

REVISIONAL CIVIL

Before D. K. Mahajan and A. D. Koshal, JJ.

PARMA NAND,—Petitioner.

versus

SARUP SINGH,—Respondent

Civil Revision No. 243 of 1968

December 18, 1969

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Displaced Persons (Compensation and Rehabilitation) Act (XLIX of 1954)—Section 29—Property forming part of compensation pool sold in an auction—Full purchase money paid subsequent thereto—Transfer of the property—Whether takes effect from the date of the auction or the date of the payment—Auction purchaser—Whether can file application for ejection of the tenant before such payment.*

*Held*, that the transfer of a property forming part of compensation pool does not take effect till the payment in full of the price by the auction-purchaser. If such payment is made before the date of the confirmation of the sale, such date may well be the one from which the transfer takes effect but if price is not paid in full the date of the auction or the date of the acceptance of the bid would not be the date from which the transfer takes effect. Thus as soon as the auction-purchaser pays the price, the title in the property purchased by him stands transferred to him and thereafter he can file an application under section 13 of the East Punjab Urban Rent Restriction Act against the tenants occupying the property, because of the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Till the price is paid, the title in the shop remains in the Central Government and the provisions of section 29 cannot be relied upon by the auction-purchaser in support of such an application.

(Paras 11 and 16)

*Case referred by Hon'ble Mr. Justice D. K. Mahajan, dated the 29th October, 1968, to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice A. D. Koshal, on 18th December, 1969.*

*Case under Section 15 of the East Punjab Urban Rent Restriction Act for revision of the order of Shri Udham Singh, Appellate Authority (District Judge), Patiala, dated the 29th January, 1968, reversing that of Shri Hardev, Rent Controller, Patiala (D), dated the 17th August, 1967, rejecting the cross-objections and accepting the appeal with costs with a direction that the respondent Parma Nand be evicted from the suit premises.*

AJIT SINGH SARHADI, SENIOR ADVOCATE, WITH N. S. BHATIA, ADVOCATE, for the petitioner.

NARINDER SINGH AND LAJPAT RAI PALLI, ADVOCATES, for the respondent.

### JUDGEMENT

Koshal, J.—A shop designated as No. 1254 and located in Samana town which belonged to the compensation pool was auctioned by the District Rent and Managing Officer, Patiala, on the 9th of June, 1961. The highest bid, which was for Rs. 2200/- was made by the respondent to whom the District Rent and Managing Officer issued a letter dated July 13, 1961 (Exhibit A/2) informing him that his bid had been accepted and that after making allowance for the amount of Rs. 220/- received as earnest money a sum of Rs. 1,980/- remained due from him which he was required to pay in the form of deposit in a Government treasury or by adjustment of any admissible claims, within 15 days of the receipt of the letter, which further stated that if the respondent failed to pay the balance of the purchase price within the time stipulated the earnest money already paid by him would stand forfeited under rule 90(14) of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules), and that the respondent would have no claim to the property. On the 28th of August, 1961, the petitioner who had been for years in occupation of the property in dispute as an allottee under the Custodian of Evacuee Property sent a letter (Exhibit A.W.4/A) to the respondent stating:—

... ..  
 Shop No. 1254 is with me on rent from the Custodian at Rs. 5/- per mensem, of which I have been regularly paying rent to the Custodian against receipts which I possess. Now it is learnt that the said shop has been purchased by you in public auction from the Custodian and that you have become owner of the shop in place of the Custodian. So I am hereby writing to you that from the date from which the shop has been transferred to you, you have rent from me at the rate of Rs. 5/- per mensem after going into an account with me; and if you so wish you may have a rent deed also executed. I have no objection in paying the rent and writing out the rent note but this fact would be stated by you as to how much rent you are entitled to.”

