



2025:CGHC:4205-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WA No. 895 of 2024**

Anup Kumar Shukla S/o Nand Kishore Shukla Aged About 68 Years  
Resident Of Village Sitapara, Tahsil Simga, District Raipur, Presently R/o  
C/o Shri Gautam Verma , Juni Line, Bilaspur (Chhattisgarh)

**... Appellant**

**versus**

**1** - Joint Registrar Co-Operative In the office of the Registrar, Cooperative Societies, Chhattisgarh, Agricultural University Campus Lobhandi, Raipur, Chhattisgarh

**2** - District Co-Operative Agricultural And Rural Development Bank Limited Branch Simga, Distt. Raipur Chhattisgarh Through Its Branch Manager

**3** - Sale Officer, District Agriculture And Rural Development Bank Limited Branch Simga, District Raipur, Chhattisgarh

**4** - Sampat Lal S/o Karanmal Jain Bairan Bazar, Raipur Teh And District Raipur Chhattisgarh

**5** - Kamalkant S/o Late Surendra Nath Sirmaur, R/o R.D.A. Building, Sharda Chowk, Raipur, District Raipur, Chhattisgarh

**... Respondents**

**(Cause-title taken from the Case Information System)**

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For Appellant	: Shri BP Sharma, and Shri ML Sakat, Advocates
For Respondents/State	: Shri Sangharsh Pandey, GA
For Respondents-Bank	: Shri Manas Bajpai, Advocate
For Respondents-4 and 5	: Shri Manoj Paranjpe, and Shri Pranjal Agrawal, Advocates

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**& Hon'ble Shri Justice Ravindra Kumar Agrawal**  
**Judgment on Board**

**Per Ravindra Kumar Agrawal, J.**  
**23.01.2025**

1. Present writ appeal has been filed by the appellant, who was the petitioner in writ petition, against the impugned order dated 25.10.2024 passed by the learned Single Judge in Writ Petition No.1326 of 2006, whereby the writ petition filed by the petitioner has been dismissed.
  
2. Brief Facts of the case as emerges from the pleadings of the parties in the writ petition are that the appellant/petitioner was owned 9.4 hectare (23 acres) of agricultural land, situated near Hathbandh Railway Station, at village Sitapar, Tehasil Simga, District Raipur CG with various Khasara numbers. To improve the agricultural fields and the activities, petitioner purchased a tractor after obtaining loan of Rs.3.25 lakhs from the District Cooperative Krishi evam Gramin Vikas Bank, Maryadit, Branch Simga (for short, 'Cooperative Bank, Simga') in the year 2000. Due to some unavoidable circumstances, the petitioner went under serious losses which resulted into inevitable defaults in repayment of loan amount and its installment.
  
3. By the time of sanctioning the loan in favour of the petitioner, he mortgaged his agricultural land of 9.4 hectare with the Bank. Market value of the land of the petitioner was more than its existing recorded

value and it was the irrigated land, as the petitioner installed a tube well also there.

4. On 25.07.2005, the petitioner received a notice from the respondent/Bank, allegedly issued on 27.06.2005, and came to know about the fact that on 27.06.2005 land of the petitioner was auctioned by the Bank and respondents 4 & 5 have purchased the land of petitioner in auction for total consideration of Rs.8,31,000/-. The auction purchaser was directed to deposit 15% of the total sale consideration which comes to 1,24,650/- on the date of auction itself, and the remaining amount of 85% which comes to 7,06,350/- should be deposited up to 11.07.2005, so that proceeding of sale confirmation may be started. It is also pleading of the petitioner that he immediately replied and expressed his willingness for settlement and stated that the entire auction sale proceeding was held RHT manner, no news paper publication was made and no proper procedure has been drawn for auction sale of the property and all of a sudden petitioner's land was put to auction. It has also come into knowledge of the petitioner that only two bidders i.e. respondents 4 & 5 were present, whose bid was confirmed and there was no competition. All these exercises clearly show that in the garb of recovering loan from the petitioner, his valuable property admeasuring 9.4 hectare of agriculture land was auctioned for a meager amount of Rs.8.31 lakhs. He also came to know that the auction amount of Rs.8.31 lakhs is almost similar to the same which is outstanding against the petitioner for his loan amount i.e. the principal amount of Rs.3.25 lakhs, and its interest.

5. The petitioner again received a notice dated 16.08.2005 that if he does not deposit the amount recoverable from him by 16.09.2005, the auction sale would be confirmed. Thereafter, the petitioner submitted a detailed objection before the Dy Registrar, Cooperative Society, Raipur, on 17.08.2005 but the objection of the petitioner was not considered. Another letter dated 25.08.2005 was issued to the petitioner for handing over the possession of subject land. On 15.09.2005, petitioner again submitted his objection before the Joint Registrar, Cooperative Society to cancel the auction, however the Joint Registrar, vide its order dated 18.11.2005, confirmed the auction in exercise of its power under Section 28(3) of the Chhattisgarh Sahakari Krishi & Gramin Vikas Bank Act, 1999 (for short, 'Act of 1999'). Before passing the order on 18.11.2005, neither the petitioner nor his counsel was noticed for hearing on his objection dated 17.08.2005.

