

BOMBAY HIGH COURT

Tumdu Dhansing

Vs

Province of Bombay

(Stone, C.J.)

21.12.1945

JUDGMENT

Stone, C.J.

1. This is an appeal from the judgment dated 3-1-1939, of Mr. R.R. Karnik, who was then First Class Subordinate Judge at Dhulia. That a delay of nearly seven years should intervene before an appeal is disposed of by this Court is a deplorable state of affairs and is one which it is to be hoped the new rules which have been recently introduced will prevent ever happening in the future. In this particular case, however, the delay has in part been brought about by the fact that when this appeal first came before this Court, certain documents which the Court considered necessary had not been disclosed and were not available, and also because the case was adjourned in order that Government might have an opportunity of being represented by the Advocate-General, having regard to the public importance of the questions involved.

2. The suit concerns an alleged auction sale conducted by a Mamlatdar as a revenue officer of Government, by which it is alleged that property of the appellant of substantial value, and which he now seeks by this action to recover possession, was sold for Re. 1 only to another Government official, viz., a revenue patil, acting for and on behalf of Government. This appears to be a very startling occurrence. But this Court has been informed by the learned Advocate-General that what was done is in accordance with Resolutions of Government, passed by the Government of Bombay in its Public Works Department. It is not suggested that any such resolution has any statutory effect or that it is anything more than an administrative instruction by Government for the guidance of its Revenue Officers. The first Resolution is No. 8766/27 and is dated 4-10-1934, and in its preamble it recites a letter from the Collector of East Khandesh in which that officer pointed out that it had been brought to his notice that in several cases in respect of the recovery of Provincial toll arrears, though the land of the defaulter and his sureties had been put up for sale, there were no bids. After referring to the fact that the economic depression was the cause for lack of bids, the officer also expressed the belief that the main reason for this

state of things is that the defaulting contractors or their sureties are able to influence the intending bidders. The officer then expressed the following opinion: In my opinion in order to avoid the trouble of postponing sales from time to time for want of bidders, it seems necessary to provide for stringent measures in a few selected cases of contumacious defaults and therefore propose that permission may be given to buy the defaulter's property on behalf of Government on a nominal bid of one rupee. The consequent resolution is in these terms: The purchase of defaulter's property by the Collector of East Khandesh on behalf of Government, on a nominal bid of one rupee is approved. Government are further pleased to direct that the method of recovery of arrears of excise revenue approved in Government Resolution, Revenue Department, No. 474/33, dated 30th August 1933, should be made generally applicable to the recovery of arrears of toll revenue as recommended by the Commissioner, Central Division.

3. A further resolution No. 4135/33 of 16-4-1936, appears to make this procedure generally applicable, since it provides: The procedure of purchasing on behalf of Government a defaulter's property by offering a nominal bid should be adopted in order to effect a speedy recovery of Government dues, in cases where a real difficulty is experienced in making such recoveries and no purchaser is forthcoming to buy the land. This procedure can, however, be followed only in respect of such Government dues as are recoverable as arrears of land revenue. It should not be adopted except as a last resort when the various remedies for the recovery of the dues have failed or unless it is clear that bidders are deterred from offering bids by other reasons than purely economic considerations.

4. It is not suggested that either of these two resolutions has been published by Government in any official Gazette, or that any means exists by which the public had any notice of them on the date which is material in this case, viz., 30-4-1936, being the date of the alleged auction sale. On the other hand, there has been no attempt to keep them secret, since the following passage is to be found in the introduction to Mr. K.S. Gupte's book on the Bombay Land Revenue Code at p. 4: Government Resolutions and Orders bearing on the Land Revenue Code were till now confined to the archives of Government offices. But I am glad to take this opportunity to mention that Government have recently by their No. 1556-B/28 (R.D.), dated 9th July 1937 kindly permitted me to consult in the Revenue Department of the Secretariat at Bombay, Government Resolutions, etc., relating to the Land Revenue Code for the purposes of my revised annotated edition of the Code. And in fact one of the resolutions is set out in Mr. Gupte's book in the edition published in August 1937.

5. But the question that we have to consider is whether Government has the power under the Bombay Land Revenue Code of 1879 or any other law to do what was done in this case. As it now appears that these sales of the defaulter's property for a nominal one rupee to an agent acting

on behalf of Government are an established practice, the matter becomes one of considerable importance both to Government and the public and we have reserved our judgment in order to give to this appeal our fullest consideration.