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(2) No reply was sent to this letter by the respondent who in the meantime appears to have associated with himself a person named Shrimati Devi Bai who had a claim payable by the Rehabilitation Department. On the 17th of October, (1961 ?) the District Rent and Managing Officer addressed letter Exhibit A. 3 to the Settlement Officer, Ambala, asking him to take steps to have an amount of Rs. 111 out of the claim of Shrimati Devi Bai adjusted against the purchase price payable by the respondent. On the 6th of February, 1962, the District Rent and Managing Officer issued another letter (Exhibit A/1) to the respondent informing him :—

“As already intimated your bid amounting to Rs. 2,200 for the property mentioned above has been accepted. As you requested for the adjustment of net compensation admissible against the compensation applications noted above and there is likely to be some delay in finalising them it has been decided to transfer to you the possession of the said property on a provisional basis on the strength of the copies of the claims, assessment orders, affidavits and other documents furnished by you and your associates.

As the property is already in the occupation of tenants they will be entitled to the protection of section 29 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, if they fulfil the conditions prescribed in the Government of India, Ministry of Rehabilitation Notification No. F. 51(14)/S. 11/55, dated the 27th September, 1955, as amended from time to time. Meanwhile, you may exercise full power and control over the management of the said property, to wit :—

- (i) take all steps authorised by law for realising the rent and any local taxes or dues payable by tenants.
- (ii) to make such repairs as are necessary for the security of the building.”

(3) On 14th of April, 1966, the respondent made an application under section 13 of the East Punjab Urban Rent Restriction Act praying for the ejection from the said shop of the petitioner on the ground that the latter, who was a tenant under the respondent, had fallen in arrears with regard to the rent and that the

shop which was in a dilapidated condition was required by the respondent for reconstruction. The petitioner took the stand that there was no relationship of landlord and tenant between the parties. However, he paid a sum of Rs. 255 before the Controller to the respondent who accepted the same under protest. This amount included Rs. 211.20 on account of rent at the rate of Rs. 5 per mensem from February 6, 1962, to May 6, 1966, Rs. 23.80 towards interest and Rs. 20 for expenses of the litigation. He also took up a plea that he was not liable to eviction from the shop in dispute by reason of any requirement thereof by the respondent for reconstruction. On the pleadings of the parties the Controller framed the following issues :—

- (1) Whether the tender of rent by the respondent is legal ?  
O.P.R.
- (2) Whether the relationship of landlord and tenant exists between the parties and, if so, to what effect ? O.P.A.
- (3) Whether the respondent is liable to eviction on grounds mentioned in paras 5 to 7 of the petition ? O.P.A.
- (4) Relief.

(4) The learned Controller held that in view of letters Exhibits A/1 and A/2 the respondent became entitled to realize rent from the petitioner with effect from 9th of June, 1961, and that the tender of Rs. 255 made to the latter was not such as to allow the petitioner to escape the liability for eviction resulting from the non-payment of the rent. This is how he decided issue No. 1. However, he found issue No. 2 against the respondent in view of the fact that no sale certificate had been issued in favour of the respondent. In this connection he relied upon *M/s. Bombay Salt and Chemical Industries v. L.J. Johnson and others* (1) and *Messrs. J. B. Mangharam & Co., Hyderabad v. Shri Parshotam Sarup, Deputy Chief Settlement Commissioner, New Delhi, and others* (2). The decision on issue No. 3 also went against the respondent. In the result, therefore, the application of the respondent was dismissed on the 17th of August, 1967.

(5) The matter was reagitated by the respondent in an appeal which was decided on 29th of January, 1968, by the Appellate

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- (1) A.I.R. 1958 S.C. 289.
  - (2) 1962 P.L.R. 922.

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Authority, Patiala, before whom the respondent produced a certified copy of the sale certificate which bears the date 27th of September, 1966, and was delivered to the respondent during the pendency of the appeal. The learned Appellate Authority admitted the copy in evidence under the provisions of Rule 27 of Order 41 of the Code of Civil Procedure and on the basis of its contents held that the relationship of the landlord and tenant had come into being between the parties. In this connection he relied upon *Bishan Paul v. Mothu Ram* (3), for the proposition that the respondent had become owner of the suit premises from the date he became an auction-purchaser on account of the acceptance of his highest bid." The learned Appellate Authority further held, however :

"The provisional possession of the suit property under deed Exhibit A/1 was given to the appellant with effect from 9th of June, 1961. The appellant was made entitled to recover rent from Parma Nand with effect from 9th of June, 1961

Under the deed of transfer Exhibit A/1 Sarup Singh was given a right to recover rent of the premises No. 1254 from Parma Nand with effect from 9th of June, 1961. This fact is also proved from letter Exhibit A/2."