6. Being aggrieved by the order dated 18.11.2005, petitioner preferred an appeal before the Joint Registrar, Cooperative Society, Raipur vide Appeal No.426/R/2005. An interim order was passed on 28.12.2005 in the appeal filed by the petitioner, and preliminary objection was raised by the Bank as well as the auction purchasers. The bank as well as auction purchasers have not disclosed the authority, the manner in which auction was conducted.

7. Additional Registrar, Cooperative Society, Raipur vide its order 28.02.2006, has dismissed the appeal of the petitioner by holding that

order of auction is neither appealable nor revisable in view of the bar accorded under section 28 (4) of the Act of 1999, and therefore, the petitioner has filed writ petition.

8. Initially, the petitioner has challenged the order of confirmation of sale dated 18.11.2005, and sale certificate 25.11.2005 but later on vide order dated 26.11.2015 he added the prayer by which he challenged the auction proceedings also, and para 7.2 of relief clause of the writ petition was substituted by its amendment. The petitioner has claimed the following reliefs in his writ petition which are reproduced here under.

**Reliefs sought in the writ petition**

7.1 It is prayed that this Hon'ble court may kindly be pleased to call for the entire records concerning the case of the petitioner from the possession of the respondents for its kind perusal.

7.2 This Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari quashing and setting aside the entire auction proceedings in the matter of sale of petitioner's property admeasuring 9.4 hectare situated in village Sitapur, Tahsil Simga, District Raipur, order of confirmation dated 18.11.2005 signed vide dated 23.11.2005 (Annexure P1) and the sale certificate dated 25.11.2005 (Annexure P1-A), by declaring the same to be illegal and in operative in law.

7.3 This Hon'ble court may further be pleased to issue appropriate writ of mandamus restraining the respondents from interfering with petitioner's possession in respect of the property described above and in case of recovery of loan to act strictly in accordance with the provisions of the Act of 1999 and relevant rules while holding auction.

7.4 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner.

**9.** After service of notice upon the respondents, respondents- 2 to 5 have filed their return and submitted that petitioner took loan of Rs.3.25 lakhs from the Cooperative Bank, Simga, and mortgaged his property on 02.12.2000, and then loan was sanctioned in his favour on 04.12.2000. Petitioner could not repay a single pie from the loan amount and he stood defaulter. Therefore, after adopting the procedure to recover the loan amount from the petitioner, proceeding of auction was started. Petitioner knowingly kept silent through out the auction proceeding. Petitioner's land is barren land and it was not useful for agriculture activities, and therefore, its market value was also on lower side. Case of the petitioner was placed in the meeting of Regional Directors on 24.09.2004 at the district level. Thereafter, it was referred to the Apex Bank i.e. CG State Agriculture and Rural Development Bank, Raipur. On 18.06.2005, notice

was published for auction proceeding which was to be held on 27.06.2005, and it was spread to various places. On the fixed date, and time, auction proceeding was done, total six bidders were present in the bidding. The bids of the respondents-4 & 5 herein, were accepted and the property was auctioned for a total consideration of Rs.8,31,000/-. Out of the total sale consideration, 15% amount was deposited by respondents-4 & 5 at the same time, which comes to Rs.1,24,650/- and on the same day i.e. on 27.06.2005, another notice was also issued to respondents 4 & 5 to pay the remaining amount of 85% within 15 days, which comes to Rs.7,06,350/-, otherwise, sale will not be confirmed. Copy of the notice was also sent to the petitioner at village Simga, and subsequently at his Bhopal address but he refused to accept the notice.

**10.** On 25.7.2005, wife of the petitioner moved an application for supply of documents, and since the amount was not deposited by the petitioner, the authority proceeded to confirm the sale. On 25.11.2005, sale deed was registered in favour of respondents 4 & 5, auction purchasers, and the mutation in revenue records was also directed to be done. The Joint Registrar has also granted time to the petitioner till 16.09.2005 vide its letter dated 16.08.2005, but the petitioner failed to deposit the amount, and thereafter, sale was confirmed.

**11.** After hearing the parties, learned Single Judge came into conclusion that the title of the purchaser is not impeachable when sale has already been made and confirmed, and thereafter, certain rights

have been accrued in favour of auction purchasers, and these rights cannot be extinguished except in exceptional circumstances, such as fraud. Further, holding that an opportunity was given to the petitioner to pay back the amount but he failed to repay the same, and ultimately, auction sale proceeding was started, it is also held by the learned single judge that the provisions under section 165 of CG Land Revenue Code 1959 are also not applicable to the present case, and thereby, the writ petition filed by the petitioner was dismissed vide its order dated 25.10.2024, hence, this appeal by the appellant/petitioner.

