



2026:KER:46315

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

MONDAY, THE 29<sup>TH</sup> DAY OF JUNE 2026/8TH ASHADHA, 1948

W.A.NO.340 OF 2026

AGAINST THE JUDGMENT DATED 12.11.2024 IN W.P(C).NO.8708 OF 2021  
OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

M/S.PEARL HILL BUILDERS AND DEVELOPERS  
AGED 55 YEARS  
ARE REPRESENTED BY ITS MANAGING DIRECTOR, MR.ABDUL NAZAR,  
PUTHEN PEEDIYAKKAL HOUSE, MOORIYAD P.O.,  
CHALAPPURAM-673002.

BY ADV.SRI.LAKSHMI NARAYAN R. (SR.)  
BY ADV.SRI.N.RAYNOLD FERNANDEZ

RESPONDENT(S)/RESPONDENT:

- 1 UNION OF INDIA  
REPRESENTED BY THE SECRETARY, MINISTRY OF LAW AND  
JUSTICE, NEW DELHI-110001.
- 2 GOVERNMENT OF KERALA,  
REPRESENTED BY THE SECRETARY, MINISTRY OF LAW,  
THIRUVANANTHAPURAM-695001.
- 3 THE KERALA FINANCIAL CORPORATION,  
HEAD OFFICE, VELIYAMBALAM, THIRUVANANTHAPURAM-695033,  
REPRESENTED BY ITS MANAGING DIRECTOR 4TH RESPONDENT.
- 4 THE MANAGING DIRECTOR,  
KERALA FINANCIAL CORPORATION, HEAD OFFICE, VELLAYAMBALAM,  
THIRUVANANTHAPURAM-695033.
- 5 CHIEF MANAGER,  
KERALA FINANCIAL CORPORATION BRANCH OFFICE,  
MALABAR PALACE, GH ROAD, KOZHIKODE-673001.



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- 6 C.ABDUL MANAF  
AGED 51 YEARS  
SON OF C.HUSSAIN, RESIDING AT CHOLAMUGHATH HOUSE,  
THAZHEKODE WEST. PIN 679 341, THAZHEKODE VILLAGE,  
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT,  
NOW WOKRING AS CHIEF MANAGER, KERALA FINANCIAL  
CORPORATION BRANCH OFFICE, MALABAR PALACE, GH ROAD,  
KOZHIKODE 673 001.
- 7 K.B. PADMADAS  
SON OF BALAKRISHNAN, THEERTHAM, KOOLIYATTUVALAPPIL (HO,  
PUDUKKAD, VIYYUR P.O., THRISSUR PIN 680 010
- 8 T.P.SALEEM  
SON OF T.V.PUSHPANGATHAN, THASHNATH (H),  
CHENTRAPPINI P.O., PIN 680 687
- 9 VARUN P.  
SON OF PEETHAMBARAN, HOUSE NO.28/2453, POTTAMMAL,  
KUTHIRAVATTAM P.O., CALICUT PIN 673 16., PIN - 673016
- 0 EDWIN JOSEPH  
SON OF T.T.JOSEPH, TREASA GRADEN, CHETHIKKULAM,  
ELATHUR P.O., PIN 673 303
- 11 ANIL KUMAR S.  
AGE NOT KNOWN, SON OF M.SIVASANKARA PILLAI, V.P.HOUSE,  
CHANTHANATHOPPU P.O., KOTTAMKARA VILLAGE, IN 691 014,  
KOLLAM TALUK, KOLLAM DISTRICT
- 12 PEETHAMBARAN  
AGE AND FATHERS NAME NOT KNOW TO THE PETITIONER,  
HOUSE NO.28/2453, POTTAMMAL, KUTHIRAVATTAM P.O.,  
CALICUT, PIN - 673016

BY ADV.SMT.R.ASALATHA VARMA, CGC  
BY SRI.M.R.ARUN KUMAR, SENIOR GOVT. PLEADER  
BY ADV.SRI.GEORGE POONTHOTTAM (SR.)  
BY ADV.SMT.NISHA GEORGE  
BY ADV.SMT.DHANYA P.ASHOKAN (SR.)  
BY ADV.SRI.M.R.VENUGOPAL, SC, KFC  
BY ADV.SRI.S.SREEKUMAR (KOLLAM)  
BY ADV.SRI.S. MUHAMMAD ALIKHAN  
BY ADV.SMT.ANJANA S. RAJ  
BY ADV.SMT.GAYATHRI VENUGOPAL  
BY ADV.SMT.A. A. AKHILA SREE PARVATHY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17.06.2026,  
THE COURT ON 29.06.2026 DELIVERED THE FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The petitioner in W.P.(C).No.8708 of 2021 is the appellant before us aggrieved by the judgment dated 12.11.2024 of a learned Single Judge that dismissed its writ petition.

