be a party to any illegal act, howsoever miniscule it is and every act of every party in misleading the Court to commit such illegal act has to be viewed and dealt with seriously. Though, it was pointed out that Section 80 of the Act, 1961 is deleted with effect from 01.03.1974, and therefore the question is now

purely academic, the learned counsel for the respondent No.1, rightly contended the date on which the fraud was committed was relevant and not the aftermath events.

39. The consequence of such fraudulent act depends upon the magnitude of the fraud, the prejudice caused to the affected person and the mitigating circumstances if any. In assessing the magnitude of fraud, this Court cannot totally ignore the fact that the auctioned property lay adjacent to the Ashram of the Trust, as claimed in W.P.No.47527/2014 and the desperation to cling on to this property is palpable. A peek into proceedings in the execution petition throws up lot of procedural irregularities, the narration of which is avoided, in view of the earlier finding of the executing court, this Court and the Hon'ble Supreme Court upholding the auction sale. Though, there is nothing to show that the petitioner or the Trust had any role in the irregularities, yet since there are no details in the execution petition indicating the buyers at the spot, their bid etc and the

petitioner was the only bidder in the Court sale, all give an impression that the Trust wanted to annex the property into its fold without facing any competition from any bidders and the Executing Court was unwittingly made a party to such fraud. In so far as the prejudice caused to the respondent No.1, it is relevant to note that except the Trust, there was no one else who had participated in the auction and therefore, if the executing Court knew about the fraud played, it would have re-initiated the auction process. As the executing Court itself had noticed, the auctioned property lay very close to Bengaluru City and presumably in the vicinity of an internationally reputed meditation center known as "Art of Living" established by His Holiness Sri Sri Ravishankar. Therefore, the possibility of the respondent No.1 garnering a better price, than a sum of Rs.3,36,363-00 per acre in the auction sale at hand, cannot be ruled out. The entire execution file does not disclose who was the sale officer, who were the bidders at the spot, what was their bid, etc., It only indicates that the petitioner was the highest bidder at the spot at a sum

of Rs.15,05,000-00 for 5 ½ acres of land. In the auction before the Court, the petitioner was the only bidder and the Court strangely negotiated the price with the petitioner and settled the price at a sum of Rs.18,50,000-00 for 5 ½ acres of land.

40. In so far as the mitigating circumstances are concerned, this Court cannot ignore the conduct of the respondent No.1, who did not choose to pay up a farthing to KSFC under the order for recovery in Misc.No.52/1996. He neither availed the benefit of Order XXI Rule 83 of CPC nor did he deposit the auction price along with 5% penalty to the auction purchaser as provided under Order XXI Rule 89 of CPC. On the contrary, he waited till the auction was confirmed and a sale certificate was issued and belatedly filed an application to set aside the sale. As a matter of fact, a statement was made by the learned counsel for respondent No.1 which was recorded by a Division Bench of this Court in W.A.Nos.1025/2007 and 3763/2011 where he stated,

"The learned counsel appearing for the appellant (respondent No.1 herein) submits that in so far as Sy.No.67 measuring 5 acres 20 guntas is concerned, which is the subject matter of Court auction in favour of petitioner is concerned, they have no claim whatsoever. Their claim is in respect of other survey numbers."

41. The other circumstance is that Section 80 of the Act, 1961 was deleted with effect from 01-03-1974 by Karnataka Land Reforms (Amendment) Act, 2020. Therefore, even if it is considered that the petitioner had played fraud, which must ordinarily result in setting aside the auction sale and re-auctioning the property but having regard to the fact that valuable right has accrued to the Trust, equity could be worked out by saving the auction sale and the sale certificate and at the same time suitably compensating the respondent no.1 by directing the petitioner to pay a sum of Rs.25,00,000-00 (Rupees Twenty Five lakh only) per acre in view of the steep increase in the present market value of the auctioned property, which in the opinion of this Court is not less than Rs.1,00,00,000-00 to Rs.1,50,00,000-00 per acre as

a Google search indicates the price of a plot measuring 30' x 40' at Rs.2500-3000 per square feet.