**12.** Learned Counsel for the appellant would submit that appellant herein is an agriculturist and dependent on agricultural income. He availed the facility of loan to enhance his capacity in doing agricultural activities and to improve his agriculture activities. Due to some unavoidable circumstances, and reasons, he could not repay the amount of loan. Since he could not carry out his agricultural activities, he shifted to Bhopal along with his family. He would further submit that Act of 1999 and CG Land Revenue Code 1959 and in view of Section 165 of the code of 1959, there is no creation of charge as contained under Section 165 of the Code of 1959 have been observed, and there is no consideration of this aspect of the matter by the learned Single Judge. The learned single judge has erred in ignoring the deposit made by the petitioner of 50% of the loan amount, due with the bank, and no order has been passed in that regard. The learned Single Judge would also consider that when the petitioner was ready to pay the interest on the



amount deposited by the auction purchaser, petitioner is also interested to pay the amount. There was no notice served upon the petitioner before / during the auction proceeding, which is violation of principles of natural justice. He would also submit that loan amount of Rs.3.25 lakhs was availed for purchase of tractor which was to be repaid in 9 years. It was an agricultural loan and the authorities have made an option to a joint bid, which was made by respondents 4 & 5. This creates doubt on the auction procedure. Initially the land of Kasra No.187/1 and 183 had measuring 5.56 acres were put to auction but subsequently, the entire loan amount was included for recovery of Rs.8,31,000/-. The entire land of 9.4 hectare was sold in auction for a meager sum, that too, in favour of two joint purchasers. When the notice under section 28 of the Act of 1999 was given to the petitioner for confirmation of sale, petitioner sought time for one or two months but no time was given to him, and eventually the sale was confirmed, 50% of the amount due against the petitioner was deposited by him by an interim order passed by learned single judge in the writ petition on 20.03.2006 and 31.07.2006, which he has deposited and still the amount is lying with the respondent- Bank. He would also submit that as per Section 41(2) of the Act of 1999, provisions of CG Land Revenue Code 1959 would apply to the property secured under the Act and code of 1959, and restriction under section 165 of 3 of the code 1959 that if the mortgage other than usufructuary mortgage has been made without possession, then the total amount of interest accrued under the mortgage shall not exceed of the principal sum. Here,

in gross violation of the provisions of the Section 165 of 3 of the Code of 1959, it reflects that principal sum is Rs. 3.25 lakhs, whereas the amount due was more than Rs.8,00,000/-. It is also submitted by him that the rules framed as Chhattisgarh Sahakari Krishi Aur Gramin Bank Rules, 2008 have also not been complied with. The sale is also to be notified by beat of drums or loud speaker, where the property situates which has also not been done by the authorities. Therefore, the impugned auction sale and its confirmation, including the entire auction proceeding is illegal and irregular which requires to be set aside.

**13.** Per contra, learned counsel appearing for respondents-4 & 5 supported the impugned order passed by the learned Single Judge, and submitted that after availing loan of Rs.3.25 lakhs on 04.12.2000 not a single installment was paid by the appellant. The demand was also made to repay the amount on 06.11.2003 by a under postal certificate which subsequently followed notice on 07.10.2004. When the petitioner failed to repay the amount, the procedure for distraint sale was initiated. The auction proceeding was conducted under the statutory rules, notice was published about sale of the property, and it was held on the date and time fixed. Even after auction sale, appellant was given opportunity to pay back the amount but he did not turn-up to deposit the same, thereafter, the sale proceeding was completed. The date of auction was in between 24.06.2005 to 27.06.2005 and the said notice was also served on the petitioner. He would also submit that there is no bar to file joint application for auction purchase which has been filed in this case by

respondents-4 & 5. He would also submit that in compliance of Section 25 of the act 1999, the opportunity was given to the petitioner to pay the entire amount along with commission of purchasers. Despite that he has not paid the sum and then sale was confirmed. Though the petitioner sought time on 26.07.2005, but no amount was deposited by him. He would further submit that once the auction sale was completed, and the sale was confirmed, right in favour of respondents- 4 & 5 was accrued, which can not be taken away from them and the title of the purchasers is not impeachable as provided under section 34 of the Act of 1999. He would also submit that principal amount of loan of Rs.3.25 lakhs which was granted on 04.12.2000, and 9.4 hectare of land was mortgaged is not disputed. Since the loan amount was not paid the demand notice was issued and thereafter auction proceeding was drawn which was absolutely justified and no interference is required in the order passed by learned Single Judge.

**14.** Learned counsel appearing for the respondent bank would also submit that since the petitioner has not repaid the loan amount they started auction proceeding to recover the amount of loan under the power given in the Act of 1999 and also under the Code of 1959 and despite the notice given to the petitioner when he has not repaid the amount, auction sale was confirmed in favour of respondents-4 & 5. The 50% amount of the total amount recoverable from the petitioner deposited by him vide order passed by learned Single Judge dated

20.03.2006 and 31.07.2006, the same is still lying with the respondent-Bank.

**15.** We have heard learned counsel for the parties, and perused the material annexed with the writ petition, as well as the writ appeal.

**16.** It is not in dispute that the appellant/petitioner availed the facility of loan of Rs.3.25 lakhs from the respondent-2/Bank and the subject land was mortgaged with the Bank. It was an agricultural loan for purchase of Tractor. Since the installment of loan amount could not be repaid, respondent-2/Bank started proceeding for recovery of the loan amount by putting the mortgaged land admeasuring 9.4 hectare situated in village Sitapur, Tahsil Simga, District Raipur for auction. The Board of Directors of respondent-Bank had taken a decision on 24.09.2004, which has been informed to the appellant through notice dated 07.10.2004, and asked him to deposit the balance amount of loan, and the said notice was also published and auction notice was also published along with the schedule of the properties which are to be put in auction, and the said notice was published on 18.06.2005. Notice was served upon father of the petitioner by Sarpanch of the village, and a note has been put in the said notice, and form No.8 was also pasted inside the house of the petitioner. On perusal of document R-7, it reflects that 07 applications in the auction proceedings were received from the bidders, but no one was bidden for land of survey No. 187/1 and 33 total area admeasuring 2.25 hectare of the land. Thereafter, by adding the survey numbers 186/2, 48/1, and