2. The brief facts necessary for disposal of this writ appeal are as follows:

The appellant/petitioner is a firm engaged in the business as Builders and developers. In connection with its business activities, it had availed a loan of Rs.4.89 crores from the Kerala Financial Corporation [hereinafter referred to as the "Corporation"] against a mortgage by deposit of title deeds in respect of 16.21 Ares of property in Kasaba Village in Kozhikode District. It is the case of the appellant that at the time of filing the writ petition, the market value of the mortgaged property was approximately Rs.30 crores. According to the appellant, pursuant to default occasioned by it in repayment of the loan amount, the loan was declared as a Non Performing Asset in 2014 and coercive action was taken by the Corporation for recovery of the loan amount with accrued interest. After a couple of rounds of litigation before this Court, when the earlier recovery steps initiated by the respondent Corporation were interdicted, the Corporation proceeded to take possession of the property on 15.01.2019 and initiated steps to bring the property to sale.



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Since the sale notice dated 26.10.2019 failed to elicit any response from bidders, the Corporation fixed the reserve price of the property through an approved valuer as evident from Ext.R4(e) dated 16.11.2020, at Rs.11,32,30,000/- and arrived at a realisable value of 80% of the market value equivalent to Rs.9,05,86,000/-. This was later revised upward and fixed at Rs.9,15,42,000/- by Exhibit R4(d) document dated 02.12.2020 and the fact was communicated to the appellant/petitioner. Thereafter, on 17.12.2020, a notice under Section 29 of the State Financial Corporations Act [hereinafter referred to as the "SFC Act"] was issued to the appellant, wherein, he was informed that if the outstanding amounts under the loan account were not paid within the time stipulated in the notice, the Corporation would go ahead with the sale of the property. It is the admitted case before us that no response was given by the appellant to the said notice. The Corporation therefore proceeded to publish the sale notice in the official website of the Corporation and in two newspapers on 18.01.2021 and 23.01.2021 respectively, as evident from the documents produced as Exts.R4(k), R4(l) and R4(m) along with the counter affidavit of the 4<sup>th</sup> respondent Corporation. The e-auction for the sale of the property was conducted on 12.03.2021 as evidenced by Ext.P5 document produced in the writ petition.

3. Although at the e-auction, the 11<sup>th</sup> respondent was identified as the highest bidder from out of the two bidders [respondents 11 and 12], who responded to the auction notice, he did not pay the entire sale consideration by himself. Instead, he requested the Corporation to confirm the sale in favour of his nominees - respondents 7 to 10, who had



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formed themselves into a partnership. It is significant that of the said respondents, the 9<sup>th</sup> respondent is the son of the 12<sup>th</sup> respondent, who was the only other bidder at the e-auction. The pleadings before us also reveal that while the 11<sup>th</sup> respondent paid 25% of the sale consideration as required by the e-auction notice on 20.03.2021, beyond the period of 7 days stipulated therein, the Corporation also offered a loan of Rs.5 crore to the partnership firm of which the 9<sup>th</sup> respondent was a partner on 30.03.2021 and the said amount was shown as adjusted towards the sale consideration paid by the firm comprised of respondents 7 to 10 in the sale deed executed in their favour on 13.04.2021. It was impugning the entirety of the action taken by the respondent Corporation to bring the property to sale and thereafter confirming the sale in favour of respondents 7 to 10 that the writ petition was filed.

4. The learned Single Judge, who considered the matter, took note of the contentions advanced on behalf of the appellant/petitioner, which were essentially fourfold. Firstly, it was contended that the auction sale conducted by the respondent Corporation was without following the guidelines laid down by the Supreme Court in **Kerala Financial Corporation v. Vincent Paul - [2011 (2) KLT 286]**. Secondly, it was contended that the reserve price fixed for the property and the place of sale were not mentioned anywhere in Ext.P3 notice dated 17.12.2020 or at the time when the auction sale was conducted on 12.03.2021. Thirdly, it was pointed out that the land value fixed as per the valuation report that was relied upon by the respondent C while arriving at the reserve price was only Rs.16 lakhs per cent, whereas the land value was much



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more than that. It was also pointed out that the valuation report did not show any separate value for the building that was situated in the property. Fourthly, the anomaly in the conduct of the auction sale, where, out of the two bidders, namely respondents 11 and 12, the properties were sold to the 11<sup>th</sup> respondent but the sale deed was executed in favour of respondents 7 to 10, who were the nominees of the 11<sup>th</sup> respondent, was highlighted to suggest that respondents 7 to 10 had formed a cartel, along with the 11<sup>th</sup> respondent, and this was evident from the fact that the 9<sup>th</sup> respondent was the son of the 12<sup>th</sup> respondent, who was the unsuccessful bidder at the e-auction.