42. The contention of the learned Senior counsel for the petitioner that this issue was considered by the executing Court by its order dated 16.01.2006 and this Court in MFA No.7981/2006, is evidently false as none of the Courts ever recorded a finding that the Trust was the purchaser but had always held that the petitioner was the purchaser. Therefore, the reliance placed on the judgments by the learned Senior counsel for the petitioner about the applicability of the principles of *res-judicata* and issue estoppel are inapplicable to the facts of this case. On the contrary, the judgments relied upon by the respondent No.1 that fraud unravels every act and the Courts are entitled to undo such fraud even in collateral proceedings are squarely applicable.

43. The other contention urged by the learned Senior counsel for the petitioner that the respondent No.1 having once invoked Section 47 of CPC when he filed the

application for setting aside the sale cannot again file another petition under Section 47 of CPC is liable to be rejected since the application filed for setting aside sale is relatable to Order XXI Rule 90 of CPC and mere mentioning Section 47 along with the application does not mean that the respondent No.1 had invoked the power of the Court under Section 47 of CPC. The present Miscellaneous Petition is filed under Section 47 of CPC on the ground that the petitioner had played fraud and therefore, the respondent No.1 was entitled to file a petition under Section 47 of CPC.

44. As regards the contention that the petition filed by the respondent No.1 before the District Court was belated is concerned, as rightly claimed by the respondent No.1, the cause of action arose when the petitioner for the first time categorically claimed in W.P.No.47527/2014 that the Trust was the purchaser of the auctioned property. The instant petition being filed in the year 2014 cannot be held to be belated in view of Article 137 of the Limitation

Act, 1963 which prescribes that when no time limit is prescribed, three years is the time within which an action could be brought. Therefore, this contention of the learned Senior Counsel is liable to be rejected.

45. In so far as the second question is concerned, if the Trust and not the petitioner was a purchaser then, all proceedings initiated by the petitioner namely, W.P. No.2173/2006, W.P.No.47527/2014, W.P.No.52691/2014 connected with W.P.No.54468/2014 and the suit filed by him in O.S.No.1414/2006 would all have to be construed as not maintainable and the orders passed therein would be unenforceable as the Trust was not a party to those proceedings and the petitioner alone could not have represented the Trust in view of the law laid down by the Hon'ble Apex Court in ***L. Janakirama Iyer and others vs. P.M. Nilakanta Iyer and others [1962 AIR 633]***. Therefore, any finding recorded in the aforesaid writ petitions would be unenforceable.

46. In so far as the third question is concerned, the executing Court did examine this question and relying on the judgment of a Co-ordinate Bench of this Court in ***K.Harnatharao vs. Smt. Parvathamma and others [1999 1 Kar.LJ 288]*** held that if the Court or the office is closed on the last day of the prescribed period and if it is done on the reopening day, by virtue of Section 10 of the General Clauses Act, it would still be valid. This Court too in MFA No.7981/2006 relied upon the judgment in ***K.Harnatharao, supra*** and held that the deposit of 75% of the auction price in the present case is valid. Strictly speaking, the office of the Court is not closed and under the Bangalore City Civil Courts Act, the Courts are closed only for the purpose of Section 11 of the Limitation Act. The petitioner was required to deposit the balance sale price which did not require any intervention by the court and the petitioner must have done so within 15 days. Though the Court reopened after vacation on 26.05.2003, the deposit was not made on 26th but it was made on 27th and the Court permitted to do so unmindful of the position

of law that the Court has no discretion to extend the time for deposit of the balance sale price and the discretion is only limited to the question whether the price already deposited was to be forfeited or not. In this regard, it is apposite to refer to the judgments of the Hon'ble Apex Court in ***Manilal Mohanlal Shah***, supra and ***Sardara Singh (dead) By Lrs***, supra where it was held that if the amount is not deposited within 15 days, the sale is invalid and void. However, since the respondent No.1 had earlier raised this ground but failed in his attempt and as this Court has now worked out equities, this Court cannot now hold that the auction sale was rendered invalid for non deposit of 75% of the sale price within 15 days from the date of declaration of sale.