96/3 to the existing survey number, put up the total land of 4.583 hectare for its auction. At that time also, no one was ready for bidding the land. It is only after putting the total land of 9.4 hectare for auction, the bidders started bidding. On 27.06.2005, a demand notice was issued to respondents- 4 and 5 to deposit 15% of the auction amount immediately, and the rest 85% within 15 days. Respondents-4 and 5 were the successful bidders in the auction process, and the total land of 9.4 hectare was auctioned for consideration of Rs.8,31,000/-.

**17.** The notice of auction, and other proceedings were sent to the appellant in the address given by him, which was of Sitapur, Tahsil-Simga, whereas, the appellant was started residing at Bhopal, the appellant was first time came to know about the auction proceeding on 25.07.2005, and immediately on the next day i.e. on 26.07.2005, appellant wrote a letter to the Sale Officer informing him that he received the notice of auction dated 27.06.2005 only on 25.07.2005, and asked at least one/two months time to settle the loan amount, and the matter was forwarded to the Dy Registrar, Co-operative Society, Raipur. On 27.07.2005, the auction proceeding was referred to the Dy Registrar, Co-operative Society, Raipur by the Sale officer, for its confirmation, because of the fact that the appellant and his wife had failed to repay the total amount of Rs.8,31,000/- and commission of 5% ie Rs.45,550/-.

**18.** With reference to the appellant's letter dated 26.07.2005, he received intimation from the office of Joint Registrar, Co-operative

Society, Raipur on 16.08.2005 that the case for confirmation of the auction proceeding has been received by him, and in consideration of his application dated 26.07.2005, one month time was granted to him to deposit the amount of auction and the the time up to 16.09.2005 was granted to the appellant, and it is also informed that failing which, the auction proceeding would be confirmed.

**19.** Immediately after the letter dated 16.08.2005, (Annexure P5), the appellant has filed his detailed objection before the Dy Registrar, Cooperative Society, Raipur on 17.08.2005, and submitted that the entire process of auction is tainted, and no valid procedure for auction has been followed and the same may be set aside, and not to confirm the auction sale. He would also submit in his objection that the entire proceeding of auction was conducted with the collusion of auction purchaser and the Bank authorities. On 15.09.2005, the appellant had submitted a detailed representation to the Joint Registrar, Cooperative Society, Raipur, and requested to consider his prayer and to grant him sometime to repay the amount of loan, and to set aside the auction proceeding. He would also submit in his representation dated 15.09.2005 that on the legitimate expansion, he had moved application on 27.06.2005 that the matter would be settled between him and the Bank, and he would be and relaxation would be given to him with respect to the interest and he would be permitted to repay the principal amount, despite that the auction proceeding was conducted.

**20.** The Joint Registrar vide his order dated 18.11.2005, has confirmed the auction sale, and a certificate was also issued to the purchasers respondents-4 and 5, and asked to handover the possession of subject land.

**21.** Order dated 18.11.2005 was challenged by the appellant before the Registrar, Cooperative Society, Raipur by filing an Appeal-77 of 2005 of Chhattisgarh Cooperative Societies Act, in which on 28.12.2005, interim order has been passed in favour of the appellant, and an order to maintain status-quo was passed by the Registrar General, Cooperative Society, Raipur vide order dated 28.02.2006.

**22.** In the present appeal, interim order has been passed in writ petition by the learned Single Judge on 20.03.2006, and it was ordered that ***“Ad interim stay as prayed for is granted subject to the petitioner paying 50% of the outstanding dues within six weeks from today to respondent-2”***.

**23.** When respondent-2/Bank refused to receive the said amount of 50% of the outstanding dues, another direction was issued by the learned Single Judge of this court on 31.07.2006, and the relevant para is reproduced here below:

“It is complained that though 50% of the outstanding dues in the form of Demand Draft was sought to be paid to the second respondent, the second respondent refused to receive the

Demand Draft of the ground that there was a day's delay in paying. Without going into that controversy whether there is any delay or not, if there is a delay, same is condoned. The second respondent is directed to receive the Demand Draft.”

**24.** It is also not in dispute that in compliance of order dated 31.07.2006, appellant deposited 50% ie Rs.4,15,000/- through Demand Draft drawn on the Bank of Maharashtra bearing No.632148 dated 06.05.2006, and the subject amount is still lying with the Bank as it has not been disputed by learned counsel appearing for the respondent-Bank.

**25.** In exercise of powers conferred under Section 56 (1) and (2) of the Chhattisgarh Sahakari Krishi Aur Gramin Vikas Bank Adhiniyam, 1999, the State Government framed the Rules named as “Chhattisgarh Sahakari Krishi aur Gramin Vikas Bank Rules, 2008” (for short, ‘CG Bank Rules, 2008’).

**26.** Chapter 4 of the CG Bank Rules, 2008 deals with distraint and sale of produce and Chapter 5 of the Said Rules deals with the procedure for sale of pledge/mortgaged property.

