LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

SOHAN LAL ETC.—*Appellants.*

versus

CENTRAL GOVERNMENT ETC.—*Respondents.*

Letters Patent Appeal No. 63 of 1971
and Civil Misc. No. 1209 of 1971.

October 14, 1971.

Displaced Persons (Compensation and Rehabilitation) Act (XLV of 1954)—Sections 25, 26, 33 and 40—Code of Civil Procedure (Act No. V of 1908)—Sections 148 and 151—Rules for disposal of urban agricultural land not framed—Auction of such land on the basis of Press notes—Whether has any legal effect—Auction of evacuee property set aside and the property re-auctioned—Subsequent auction purchasers depositing 20 per cent of the bid—Previous auction purchaser filing revision petition under Section 33 for restoration of the previous auction—Subsequent auction purchasers—Whether interested parties and should be heard in the revision petition—Order of the Central Government under Section 33—Whether can be reviewed—Time for deposit of money fixed in such order—Whether can be enlarged under sections 148 or 151, Code of Civil Procedure.

Held, that an auction sale of evacuee urban agricultural land on the basis of the press-notes issued by the Central Government without framing the Rules under a statute is of no legal effect. (Para 5)

Held, that where an auction sale of evacuee property is set aside and the property is re-auctioned, it is true that by virtue of being highest bidders and depositing 20 per cent of the bid amount, the subsequent auction purchasers do not become transferees of the property, but under law it is not necessary that they should be the owners of the property and it is only then that they will be heard in the revision petition under Section 33 of Displaced Persons (Compensation and Rehabilitation) Act, 1954, filed by the previous auction purchaser praying for the restoration of the earlier auction in his favour. The principles of natural justice are attracted in favour of the subsequent auction purchasers because they are really interested in the property in dispute. They are adversely affected if the auction in favour of the previous auction purchaser is approved and confirmed, as by doing so, the auction in their favour will be of no effect and they will not be entitled to get the property. Hence in all fairness, the subsequent

auction purchasers must be heard by the Central Government in revision under section 33 of the Act, if the Government is inclined to accept the prayer of the previous auction purchaser for restoring the auction in his favour.

Held, that proceedings under section 33 of the Act are of quasi-judicial nature and the Officers exercising powers under that section cannot review their orders, unless power to do so is given to them by the statute itself. There is no inherent power of review and this power has to be given specifically by the statute under which they are functioning. Under section 25 of the Act, it is only the Settlement Officer, who has been given the power of review and that also in an order under section 5 of the Act. No other Officer has been conferred this power, under sub-section (1) of this section. Under sub-section (2), however, the power to correct clerical or arithmetical mistake or errors existing from any accidental slip or omission has been given to all the Officers and Authorities under the Act. Thus, the Central Government has not been entrusted with any power of review and the Officer acting for the Central Government has no jurisdiction to review his earlier order. **(Paras 15 & 16)**

Held, that reading of section 26 of the Act shows that section 148 of the Code of Civil Procedure has not been made applicable to the proceedings under the Act. The Central Government cannot, therefore, enlarge the time fixed in an order under section 33 of the Act. Such time can also not be enlarged under section 151 of the Code, because this section only deals with inherent power of the *Courts* and the officers acting under the Act are not Courts, as they derive their authority from the provisions of the statute under which they are functioning. Moreover section 151 does not itself give or clothe someone with any power. The power mentioned under this section inheres in a Court itself and all that this section states is that nothing in the Code will be deemed to limit or otherwise affect that inherent power to pass such orders as it may think necessary in the interest of justice or to prevent abuse of the process of the Court. A power of this kind does not inhere in any Tribunal or an Officer acting under the provisions of a particular statute. Whatever power an Officer wants to exercise must be given to him by the statute itself. (Paras 19 and 21)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice D. S. Tewatia passed in Civil Writ No. 621 of 1970 on 15th December, 1970.