47. While answering the fourth question, it is a matter of ordinary common sense that in any conveyance of any immovable property, there should be certainty of the person selling, the person buying, about the property sold and the consideration. If any one of these is lacking or

uncertain, the same is susceptible to be challenged on various grounds. When it comes to an auction sale by a court, the Judgment Debtor is always informed of the proceedings leading to the auction sale of his property and is given enormous opportunity to raise the decree amount through private treaty and liquidate the liability. Even after the auction sale, he is granted an opportunity to pay up the purchase price along with 5% to the auction purchaser and the balance decree amount to the Decree Holder. When all these are not availed, a final opportunity is granted to the Judgment Debtor to seek setting aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale, which caused substantial injury to him. It is only after, such an application is rejected that the sale becomes absolute. Thus once a sale certificate is issued, all contentions of the Judgment debtor is liquidated and a seal of certainty is attached to it.

48. In so far as the present case is concerned, there are no records in Misc.No.52/1996 to indicate that

when KSFC initiated proceedings for recovery, it had the details and boundaries of the property of the respondent No.1. It was only when an execution petition was filed that KSFC gave the boundaries of the property to be proceeded against for recovery of the money decreed. There is nothing to indicate the basis of the boundaries mentioned in the execution petition. In the execution proceedings, an application was filed by KSFC under Order XXI Rule 54 to restrain the respondent No.1 from encumbering the property and to attach it. The executing Court in terms of the order dated 10.04.2000 allowed the application and directed attachment of the property. In so far as the subject property is concerned, when the Court bailiff and an official of KSFC visited the land, they could not identify the property and hence the attachment warrant was returned by the bailiff with the following endorsement:-

*"Fixed on 29.5.2000
Sd/- 26.5.
(B.T.Sathish)
Dy. Manager
KSFC, HO.*

ಈ ಆರ್ಡರ್‌ನಲ್ಲಿ ಕಂಡ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತನ್ನು ಟಾಮ್ ಟಾಮ್ ಮೂಲಕ ಜಪ್ತಿ ಮಾಡಲು ವಾದಿಯಾದ ನಾನು ಮತ್ತು ಪಂಚಾಯತರು, ಕೋರ್ಟ್ ಆಫೀನರ ಸಮೇತ ಈ ಶೆಡ್ಯೂಲ್‌ನ್ನು ಅಜಮಾಯಿಸಿ ನೋಡಲಾಗಿ ಈ ಶೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ತೋರಿಸಿರುವಂತೆ ಒಟ್ಟು 6 ಎಕರೆ ಇದ್ದು 5 ಎಕರೆ 20 ಗುಂಟೆ ಟಾಮ್ ಟಾಮ್ ಮೂಲಕ ಜಪ್ತಿ ಮಾಡಲು ಅನುಮತಿ ಇದ್ದು ಇದನ್ನು ಸ್ಥಳದಲ್ಲಿ ಗುರುತಿಸಲು ಸಾಧ್ಯವಾಗದೆ ಇರುವುದರಿಂದ ಸರ್ವೇಯರ್ ಮೂಲಕ ಅಳತೆ ಮಾಡಿಸಿ ನಕ್ಷೆಯೊಂದಿಗೆ ಮತ್ತು ರಿಪೋರ್ಟ್‌ನೊಂದಿಗೆ ಜಪ್ತಿ ಮಾಡಿಸಲು ಆದೇಶಿಸಬೇಕಾಗಿ ಪ್ರಾರ್ಥನೆ.