**27.** The contention of the appellant is that in recovery of the loan, the immovable property which includes the tractor which is hypothecated with the Bank ought to have been sold first, and if the amount is deficient, then the Bank may proceed under Chapter 5 of the CG Bank Rules,



2008. The contention of the appellant is that Rule 16(1) of the said Rules has not been followed in the present case in its true spirit. Particularly, in issuance of the proclamation of the sale in the form prescribed at least 10 days before the date fixed for sale and beat and drums etc. in the village about the property to be sold on three consecutive dates before the date of sale. Between 24.06.2005 and 27.06.2005, the proclamation was made for three consecutive dates, and the documents reveal that even before the completion of the process, as mentioned in Chapter 5 of Rule 16(3) of the Rules of 2008 before the period fixed on 27.06.2005 the auction has taken place. It is necessary to reproduce Chapter 4 and 5 of the said Rules, 2008, for sake of convenience:

#### **Chapter 4**

#### **Distraint and Sale of Produce**

#### **14. Application for distraint and sale of produce**

The application for distraint and sale of produce under subsection (1) of Section 23 of the Adhinyam shall be submitted in such form as may be issued by the Registrar, under the signature of the person authorised by the Committee of the Bank. On receipt of the application the Registrar shall if satisfied that the particulars set forth in the application, are correct, after passing the distraint order, prepare a demand notice in duplicate in such form as may be issued by the Registrar and the same shall be forwarded

to the concerned distrainer.

**15. Procedure for distraint and sale of properties**

(1) As soon as distraint of produce and properties are made, distrainer shall prepare a list of produce and other movable properties distrained in such form as may be issued by the Registrar and copy of such list shall be delivered to the defaulter/guarantor or any member of his/her family present at the time of distraint. The distrainer shall also give intimation in such form as may be issued by the Registrar to the defaulter/guarantor showing date, place and time on which distraint properties will be sold.

(2) The distrainer shall make proper arrangements for the custody and preservation of the distrained property during the interval between the distraint and sale in such form as may be issued by Registrar. The defaulter/guarantor may if required by the distrainer, undertake the custody and preservation of the property distrained for which a promissory bond in writing is given by him. Such custodian/preserver shall be responsible for any loss or damage caused to the distrained property owing to his/her negligence. If the distrained property is tractor, machinery etc. its custody and preservation may be kept under the supervision of Police-thana/Chowki. If cattle is distrained, it may be kept in custody in cattle bound by the

distrainer at the cost of the defaulted borrower.

(3) No distraint shall be made before sunrise and after sunset.

(4) If crops of the land or processing units or ungathered products or other products belonging to a defaulter/guarantor are distrained, the distrainer may cause them to be sold, when fit for being reaped or gathered or may cause them to be reaped or gathered in the season and stored in a proper place until sold.

(5) It shall be lawful for the distrainer to force open any stable, cow house, granary, godown, outhome, agriculture area home, processing unit/unit or any building or any fenced area or other building and to enter any dwelling house related to the defaulter/guarantor the out door of which may be opened and to break lock/open the door of any room in such dwelling house and to distrain the products of the mortgaged property or the produce of mortgaged land or the other movable property stored therein :Provided that it shall not be lawful for such distrainer to enter any apartment in such dwelling house used for the residence of women except as hereinafter provided.

(6) (a)Where a distrainer has reason to suppose that the produce of the mortgaged land and/or products of the unit

financed belonging to the defaulter/guarantor is lodged within a dwelling house, the outer door of which is shut or within any apartment used as the residence for the women the distrainer shall represent the written fact to the officer-in-charge of nearest police station. (b)On such representation, the officer-in-charge of the said police station shall send a Police Officer to the spot, in the presence of whom the distrainer may force open the outer door of any room within the home except the room of residence for women and enter forcibly. (c)The distrainer may also in the presence of the Police Officer, after due notice given for the removal of women from their residence and after furnishing means for their removal in a suitable manner enter the said room and may distrain the produce of the mortgaged land or products of the financed unit or other movable property if any, deposited therein but such produce if found shall be removed immediately from such rooms after which they shall be left free to the former occupants.

(7) (a)The distrainer shall cause to proclaim the date, time and place of the intended sale to be made by beat of drums or loud speakers or publication in news papers or pamphlets distributions or affixing poster in the village in which the defaulter/guarantor resides or the produce is kept

and in such other place or places as the distrainer may consider necessary to give due publicity to the side. (b)The sale shall take place after the expiration of a period of 15 days from the date of the service of the notice of demand/distrainment referred to in sub-section (1) or Section 25 of the Adhiniyam :Provided that where the property distrained is subject to speedy and natural decay, the distrainer may sell it at any time before the expiry of the said period of 15 days.

(8) At the appointed date, time and place the distrainer shall, subject to the order, if any, made under sub-section (3) of Section 23 of the Adhiniyam sell by auction the distrained property or such other part thereof as may be necessary in one or more lots as the distrainer may consider desirable and dispose of the same to the highest bidder.

(9) The price of the property sold under sub-rule (8) shall be paid in cash at the time of sale or as soon thereafter as the distrainer may appoint and the purchaser shall not be permitted to carry away any part of the property until he has paid the price in full.