J. N. Kaushal, Advocate with Ashok Bhan, Advocate, *for the Appellants.*

B. S. Bindra, Advocate (on 14th & 15th September only) and Sarjit Singh, Advocate, *for Respondent No. 2.*

JUDGMENT

PANDIT, J.—The dispute in this case relates to evacuee urban agricultural land 4 Kanals 5 Marlas in area, comprised in plot No. 168, situate in Jullundur City. It was in possession of Sohan Lal and Sunder Lal, but according to Surinder Singh, they were neither allottees nor lessees of the said land. On 24th August, 1959, this property was put to auction by the Rehabilitation Authorities and Surinder Singh got it for Rs. 20,500. One-fifth of this amount was deposited by him at the time of the auction, but as he did not pay the balance, the sale in his favour was cancelled on that account by the Managing Officer. This order of the Managing Officer was, however, later on, reversed by the Chief Settlement Commissioner Shri K. L. Wason on 30th March, 1968, before whom the revision petition was filed by Surinder Singh. The Chief Settlement Commissioner allowed him to deposit the balance of the auction price up to 30th May, 1968. He again failed to pay this amount within time and it is said that the Chief Settlement Commissioner gave him further time for doing so till 30th August, 1968. As Surinder Singh did not make the deposit up till that date as well, the Settlement Officer on 2nd October, 1968, cancelled the auction sale conducted on 24th August, 1959. This property was again put to auction on 17th January, 1969. Sohan Lal and Sunder Lal then gave the highest bid of Rs. 27,025.20 per cent of this amount was deposited at the time of auction and the balance had to be paid later. In the meantime, Surinder Singh filed an appeal against the order, dated 2nd October, 1968, passed by the Settlement Officer cancelling the auction sale in his favour, before the Assistant Settlement Commissioner having the powers of Settlement Commissioner. The said Officer rejected the appeal on 2nd April, 1969. Surinder Singh then filed a revision petition before the Chief Settlement Commissioner and the same was dismissed by him on 13th August, 1969. A petition under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter called the Act, was then made by Surinder Singh, before the Central Government and it was accepted by Mr. Rajni Kant, who was delegated with the powers of the Central Government under the Act, on 6th February, 1970, and he granted 15 days time for depositing the balance of the auction price. In the concluding portion of his order, Mr. Rajni Kant observed:

> "I, therefore, allow the petition, set aside the impugned order and direct the petitioner to pay the balance of the sale

consideration of the said property in cash within 15 days from today, failing which the petition shall stand dismissed."

(2) It is common ground that Surinder Singh did not deposit the amount within the time allowed by Mr. Rajni Kant. It is said that this period was further extended till 28th February, 1970, on which date the amount was paid by Surinder Singh. Thereafter, in March, 1970, Sohan Lal and Surinder Lal filed a writ petition under Articles 226/227 of the Constitution challenging the order, dated 6th February, 1970, passed by Mr. Rajni Kant. This petition was dismissed by a learned Single Judge of this Court in December, 1970, and the present Letter Patent Appeal has been directed against that order.

(3) The first contention raised by the learned counsel for the appellants was that the auction sale in favour of Surinder Singh was held on 24th August, 1959, when rules for the disposal of the evacuee agricultural lands situate in urban areas had not been framed and the said sale had been conducted under the press-notes issued by the Central Government and, therefore, the sale was void *ab initio*. That being so, according to the learned counsel, Surinder Singh got no rights in the property by virtue of the said sale and, consequently, the Central Government or as a matter of fact, any officer of the Rehabilitation Department, could not confirm the auction sale in his favour and thus make him the owner of the property. Reliance for this submission was placed on a Bench decision of this Court in *Bishan Singh* v. *The Central Government and others* (1). The learned Single Judge, so argued the counsel, had erroneously not given affect to the decision in the abovementioned case, by observing that a later Bench decision of this Court reported as *Sona Ram and others* v. *Central Government and others* (2), had held that an auction sale, which had been conducted before the promulgation of the Rules by the Central Government for the disposal of evacuee agricultural lands, situate in urban areas, was not void *ab initio*, but the same was voidable at the instance of a party, which was entitled to purchase the same at the reserve price under Chapter 5-A of the said Rules.