Sd/- 29.5.2000
(B.T.Sathish)
Dy. Manager, R-II,
KSFC, HO,
Bangalore-52

1. ಸಹಿ/-
ಕೆ.ಎಸ್.ಎಫ್.ಸಿ.
ಬೆಂಗಳೂರು-52

2. Sd/- 29.5.
Krishnappa
S/o Balanappa P.P.
Saladoddi,
Tatagoni Post,
Bangalore.

3. Sd/-
Ramesh Nayak V
S/o Venkatanayak,
Saladoddi (Vi)
Tatgoni (PO)
Uttarahalli (HO)
B'lore (S.TI)-62

ವರದಿ: ಹುಕ್ಕುಂ ಪ್ರಕಾರ ಈ ಪ್ರೋಬೇಟರಿ ಅದೇ ನಿನಗೆ ದಿನಾಂಕ 29.5.2000 ರಂದು ಇದೇ ವಾದಿಯವರೊಂದಿಗೆ ಉರಿಯವರು ತೋರಿಸಿದ ಸ್ಥಿರ ಷೆಡ್ಯೂಲನ್ನು ಅಜಾಮಾಹಿಸಿ ನೋಡಲಾಗಿ ಪ್ರೋಬೇಟರಿನ ಸ್ಥಿರ ಷೆಡ್ಯೂಲಿಗೂ ಸ್ಥಳದಲ್ಲಿ ಇರುವ ಷೆಡ್ಯೂಲಿಗೂ ತಾಳೆಯಾಗದೆ ಇದ್ದುದರಿಂದ ಮೇಲ್ಕಂಡ DHR ರವರಿಗೂ ಈ ಜಮೀನನ್ನು ಟಾಂ ಟಾಂ ಮೂಲಕ ಜಪ್ತಿ ಮಾಡಲು ಸರ್ವೇಯರನ್ನು

ಅಪಾಯಾಂಟ್ ಮಾಡಿ ನಕಾಶೆಯೊಂದಿಗೆ ಅಳತೆ ಮಾಡಿ ರಿಪೋರ್ಟ್ ನೀಡಲು
ವಾದಿಯವರ ಇದರ ಮೇಲ್ಕಂಡ ಷರದಂತೆ ವಾಪಸ್ ಮಾಡಿರುತ್ತೇನೆ.

Sd/-
(Sarvottam)
Bailiff
30.5.2000

ವಾದಿಯವರ ಷರದಂತೆ ಸರ್ವೇಯರ್ ಅಳತೆಯೊಂದಿಗೆ ನಕ್ಷೆ ಬೇಕಾಗಿದೆ ಎಂದು
ಷರ ಮಾಡಿದ್ದರಿಂದ ವಾಪಸ್ಸು.

R
As per shara of Bailiff P.O. unexecuted, for want of
identity of property which was not possible by DHR.
Sd/- 30.5.2000"

49. On 01.06.2000, the Registry of the executing Court endorsed that the prohibitory order in respect of the subject property was unexecuted for want of sketch. The KSFC (DHR) therefore filed an application on 01.07.2000 under Section 32(8) of the State Financial Corporation Act, 1951 to appoint "Cadastral Surveyor" as a Commissioner to survey and demarcate the subject property. In the affidavit accompanying the application, it was stated as follows:

"The bailiff of the Court could not attach the property for want of proper identification/boundaries being an agricultural holding carved out of larger holdings. Further the

deponent has also been informed that a part of the land has been acquired by the BWSSB. As such survey of land by a surveyor of the Survey and land department is necessary with the village map and other documents available in the said department. "

50. The executing Court though posted the case to hear this application, did nothing from 15.07.2000 but adjourned the case on 37 dates. On 22.08.2002, the executing Court instead of hearing the application for conducting survey and fixing the boundaries, passed an order rejecting the objections filed by Judgment Debtor to the execution petition and directed the Decree Holder to take steps for sale of the subject property. Therefore, the application filed by Decree Holder for appointment of "Cadastral Surveyor" was never considered. However, the proceedings continued in respect of an unidentified property till it was sold at the spot and in the Court. A certificate of boundaries issued by the Village Accountant which is found in Execution Petition No.33/2000 discloses

that Sy.Nos.67 and 71/2A lay within the following boundaries:-

East by :B.K. N. Anusuya singh land Rajamma,
W/o Narayandas land
West by : Government BWSSB road
North by: land of Miss. Asha
South by: land of Miss. Bhanumathi.