(10) If the purchaser fails to pay the price the property shall be resold and the proceeds of such resale shall be applied in the manner provided in Section 25 of the

Adhinyam. Any deficiency of price which may happen on the resale and all expenses connected with such resale shall at the instance of either the applicant or the defaulter/guarantor be recoverable from the defaulting purchaser under the provisions relating to the execution of an award of an arbitration contained in the rules made under the Chhattisgarh Co-operative Societies Act, 1960 (No. 17 of 1961).

(11) Where on an application made in this behalf it is proved to the satisfaction of any Civil Court of competent jurisdiction that any property which has been distrained under these rules has forcibly or clandestinely removed by any person, the Court may order forthwith such property to be restored to the distrainer. Explanation :- For the purpose of this clause, "Civil Court of Competent Jurisdiction" shall mean the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage.

(12) Where prior to the date fixed for sale a defaulter or any person acting in his behalf or any person claiming an interest in the property distrained pays the full amount due including interest, travelling allowance and other expenses incurred in distraining and proclaiming the sale, the distrainer shall not proceed with the sale and shall release the property forthwith.

(13) (a) Where any claim is preferred by any person other than the person specified in sub-rule (12) to any right or interest in the distrained property, the distrainer shall investigate the claim and dispose it of on its merits, provided that no such investigation shall be made where the distrainer considers that the claim was designedly or unnecessarily delayed. (b) Where the property to which the claim is applied has been advertised for sale the distrainer may postpone the sale pending the investigation of the claim.

### **Chapter 5**

#### **Procedure for Sale of Pledged/mortgaged Property**

16. (1) For the sale of pledged/mortgaged etc. of movable/immovable property under the provision of Chapter 5 of the Adhinyam the following procedure shall be observed :-

(a) If the amount becomes overdue the Development Bank shall give notice to all the persons specified in sub-section (3) of Section 26 of the Adhinyam in such form as may be issued by Registrar stating to deposit the amount within 2 months.

Simultaneously if the loan is given by the District Development Bank, the District Development Bank shall

apply to the State Development Bank for authorisation of sale under sub-section (1) of Section 26 of the Adhinyam, in such form as may be issued by the Registrar.

(b)Or receipt of the application from District Development Bank, the State Development Bank after enquiry if any objection received shall give permission to exercise the powers under Section 26 of the Adhinyam in such form as may be issued by the Registrar.

(c)On receipt of the authorisation from the State Development Bank, if any, the District Development Bank shall apply to the Sale Officer for conducting sale. In case of State Development Bank no such authorisation shall be required.

(d)The application shall be submitted to the Sale Officer in such form as may be issued by the Registrar and shall be signed by the person duly authorised by the committee of State Development Bank or District Development Bank. It shall state the amount due for recovery including interest, expenses incurred in the service of the notice referred to in clause (a) of sub-section (3) of Section 26 of the Adhinyam and the names and address of the person on whom notice was served under the said clause. It shall also contain the description of the movable/immovable property to be



proceeded against with its sufficient identification and in case such property can be identified by boundaries in a record of settlement and/or survey, the specification of such boundaries and/or numbers.

(2) On receipt of the application, the Sale Officer shall give a notice in writing to all persons referred to in clause (a) of sub-section (3) of Section 26 of the Adhiniyam in such form as may be issued by the Registrar stating the amount claimed by the bank including expenses incurred by it for the service of notice and particulars of the properties to be sold in case of non-payment within a time to be allowed by the Sale Officer.

(3) If before the expiration of the time allowed in the notice issued under sub-rule (2) the amount specified in such notice is not paid the Sale Officer shall after giving notice to the Development Bank on whose behalf the application is made proceed to sell the movable/immovable property specified in the application in the following manner :-

Proclamation of sale in such form as may be issued by the Registrar be published by affixing a notice in the office of the Principal Officer of the Co-operative Department in the district and in the Revenue Office of Tehsil at least 10 days before the date fixed for the sale and also by beat of drum

or through loudspeaker in the village where the pledged/charged/mortgaged movable/immovable property is situated and the place where such pledged/charged/mortgaged property is to be sold on 3 consecutive days prior to the date of sale. The proclamation shall state the date, time and place of sale and specify as fairly and accurately as possible :-

- (i)The movable/immovable property to be sold,
- (ii)The revenue or rent/tax payable in respect thereof,
- (iii)The amount for the recovery of which the sale is ordered, and
- (iv)Any other matter which the Sale Officer considers material for purchasers to know in order to judge the nature and value of the movable/immovable property.

If the Sale Officer feels necessary he shall publish sale advertisement through news papers, or pamphlets or posters.

(4)The sale shall be by public auction. Each bidder shall have to deposit Rs. 1000/- as security to bid the auction. In case of his highest bid, this amount shall be adjusted against the bid amount. In case the bid is not accepted, this amount shall be refunded to the depositor immediately in

cash. In case of default by the highest bidder/purchaser this amount shall be forfeited in favour of the State Development Bank or District Development Bank as the case may be. When any pledged/charged/mortgaged movable/immovable property offered as security for the loans is sold under these rules the sale shall be subject to prior encumbrances on the property, if any. The sale shall be by public auction to the highest bidder. No security deposit shall be required if the bidder is the State Development or District Development Bank.