6. On or about 26-3-1933, one Dhanalal purchased from Government at an auction sale the right to collect certain tolls in the West Khandesh District for the period from 1-4-1933 to 31-3-1934. The sale of this right to levy tolls is perfectly regular and is in accordance with Section 10, Tolls on Roads and Bridges Act, 1875, which section provides that the lessee of such tolls "shall give security for the due fulfillment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for the land revenue under the law for the time being in force so far as applicable." In the case before us the security took the form of a suretyship agreement entered into by two sureties, one of whom was the appellant. By that agreement the appellant and his co-surety jointly and severally agreed that Dhanalal would pay to Government at the proper times the respective amounts that he had agreed to pay, and further: In case he fails or neglects to do the same in any way, we both jointly as well as severally bind ourselves, our heirs and the managers and possessors of our estate that we are liable to pay to the Secretary of State for India in Council any amount not exceeding Rs. 7100 that may be fixed by the Collector.

7. Some difference arose between Dhanalal and Government with regard to the tolls and Dhanalal did not pay the amounts for which he was liable. Thereafter Government called upon the appellant as surety to pay. Amongst the various grounds upon which the appellant seeks to recover his property now in the possession of a revenue patil on behalf of Government are two, which it will be convenient to dispose of at this stage. First, it is said that Government ought not to have called upon the plaintiff to pay, or at any rate, ought not to have attempted to enforce payment under the suretyship agreement by disposing of the appellant's land before Government had sold or attempted to sell Dhanalal's movable and immovable property. This is a bad point, for a creditor, once the principal debtor has made default, can call upon the surety to pay without having pursued all his remedies against the principal debtor. The second point is that Dhanalal contracted to lease the tolls as agent or attorney for another and not on his own behalf, though it cannot be disputed that Dhanalal made himself personally liable to pay. The matter is raised in this way in the plaint. It is said that when Government sought to recover what was due from Dhanalal, Dhanalal denied his liability and stated that he had made the purchase of the tolls as attorney for one Hansraj Singh and that the solvency certificate required by Government for entering into a contract such as this was the solvency certificate of Hansraj Singh, The plaint continues: As a matter of fact, although the particulars mentioned above were clear from the records of the Government Officers, still they took from the plaintiff a surety bond for the said Dhanalal as the auction purchaser without in any way informing him (plaintiff) about it. In the

circumstances stated above, although it was incumbent upon the officers of the Government to furnish proper and full information regarding the real state of affairs, they failed to do so, and on the other hand they misled the plaintiff and took security from the plaintiff as for Dhanalal in respect of the Shirpur toll bar. In this way as the agreement relating to suretyship made between the plaintiff and the Government was due to misunderstanding and without the plaintiff having been informed of the real state of affairs, the same will not be binding upon him (plaintiff) according to law.

8. In the Court below, the learned Judge in his judgment pointed out that the appellant had not given evidence to the effect alleged in the plaint that Dhanalal had offered his bid under a power of attorney executed by Hansraj Singh, that the solvency certificate was the latter's, and that it was Dhanalal who produced the solvency certificate which it was thought was in his name. Having discussed the matter in some detail, the learned. Judge came to the conclusion that, having regard to all the facts, the appellant had failed to prove that Dhanalal offered bids as an agent of Hansraj Singh. That finding disposes of the question, but, apart from it, it is clear that Dhanalal made himself personally liable to Government and that for this personal liability the appellant stood surety. In my judgment there is no substance in this point.

9. The issues which are, however, of substance have regard to the validity of the alleged auction sale and to the contention of Government that no civil Court has jurisdiction to entertain this suit at all by reason of Section 11, Bombay Revenue Jurisdiction Act, 1876, which says: No civil Court shall entertain any suit against the Crown on account of any act or omission of any Revenue Officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

10. In order to determine these issues, it is necessary to consider the course of events in some detail and also certain sections of the Bombay Land Revenue Code, 1879. Government having called upon the appellant to pay, he failed to do so, and pursuant to the conjoint effect of Section 10, Tolls on Roads and Bridges Act, 1875, and Section 187, Bombay Land Revenue Code he became what the Code describes as, "a revenue defaulter." As such the appellant was Liable to be proceeded against under the provisions of chap. XI of the Code, in which chapter there is Section 150 which, so far as material, provides that an arrear of land revenue may be recovered by sale of the defaulter's immovable property under Section 155 of the Code. That section and Section 167 are in these terms:

155. The Collector may also cause the right, title and interest of the defaulter in any immovable property other than the land on which the arrear is due to be sold.