(4) We have gone through both the judgments referred to by the learned counsel and are of the opinion that there is merit in this

(1) 1961 P.L.R. 75.
(2) 1963 P.L.R. 599.

contention. In *Bishan Singh's case* (1), to which I was a party, it was held:

> "That the holders of urban agricultural land form a separate class of displaced persons, and, therefore, it was necessary for the Government to frame rules for this class. The existing provisions, both in the Act and in the rules do not cover this class of displaced persons. Press-Notes, dated 4th June, 1957, and 15th October, 1958, issued by the Central Government and the Memorandum, dated the 27th November, 1958, issued by the Chief Settlement Commissioner are not valid and no action can be taken thereon and the Central Government cannot sell evacuee urban agricultural land without framing relevant rules."

In this very ruling, it was further held:

> "I am, therefore, of the opinion that the impugned press-notes and the memorandum are not valid and no action can be taken thereon and the Central Government cannot sell evacuee urban agricultural land without framing relevant rules.
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> * * * * * *
> * * * * * *
> * * I would allow these petitions and hold that any action taken or intended to be taken on the basis of the press notes and the memorandum is of no legal effect, as they have not the force of law. * * * *".

(5) From the above quotation, it would be apparent that an auction sale of evacuee urban agricultural land on the basis of the press-notes issued by the Central Government without framing the Rules was of no legal effect. The auction sale in favour of Surinder Singh was admittedly conducted on the basis of the press-notes before the relevant Rules were framed by the Central Government. According to the law laid down in *Bishan Singh's case* (1), the said sale would be of no legal effect.

(6) Now the question is as to whether the latter Bench decision in *Sona Ram's case* (2), has in any way varied the law laid down in *Bishan Singh,s case.* I was a party to the latter ruling as well. There the Bench was called upon merely to clarify an order passed by Bishan Narain J., by means of an application filed under sections 151

and 152 of the Code of Civil Procedure by the aggrieved party. It is because Bishan Narain, J., had retired when the said application was made, that the matter was placed before a Division Bench. We were at that time only attempting to find out the intention of the learned Judge when he made the order in question, by which he had accepted the writ petition filed by the applicants and quashed the press-notes issued by the Central Government and the memorandum (circular) issued by the Chief Settlement Commissioner, although in the writ petition the applicants had prayed for a writ of *certiorari* quashing the auction, held under the impugned press-notes and the circular, in favour of the opposite party. Since the District Rent and Managing Officer, even after the judgment of Bishan Narain J., directed the Tehsildar to deliver possession of the land in dispute to the auction purchaser, the applicants filed the said application under sections 151 and 152 of the Code of Civil Procedure in this Court, because, according to them, as their writ petition had been accepted, the same auction sale had automatically been set aside, the same having been conducted on the basis of the impugned press-notes and the circular, which had admittedly been quashed by Bishan Narain, J. This matter was placed before S. B. Capoor, J., and myself and during the course of arguments before us, it was agreed by both the parties that the applicants would have a right to purchase the property in dispute only, if they were lessees of the same. Their claim on this basis was being opposed by the auction purchaser. Bishan Narain, J., had mentioned in his order that he was not deciding the question as to whether the applicants were the lessees of the property or not and whether they were entitled to the transfer of the property on that account and this matter was left open to be determined in other proceedings. In the course of our judgment, it was observed :

> "All that was decided (by Bishan Narain, J.) was that the press-notes and the circular were void. In other words, if the Department was refusing to transfer the land to the applicants because of certain restrictions contained in them, then it was not justified in doing so. The idea seems to be that if the Department found that the applicants were the lessees of the property, then they were entiled to its transfer and the auction would be set aside. If, on the other hand, they failed to establish this fact, then naturally they would have no grievance and the auction sale would remain unaffected. It was perhaps with that very object that since the point whether the applicants were lessees of

the property or not was not being determined in the writ petition that the learned Judge did not quash the auction sale. The Department will now decide the case in accordance with the observations mentioned above."