(6) A contention raised on behalf of the petitioner that he had already paid rent for the period from 9th of June, 1961 to 5th of February, 1962, to the District Rent and Managing Officer was negated on a discussion of the evidence produced in that behalf by the parties and, in view of his findings abovementioned, the learned Appellate Authority accepted the appeal and directed the eviction of the petitioner from the shop in dispute. It is against the order passed by the learned Appellate Authority that the petitioner has come up in revision to this Court.

(7) When the petition for revision first came up for hearing before my learned brother Mahajan, J. sitting in Single Bench, reliance on behalf of the petitioner was placed on *Bahali Ram v. Chuni Lal* (4), decided by Capoor, J. That decision proceeds on the ground that before a sale certificate is issued to an auction-purchaser who purchases property belonging to the compensation pool

(3) A.I.R. 1965 S.C. 1994.

(4) C.R. 331 of 1967 decided on 5th January, 1968.

under the provisions of the Rules, a Controller has no jurisdiction to entertain his application for ejection of the persons occupying the property purchased as allottees under the District Rent and Managing Officer. The learned counsel for the respondent however relied upon *Harkishan Lal v. Bansi Lal and others* (5), in which Khosla, C.J., held that the sale certificate when issued related back to the date of the confirmation of sale. In view of this apparent conflict of authority, my learned brother thought it advisable that the point involved be settled by a larger Bench and that is how the case has been placed before us for decision.

The first contention raised before us by learned counsel for the petitioner was that the relationship of landlord and tenant never came into existence between the parties before the 6th of February, 1962 (when letter Exhibit A/1 was issued) and that therefore the order of eviction passed by the Appellate Authority on the ground of non-payment of arrears of rent for the period from 9th June, 1961, to 5th of February, 1962, was without jurisdiction. This contention appears to me to be unexceptionable for the reasons given below.

(8) As has already been stated, the learned Appellate Authority found that under letters Exhibits A/1 and A/2 provisional possession of the shop in dispute was delivered to the respondent with effect from the 9th of June, 1961, and that he was given the right to recover rent thereof also with effect from that date. This finding, in my opinion, is wholly erroneous and not at all warranted by the contents of the two documents last mentioned. In letter Exhibit A/2, which was earlier in point of time, all that was stated was that the respondent's bid for Rs. 2,200 had been accepted and that he was required to take steps to pay the balance of Rs. 1,980 due from him within 15 days of the receipt of the letter. No reference at all to the date of auction is made in the body of the letter although a note to the effect "1254 Machi Hatta, Samana, on 9th June, 1961" appears in pencil at a place where the subject covered by the letter is mentioned. That note obviously means that the auction at which the bid was given took place on the 9th of June, 1961. The letter makes no reference to delivery of possession or to the transfer of any right to recover any rent in respect of the shop in dispute. In the letter Exhibit A/1, which is dated 6th February, 1962, the date 9th June, 1961, does not appear at all. By virtue of this letter possession was no doubt transferred to the

(5) 1962 P.L.R. 55.

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respondent on a provisional basis and he was also given the right to realise rent, etc., from the petitioner but then the date from which the delivery of possession or the right to recover rent was to take effect was left unstated and no rule of construction has been brought to our notice a recourse to which would give retrospective operation to the contents of the letter. The learned Appellate Authority therefore (as also the learned Controller) misread the two letters and his finding about the effect of their contents must be held to be unwarranted and is reversed. Those letters must be held to mean what they state, i.e., that the bid given by the respondent at the auction was accepted on the 13th of July, 1961 subject to the payment by him of Rs. 1,980 and that the possession of the property was provisionally transferred to him on the 6th of February, 1962, with a right to realise rent pertaining thereto with effect from that date.