167. Sales shall be made by auction by such persons as the Collector may direct. No such sale shall take place on a Sunday or other general holiday recognized by the Provincial Government, nor until after the expiration of at least 30 days in the case of immovable property or seven days in the case of movable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

11. By Section 165 it is provided that where any sale is ordered under the provisions of chap. 11, the Collector shall issue a proclamation in the vernacular language of the district of the intended sale, specifying certain particulars, such proclamation being made by beat of drum at the headquarters of the taluka and in the village in which the immovable property is situated. By Section 166 a written notice of the intended sale and of the time and place thereof has to be affixed at various places including the defaulter's dwelling house. Section 172 provides that the party who is declared to be the purchaser shall be required to deposit immediately 25 per cent. on the amount of his bid. Section 178 is as follows: At any time within 30 days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it; but, except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained injury by reason thereof. If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

12. The next section, Section 179, provides that on the expiration of 30 days from the date of the sale if no such application as is mentioned in Section 178 has been made, or if the application has been made and rejected, the Collector shall make an order confirming the sale, provided that the Collector may set the sale aside notwithstanding that there has been no such application, and Section 181 provides for putting the purchaser into possession after confirmation.

13. There is not in India any Act which governs auctioneers or the holding of auction sales with regard to immovable property, nor has any particular custom or usage in relation to such sales been suggested at the bar. But sales by auction are well understood and constantly occur and the principles of the English common law are applicable to them in default of any statutory provision.

14. To continue the narration of the facts. On 10th September 1935, the appellant's immovable property was put up for sale by Government in five lots, in the same way and at the same reserves as hereinafter mentioned in respect of the second attempt to sell the property. There were no bids and accordingly the sales were postponed. On 11th March 1936, a new order for sale was made, and on 18th March a new proclamation was issued giving notice that on 30th April 1936, from 6 A.M. to 6 P.M. the Mamlatdar of Shindakhede will sell by public auction the

right, title and interest of the said Tumdu Dhansing (the appellant) in the property mentioned below situate in Dondaiche in Kharde, in taluka Shindakhede in this district or whatever right which the said Tumdu Dhansing can exercise legally at present for his own benefit of disposing of the income thereof or any part of the income and will sell by public auction to the highest bidder subject to the conditions attached to the first bid offered and subject to the conditions mentioned in the schedule attached to the conditions of sale annexed hereto. Then follow certain particulars with regard to the appellant's movable property, and then the five lots of immovable property and the reserve prices are described as follows: Property at Kharde S. No. Area. Assessment. Price.

	A.	g.	Rs.	a.	p.	Rs.
60-1	2	37	4	12	0	800
60-5	2	1	4	5	0	400
95	15	34	19	15	0	1,200
96	13	26	7	15	0	400
97	25	30	24	1	0	1,700

4,500

15. It is quite clear from this that the appellant's immovable property was to be put up for sale in five lots and that each lot was to be subject to the stated reserve price. From the documents produced by Government under order of this Court, it appears from a statement recorded before the Mamlatdar by the revenue patil dated 30th April 1936, that: Publicity was given in the village about the auction sale by beat of drum. In order that any other person should bid at the auction Bale in the village I informed the people and explained to them. But no one is ready to bid at the auction sale. Hence no one came there. Tumdu Dhansing had come to Dhondaiche yesterday evening. He went away from this place this morning. I informed him orally about the auction sale. This statement is given in writing.

16 On 30th April 1936, the Mamlatdar conducted certain proceedings which it is alleged were an auction sale and at which it appears that 14 persons other than the Mamlatdar and his revenue patil were present. There were no bids and at the foot of the document recording what took place and which is called: "Yadi of auction sale," there are two endorsements, the first is by the revenue patil and is in these terms: None offered bids at the auction sale. Hence under the order of the Collector Saheb Barikrao Hansraj Mulki patil of Kharde on behalf of Government: Re. 1. (Sd.) Barikrao Hansraj, Mulki Patil, Kharde. The second is signed by the Mamlatdar: A bid is taken for one rupee on behalf of Government and the auction sale completed three times subject to confirmation of the auction by the Huzur. Dated 30th April 1936. Signed A.M. Pandit,

Mamlatdar. On the same day the revenue patil gave a receipt in these terms: I, Barikrao Hansraj, Mulki Patil, resident of Kharde, give a receipt in writing that I gave a bid of Re. 1, one only on behalf of Government at the auction sale of the estate of Tumdu Dhansing, a resident of Kharde. I have received the said Rupee from the Circle Inspector, Dhondaiche Division. This receipt is given in writing. Dated 30th April 1936. (Sd.) Barikrao Hansraj, Mulki Patil, Kharde.