(7) It is significant to mention that there was no other point before the Division Bench, except regarding the clarification of the order passed by Bishan Narain, J. The correctness of the earlier Bench decision in *Bishan Singh's case* was never challenged. It is also noteworthy that even if Capoor. J., and myself wanted to upset the previous Bench decision, we would not have done so and we had to refer the case to a larger Bench. It is conceded by the learned counsel for Surinder Singh, respondent No. 2, that in *Bishan Singh's case*, it had been firmly decided that any action taken by the Rehabilitation Authorities on the basis of the press-notes and the memorandum was of no legal effect and the same was void. That being so, the auction sale in favour of respondent No. 2, which was admittedly conducted on the basis of those impugned press-notes and the memorandum was void. If Capoor, J., and myself were of the view that *Bishan Singh's case* was not correctly decided and an auction sale of that type was not void, then we would have referred the case to a Full Bench. Throughout the judgment, we have not anywhere said that an auction sale of that kind would not be void but voidable. As a matter of fact, the word 'voidable' has not even been used in the said judgment. As I have already stated, we were trying to find out the intention of Bishan Narain, J., when he passed the order in question and we came to the conclusion that he had in his mind that the auction sale in that case would be set aside, if the applicants had some interest in the property and were the aggrieved parties. If they had no grievance, then the learned Judge, according to us, was of the view that the auction sale should not be upset. As he himself was not deciding the question in the writ petition regarding the applicants' alleged right to the property, he left that matter to the Rehabilitation Department. At any rate, we were not limiting the right to challenge an auction sale conducted on the basis of the impugned press-notes and the memorandum to the lessees of the land in question only. As the applicants in that case happened to be the lessees, it was, therefore, that this word was used in that authority. From the observations quoted above, which were relied on by the learned Single Judge and also pressed into service by the counsel for the respondent before us, at the most all that could be concluded was that the auction sale would be set aside at the instance of some interested or aggrieved

party. In a writ petition, the petitioner is generally asked as to how he is aggrieved by the impugned order. If he is unable to show that, the writ petition is normally rejected on that ground alone. This Court usually does not set aside an order merely at the instance of by-standards, who are not in any way affected by it. The petitioner has to show which legal right of his is being infringed for which he comes to this Court for redress. If a person is not prejudiced by an order, this Court ordinarily does not in that eventuality set aside the order at his instance. Even if this principle is applied, it will be noticed that the appellants are very much aggrieved by the impugned order, because they are interested in the property in dispute. They were the highest bidders at the auction sale conducted on 17th January, 1969, and were in occupation of this land for a large number of years. They had offered a bid of Rs. 27,025, which was more than the one given by respondent No. 2, in the auction held on 24th August, 1959. It appears that the appellants' bid was not being approved, because of the earlier auction in favour of respondent No. 2. It cannot, therefore, be said that the appellants had no business to challenge the auction sale in favour of respondent No. 2. The said sale could, therefore, be held illegal at their instance.

(8) Following the bench decision in *Bishan Singh's case,* I would hold that the auction sale held on 24th August, 1959, on the basis of the press-notes and the memorandum, in favour of respondent No. 2 was of no legal effect and he did not derive any rights in the property in question by virtue of that sale. In view of these findings, the impugned order, dated 6th February, 1970, passed by the Central Government under section 33 of the Act has to be quashed, because even if the balance of the sale consideration has been paid by respondent No. 2, under the orders of Mr. Rajni Kant, the auction sale in his favour could not be approved and confirmed, because the same was of no legal effect *ab initio* and would not clothe respondent No. 2 with any rights in the property. The appeal has to be accepted on this ground alone, but since two other matters have also been argued at length before us, I would like to express my views regarding them as well.