(9) Having gone through the contents of the two letters just above discussed and finding that they did not mention the 9th of June, 1961, as the date from which the possession of the shop was delivered and the right to recover rent was transferred to the respondent, his learned counsel contended that the relationship of landlord and tenant had come into existence between the parties of law or, in any case, on the 28th of August, 1961, by reason of attornment on the part of the petitioner in favour of the respondent. Reliance has been placed by him in support of the first part of the contention on the provisions of section 29(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which are to the following effect:—

“Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under sub-section (2), which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer :—

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(10) It is urged that the shop stood transferred to the petitioner with effect from the date of the auction or, in the alternative, from the date of the acceptance of the bid, these two dates being 9th June, 1961, and 13th of July, 1961, respectively. A reference is made to rules 90 and 92 of the Rules for this proposition which, however, has been authoritatively negatived in *Bishan Paul v. Mothu Ram* (3). After reproducing the relevant parts of Rules 90 and 92, their Lordships observed:—

“The rules which we have earlier reproduced show that the auction is held on a date fixed and is subject to a reserve price which is confidential. The officer conducting the sale declares at the fall of hammer who is the highest bidder. The highest bid is subject to the approval of the Settlement Commissioner or an officer appointed by him. A period of seven days must elapse before the bid is approved and there is also a limitation of seven days from the acceptance of the bid for making an application to set aside the sale. If the bid is approved and if no application meanwhile for setting aside the sale is made, the highest bidder is recognised as the auction purchaser and he is required to produce a treasury challan in respect of the balance of the purchase money within a period of fifteen days (which period may be extended without limit of time) before the Settlement Commissioner or the officer appointed by him. When the full purchase price is paid a certificate issues in Form No. XXII and is sent to the Sub-Registrar for registration. If the balance of the price is not paid, the amount of advance in deposit is forfeited and the auction purchaser has no claim to the property.

The passing of title thus presupposes the payment of price in full and the question is at what stage this takes place. Obviously, there are several distinct stages in the sale of property. These are : (a) the fall of the hammer and the declaration of the highest bid; (b) the approval of the highest bid by the Settlement Commissioner or officer appointed by him; (c) payment of the full price after approval of the highest bid; (d) grant of certificate; and (e) registration of the certificate.

The first and last in this series, namely, the fall of the hammer and the registration of the certificate are not critical



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dates for this purpose and they have not been suggested as the starting point of title. It is also clear that till payment of full price title is in abeyance for the rules themselves say that if the price is not paid the auction purchaser has no claim to the property."

And again :

"It seems to us that the matter must be considered on general principles. In this case the highest bid was of the respondent and he paid the full price before the sale in his favour was confirmed. The sale certificate though issued later, mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate reproduced in *Jaimal's case* (6). No doubt till the price is paid in full there is no claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him. There may conceivably be a great deal of time spent before the certificate is granted. In this case the tenant was told to attorn from October 3, 1956, because nothing remained to be done except the ministerial acts of issuing the certificate and getting it registered. Therefore, so far as title was concerned, it must be deemed to have passed and the certificate must relate back to the date when the sale became absolute."

(11) It is quite clear from these observations that the transfer of a property forming part of compensation pool does not take effect till the payment in full of the price by the auction-purchaser. If such payment is made before the date of the confirmation of the sale, such date may well be the one from which the transfer takes effect but if the price is not paid in full the date of the auction or

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(6) 66 P.L.R. 99—A.I.R. 1964 Pb. 99.

the date of the acceptance of the bid would not be the date from which the transfer takes effect.