17. The order of the Collector referred to in the first endorsement and which is dated 11th March 1936, is also in writing and starts with a preamble to the effect that after going through the whole correspondence "it is noticed," that Dhanalal, the appellant and the other surety "have all with common intention conspired together to deceive Government"; and after stating the Collector's Views on the history of the matter continues:

The Mamlatdar of Sindkheda is therefore requested to start vigorously to realise the Government dues with interest as early as possible. He should note that no illegal combination is formed by the defaulters. He should in the first instance put up for sale the immovable property of Hansraj and Tumdu and also the undefined portion which Dhanalal holds in the joint property. The Mamlatdar should try to secure bidders at the time of auction if he apprehends that there should be no bidders. He should send the copies of the proclamations of sales to the adjoining Talukas and request the Mamlatdars concerned to send bidders on the date of sale. Even if with all his efforts the Mamlatdar fails to secure bidders he should arrange to purchase the whole property of the defaulters for a nominal bid of one rupee only in each case through the Revenue Patil. But this is the last measure which he should resort to. The Mamlatdar should also ascertain and report the movable property if any of defaulters as already ordered. The Collector hopes that with prompt efforts on the part of the Mamlatdar the sale of the property of the defaulters including that of sureties would certainly wipe off all the outstanding dues from the defaulters. As regards the proposal of the Mamlatdar to send the defaulters to the civil Jail, it appears that the defaulters have no self-respect and they will therefore enjoy life in the civil Jail at the expense of Government. (Sd.) Collector, West Khandesh.

18. The rest of the history of this matter can be concisely stated. On 27th June 1936, "the sale" was confirmed by the Collector. On 30th June 1936, an order was issued that possession be taken of the appellant's immovable property. On 28th August 1936, possession was taken by the revenue patil, and on 30th August that fact was reported and recorded.

19. The following points are, in my opinion, important in any consideration of the alleged auction sale. In the first place there is not either in the sale proclamation or elsewhere any notification that Government or its auctioneer, the Mamlatdar, or any other servant of Government reserved any right to bid. Secondly, by the proclamation the appellant's property was split up into five lots with separate reserve prices, being the same as those fixed for the

previous sale and repeated in the proclamation of 18th March 1936. Thirdly, it was not until after it had been ascertained that there were no bids that the revenue patil made his offer of a nominal one rupee on behalf of Government. Fourthly, the nominal one rupee was apparently paid by the revenue patil in respect of "the estate of Tumdu Dhansing" (the appellant), there is no suggestion that a bid of a nominal one rupee was made in respect of each of the five lots. Fifthly, the published reserve prices were totally disregarded by the Mamlatdar in accepting the revenue patil's offer. Sixthly, the one rupee was described as being something "nominal", and seventhly, the acceptance by the Mamlatdar of this "offer" by the revenue patil on behalf of Government of a, nominal one rupee was a foregone conclusion and was pursuant to the previous order of the Collector set out above.

20. During the course of the argument in this Court the cases in (1776) 1 Cow. 3951 and (1790) 6 T.R. 6422 were referred to, in which the common law rule is set forth. That rule is to the effect that where a seller has not reserved by notification the right to bid or to have bids made on his behalf, it is not lawful for him to bid or to employ any one in that behalf or for the auctioneer knowingly to take any such bid. A sale in contravention of this rule may be treated by the purchaser as fraudulent and the purchaser has the alternative remedies of either avoiding the contract or of suing for the tort. But even if Government is to be considered as a seller, a question which is not free from doubt, the appellant is not a purchaser who can complain that the bidding has been run up against him by the seller's "puffer". In my judgment the proper view to take of what was done is that the alleged sale was a nullity, because what took place had no legality either at law or by statute. Apart from the Bombay Land Revenue Code, nothing can be craved in aid to give a semblance of justification to what happened on 30th April 1936. Wide as the powers are under the Code, the only right which can be relied upon in this case is the right to sell by auction after proclamation made. The proclamation was regular and the formalities attendant upon it appear to have been properly complied with. But I do not think that the matter is any further advanced than it would have been if after proclamation regularly made no auction sale had in fact been held at all.