51. The above boundaries were the same as mentioned in the Execution Petition. Therefore, it is evident that what lay within the boundaries mentioned in the Execution Petition was not just 5-20 acres that was brought for sale but was a larger extent including another survey number. The learned Senior counsel for the petitioner deliberately refrained from informing the Court whether the three bits of land in Sy.No.67 sold at the auction, lay adjacent to each other and whether the extent of land lying within the boundaries mentioned in the sale certificate was 5-20 acres or more.

52. It appears that in a desperate bid to save his other properties, the respondent No.1 gifted the land bearing Sy.Nos.70, 71/2, 179 to his wife Smt.Arathi Krishna, in terms of a gift deed dated 28.01.2006. The petitioner challenged this alienation in O.S No.374/2006, which is presently numbered as O.S.No.1414/2006 and pending adjudication before the II Additional Senior Civil Judge, Bengaluru Rural District. What followed this was an avalanche of proceedings before the Department of Survey to initially fix the boundaries of Sy.No.67 which was shot down by the petitioner by challenging it before this Court in W.P.No.2173/2006. This was challenged by the respondent No.1 in W.A.Nos.1025/2007 and 3063/2011, which were dismissed in terms of the order dated 02.11.2012. Though, this Court held in W.P.No.2173/2006,

"If the wife of the 5th respondent (respondent No.1 herein) becomes the owner of Sy.No.70, 71/2 and 179, the authorities may survey only those three items of the land."

and an attempt to survey and fix the boundaries of Sy.No.71/2 and 179 was made, which met with initial success, in as much as the Tahsildar after receipt of the survey report directed the petitioner to hand over possession of 4 acres 37 guntas including kharab to the respondent No.1. This too was shot down by the petitioner by challenging it before this Court in W.P.No.52691/2014 and W.P.No.54468/2014. This Court held that the dispute was not regarding the boundaries but related to the title of the petitioner to Sy.No.67 and thus directed the respondent No.1 and his wife to approach the Civil Court.

53. Therefore, it is evident that the petitioner and the respondent No.1 are at a tug of war, in as much as the respondent No.1 claims that there are other survey numbers within the boundaries mentioned in the sale certificate but the petitioner is non committal but claims that he owns the entire extent lying within the boundaries mentioned in the sale certificate. A statement made by the respondent No.1 in W.A.Nos.1025/2007 and 3063/2011

that the respondent No.1 has no claim whatsoever in respect of Sy.No.67 measuring 5-20 acres and that his claim is in respect of other survey numbers, indicates in sure terms that there is a larger extent of land lying within the boundaries mentioned in the sale certificate. This imbroglio could have been certainly avoided, if the executing Court had acted with alacrity when the bailiff and the Decree Holder reported that the property to be attached was not identifiable. The executing Court also committed a blunder in not considering an application filed by the Decree Holder for survey and fixing the boundaries, which would have put to rest the quagmire about the sale of Sy.No.67.

54. The contention of the learned Senior counsel that this was also one of the grounds urged in the application filed for setting aside the auction sale and therefore should not be re-visited now needs to be considered. In the application filed by the respondent No.1 for setting aside the sale, no such ground was urged and

no finding was recorded. Similarly, this Court too in MFA No.7981/2007 did not record any finding. The further contention of the learned Senior counsel that the said issue was put to rest in W.P.No.52691/2014 and W.P.No.54468/2014 is liable to be rejected out rightly, on two grounds (i) the records of the executing Court was never perused by this Court (ii) the orders passed in W.P.No.52691/2014 and W.P.No.54468/2014 were unenforceable as they were filed not by "Ved Vignan Maha Vidya Peeth", who purportedly was the purchaser and not the petitioner. Therefore, it is evident that this ground urged by the petitioner was not seriously considered by this Court in earlier proceedings particularly in the light of the lapses by the executing Court. If only, this was done by the executing Court, the long drawn litigation and the innumerable proceedings could have been avoided.