5. The learned Single Judge, after considering the submissions of the respondent Corporation as also the contentions of respondents 7 to 10, in whose favour the sale was confirmed, found against the appellant/petitioner on all the four arguments put forth on its behalf, and proceeded to dismiss the writ petition.

6. In the appeal before us, we have heard Sri.Lakshmi Narayan R., the learned senior counsel, duly instructed by Sri.N.Raynold Fernandez, the learned counsel for the appellant, Smt.Dhanya P. Ashokan, the learned senior counsel, duly instructed by Sri.M.R.Venugopal, the learned Standing counsel appearing for the respondent Corporation and Sri.George Poonthottam, the learned senior counsel, duly instructed by Smt.Nisha George, the learned counsel for respondents 7 to 10 and 12.

7. For the sake of brevity, we might at the outset point out that



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while before us, the learned senior counsel Sri. Lakshmi Narayan R. would re-iterate the same four contentions as were urged before the learned Single Judge, as noticed in an earlier paragraph of this judgment, we have not been shown any material that would persuade us to interfere with the findings of the learned Single Judge on the first three of those contentions. The conduct of the appellant in occasioning persistent defaults in the matter of repayment of the loan amounts, and in not responding to the valuation report and intimation regarding fixation of the reserve price that were received by it, effectively prevents it from questioning the legality and propriety of the actions of the respondent Corporation in that regard at this belated stage of the proceedings. We also do not find any irregularity or illegality in the procedure followed by the respondent Corporation up to the stage immediately prior to effecting the sale of the mortgaged property. Our concern, presently, is only with regard to the manner in which the sale of the mortgaged property was effected by the respondent Corporation. The contention of the learned counsel for the appellant in that regard is essentially that the sale was not conducted in a fair manner and therefore did not result in the respondent Corporation getting the best possible price for the mortgaged property.

8. We have to bear in mind that the respondent Corporation is a statutory body governed by the provisions of the SFC Act. In the context of Section 29 of the SFC Act, which deals with the power of a Financial Corporation to take possession of a defaulting unit and transfer by sale for realisation of amounts due to the Corporation, the Supreme Court in



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**Mahesh Chandra v. Regional Manager, U.P. Finanacial Corporation and Others - [(1993) 2 SCC 279]** observed as follows as regards the manner in which the power ought to be exercised:

“15. Section 29 confers very wide power of the Corporation to ensure prompt payment by arming it with effective measures to realise the arrears. But the simplicity of the language is not an index of the enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far - reaching repercussion has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become *bona fide* and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is *mala fide* if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. Power under Section 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably. Default in payment of loan may attract Section 29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any guideline framed by the Corporation was placed, yet the basic philosophy enshrined in Section 24 has to be kept in mind. Rationale of action and motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid.....

16. Equally sub-section (4) of Section 29 treated the Corporation "to be a trustee" of the debtor or person claiming title through him. It saddles the Corporation or the officer concerned with inbuilt duties, responsibilities and obligation towards the debtor in dealing with the property and entails him to act as a prudent and reasonable man standing in the shoes of the owner. According to Prof. Issac, a noted author on Trusts, trusteeship has become a readily available tool for everyday purpose of organisation financing, risk shifting, credit operations, settling disputes and liquidation of business affairs. Maitland, the other renowned writer on Equity, observed that one of the exploits of equity; the largest and the most important, is the innovation and development of the trust. Thus, trust has been and is being applied for all purposes mentioned by Prof. Issac and many others as device to accomplish different purposes. Trusteeship is an institution of elasticity and generality. The broad base of the concept of property or its management vested in one person and obligation imposed for its enjoyment by others is accepted in Hindu jurisprudence. Therefore, when the property of the debtor stands transferred to the Corporation for management or possession thereof which includes right to sell or further mortgage etc., the Corporation or its officers or employees stands in the shoes of the debtor as trustee and the property *cestue que trust*. In N. Suryanarayan Iyer's *Indian Trust Act*, (3<sup>rd</sup> edn., 1987 at page 275) in Section 37 it is stated that, "Where the trustee is empowered to sell any trust property... by public auction or private contract and either at one time or at several times..." the duty of trustee is to obtain the best price. He should, therefore, use reasonable diligence in inviting competition to that



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end. Where a contract of sale has been entered into bona fide by a trustee the court will not allow it to be rescinded or invalidated because another purchaser comes forward with a higher price. It would, however, be improper for the trustee to contract in circumstances of haste and improvidence. Where in a trust for sale and payment of creditors the trustee sold at a gross under valuation showing a preference to one of the creditors, he was held guilty of breach of trust. If the purchaser is privy to the fraud the property itself can be recovered from him.