(5) In case of immovable property a sum of money equal to 15 percent of the purchase money (bid amount) shall be deposited by the purchaser to the Sales Officer at the time of purchase and in default of such deposit the immovable property shall be resold forthwith :

Provided that where the committee of the Development Bank at the instance of which the immovable property is sold is the purchaser and is entitled to set off the purchase money against the amount due under sub-rule (10) the Sale Officer shall dispense with the requirement of this clause. In case of movable property the entire purchase money (bid amount) is to be deposited to the Sale Officer.

(6) The remainder of the purchase money of immovable

property shall be paid within 15 days from the date of sale, provided that in calculating the amount to be so paid, the purchaser shall have the advantage of any set off, to which he may be entitled under sub-rule (10).

(7) In default of payment within the period mentioned in sub-rule (6), if the Sale Officer thinks fit, after defraying all costs, charges and expenses of the sale the deposit may be forfeited in favour of the State Development Bank or District Development Bank and the defaulting purchaser shall be deprived of all the claims to the movable/immovable property or to any part of the sum for which it may subsequently be sold.

(8) Any deficiency in price which may happen on the resale by reason of the purchaser's default and all expenses connected with such resale shall, at the instance of either the applicant or the mortgagor/guarantor, be recoverable from the defaulting purchaser under the provisions relating to the execution of an award of an arbitrator contained in rule made under the Chhattisgarh Co-operative Societies Act, 1960 (No. 17 of 1961).

(9) Every resale of pledged/mortgaged movable/immovable property in default of payment of the purchase money within the period allowed for such payment shall be made

after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale.

(10)Where the Committee of the Development Bank, at whose instance the movable/immovable property is sold, purchases, the purchase money and the amount due shall be set off against one another and the Sale Officer shall record satisfaction of payment of the due money in whole or in part accordingly.

**17. Release of property attached.** - Where prior to the date fixed for sale, the mortgagor/guarantor or any person acting on his behalf or any person claiming an interest in the pledged/mortgaged, movable/immovable property or in the property kept as security tenders payment to the full amount due including interest, travelling expenses and other expenses incurred in connection with the sale of the movable/immovable property, the Sale Officer shall not proceed with the sale.

**18. Application to set aside the sale on deposit-**

(1)The Sale Officer shall on the conclusion of the sale make a report to the Development Bank regarding the result of the sale.

(2)Whenever the sale of the pledged/charged/mortgaged

movable/immovable property/security is set aside under sub-section (1) of Section 28 of the Adhinyam the deposit or the purchase money, as the case may be, shall be returned to the purchaser together with a sum as specified in Section 28 of the Adhinyam.

**19. Sale of immovable property to be proportionate to arrears due.** - It shall be lawful for the Sale Officer to sell the whole or any portion of the pledged/charged/mortgaged movable/immovable property/security in discharge of money due

:Provided that so far as may be practicable, only that portion of such property shall be sold which may be sufficient to discharge the amount due including interest and expenses of sale etc.

**20. Issue of sale certificate.**- - After confirmation of the sale by the Registrar or the officer authorised by him the Sale Officer under sub-section (3) of Section 28 of the Adhinyam shall give the sale certificate to the purchaser under sub-section (1) of Section 30 of the Adhinyam in the Form 'D' appended to these rules.

**Explanation :-** The procedure of the sale of movable property mentioned in Chapter 5 of the Adhinyam and these Rules shall be followed only when any movable

properly is pledged as security in favour of State Development Bank or District Development Bank and the default has been made for the due amount.

**28.** Before invoking Chapter 5 of the CG Bank Rules, 2008, the Bank should have gone for the distraint sale as provided under Chapter 4 of the Rules 2008. There is no material in the case produced by the bank that they had gone for distraint sale before initiating the auction proceeding of the mortgaged land of the writ petitioner/appellant.

**29.** Rule 19 of Chapter 5 of the CG Bank Rules, 2008 also provides with sale of immovable property proportionate to the arrears due, particularly, the proviso the Rule 19 which says that only that portion of such property shall be sold which may be sufficient to discharge the amount due including interest and expenses of sale etc. Initially, the part of land admeasuring 5.56 acres was put to sale in auction for recovery of loan 8,25,000/-. However, since the bidders have not agreed to submit their bid, without there being any approval by superior authority, all the mortgaged property of the petitioner i.e. 10.83 acres, were put for sale in action. The said property adopted by the respondents is contrary to Rule 19 of the CG Bank Rules, 2008.

**30.** On 25.07.2005 when the petitioner received an information about the auction of his land, he immediately approached the authorities

concerned on 26.07.2005 and made an application for grant of 1 – 2 months time to deposit the loan amount which is evident from the document (Annexure R/10) and in response to that application of the petitioner and bank had replied on 16.08.2005 that the petitioner may deposit the amount as set out in the auction proceeding within 1 month, i.e. up to 16.09.2005 or else the auction sale would be confirmed. On 17.08.2005 (Annexure P/6), the petitioner moved his application/objection before the Deputy Registrar Cooperative Society Raipur and raised his objection in the sale confirmation proceeding and submitted the irregularities and illegalities of auction proceedings and prayed for setting aside the auction sale proceeding and not to confirm the same.