(9) The second contention of the learned counsel for the appellants was that the order of the Central Government deserves to be quashed, because it had been passed in violation of the principles of natural justice, inasmuch as the appellants were not given any notice or opportunity by Mr. Rajni Kant, before passing the impugned

order. He submitted that although the bids given by the appellants had not been approved, yet they had interest in the property and would have been adversely affected if the earlier auction sale in favour of respondent No. 2 had been confirmed. They had deposited 20 per cent of the purchase price and were in possession of the property for many years and were anxious to buy the same. The only hurdle in their way of getting this property was the earlier auction sale in favour of respondent No. 2. Their case was that the said auction, dated 24th August, 1959, was void, because it had been conducted on the basis of the illegal press-notes and the circular. They had even made an application before Mr. S. N. Bahl, Settlement Commissioner, for being impleaded as a party to the appeal filed by respondent No. 2 before him. This application was rejected by the said Officer observing that no action was required thereon because respondent No. 2's request for payment of the balance of the auction price was being rejected by him. Under these circumstances, according to the learned counsel, they should have been heard by Mr. Rajni Kant before passing the impugned order.

(10) In my view, this submission of the learned counsel is also not without substance. The learned Single Judge repelled this contention by observing that the appellants had not acquired any rights in the land on the basis of merely being the highest bidders in the auction, when that bid had not been accepted and confirmed. Reliance in this connection was placed by the learned Judge on a Supreme Court decision in *M/s Bombay Salt and Chemical Industries* v. *L. J. Johnson and others* (3). The dispute, according to the learned Judge, was between the Central Government and respondent No. 2. The appellants could not be considered as a necessary party and had no right to be heard.

(11) It is true that by virtue of being the highest bidders at an auction sale and depositing 20 per cent of the bid amount, the appellants had not become the transferees of the property; but, under the law, it was not necessary that they should be the owners of the property and it was only then that they would be heard. The principles of natural justice would be attracted, even if it could be shown that the appellants were really interested in the property in dispute and would be adversely affected if the aucton sale in favour of respondent No. 2 was approved and confirmed, as by doing so, the auction

(3) A.I.R. 1958 S.C. 289.

in their favour would be of no effect and they would not be entitled to get this property.

(12) Admittedly, the appellants were in occupation of this property for a very long time and had applied for its transfer in their favour to the Settlement Officer. They had given the highest bid at the auction and deposited one-fifth of that amount at the fall of the hammer. Their bid would in all probability have been approved, if there had not been an earlier auction sale in favour of respondent No. 2. That seemed to be the only impediment in their way. The dispute before the Rehabilitation Authorities was as to whether the earlier auction sale should be cancelled, because respondent No. 2 had failed to deposit the balance of the purchase price within the time allowed. He could not get relief before a number of subordinate Officers and his appeals also had been rejected. As I have already mentioned, the appellants had even made an application before Mr. S. N. Bahl, Settlement Commissioner, for being impleaded as a party to the appeal filed by respondent No. 2 before him. The Officer thought that no action was called for on their application, because respondent No. 2's appeal itself was being rejected by him. Be that as it may, the fact remains that they were very much interested in the transfer of the property in dispute in their favour and wanted the auction sale in favour of respondent No. 2 to be set aside. In all fairness to them they should have been heard by Mr. Rajni Kant, if he was inclined to accept the prayer of respondent No. 2 for allowing him more time for depositing the balance of the purchase price, after setting aside the orders of all the subordinate Officers. If they were present before Mr. Rajni Kant, they would have brought to his notice that the auction sale in favour of respondent No. 2 was of no legal effect, the same having been conducted on the basis of the press-notes and the circular. The impugned order, in my view, had thus been passed in violation of the principles of natural justice.