**17.** The sale may be either by public auction or private contract. In either case the trustee has to keep in mind that he must obtain the most advantageous price. Kerr on Receivers (17<sup>th</sup> Edition, page 208) states that "a receiver, however, is not expected any more than a trustee or an executor to take more care of their property entrusted to him than he would have as a reasonably prudent man of business". In Halsbury's Law of England, (4<sup>th</sup> Edition; Vol. 39 para 919) it is stated that the "receiver will be compelled to show that he has acted with perfect regularity and has used such degree of prudence as would be expected from a private individual in relation to his own affairs". The trustee or a receiver is, therefore, duty bound to protect and preserve the property in his possession and the standard of conduct expected of him, in dealing with the property or sale thereof, is as a prudent owner would exercise in dealing with his own property or estate. The degree of care expected of him in handling property taken possession of is measured by the degree of care expected of a person acting as trustee, executors or assignees. The object and endeavour should also be to secure maximum advantage or price in a sale of the property in lots or as whole, as exigencies warrant.

**18.** The Corporation or its officers or servants as trustee are bound to exercise their power in good faith in selling or dealing with the property of the debtor as an ordinary prudent man would exercise in the management of his own affairs to preserve and protect his own estate. Therefore, the acts of the officer or servant of the corporation should be reasonable, just and fair which must meet the eye and the offer accepted must be competitive and every attempt should be made to secure as maximum price as possible to liquidate the liabilities incurred by the industrial concern or the debtor under the Act."

9. Although the guidelines issued by the Supreme Court in **Mahesh Chandra (supra)** were found to have been too widely expressed in regard to the extent of indulgence shown to chronic defaulters therein, and the decision in **Mahesh Chandra (supra)** was overruled to the extent the guidelines issued thereunder were contrary to the letter and intent of Section 29 of the SFC Act, the afore extracted paragraphs from the said judgment that outline the statutory object of Section 29 of the SFC Act and the role that is expected to be played by the Corporation concerned while exercising its powers under Section 29 remains good law. In fact, two recent judgments of the Supreme Court in



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**Om Sakthi Sekar v. V. Sukumar - [2026 INSC 237 = 2026 KHC OnLine 7124]** and **M.R. Vasumathi v. The Authorized Officer & Ors. - [2026 INSC 633]** that deal with the aspect of fairness of the process leading to fixation of reserve price and sale of assets of a borrower under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, reiterate the above position. In **Om Sakthi Sekar's case [supra]**, while repelling a contention that once an auction sale was confirmed and the purchaser was a *bona fide* third party bidder, the sale ought not to be disturbed except in cases of fraud or material irregularity, the court observed as follows:

“15. While there can be no quarrel with the settled proposition that the rights of a *bona fide* auction purchaser deserve due protection and that confirmed court sales should not ordinarily be interfered with, it is equally well established that such protection is not absolute. Where credible issues are raised regarding the adequacy of valuation or the fairness of the process leading to the fixation of the reserve price, the supervisory jurisdiction of the Court may be invoked to ensure that the recovery proceedings have been conducted in a manner that secures the best possible value of the property. The objective of recovery proceedings is not merely to complete the sale but to realise the maximum value of the secured asset so as to balance the interests of the creditor and the borrower. In this regard, reference may be made to the decision of this Court in **Rajiv Kumar Jindal v. BCI Staff Welfare Association**, (2023 (238) Comp Cas 227 : 2023 SCC OnLine SC 507) wherein, it was observed that the purpose of an auction is to obtain the most remunerative price for the property by affording an opportunity to intending purchasers to participate in a process of competitive bidding, thereby ensuring transparency and fairness in the sale. The Court further emphasized that if the process of competitive bidding is curtailed or compromised, the possibility of underbidding or securing an inadequate price cannot be ruled out. In such circumstances, the court is required to exercise its discretion with circumspection so as to safeguard the legitimate interests involved in the sale process. The following paragraphs are apposite:

“24. *The object of the auction is to secure optimum realisable value of the property by giving opportunity to the potential buyers facing competitive bids either in open or closed format. The terms “auction” or “bid” are inter-related as both give the idea of selling the product to the public. Bidding involves the process where a person offers a price which is known as a bid. The process of bidding takes place in a situation where large number of people show their willingness to buy a particular product or a service and bidding in a sealed envelope is often used by various companies, industries and small businesses for assessing the needs of the public at large. On the other hand, auction is the process that involves buying and selling goods and services by offering them for bids, taking*



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*bids and selling the item to the highest bidder and that is possible if there is a competitive bidding between the bidders.*

*25. The purpose of auction (open or close format) is to get the most remunerative price and giving opportunity to the intending bidders to participate and fetch higher realizable value of the property. If that path is cut down or closed, the possibility of fraud or to secure inadequate price or underbidding would loom large. In the given circumstances, it is the duty of the court to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case.*