55. In view of the findings recorded on question No.4, this Court is bound to undo a mistake committed by it so that the parties are not put to peril. Courts are bound

by the principle of *ex debito justitiae*. The Hon'ble Apex Court in ***A.R.Antulay vs. R.S. Nayak and another*** [1988 AIR 1531] held,

"No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure or irregularities. Rules or procedures are hand-maids of justice and not the mistress of the justice. If a man has been wronged so long as the wrong lies within the human machinery of administration of justice, that wrong must be remedied".

56. There are abundant precedents rendered by Courts in India in support of the view that injustice caused due to mistake of Courts should be corrected by applying the principle *actus curiae neminem gravabit* - an act of the Court should prejudice no one. Similarly, the principle of certainty of Court orders cannot be stretched to an extent of causing injustice to a party to the proceedings and the court is not devoid of the power to do justice to the parties.

57. In the present case, if the Court had sold a property in execution of a decree, it was bound to identify it and not doing so has resulted in exposing respondent No.1 to risk of losing all the other un-auctioned properties allegedly lying within the boundaries mentioned in the sale certificate.

58. The conduct of the learned Senior counsel for the petitioner in dodging the question of the Court, presents an acute desperation on the part of the petitioner to cling on to a property, which it purportedly did not own. This is understandable since the auctioned land in Sy.No.67 lay adjacent to an Ashram established by His Holiness Sri Sri Ravishankar, which is evident from an application filed by "Ved Vignan Maha Vidya Peeth" under Order XXI Rule 94 of CPC in the execution petition for a sale certificate confirming the sale of Sy.No.67, where it was stated as follows:-

"That the petition schedule properties are the adjacent landed properties of the Ashram, which is proposing to enter herein as a intending

purchaser of the schedule properties put up for sale".

It was further claimed that,

"The subject property is suitable for establishment of a college and an orphanage".

59. If the three bits of Sy.No.67 auctioned are lying at different places in Sy.No.67 or if within the boundaries mentioned in the sale certificate, there are more than one survey number, the Ashram may not be in a position to utilize it. Therefore, the desperation of the petitioner to shoot down every attempt at a survey is understandable.

60. Therefore, it is appropriate that the property sold to the petitioner bearing Sy.No.67 of Agara village, Kengeri Hobli, Bengaluru South Taluk, measuring 5½ acres is identified through a revenue survey in accordance with law.

61. In view of the above, the following order is passed.

ORDER

The Petition is ***allowed in part.*** The impugned order dated 28.09.2015 passed by the I Additional District Judge, Bengaluru Rural District, Bengaluru in Misc.No.157/2014 in so far as it relates to setting aside the auction sale dated 19.04.2003 and the consequent confirmation of sale and the sale certificate dated 09.09.2005 in respect of Sy.No.67 of Agara village, Kengeri Hobli, Bengaluru South Taluk is set aside. However, the Petitioner shall pay a further sum of Rs.25,00,000-00 (Rupees Twenty Five Lakh only) per acre to the respondent No.1 as additional sale price within three months from the date of receipt of a copy of this Order. The District Court is directed to conduct a survey of the auctioned property measuring 5 acres 20 guntas in Sy.No.67 of Agara village, Kengeri Hobli, Bengaluru South Taluk and fix its boundaries

and thereupon take steps to rectify the boundaries mentioned in the sale certificate dated 09.09.2005, if necessary. Until then, the parties shall maintain status quo.

**Sd/-
JUDGE**

PMR