(12) *Bishan Paul v. Mothu Ram* (3) was followed by their Lordships of the Supreme Court in *Shiv Nath etc. v. Shri Mela Ram, etc.* (6), a remark in which to the following effect :—

“\* \* \* \* \*

The decision of this Court in *Bishan Paul's* (3) case makes it clear that the title to the property related back to the date when it was sold in auction to the respondent”

is sought to be interpreted on behalf of the respondent as meaning that the dictum in *Bishan Paul's* (3) case was not to be construed as having any relation to the payment of the full price by the auction purchaser but laid down that the date of the auction was the date of the sale. This interpretation of the words “sold in auction” occurring in the remark above quoted appears to me to be wholly unjustified. While deciding *Shiv Nath etc. v. Mela Ram etc.* (7), their Lordships followed *Bishan Paul's* (3) case with approval and without making a single observation doubting its correctness in any of its aspects, and the words “the date when it was sold in auction” must be read in the context of the facts with which their Lordships were dealing and which may be stated. The disputed building which formed part of the compensation pool was sold by public auction on the 14th of November, 1958. The highest bid was made by Attar Lal, the respondent before their Lordships, who was accepted as the auction purchaser by the Managing Officer who, on the 19th of March, 1959, addressed a communication to each of the tenants occupying the building stating that it had been decided to give provisional possession of the building to Attar Lal and that the tenants were to pay rent to him and deal otherwise with him direct with effect from the 20th of February, 1959. Copies of the communication were received by Attar Lal, who filed suits for eviction of the tenants in August and September, 1959, in the Court of the Subordinate Judge, Delhi. His claim was that the tenants under the Custodian had, by operation of law, become tenants under him with effect from the 20th of February, 1959, because he was put in provisional possession of the building by the Managing Officer after the acceptance of his bid and the

(7) 1969 R.C.R. 494.

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tenants had been asked to pay rent to him with effect from the said date. It was stated that the Delhi Rent Control Act did not apply to the facts of the case as no sale certificate had been granted to Attar Lal and the building still vested in the Central Government. The trial Court dismissed the suits as not maintainable in view of the fact that Attar Lal had not yet been granted a sale certificate. He went up in appeal to the District Judge at Delhi before whom he took the plea that he had acquired substantive rights in the building which became still more definite when after payment of the purchase price in full the provisional possession of the property was handed over to him with intimation to the tenants. His appeals were dismissed by the District Judge but on appeals taken by him to the High Court of Punjab, a Division Bench held that the suits were properly tried by the Civil Court and that the building was not governed by the Delhi Rent Control Act. It was, thereafter, that the tenants took the matter to the Supreme Court. Their Lordships observed :

“Normally an auction purchaser does not acquire title to property before he pays the purchase money and obtains a document of transfer in his favour but the case of a transfer by the Managing Officer under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Rules thereunder stand on a different footing. In *Bishan Paul v. Mothu Ram* (3), where the facts were very similar, it was held by this Court that the title to the property passed to the auction purchaser on the date of confirmation of sale and was not in abeyance till the issue of the certificate and that the certificate when issued related back to the date when the sale became absolute. It was said :

The sale certificate, though issued later mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate . . . . . No doubt till the price is paid in full there is no

claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him.

“That reasoning holds good in the case before us and it must be held .....there being no dispute that the sale certificate was issued subsequently . . . . that the premises ceased to belong to the Government and there is no scope for the application of the proviso. As the Act applies to the premises, proceedings for eviction could only be taken under section 14 of the Act by presenting an application to the Controller.”

(13) It is clear from these observations that the transfer of title in favour of Attar Lal was held by their Lordships to be operative with effect from the 20th of February, 1959, because his case fell squarely within the ratio of the decision in *Bishan Paul's case* (3) by reason of the fact that provisional possession of the building was transferred to Attar Lal after he had paid the purchase price in full as claimed by him before the District Judge. It is further clear that the dispute before their Lordships was confined to the question as to whether an auction purchaser in whose favour provisional possession of the property had been transferred after payment by him of the purchase price in full could be regarded as the landlord of the tenants inducted into the property by the Managing Officer. No question arose in that case of the auction purchaser becoming the landlord prior to the payment by him of the purchase price or to the transfer of provisional possession to him. In these premises the words “the date when it was sold in auction” used by their Lordships in a latter part of the judgment would clearly mean the date of confirmation of the sale after payment of the full price and not the date on which the auction was held or any subsequent date preceding such payment and the contention raised on behalf of the respondent to the contrary must be repelled.