*26. The object of auction has been considered by this court in Lakshmanasami Gounder v. C.I.T. Selvamani as under:-  
“...The object of the sale is to secure the maximum price and to avoid arbitrariness in the procedure adopted before sale and to prevent underhand dealings in effecting sale and purchase of the debtor's property. Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities or the sale officers who should act fairly and objectively. Their action should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the debtor. . .”*

10. Similarly in **Vasumathi [supra]**, while stressing on the need to strictly comply with the statutory ordained time limit while disposing the secured assets of a borrower by sale at an auction, it was observed as follows:

**“35.** The DRT, the DRAT and the High Court appear to have proceeded on a broader premise of consideration of delay, conduct of the borrower, and the perceived equities in favour of the auction purchaser. Equally, it is true that the record bears out that no concrete steps were ultimately taken by the appellant, who is the daughter of the deceased guarantor, to liquidate the outstanding dues and that earlier attempts at settlement did not come to fruition. However, in our considered opinion, the failure to repay without being informed of an extension being granted to the auction purchaser, by itself, cannot validate proceedings that are otherwise vitiated in law.

**36.** While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny.”

11. It is against the backdrop of the said decisions that we have to scrutinize the actions of the respondent Corporation in the instant case,



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especially in the conduct of the e-auction sale. The e-auction notice was published on the website of the respondent Corporation on 24.02.2021 notifying the e-auction date as 12.03.2021. In the said notice, produced as Ext.P5 in the writ petition, the reserve price of the mortgage property was shown as Rs.9,15,42,000/- and the total liability of the borrower to the respondent Corporation was shown as Rs.9,56,51,212/- as on 23.02.2021. Clauses 6 and 7 of the General Conditions notified are relevant and read as follows:

“6. Once an e-sale/auction is confirmed the tenderer or the party in whose favour the sale is decided shall remit a minimum of 25% (Twenty five percent) of the e-sale value or amount so specified/agreed, upon with the Corporation, within 7 (seven) days of the confirmation or on the date so specified in the auto mail/SMS of confirmation. E M D will be adjusted against this amount. If the successful e-tenderer/e-bidder fails to make the payment as aforesaid and take delivery of the properties involved, the auto mail/SMS of confirmation shall stand revoked automatically and the E M D shall stand forfeited. Similarly if after making the advance as prescribed, the bidder fails to make further payment get the deal settled, the advance so paid shall stand forfeited. The Corporation will then be free to retender and/or re-auction the industrial concern or part thereof or carry on negotiation at the risk of the e-tenderer and for any loss or damages caused in this account shall be recoverable from the e-tenderor/e-bidder/parties.

7. The balance 75% (Seventy five percent) of the bid amount will be deposited by the party within 30 (thirty) days of the confirmation. The unit/property/machinery/vehicle will be handed over only after the execution of the sale deed/sale note in favour of the bidder/e-tenderor or his nominee. In the case deferred payment with approval of the Corporation in deserving cases the unit be handed over only on sufficient collateral security and on the security of the industrial site sold.”

12. In the e-auction conducted on 12.03.2021, only two bidders namely respondents 11 and 12 participated and the 11<sup>th</sup> respondent was declared the highest bidder at Rs.9.18 crores. On the same day, i.e., on 12.03.2021, he paid Rs.46 lakhs towards the EMD as well. Thereafter on 20.03.2021, an amount of Rs.183.50 lakhs representing 25% of the sale consideration was paid and the 11<sup>th</sup> respondent requested the respondent Corporation to execute the sale deed in the name of respondents 7 to 10.



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It must at once be noticed that the payment of 25% of the sale consideration was not on the seventh day after confirmation of sale which would have been 19.03.2021 but on the eighth day, namely, 20.03.2021. The payment was also not made by the 11<sup>th</sup> respondent in whose favour the sale was confirmed. This is because, going by clause 6 and 7, the “party” who is to make payment is the “tenderer or the party in whose favour the sale is decided”. Therefore, technically speaking no amount was paid by the “tenderer or the party in whose favour the sale is decided” other than the amount deposited as EMD. Further, the request for executing the sale deed in favour of respondents 7 to 10 was also made prior to payment of the balance 75% of the sale consideration. This was in contravention of clause 7 of the General Conditions extracted above. It is clear therefore that the successful bidder in whose favour the sale was confirmed, left the scene immediately after the confirmation and was not part of the further steps for finalisation of the sale.