21. The production of the nominal one rupee for all the property cannot be regarded as a bid at an auction sale for property lotted into five lots with a separate reserve price on each. The word "nominal" shows that there was nothing of substance about the offer, and the endorsements and formalities by which an attempt was made to give some semblance of regularity to what was done, cannot in my opinion, cloak in legal guise that which was nothing better than a device to vest the appellant's property in a revenue officer holding on behalf of Government. The Bombay Land Revenue Code contains no power either to forfeit or to foreclose a defaulter's property. Yet the scheme formulated by the resolutions referred to at the commencement of this judgment aims in effect at bringing about such a result, for, if effective it would achieve the extinguishment in

favour of Government of all the appellant's rights and ownership in his land. In my judgment what took place at the alleged auction sale was of no effect and did not give to the revenue patil or to Government any right, estate or interest in the appellant's property.

22. But the Advocate-General has submitted that it is not open to the appellant on his plaint to contend that what took place was a nullity. In my opinion this is not so. Although not artistically worded, the plaint raises the issue with sufficient clarity, since by it the appellant complains of what he describes as "material irregularities in the matter of the sale", and again, "Government officers have also no right according to law to sell the plaintiff's property for a nominal price and to transfer the same in favor of their officer." In paragraph 9 this is alleged: The plaintiff maintains that the sale of his property being illegal, no rights have thereunder accrued to the purchaser and he claims possession of the property. and on that pleading issues 6 and 7 were framed which are:

6. Does the plaintiff prove that the procedure followed by the revenue authorities was not legal and proper? Is it legal for Government to purchase the property for a nominal bid?

23. The learned Judge in the Court below answered the first of these questions in the negative and the second of them in the affirmative.

24. Although the expression "null and void" is not used, it is clear that what the appellant is contending is that his property has been wrongfully taken from him and vested in Government and that he is entitled to its restoration. In my opinion, if this Court has jurisdiction, the plaintiff is entitled to the order he asks. That brings me to the remaining question with regard to the jurisdiction of the Courts to entertain this suit at all. In the Court below the learned Judge came to the conclusion that there was jurisdiction because the Collector was not acting as a revenue officer but as a *persona designata*, and also because the sale was ordered under Section 10, Tolls on Roads and Bridges Act, 1875, which Act makes no provision for appeals and makes no mention of any authority to whom any such appeal could be made. These aspects of the matter have not been pressed in this Court.

25. Section 11, Bombay Revenue Jurisdiction Act, to which I have already referred, provides that the plaintiff must prove that, "previous to bringing his suit he has presented all such appeals allowed by law for the time being in force as within the period of limitation allowed for bringing such suit it is possible to present." This section must be read in conjunction with Section 203, Bombay Land Revenue Code which provides: In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on

appeal from a subordinate officer's decision or order or not.

26. What type of decision or order is it against which there must be an appeal? Can it be that a plaintiff must appeal against every decision and order of a revenue officer against which he either does not or cannot object? The suit which no civil Court shall entertain is a suit on account of any act or omission of a revenue officer, and it must, in my opinion, follow that it is against the act or omission complained of and upon which the subsequent suit is to be grounded that the appeal under Section 203, Bombay Land Revenue Code must take place. In my opinion, a decision or order in respect of which an appeal will lie must be a decision or order of a quasi-judicial character, and one of which the defaulter is given notice. It would not be possible for a defaulter to appeal against an administrative decision of which he had no knowledge, and further the decision or order must be one to which the defaulter in fact objects. Mere administrative or departmental decisions or orders from one revenue officer to another, of which the defaulter has no knowledge or notice, cannot be the subject-matter of any appeal. If these principles are applied to the facts of the present case, the only decisions or orders against which the appellant might have appealed were the order for the issue of a proclamation for sale brought to the appellant's notice by the proclamation of sale itself and the subsequent order for confirmation of the alleged sale. For the reasons stated in disposing of the two preliminary points no valid objection could have been taken to the mere order for a sale. Nor does the appellant in fact complain that there was any irregularity with regard to the proclamation of sale. With regard to the order confirming the sale, such order, even if brought to the appellant's notice or knowledge, of which there does not appear to be any evidence, is not the substance of his complaint. The appellant's complaint is with regard to what happened on 30th April 1936, which was done by the Mamlatdar and the revenue patil acting in conjunction pursuant to the Collector's order of 11th March 1936, which directed: If with all his efforts the Mamlatdar fails to secure bidders he should arrange to purchase the whole property of the defaulters for a nominal bid of rupee one only in each case through the Revenue Patil.

27. It is not suggested that the appellant had or could have any notice or knowledge of this direction nor that he had any knowledge of the Resolutions of Government dated 4th October 1934 and 16th April 1936, In my opinion therefore Government's contention that the civil Courts have no jurisdiction in this case fails.

28. In the result the appeal must be allowed, the appellant is entitled to possession of his lands and he is also entitled to mesne profits by way of damages for being unlawfully ejected therefrom. We will consider the form of order which is to be made at the conclusion of the judgments.

Diyatia, J.

29. I agree. The main point arising in this case is that covered by issue 7, viz., "Is it legal for Government to purchase the property on a nominal bid?" The learned Judge below has answered the issue in the affirmative on the ground that it is open to the Government under the Land Revenue Code to buy a property on a nominal bid if there are no bidders at the auction sale. It appears that some persons were present at the time of the auction sale. But it is contended on behalf of the respondent that as there was a conspiracy between the plaintiff, Dhanalal and Hansraj Singh, they did not offer any bid. Government had, therefore, no option except to purchase the property on a nominal bid of one rupee in the name of the revenue patil. For that, reliance is placed on a Government Resolution of 4th October 1934, in which such a procedure as regards the purchase of the defaulter's property by the Collector on behalf of Government on a nominal bid of one rupee was approved. Accordingly, the Collector in the present case directed the Mamlatdar that he should try to secure bidders at the time of the auction if he apprehended that there would be no bidders, and that even if with all his efforts the Mamlatdar failed to secure bidders, he should arrange to purchase the whole property of the defaulters for a nominal bid of rupee one only through the revenue patil. This procedure is, in my opinion, not supported either by the Land Revenue Code or by the rules framed under it. The rules with regard to auction sales are Rr. 127 to 129. They provide that auction sale should ordinarily be conducted in the town or village in which the land is situated and that an upset price shall, if the Collector thinks fit, be placed thereon. There is no rule laying down the procedure as to what should be done when there were no bidders. Presumably, therefore, the sale should be postponed and another auction sale should be held, but there seems to be no warrant for holding an auction sale in absence of any bidders and purchasing the property by Government itself through the revenue patil on a nominal bid of one rupee. In my opinion, the patil cannot, in such circumstances, be regarded as a bidder at all. It was a fictitious bid by which Government purchased the property for the nominal amount of one rupee.

30. There is nothing to show that the public were aware of the Government Resolution under which a nominal bid could be made by a Government servant in absence of bidders. If the plaintiff or the public had been aware of such a Resolution, the plaintiff would have probably taken care to see that there were bidders present so that the property may be sold at a fair price. But it is not legal, in my view, that when bidders are absent and the auction sale cannot, therefore, be held at all, Government should step in through its servants and purchase the property in such a way as would virtually amount to confiscation.

31. I quite appreciate the difficulty of Government in a case where there is a conspiracy among the people of the locality not to make any bid at all. But in order to overcome that difficulty it would not, I think, be impossible for Government to lay down proper rules for conducting auction sales, so that the public may be fixed with the knowledge as to what would happen if no

bidders were forthcoming. It ordinarily happens that when no bidders are present the sale is postponed to another date. If the Government apprehends that no bidders are going to come at all, it should be made known to the public by proper means as to what would happen if no bidders were intentionally forthcoming on the first date of the auction. In my view, therefore, the purchase of the property by the revenue patil for a nominal price has no warrant in law and must be set aside.

32. As regards the bar of the Revenue Jurisdiction Act, I think there was no appealable order in the present case. It was only an administrative act on the part of the revenue authorities of which the public were not aware. Moreover, the alleged act is ultra vires, and it would, therefore, be open to a party to bring a suit without filing any appeal as laid down in 33 Bom. L.R. 213.3 I agree, therefore, that the suit is not barred by the Revenue Jurisdiction Act, and that the appeal should be allowed as proposed by the learned Chief Justice.

33. Per Curiam.-Appellant to get possession of his lands. Inquiry as to mesne profits to be held. Appeal allowed with costs in the Court below and in this Court.