(14) In the present case the price had not been adjusted even by the 6th of February, 1962, as is mentioned in letter Exhibit A/1 itself. According to the *dictum* in *Bishan Paul's case* (3), therefore, the title in the shop remained in the Central Government till then

and the respondent cannot rely on the provisions of section 29 for the proposition that he became the landlord *qua* the petitioner at any time before that date.

(15) The matter may be looked upon from another angle. The sale certificate produced by the respondent specifically mentions the 6th day of February, 1962, as the date with effect from which the respondent was declared purchaser of the shop in dispute. In view of this it cannot be said that the Central Government ever transferred or intended to transfer title in the shop to the respondent before that date. In this connection the following observations of their Lordships of the Supreme Court in *Bishan Paul's case* (3) (supra) may be quoted with advantage:—

“It may be pointed out that a modified certificate is now issued. The new form of the certificate is reproduced *in extenso* in *Jaimal Singh's case* (6). It requires a mention that the purchaser ‘has been declared the purchaser of the said property with effect from day of .....19’. This leaves no room for any doubt, though it does show that a date other than the date of the certificate may now be filled in the blanks. The reason appears to be this that the balance of the purchase price may not be paid before the approval of the highest bid but much later and it may be necessary to put in the date of payment rather than the date of approval of the bid.”

These observations clinch the matter in favour of the petitioner as, according to them, the date of transfer mentioned in the sale certificate must be taken to be the date from which title in the property passes to the transferee.

Reliance on behalf of the petitioner was also placed on *Bahali Ram v. Chuni Lal* (4) (supra) in which, as already stated, Capoor, J. held that a Controller has no jurisdiction to entertain an application for the ejection of the persons occupying the property transferred from the compensation pool before the issuance of the sale certificate. This authority cannot be regarded as laying down good law in view of the dictum of their Lordships of the Supreme Court in *Bishan Paul's case* (3) which, however, it purports to follow and in which it was remarked :

“We agree generally with the observations of Tek Chand, J. in *Roshan Lal Goswami v. Gobind Ram* (8) that the

landlord's right to bring a suit for ejectment need not necessarily depend on the issuance of the certificate."

This is how Capoor, J. discussed this remark :

"In *Roshan Lal Goswami v. Gobind Ram and others* (8), the Division Bench of this Court held in a case under the Delhi and Ajmer Rent Control Act (XXXVIII of 1952) that when the sale certificate in respect of evacuee property has not issued in favour of the auction-purchaser, the ownership of the property still vests in the Central Government and the provisions of the Delhi and Ajmer Rent Control Act cannot be invoked by the landlord or the tenant. The law applicable until the issue of the sale certificate is the ordinary law. The principle applied in this case was approved in *Bishan Paul v. Mothu Ram* (3)."

(16) With all respect I must say that Capoor, J. appears to have been misled by the words "suit for ejectment" used by their Lordships, which he thought meant a suit in a civil Court as distinguished from an application for ejectment made under the East Punjab Urban Rent Restriction Act, although what their Lordships meant was an action in ejectment under that Act as is clear from the preceding part of their judgment which holds that as soon as the auction-purchaser pays the price, the title in the property purchased by him stands transferred to him and that thereafter he can file an application under section 13 of the East Punjab Urban Rent Restriction Act against the tenants occupying the property, because of the provisions of section 29 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. It is no doubt true that in *Roshan Lal Goswami v. Gobind Ram and others* (8), Tek Chand, J. used the words "suit for ejectment" in a restricted sense and in contradistinction to an application for ejectment under the provisions of section 13 aforesaid but then that was not the sense adopted by their Lordships of the Supreme Court in using those words. Were it otherwise, their Lordships' remark now under consideration would run counter to the rest of their judgment. It is to be noted that in *Roshan Lal Goswami's case* (8), Tek Chand, J. while holding, on an interpretation of *M/s. Bombay Salt and Chemical Industries v. L. J. Johnson and others* (1) (supra), that section 29 mentioned

(8) A.I.R. 1963 Pb. 532—1963 P.L.R. 852.

above could not be taken advantage of by an auction-purchaser till he had obtained the sale certificate (an interpretation which must be held to be erroneous in view of the dictum in *Bishan Paul's case* (3) also gave the finding that a relationship of landlord and tenant between the parties before him had come into existence on the basis of attornment by the occupier of the disputed premises in favour of the auction-purchaser and it was in connection with this finding that he observed that the landlord's right to bring a suit for ejectment need not necessarily depend on the issuance of the certificate. What he meant, in other words, was that if the relationship of landlord and tenant between the parties came into existence otherwise than by operation of the provisions of section 29 above mentioned, the auction-purchaser landlord would not be without a remedy against an occupier-tenant. In so far as the interpretation by Tek Chand, J. of *M/s. Bombay Salt and Chemical Industries case* (1) is concerned, it runs counter to and must be held to have been overruled by the dictum in *Bishan Paul's case* (3), and that interpretation could not be said to be the principle approved in the case last mentioned.

(17) The petitioner cannot, in this view of the matter, gain any advantage from *Bahali Ram v. Chuni Lal* (4) (supra).

(18) I shall now take up the question of attornment which is sought to be spelled out of the language of letter Exhibit A.W.4/A. As is clear from the contents of that letter, it merely stated that the petitioner was prepared to pay rent to the respondent and to execute a rent note in his favour but then these acts were to take effect from the date from which the respondent had become entitled to receive the rent. As it is the petitioner neither paid any rent nor executed a rent note in favour of the respondent at any time before the parties went into litigation and therefore it must be held that all that the letter contained was an offer of attornment (rather than attornment itself) from the date when the title in the shop passed to the respondent. The letter was clearly written on the assumption that the shop had been purchased by the respondent who had on that account become owner thereof. If the assumption was erroneous, then what was stated in pursuance of it cannot be said to have been meant. This also follows from the following specific demand made in the letter :

“But this fact is to be stated by you as to how much rent you are entitled to.”

(19) It is common ground between the parties that the respondent did not care even to acknowledge this letter and that no rent was, therefore, paid to him. The mere issuance of this letter in these circumstances cannot be said to amount to attornment on the part of the petitioner in favour of the respondent.

(20) In view of the conclusion arrived at above I hold that no relationship of landlord and tenant came into existence between the parties at any time before the 6th of February, 1962. Non-payment of rent for the period preceding that date being the sole ground on which the learned Appellate Authority ordered eviction of the petitioner from the shop in dispute, I set aside the impugned order and dismiss the application for eviction brought by the respondent before the Controller. There will, however, be no order as to costs.

D. K. MAHAJAN, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

CHARAN SINGH,—Petitioner.

*versus*

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 982 of 1969

December 22, 1969.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 2(b), 23(1), 24, 26(1) and (2) and 85—Punjab Co-operative Societies Rules, 1963—Rules 8 and 22—Model bye-laws 30(i) and 30(iv), providing for Assistant Registrar to be an ex-officio member and for co-option of two members by the managing committee—Whether ultra vires section 26 of the Act—Such co-option—Whether to be done by election by the general body and not by managing committee.*

*Held*, that section 26 of Punjab Co-operative Societies Act, 1961, does not purport to provide for the entire constitution of a committee of management of a co-operative society. All that sub-section (1) of section 26 appears to say is that so far as the matter of filling the elective seats on a committee is concerned, it would be subject to the following two conditions viz:—(1) No person would be eligible for such election unless he is a share-holder of the society; and (2) such a member must be elected in the manner prescribed by the rules framed under the Act. The plain and unambiguous language of section 26(1) cannot be construed in such a manner as to spell out of it a provision reserving all the seats on a