13. What happened thereafter is even more intriguing. The respondent Corporation, that was statutorily obliged to obtain the best price for the property, advanced a term loan of Rs.5 crore to respondents 7 to 10 for the purpose of purchasing the property, the sale of which was confirmed in favour of the 11<sup>th</sup> respondent. Responding to a specific query posed to the learned senior counsel for the respondent Corporation, their actions were justified as being in compliance with a Circular dated 23.03.2021 that purportedly empowered the Corporation to do so. The said Circular reads as follows:



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**KERALA FINANCIAL CORPORATION  
HEAD OFFICE, THIRUVANANTHAPURAM**

Credit	Circular No. KFC/CIR 81/CR 47/2020-21	Date	23.03.2021
	Guidelines / Operational Procedures for processing loans for the acquisition of existing concerns / units sold by the Corporation	Page	1/4

- Ref: 1. Circular No. KFC/CIR 07/CR 03/2019-20 dated 24.05.2019  
2. Circular No. KFC/CIR 29/CR 15/2020-21 dated 10.08.2020

1. The Credit Manual of the Corporation, circulated vide first reference, inter alia, covers "Acquisition of existing concerns/ units taken over by KFC" as an eligible activity for finance by the Corporation. The Minimum Promoters' Contribution specified as per the Manual is 50% of depreciated value of plant & machinery and 25% for the value of land and building of the enterprise being acquired. It is also specified that the value should be limited to the document value plus documentation charges or the value fixed by the Corporation, whichever is lower. In such cases, the general condition that the land value shall be limited to 50% of the promoters' contribution shall not be applicable.

2. BOs have sought clarifications on the procedures to be adopted while sanctioning loans to the purchaser of assets sold by the Corporation under SFCs Act 1951/ SARFAESI Act 2002. Considering this, it has been decided to issue the following revised detailed guidelines/ operational procedures:

Scheme under which the loan is to be processed	:	All loans are to be processed under the 'Scheme No.1, Scheme for Term Loan for Industrial Activities' irrespective of its sector.
Purpose of the loan	:	To purchase the assets sold by the Corporation under SFCs Act 1951/ SARFAESI Act 2002
Eligible Promoters	:	-All eligible entities as per the Credit Policy. -The CIBIL Credit Vision score of all the promoters should be 650 or above. -The promoters should have been issued with the Sale Confirmation Letter by the Corporation as on date of sanctioning the loan.
Project Cost	:	The Sale Confirmation amount & documentation charges plus DSRA portion. In such cases, the general condition that the land value shall be limited to 50% of the promoters' contribution shall not be applicable. No other charge/ expense (like, processing charge/interest during construction/ etc. shall be included in the project cost).
Minimum Promoters Contribution (PC)	:	50% of the Sale Confirmation amount & documentation charges. The PC has to be brought in upfront.
Maximum Assistance	:	Up to 60% of the Sale Confirmation amount & documentation charges, subject to the condition that minimum 15% of the loan component earmarked for sale consideration is retained as DSRA.
Processing fee/ Upfront fee	:	As per the Circular No. KFC/CIR 18/CR 07/2020-21 dated 08.07.2020 for other income.
Internal Credit rating	:	Not insisted.
Rate of Interest	:	Shall be 12%. No rebate is allowed in this scheme. The rate is linked to the Base rate of the Corporation.
Security Coverage	:	-The asset being sold in "as is where is" condition. -Personal Guarantee of all the Promoters.



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	:	Since the loan amount is limited to 60% of the value of the asset, no additional/ interim security is insisted. The usual condition of insisting additional collateral for specific sectors shall not be applicable in this case.
Repayment of Loan	:	The moratorium on principal repayment shall be fixed as per the project requirements, subject to the condition that maximum period shall not exceed one year. The total repayment period also shall be fixed as per the project requirements, subject to the condition that the total period including moratorium shall not exceed five years. The residual life of the primary asset should also be taken into consideration while fixing the repayment period. However, for Flats/ Apartment projects, the maximum repayment period shall be limited to three years including one year moratorium.
Foreclosure Premium	:	No foreclosure premium, except in case of takeover of loans by Bank/ other FI.
Processing of the Loan	:	Loans shall be processed at BOs or Zones or by Head Office Appraisal Team as decided by the HO Credit Department.
Sanctioning Authority	:	Prior BRC clearance to be obtained. As per Credit Policy.
Disbursing Authority	:	Branch Head
Mode of Disbursement	:	Stamped receipt for the full sanctioned loan amount has to be obtained from the purchasers. A new loan account has to be created for the purchaser. The full loan amount has to be shown disbursed in the new loan account of the purchaser. Such portion of the loan amount, after retaining the DSRA, shall be adjusted in the loan account of the 'unit under sale'. No portion of the loan amount should be disbursed to the Bank account of the purchaser. The DSRA portion shall be kept in the excess head of the purchaser's loan account, which will be adjusted in the loan account by the CFS automatically as and when interest is due. Thereafter, the purchaser should repay the loan as per the schedule set.
Documents to be collected for processing the loan application	:	-Project report with proposed plan to repay the loan. -KYC/Biodata/Affidavit/copies of IT return statements/etc. of the promoters. -Verification of the background of the promoters through Customer Verification Points/ by Field Officer. -Any additional document as required by the Appraising Officer for processing the loan.
Other Points	:	-Symbolic deposit of title deeds kept with the Corporation to be executed by the proposed purchaser along with loan agreement. -Disbursement shall be initiated only after ensuring that the promoter has remitted the balance sale consideration in KFC account. -Branch Head has to discuss with the concerned Sub-Registrar Officer (SRO) for registering the sale agreement and the date of registration has to be fixed. -Details of KFC loan amount has to be mentioned in the sale agreement. -Branch Head has to be present in SRO while registering the loan agreement and the sale deed has to be collected directly by the Branch Head from SRO. -BO has to send letter to the Village Officer and liaison with the Village



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	<p>Officer to get the mutation done at the earliest.</p> <p>-Necessary letters have to be sent to the Secretary, Local Body with sale details.</p> <p>-Caveat petition to be filed in all cases.</p> <p>-For units located in Industrial Estates, Branch Head shall liaison with concerned Estate Manager/ GM, DIC as applicable.</p>									
Additional Sanction Conditions	<p>The purchaser shall undertake that balance costs for acquiring the asset, post-sale expenses, cost of renovation, etc. shall be met by him. The Corporation will not be under any obligation to provide financial assistance to meet such expenses.</p> <p>The promoter should agree to the condition that the Corporation will not give any legal/ technical guidance/ support on any matter relating to the sale of the property or its subsequent developments.</p> <p>Effecting Mutation of the purchased property shall be the responsibility of the promoter.</p> <p>KFC shall not be responsible for Non-generation of income from the project, litigations, attachments, etc. The promoter shall also undertake to service the loan from his/ her own sources irrespective of the fact that whether income is generated from the project. The corporation reserves right enforce recovery measures of the asset sold in case the promoter fails to service the loan as per the schedule or sanctioned conditions are not complied.</p>									
Stamp duty/ Registration Fees/ TDS	<p>Applicable stamp duty is 8% and registration fee is 2% of the sale confirmation amount.</p> <p>In case the sale confirmation amount of immovable property in excess of or equal to Rs.50 lakh, TDS of 0.75% (applicable till 31<sup>st</sup> March 2021) / 1% shall be deducted by the Buyer of the property at the time of making payment of sale as per Sec 194 IA of the Income Tax Act, 1961. Tax so deducted should be deposited by the buyer to the Government Account under KFC's PAN (AABCK1316M) and submit the Chellan to the Corporation.</p> <p>The accounting entry would be</p> <table style="margin-left: 40px;"> <tr> <td>Dr</td> <td>Bank Account</td> <td>xxx</td> </tr> <tr> <td>Dr.</td> <td>Income tax Deducted at Source</td> <td>xxx</td> </tr> <tr> <td>Cr.</td> <td>Gross recovery</td> <td>xxx</td> </tr> </table> <p>Stamp duty/ Registration Fees/ TDS are subject to revision and Officers shall verify the updates with the concerned departments.</p>	Dr	Bank Account	xxx	Dr.	Income tax Deducted at Source	xxx	Cr.	Gross recovery	xxx
Dr	Bank Account	xxx								
Dr.	Income tax Deducted at Source	xxx								
Cr.	Gross recovery	xxx								

3. The revised guidelines take immediate effect. Any practical difficulty shall be brought to the notice of the undersigned at the earliest.

Sd/-  
Chairman and Managing Director

Copy to:

CMD's Office  
ED  
GMs  
HODs  
ZMs/ CMs/ BMs

14. We are at a loss to understand how, in the face of Section 29 of the SFC Act, that obliges the respondent Corporation to act as a trustee



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of the mortgaged property with an obligation to try and obtain the best price for the property at an auction sale, it can have a scheme to finance an auction purchaser with a loan granted to him against the security of the very same property. We would have thought that any genuine attempt at obtaining the best price for a property that is up for sale cannot culminate in the identification of a purchaser who admittedly does not have the means to pay that price. Added to that, if the Financial Corporation that is obligated to obtain the best price for the property is seen to finance the purchaser, through the advance of a loan or otherwise, then the *bona fides* of the Financial Corporation would also become questionable. To make matters worse, we find that even the conditions laid out in the Circular were flouted while sanctioning the loan of Rs.5 crores in favour of respondents 7 to 10. Firstly, the Circular is unambiguous when it states that an eligible promoter has to be one who is issued with a sale confirmation letter by the Corporation as on the date of sanctioning of the loan. Here, it was the 11<sup>th</sup> respondent, who was issued with the sale confirmation letter whereas, the loan was sanctioned in favour of respondents 7 to 10. Secondly, although the Circular mandates that the disbursement of the loan shall be initiated only after ensuring that the promoter has remitted the balance sale consideration in the Corporation's account, there is no material on record to show that the 11<sup>th</sup> respondent, as the eligible promoter, made any payment to the respondent Corporation. Even assuming, as contended by the learned senior counsel for respondents 7 to 10, that they had made the necessary payment to the respondent Corporation for getting a release of the loan payments, the sale deed executed on 13.04.2021 shows that the



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adjustment of the loan amount sanctioned towards the sale consideration was only on that day, namely, on 13.04.2021. The payment of the balance sale consideration through the aforesaid adjustment was beyond the period of 30 days after the confirmation of the sale envisaged in Ext.P5 auction notice. Thus, not only was there a non-compliance with the conditions of sale with regard to payment of balance sale consideration to the respondent Corporation, the Corporation did not also comply with its own Circular while sanctioning the loan to persons who did not qualify to be eligible promoters under the Circular.

15. When, in addition to the above, we also find that the 9<sup>th</sup> respondent, who is one of the partners of the partnership Firm formed between respondents 7 to 10, is the son of the 12<sup>th</sup> respondent, who was the unsuccessful bidder in the e-auction sale, we cannot but view the entire exercise of sale carried out by the respondent Corporation as one that was in breach of its statutory obligation to display fairness and reasonableness in its actions as a trustee of the mortgaged property of the petitioner/appellant-borrower.

16. In the result, we allow this Writ Appeal, by setting aside the impugned judgment of the learned Single Judge to the extent it upholds the sale of the secured asset to respondents 7 to 10, and allow the writ petition to that extent. The respondent Corporation shall proceed to obtain a fresh valuation report in relation to the property and fix the reserve price therefor prior to holding a fresh auction sale within a period of six months from the date of receipt of a copy of this judgment.



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Before parting with this case, we might observe that we are mindful of the limits of our jurisdiction and of the settled legal position that courts will not ordinarily interfere with or unsettle concluded sale transactions of State Financial Corporations in exercise of the power of judicial review under Article 226 of the Constitution of India. However, when we find the actions of the respondent Corporation to be not merely falling short of the standards required to be adhered to by a State Financial Corporation under the SFC Act, but also in breach of its obligations to act fairly and as a trustee of mortgaged property as envisaged under the statutory provisions, we cannot shut our eyes to the apparent injustice meted out to the appellant - borrower. This is more so when it is the admitted case before us that the sale in question was conducted during a period when the realisable market value of the property had fallen to substantially lower levels on account of the Covid pandemic situation.

The Writ Appeal is allowed as above. No costs.

**Sd/-**  
**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

**Sd/-**  
**PREETA A.K.**  
**JUDGE**

**prp/**



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APPENDIX OF W.A NO.340 OF 2026

PETITIONER'S ANNEXURES:

ANNEXURE 1 COPY WRIT PETITION WITH ANNEXURES AND ENGLISH TRANSLATION  
ANNEXURE 2 COUNTER AFFIDAVIT FILED BY 4TH RESPONDENT AND ENGLISH TRANSLATION  
ANNEXURE 3 STATEMENT FILED BY 4TH RESPONDENT

RESPONDENTS ANNEXURES:

EXHIBIT R4 (H) TRUE COPY OF THE LETTER DT. 28.10.2020 ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT.  
EXHIBIT R4 (I) TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 22.12.2020 RECEIVED BY THE PETITIONER.  
EXHIBIT R4 (J) TRUE DOWNLOADED COPY OF THE FINANCIAL STATEEMNT FOR THE FINANCIAL YEAR 2018-19 UPLOADED BY THE COMPANY IN THE PORTAL OF MINISTRY OF COMPANY AFFAIRS.  
EXHIBIT R4 (K) TRUE COPY OF THE SALE NOTIFICATION PUBLISHED IN THE HINDU DATED 23.01.2021.  
EXHIBIT R4 (L) TRUE COPY OF THE SALE NOTIFICATION PUBLISHED IN THE MATHRUBHUMI DATED 23.01.2021.  
EXHIBIT R4 (M) TRUE COPY OF HTE E-AUCTION NOTIFICATION DATED 18.01.2021 PUBLISHED IN THE WEBSITE OF THE CORPORATION.  
EXHIBIT R4 (N) TRUE COPY OF THE ORDER DATED 15.12.2021 IN W.P.(C).NO.11597 OF 2021 OF THIS HON'BLE COURT.  
EXHIBIT R4 (O) TRUE COPY OF THE JUDGMENT DATED 6.10.2021 IN WPC.8708 OF 2021.  
EXHIBIT R4 (P) TRUE COPY OF THE JUDGMENT DATED 29.10.2021 IN R.P.741 OF 2021 IN WPC 8708 OF 2021.  
ANNEXURE R7 (a) A COPY OF THE PARTNERSHIP DEED DATED 19TH DAYH OF MARCH 2021.

//TRUE COPY//

P.S. TO JUDGE