**31.** On 15.09.2005 he also made an application to the Joint Registrar Cooperative Societies Raipur and prayed for fixation of the installment of the loan amount and not to confirm the auction sale. Yet the Joint Registrar Cooperative Societies Raipur by his order dated 18.11.2005 confirm the auction sale vide order Annexure P/1.

**32.** The petitioner has further challenged the order dated 18.11.2005 by filing the appeal under Section 77(1) of the Chhattisgarh Cooperative Societies Act before the Registrar Cooperative Societies Raipur in which initially an interim order was passed on 28.12.2005 in favour of the petitioner by observing that before taking the auction proceeding, the petitioner has not been noticed in accordance with law and the auction



sale letter have been issued without considering his objection. Subsequently, on being objection raised by the respondents regarding the maintainability of the appeal before the Registrar Cooperative Societies against the sale confirmation order, the appeal of the petitioner was disposed of vide its order dated. 28-02-2006.

**33.** When the petitioner filed the present writ petition challenging the sale confirmation order dated 18.11.2005, this Court directed the petitioner to pay 50% auctioned amount within 6 weeks from the date of order i.e. 20.03.2006 and thereafter vide order dated 31.07.2006 when the respondent had refused to receive the demand draft submitted by the petitioner this Court has further directed to receive the demand draft as submitted by the petitioner and in pursuance thereof the petitioner has deposited the demand draft of 50% of the auctioned amount which is still lying with the respondent bank. The entire episode of the transaction auction proceeding up to the confirmation of the auction sale smells about collusion between the private respondents/auction purchasers and the bank authorities.

**34.** In the matter of **PHR Invent Education Society vs. UCO Bank and Others** reported in 2024 (6) SCC 579, the Hon'ble Supreme Court has held in Para 33 of its judgment as under:

"33. This Court in Valji Khimji & Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator) [Valji Khimji & Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator), (2008) 9 SCC

299 : 2008 INSC 925], has observed thus : (SCC p. 305, paras 30-31)

“30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

31. In the present case, the auction having been confirmed on 16 / 16 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case.” (Emphasis supplied)

**35.** From the aforesaid judgment passed by Hon’ble Supreme Court, the confirmation of the auction sale could be interfered with when the Court found fraud or collusion between the parties as it has been

observed in the present case from the conduct of the auction purchaser and the bank authorities and also the manner in which the auction proceeding was drawn smells with collusion between the private party and the auction purchaser and the bank authorities. This Court deem it fit to interfere with the confirmation of auction sale in the present case. Although by the confirmation of the auction sale, the right has been created in favour of the auction purchaser, but when the auction sale itself is found tainted and collusion between the auction purchaser and bank authorities, the same may be interfered with by the Court.

**36.** Further, Section 165 (3) of the Chhattisgarh Land Revenue Code, 1959 puts a restriction on auction sale of the entire mortgaged land. Section 165(3) of the Chhattisgarh Land Revenue Code, 1959 is reproduced below:

Sec. 165 (3) Chhattisgarh Land Revenue Code, 1959:- Where a Bhumiswami effects a mortgage other than a usufructuary mortgage of his land in pursuance of the provisions of subsection (2), then notwithstanding anything contained in the mortgage deed, the total amount of interest accruing under the mortgage shall not exceed half the sum of the principal amount advanced by the mortgagee.

**37.** As per Section 41 (2) of the Chhattisgarh Sahakari Krishi Aur Gramin Vikas Bank Adhinyam, 1999, the provisions of Section 165 (3) of

the Chhattisgarh Land Revenue Code, 1959, are applicable to the property secured under the Act.

**38.** In the present case, the principal amount of the loan was Rs. 3,25,000/- (in some documents it is shown as Rs. 3,48,000/-). The respondent/Bank proceeded to recover the principal amount and interest, i.e. total of Rs. 8,25,000/- and the property was auctioned for Rs. 8,31,000/-, which is more than double the principal sum. It was an agricultural loan, and Section 165(3) of C.G. Land Revenue Code, 1959 is applicable to the transaction.

**39.** The petitioner had tried to save his land from the time when he received information about the auction proceeding, he made various objections before the authority not to confirm the sale. Even this Court has passed an interim order in favour of the petitioner.

**40.** On 20.03.2006 in pursuance thereof, he has already deposited 50% of the amount which comes to Rs. 4,15,500/- which is still lying with the respondent bank. We found collusion and fraud in the auction proceeding and sufficient ground to interfere with the impugned order passed by the learned Single Judge and to set aside the same under the facts and circumstances of the case as well as the law applicable to it.

**41.** Consequently, the writ appeal filed by the writ appellant is allowed. The impugned order dated 25.10.2024 passed by learned Single Judge in WP No. 1326/2006 is set aside and consequently, the writ petition filed

by the petitioner is also allowed and the order dated 18.11.2005 (Annexure P/1 in writ petition), auction sale confirmation order, and sale certificate dated 25.11.2005 (Annexure P/1A in writ petition) are hereby quashed.

**42.** The appellant is directed to deposit the remaining outstanding amount against his loan as per rules, and the amount which has already been paid by him in compliance of order dated 20.03.2006 (interim order) by the Writ Court shall be adjusted with interest against the outstanding amount due, within one month from the date of receipt of a copy of this order.

**43.** Appellant is at liberty to take recourse to law if further cause of action arises.

Sd/-  
**(Ravindra Kumar Agrawal)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice