

PETITIONER:
RAMRAO JANKIRAM KADAM

Vs.

RESPONDENT:
STATE OF BOMBAY

DATE OF JUDGMENT:
26/09/1962

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
GUPTA, K.C. DAS

CITATION:
1963 AIR 827 1963 SCR Supl. (1) 322
CITATOR INFO :
R 1964 SC 436 (13)

ACT:
Revenue Sale-Public auction-Connotation of "Sale"Whether sale for predetermined nominal price is such sale-Legality-Suit to set aside sale-Limitation-Waiver and estoppel-Bombay Land Revenue Code 1879 (Bom. V. of 1879) Ch. XI, 167, 203--Bombay Revenue Jurisdiction Act, 1876, (Bom.X of 1876), ss. 4(c) and 11-Transfer of Property Act, 1882 (IV of 1882), s. 41.

HEADNOTE:

A sum of about Rs. 9,000 was due from the appellant to the Government on account of excise dues. The movable and immovable property of the appellant was several times put for sale by auction under Ch. XI Bombay Land Revenue Code but the amount remained unrecovered and three items of lands remained unsold. In view of a Government Order dated August, 30, 1933, which prescribed such a course, the Mahalkari sought permission of the Collector to make a nominal bid of Re. 1/for each item of land in the next auction. The permission was granted and the Mahalkari informed the appellant that if no bidders came forward at the next auction the lands would be sold at the nominal price of Re. 1. The auction was held and as no stranger came to bid the Mahalkari made the nominal bid of Re. 1 for each item of land. The bid was accepted and the sales were later confirmed. Subsequently, the Collector sold these lands for adequate consideration and the purchasers were put in possession. The appellant filed a suit challenging the validity of these sales. The purchasers contended that the suit not having been brought within one year of the sales was time barred, that the suit was barred by ss. 4(c) and 11 of the Bombay Revenue jurisdiction Act and, that the appellant was disentitled to relief on the ground of acquiescence and estoppel.

Held, that the Sales were invalid and the suit was liable to be decreed. The purchase for a predetermined nominal price of Re 1, irrespective of the actual market value was not a sale by public auction as contemplated by s. 167 of the Bombay Land Revenue Code. An auction is a proceeding at

which people are invited to compete for purchase of property by successive offers of advancing sums and a sale by auction is a means of ascertaining what the property is worth i.e. its fair

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market price. If at the sale there are no bids there cannot be a sale. The Government Order had no statutory force at all, and could not authorise or render valid the transaction if otherwise it lacked a legal basis. There was no provision in the Code which authorised such a course which amounted to forfeiture of the property of a defaulter. It was anomalous that the Collector who moved the machinery for realisation of arrears by sale and who was constituted the authority to determine judicially allegation of irregularity in the conduct of the sale should, without authority of any statutory power, bid at the auction conducted by his deputy. The mere fact that the appellant had been informed before hand of the nominal bid did not render the sales valid. Nor was the appellant estopped from questioning the legality of the sales.

Tumdu Dhansing v. Government for the Province of Bombay, I.L.R. 1947 Bom. 75, approved.

The suit was not barred by Art. 11 of the Limitation Act. The article was applicable only to cases where there was need for setting aside a sale and not to cases where no sale as contemplated by law had taken place.

The provisions s. 4(c) Bombay Revenue jurisdiction Act, 1876 applied to cases where there was a sale and it was sought to be set aside on the ground of irregularities other than fraud. They did not apply where there was only a purported sale which did not pass title, Section 11 barred a suit when there was an appeal provided against the act or omission of a revenue officer and the party failed to avail of the remedy. In the present case there was no order which was appealable under s. 203 and s. 11 could not be applied.

There was no scope for invoking the aid of s. 41 Transfer of Property Act. The purchasers had not relied upon any representation, act or conduct of the appellants but on the belief that Government had acquired a good title to the lands. If the Government had no title the purchasers could not acquire any.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 67 of 1956. Appeal from the judgment and decree dated March 20, 1950, of the Bombay High Court in first Appeals Nos. 142 and 211 of 1947.

S.P. Varma, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellant.

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H.R. Khanna, R. H. Dhebar and T. M. Sen, for the respondent No. 1.

C.B. Agarwala and Naunit Lal, for the respondents Nos. 2 and 5.

1962. September 26. The judgment of the Court was delivered by-

AYYANGAR, J.-This appeal comes before us on a certificate of fitness granted by the High Court of Bombay under Art. 133 (1) (a) of the Constitution.

The appeal was heard by us in November last and judgment was reserved on 9/11/1961. Within a short time thereafter, learned Counsel for the Appellant intimated the Registry

that the 2nd respondent had died on November 5, 1961, and that steps were being taken to have the legal representative brought on record. The certificate under O. XVI r.13 was received by this Court and on its basis substitution was ordered at the end of August 1962. The appeal was subsequently reported for hearing and we have now heard the learned Counsel for the parties.

The facts giving rise to the appeal are briefly as follows: The plaintiff who is the appellant brought a suit in the Court of the Civil judge at Jalgaon for a declaration that the sale of certain of his lands which were held by the Revenue Authorities in circumstances which we shall detail later was void, and to recover possession of the lands from the defendants who had purchased these lands in revenue auction. In view of the prayer for the declaration regarding the invalidity of the sale, the Province of Bombay was impleaded as a defendant to the suit.

The plaintiff's father was an excise contractor and he and the plaintiff were licensees of certain opium shops in 1931-32. By the end of March 1934 a sum of about Rs. 8,500/- were due to the Government in respect of the excise dues from these opium shops. For the realisation of these dues the lands

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belonging to the plaintiff were brought to sale and among others Survey Field No. 35, 40 and 80 in Mauje Therole, Peta Edalabad and a house bearing Survey No. 23A in the village of Kurhe was brought to sale and sold. The three items of lands were purchased by government at the sale for a nominal bid of Re. 1/- for each item for realisation of these dues. The sale was confirmed and possession taken by government of these lands. Later the government sold the land bearing Survey No. 80 to the second defendant for Rs. 2,000/- and Survey Nos. 35 and 40 to the fifth defendant for Rs. 1,750/-. Possession of these properties was delivered to the respective defendants in 1939. As substantially the arrears due to government still remained undischarged, because the sales were for nominal amounts, the house property at Kurhe was attached and brought to sale and was sold on November 6, 1940, but the purchase in the case of the house was not by the government but the property was bid for and purchased by the second defendant for Rs. 76/-. A certificate of sale was issued to him on February 13, 1941. It was the validity of these sales that was challenged in the suit which has given rise to this appeal.

The suit was substantially decreed in favour of the plaintiff by the trial-judge but on appeal the plaintiff's suit was dismissed in respect of the relief in regard to the three plots above-named which were the subject of sale on September 21, 1938, and of the house which was sold on November 6, 1940. The learned trial-judge had held that these sales were not in accordance with the provisions of the Bombay Land Revenue Code and were consequently void. The learned judges of the High Court, on the other hand, were of the opinion that the sales and the purchase by government for a nominal sum of Re. 1/ for each of the plots were authorized by the Code and were therefore valid and binding on the plaintiff. It is the correctness of this view of the High Court that is raised for consideration in the appeal.

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Before dealing with the arguments addressed to us regarding the validity of the sales it is necessary to set out the statutory provisions which bear upon the power of government to effect sales for the realisation of arrears

due to them.

Section 34 of the Bombay Abkari Act enables arrears of excise revenue to be recovered as an " arrear of land revenue". Chapter XI of the Bombay Land Revenue Code lays down the procedure for the realisation of land revenue and other revenue demands. Among the provisions of this Chapter it is necessary to refer to s.155 reading :

"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."

Section 165 directs the Collector to issue a proclamation, in the vernacular language of the district of the intended sale, specifying the time and place of sale, while the section following requires that a written notice of the intended sale should be affixed in the public offices named therein. Section 167 enacts that sales shall be made by auction by such persons as the Collector may direct. Section 171 is the next relevant section and this reads:

"When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever."

As some point was made before us of a violation in the instant case of the provisions of ss. 172 and 173, we shall read these also

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"172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted, a receipt for the same, and the sale shall become absolute as against all persons whomsoever."

"173. In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold."

Section 175 sets out the effect of a default in payment of purchase-money and this runs:

"175. In default of payment within the prescribed period of the full amount of purchase-money, whether of movable or immovable property, the deposit, after defraying therefore the expenses of the sale, shall be

forfeited to the Provincial Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold."

Section 178 enables sales to be set aside for irregularity and this section runs

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"178. At any time within thirty 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 substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the same and direct a fresh one."

The consequential provision is in s. 179 which reads:

"179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale; provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale."

and s. 182 enacts :

"182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed."

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Section 214 of the Code empowers a State Government by a notification published in the official gazette to make rules not inconsistent with the provisions of the Act to carry out the purposes and objects of the Act and for the guidance of all persons in matters connected with the enforcement of the Act or in cases not expressly provided for therein. In the Rules framed under the Code Ch. XVIII is concerned with making provision for sales. Rule 128 which is the second of the Rules in this Chapter. prescribes

"Where any land or other property is sold by public auction, an upset price shall, if the Collector thinks fit, be placed thereon; Provided that where in the opinion of the Collector difficulty is likely to be experienced in effecting speedy recovery of

the arrears or bidders are likely to be deterred from offering bids, no such upset price shall be placed."

Rule 129 has a new sub-r. (4) added after the sales which are now in controversy were effected reading :

"Where in the opinion of the Collector difficulty is likely to be experienced in effecting speedy recovery of the arrears or bidders are likely to be deterred from offering bids, it shall be lawful for the Collector or his nominee to bid at the auction

and purchase the land or other property for a bid of rupee one."

We shall now proceed to narrate the proceedings that preceded the impugned sales where are stated to be in contravention of statutory provisions.

Before doing so, however, we might point out that in regard to the sale of the house in the village of Kurhe no irregularity which would vitiate the sale as pointed out, and the only complaint was that the house which was estimated to be worth about Rs. 200/- was sold for an inadequate sum of Rs. 76/-. Obviously standing alone this could not be a ground for holding

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the sale void. In the rest of this judgment, therefore, we shall confine our attention to the sale of the three plots bearing Survey Nos. 35, 40 and 80 which were purchased by the Government for a nominal bid of Re. 1/-.

The relevant facts in relation to the sale of these three plots were these: In January 1934 the Mahalkari of Edalabad brought to the notice of the Collector of East Khandesh that an amount of over Rs. 9,000/- was due in respect of excise transactions from the plaintiff and his father and he pointed out that the amount remained unrecovered notwithstanding that the defaulter's movable property was put up for sale eighteen times and his immovable property eight times. He suggested to the Collector that "in order to bring home a sense of responsibility to the defaulters and to make them realise the need for quickly paying up the arrears", the procedure laid down in a Government order dated August 30, 1933, might be applied to them. The procedure indicated was that contained in a Government resolution in the Revenue department bearing No. 474 of 1933 that "if defaulters were contumacious the Collector would have authority to purchase on behalf of Government the defaulter's property on a nominal bid." By this letter the Mahalkari desired to have the permission of the Collector to make a nominal bid of Re. 1/- at the next auction of the defaulter's property. The principal question raised in this appeal is whether or not the procedure indicated in this resolution is in accordance with the provisions of the Land Revenue Code. Before continuing the narrative it is necessary to refer to a further resolution No. 4135 of April 16, 1936, which ran

"The procedure of purchasing on behalf of Government a defaulter's property nominal bid should be adopted in order a speedy recovery of Government by offering a order to effect dues in cases where a real difficulty is experienced in making

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such recoveries and no purchaser is forthcoming to buy the land..... It should not be adopted except as a last resort when

various remedies for the recovery of dues have failed or unless it is clear that bidders are deterred from offering bids by other reasons than purely economic considerations."

The reason for the adoption of this procedure was stated to be that it would produce a good deterrent effect and would put a stop to any obstructive tactics on behalf of defaulting licensees.

The permission sought was granted by the Collector enabling the Mahalkari to bid at the auction. Thereafter the Mahalkari intimated the defaulters the plaintiff and his father that if no bidder came forward at the time of the public auction-sale and nobody bid, the lands mentioned in the proclamation would be sold at a nominal price of Re. 1/- and it was after this notice that the purchase by Government on the above terms was effected. The sales were held, no stranger bid at the sale and thereupon the Mahalkari acting under the resolution of Government and the terms of the permission granted by the Collector, made a nominal bid of Re. 1/- for each lot on behalf of the Government and the bids were accepted and thereafter the sales were confirmed.

The validity of the sale was attacked before us on several grounds : (1) that under r. 128 the Collector was bound to have fixed an upset price and that his failure to do so rendered the sale void., (2) Rather inconsistently with this that the Collector had actually fixed an upset price and that in the- face of this fixation the purchase by the Mahalkari on behalf of the Government for a nominal sum of Re. 1/- was illegal and rendered the sale void., (3) that on the terms of section 171, the sale-price had to be paid for at the time of the sale and that as this was not done, the sale-officer was statutorily bound to have put up
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the property for sale again, (4) that ss. 172 and 173 laid an obligation on the purchaser to deposit 25 per cent of the sale-price immediately the bid was knocked down and further required him to pay the balance within 15 days thereafter and also prescribed the consequences of default, viz., the sale shall be avoided and that a resale shall take place and that in the present case the Mahalkari who bid on behalf of the Government, or the Government itself had not made either the deposit or the final payment with the result that the purchase stood automatically cancelled by reason of that default and (5) that the purchase by the Government on a nominal bid of Re.1/- was not a sale by public auction as was contemplated by s. 167 of the Code and in consequence the sale was void and that no title passed by reason of that sale.

As regards the first four of the objections set out above, they have, in our opinion, no substance on the facts of the present case. We do not however consider it necessary to deal with them because they were raised for the first time in this Court and they involve questions of fact which were not the subject of pleading or investigation in the Courts below. We intimated to the learned Counsel that we would not permit him to urge those grounds before us. It is only the last of these grounds that therefore requires to be considered.

This raises a question of some importance in the law relating to revenue sales. The question of the validity of such sales was raised before the High Court of Bombay on an earlier occasion and the judgment of the Court is reported in *Pumdu Dhansing v. Government for the Province of Bombay* (1). The Court was then concerned with an auction-sale

conducted by the Mamlatdar---a revenue officer of the Government by which a property of a substantial value belonging to a surety for a toll-contractor was sold to the Revenue-Patel acting for and on behalf of the government for a nominal sum of Re. 1/-. The

(1) I. L. R. 1947 Bom. 75.

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contractor was in default and for the recovery of the amount due from him the provisions of Ch. XI of the Bombay Land Revenue Code became applicable. Several attempts were made to sell the property of the defaulter and the reserve prices which were fixed for the lots were never reached. Subsequently at 'the next auction when no bids were forthcoming, the Patel acting under the orders of the Collector made a bid on behalf of Government, of Re. 1/- for each lot and this was accepted by the Mamlatdar who was conducting the auction, and this sale was confirmed later by the Collector and possession was thereafter taken of the property thus purchased. It was the validity of this sale that was challenged in a suit filed by the defaulter. Support for the validity of the sale was sought in the resolutions of the Government of 1933 and 1936 which we have extracted earlier. On the facts of the case before the Court there were certain special features to which attention was drawn by the learned judges : (1) The first was that the proclamation of sale set out that a reserve price had been fixed and where a sale was subject to such a condition, "the conditions of sale" which are prescribed by the rules made a special provision invalidating the acceptance of bids below the reserve price, (2) there was no evidence that the defaulter had been served with any special notice that the different procedure of the purchase for a nominal price by government would be resorted to. Though the learned judges pointed out these two features, the reasoning by which they held the sale void rested on wider grounds. Stone C.J. speaking for the Court said:

"The production of the nominal one rupee for all the property, cannot be regarded as 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

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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 Pail or to Government any right, estate or interest in the appellant's property."

When the present appeal was before the learned judges of the

Bombay High Court it was pressed before the Division Bench which heard the appeal in the first instance that the reasoning of the decision in Tumdu Dhansing v. Government for the Province of Bombay (1) governed the present case also and entitled the plaintiff to succeed and that the appeal should be dismissed. The learned judges observed:

"It must be conceded that if the decision in Tumdu Dhansing v. Government for the Province of Bombay represents good law, the decision of the trial Court is correct".

They however, went on to say :

"With respect however, to the learned judges who decided that case (Tumdu Dhansing v. Government for the Province of Bombay) we find great difficulty in understanding the reasoning and doubt whether the conclusion is correct".

(1) I. L. R. 1947 Bom. 75.

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They therefore suggested a reference to a Full Bench for an answer to the question :

"Whether when at a sale held under s. 153 of the Bombay Land Revenue Code the land is purchased by the Government under a nominal bid the sale is either void or voidable":

The learned Judges of the Full Bench however without deciding whether the decision in Tumdu Dhansing v. Government for the Province of Bombay was right or wrong, upheld the sale in the present case on certain distinguishing features : (1) the sale proclamation in the present case did not fix a reserve price and therefore there was no purchase for a nominal sum in disregard of the price so fixed, (2) Before the bid for a nominal sum and a sale by the acceptance of such a bid notice had been given to the defaulter stating that the Government intended to pursue that course. Though on these grounds they held the sale not to be void, the learned judges proceeded to point out that this practice of purchasing property for nominal bids was neither fair nor equitable. With this answer the case came back to the Division Bench where the appeal by the defendant was allowed.

The question now for our consideration is whether a sale for a "nominal" bid of Re. 1/- is "a sale by auction" within the provisions of the Bombay Land Revenue Code. Before entering on a discussion of the relevant provisions it is necessary to state that the Government Resolutions of 1933 and 1936 do not purport to have and have no statutory force at all. They cannot authorise or render valid the transaction if otherwise it lacked a legal basis. A further matter which requires to be pointed out is that para. (4) of r. 129, already set out, which authorises the purchase by Government for a nominal price was added only in 1946 long after the sales in the present case and cannot serve as any basis for sustaining the validity

(1) I. L. R. 1947 Bom. 75.

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of the sale. In the circumstances it is not necessary to consider the scope or validity of this rule or its legal efficacy for authorising such a sale or purchase.

It is common ground that the power of Government to effect a sale by summary process for the recovery of amounts due to them has to be gathered from the four corners of Ch. XI of the Code read in conjunction with the relevant rules in Ch. XVIII. Section 155 of the Code enables the Collector to cause the right, title and interest of the defaulter in the

immovable property to be sold. The manner in which those sales might take place is provided for by s. 167 which enacts that "sales shall be by public auction by such person as the Collector may direct." Leaving aside for the moment the provisions which detail the procedure to be followed in the conduct of these sales, the point to be observed is that the realisation of the dues has to be by "sales" by public auction to be held in the manner prescribed. This therefore does not and cannot authorise a forfeiture of the immovable property of a defaulter because of his contumacious conduct in not paying up his dues when demanded. Nor does the Land Revenue Code contemplate or provide for any punishment of defaulters because of their conduct in either not paying up their dues or in not facilitating the realisation of the dues payable by them by co-operating with the Government and securing a proper price for their property such as would be sufficient for the discharge of their dues. While on this point it might be interesting to point out that s. 58 of the Revenue Sale Law (Bengal Revenue Sale Law) Act 11. of 1859 enacts:

"When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee"

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There is no provision corresponding to this in the Bombay Code. The question then arises whether a purchase for a predetermined nominal price of rupee one for property, whatever its actual market value, is a sale by public auction within s. 167 of the Code. An auction has been described as "the proceeding at which people are invited to compete for the purchase of property by successive offers of advancing sums" and a sale by auction is a means of ascertaining what the thing is worth, viz., its fair market price. If at the sale there are no bids there cannot be a sale. A sale for a predetermined nominal sum cannot, in our opinion, be held to be a "sale by public auction" in the absence of any provision for such sales in the statute. Such a sale appears to us to be somewhat analogous to what Sir Richard Couch described, though in a slightly different context. "The offer and acceptance of a rupee was a colorable attempt to obtain a title without paying for the land. Virtually it was a present which it was not open to the authorities to make". (vide *Luchmeswar Singh v. the Chairman, of the Darbhanga Municipality*(1). It may not also be out of place to point out that it is the Collector who on behalf of Government sets in motion the machinery for the realisation of the arrears by bringing the defaulter's property to sale and it is he who is by the Land Revenue Code invested with the power to make arrangements for the sale and s. 178 constitutes him the authority to determine judicially any allegation about the irregularity in the conduct of the sale. In these circumstances it looks to us somewhat anomalous that the Collector should of his own motion and without the authority of any statutory power claim the right to bid at the auction which his deputy is conducting on his behalf for the realisation of the dues which he as the executive authority is to recover and particularly when he is constituted the authority to consider the validity or irregularity in the auction conducted at his instance and the purchase made at his instance.

(1) (1890) 1. I., R. 18 Cal. 99, 106.

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The next question for consideration is whether the fact that the defaulter was appraised that Government would bid for a nominal sum of one rupee for the property at the auction renders the sale valid. We do not find it easy to discover the precise legal basis upon which prior notice to the defaulter would have the effect of validating the sale. If a sale for a nominal bid of one rupee were "a sale by public auction" within s. 167 of the Code, notice to the defaulter that such a procedure would be followed would be legally unnecessary and would not add to the legal efficacy of the sale. If, on the other hand, such a sale or a sale in such circumstances was not a sale by public auction then notice to the defaulter could be of value only if (a) it operated as a waiver of the requirement of s. 167, or (b) created an estoppel which precluded him from questioning the legality of the proceeding. First as to waiver, the power of Government to effect the sale by summary process is a special provision resting on public grounds and being so very special it is clear that the limitations on the power thus conferred should be strictly construed. In our opinion, it is an essential condition of the passing of property from the defaulter in invitum that there should be a sale by public auction and if a sale in the manner in which it has been conducted in the present case does not amount to a sale by public auction there is no question of the title to property passing by virtue of such a sale. The plea of waiver cannot therefore be of any avail.

Nor is there any basis for any argument that by reason of the notice the defaulter is estopped from questioning the legality of the sale. If waiver cannot cure the defect there is still less scope for invoking the rule as to estoppel, for the essential condition of estoppel, viz., representation by the person sought to be estopped and prejudice to the person seeking the benefit of the rule, would both be absent. We therefore

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come to the conclusion that the fact that the defaulter was informed that the Government would make a nominal bid of rupee one and purchase the property is really irrelevant for considering the validity of the sale.

The conclusion we have indicated earlier is in accord with the decision of the Bombay High Court in *Tumdu Dhansing v. Government for the Province of Bombay*(1) and we consider that that case is correctly decided. We are further of opinion that the ratio of that decision would also cover the case where notice was served on the defaulter of the Government's intention to purchase the property for a nominal price.

Learned Counsel for the respondent raised several defenses besides seeking to support the judgment of the High Court on the reasoning of the learned judges and sought to sustain the impugned sale on various grounds. His first submission was that the sale was at the worst irregular which rendered it voidable and that no suit having been brought within one year of the sale, the suit was barred by Art. 11 of the Indian Limitation Act. We consider however that there is no substance in this contention because if, as we hold, a sale of the type now impugned was not authorised by the statutory provision in that regard then it was not a question of any mere irregularity in the conduct of a sale but a case where there was no sale at all with the consequence that no property passed from the defaulter. It was not disputed that Art. 11 of the Indian Limitation Act would only apply to a case where there is need for the setting aside of a sale and

that it has no application to cases where no sale as contemplated by law has taken place.

It was next submitted that the appellants' suit was barred by ss. 4 (c) and II of the Bombay Revenue

(1) 1. L. R. 1947 Bom. 75.

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jurisdiction Act, 1876. Section 4(c) runs:-

"4. Subject to the exceptions hereinafter' appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:

(a).....

(b).....

(c).....

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

and s. 11 enacts:

"11. No Civil Court shall entertain any suit against the Government 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."

As to the applicability of s. 4 (c), it would be noticed that resort to the Civil Courts is barred only as regards certain specified classes of suits in which the validity of sales for arrears Land Revenue are impugned. The classes so specified are those in which the plaintiff seeks to set aside a sale on account of irregularities etc., other than fraud. The provision obviously assumes that there is in existence a sale though irregular under which title has passed to the purchaser and that sale has to be set side, on grounds other than fraud, before the plaintiff can obtain relief. Where however there is only a purported sale which does not pass title and the suit is for recovery of possession of property ignoring

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such a sale, the provision and the bar that it creates have no application.

Nor is there any scope on the facts of the present case to attract the application of s. 11. The section is based on the principle that a party must exhaust the remedies provided by the Act before he can seek the assistance of the Civil Court in respect of a claim against the Government. It therefore posits three matters before its protection could be invoked. (1) There must be an act or omission of a revenue officer which gives rise to a claim against the Government; (2) the Act must provide for appeals against the said act or omission; and (3) lastly the party should have failed to avail himself of the remedy by way of appeal to obtain redress for his grievance. The only "act" of which, on the facts, the appellant could be said to complain would be the direction by the Collector authorising the Mahalkari to offer the nominal bid of Re. 1/- and purchase the property. The question that next arises is whether the Statute had provided an appeal against this "act" It was admitted that there was no such specific provision. Learned Counsel for the respondent however drew our attention to s. 203 of the Bombay Land Revenue Code.

"203. 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."

In the present case however, there was no order by any authority which could be the subject of any appeal under s. 203. The Collector authorised administratively the Mahalkari to offer the bid and that is certainly not "a decision" which is capable of

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appeal within s. 203. No other order which could by any stretch of language be construed to be a decision was pointed out in respect of which an appeal could have been filed. In fact, there was no decision and except the sale which is complained of as void and of no effect nothing took place. If s. 203 is not attracted it was not suggested that s. 11 of the Revenue Jurisdiction Act created any bar to the entertainment of the present suit.

It was then suggested that the plaintiff was disentitled to any relief by reason of an estoppel raised by s. 41 of the Transfer of Property Act. The basis for this argument was that some time after the sale the second defendant had purchased the plot bearing Survey No. 80 for Rs. 2,600/- from the Government while the fifth defendant similarly purchased plots bearing Survey Nos. 35 and 40 for Rs. 1,750/- and that the inaction of the plaintiff without taking proceedings to set aside the sale constituted a representation to the world that the Government were properly the owners of the property which they had purchased for nominal bids and this was the reasoning by which s. 41 of the Transfer of Property Act was sought to be invoked. The argument has only to be stated to be rejected. The respondent did not rely on any representation or any act or conduct on the part of the appellant but their belief that Government had acquired title by reason of their purchase at the revenue sale. If the Government had no title to convey, it is manifest the respondents cannot acquire any. They would clearly be trespassers. In the circumstances we consider there is no scope for invoking the rule as to estoppel contained in s. 41 of the Transfer of Property Act. Lastly, it was submitted that the respondents had made improvements to the property since they had purchased them for which they were entitled to compensation under s. 51 of the Transfer of Property Act. But no basis was laid for this plea which is

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one of pure fact. No evidence was led and no issues struck before the trial judge and we do not therefore think it proper to entertain this point at this stage.

The Government of Bombay did not file any Written Statement before the trial-judge, nor did they seek to support the sale before the High Court. As we have stated, they were impleaded as the first respondent in the appeal before this Court. In their statement of the case which they filed they did not oppose the appeal but left it to the Court to decide the matter and they took no part in the hearing except that learned Counsel appearing on their behalf made a statement that no order as to costs might be passed against them.

In the result the appeal is allowed and the suit decreed as regards the three items of land bearing Survey Nos. 35, 40

and 80. The appeal will however stand dismissed as regards the house in village Kurhe. In view of the partial success of the appellant the appellant will be entitled to half of the costs of the appeal here to be paid by the respondents other than the State of Bombay (now Maharashtra).
Appeal partly allowed.

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JUDIS