(13) As regards the Supreme Court ruling, referred to above, and relied on by the learned counsel for the respondent, it may be stated that all that it says is that the declaration that a person was the highest bidder at an auction sale did not amount to complete sale and transfer of the property to him. The bid had to be approved by the Settlement Commissioner and till that was done, the auction purchaser had no rights at all. Even the approval of the bid by the

Settlement Commissioner did not amount to a transfer of the property, because the purchaser had yet to pay the balance of the purchase money and if he failed to do that, he would not have any claim to the property. There is no quarrel with the proposition laid down in this authority and, as I have already stated, it is not the case of the appellants that any rights in the property had passed on to them by virtue of giving the highest bid and depositing one-fifth of the purchase price. Their case was that although they had not become the transferees of the property, yet on the basis of a number of circumstances mentioned above, they were trying to perfect their title by making efforts that their bid be approved, so that they might be able to deposit the balance of the purchase price. The only obstacle in their way was, as already mentioned above, the earlier auction sale in favour of respondent No. 2 and they were trying to see that the said sale was set aside. Mr. Rajni Kant had, by the impugned order, given further extension of time to respondent No. 2 to pay the balance of the auction money so that the sale in his favour be approved and confirmed. The appellants would have opposed this prayer and since they would have been aggrieved by this order, as they were interested in the transfer of the property in dispute in their favour, they should have been given notice and heard before the impugned order had been made by Mr. Rajni Kant.

(14) The third and the last submission of the learned counsel for the appellants was that once Mr. Rajni Kant had passed the order under section 33 of the Act and allowed respondent No. 2 to pay the balance of the sale consideration within 15 days from the date of the passing of his order, dated 6th February, 1970, and had held that if he did not pay the said amount within the prescribed time, his revision petition would stand dismissed, he lost seisin of the case. If respondent No. 2 did not deposit the said amount as directed by Mr. Rajni Kant, his revision petition stood automatically rejected. After the passing of this order, Mr. Rajni Kant could not extend the time for the payment of the amount, unless he had the power to review his order. That power, according to the learned counsel, was not given to him under any of the provisions of the Act or the Rules framed thereunder. His subsequent order allowing extension of time till 28th February, 1970, was, therefore, without jurisdiction, and if respondent No. 2 deposited the amount within the extended period on the basis of the order, which was passed without jurisdiction, he could not get any rights in the property.

(15) It is common ground that proceedings under section 33 of the Act are of a quasi-judicial nature,—*vide Dewan Jhangi Ram* v. *Union of India and others* (4), and *Beli Ram Malhotra* v. *Union of India and others* (5), and the Officers exercising powers under that section cannot review their orders unless power to do so was given to them by the statute itself. There is no inherent power of review and this power has to be given specifically by the statute under they are functioning. (*Vide Harbhajan Singh* v. *Karam Singh and others* (6), and *Deep Chand and another* v. *Additional Director Consolidation of Holdings, Punjab, Jullundur, and another* (7). In the Act, section 25 deals with "review and amendment of orders", it reads:—

> "(1) Any person aggrieved by an order of the Settlement Officer under section 5, from which no appeal is allowed under section 22, may, within thirty days from the date of the order, make an application in such form and manner as may be prescribed, to the Settlement Officer for review of his order and the decision of the Settlement Officer on such application shall, subject to the provisions of section 24 and section 33, be final.
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> (2) Clerical or arithmatical mistakes in any order passed by an officer or authority under this Act or errors arising thereto from any accidental slip or omission may, at any time, be corrected by such officer, or authority or the successor-in-officer of such officer or authority."

(16) It will be seen that it is only the Settlement Officer, who has been given the power of review and that also in an order under section 5 of the Act. No other Officer has been conferred this power, under sub-section (1) of this section. Under sub-section (2), however, the power to correct clerical or arithmatical mistakes or errors arising from any accidental slip or omission has been given to all the Officers and Authorities under the Act. Thus, the Central Government has not been entrusted with any power of review and Mr. Rajni Kant had no jurisdiction to review his earlier order and grant extension of time for the deposit of the balance of the sale price.

(4) 1961 P.L.R. 610.
(5) A.I.R. 1962 Pb. 164.
(6) A.I.R. 1966 S.C. 641.
(7) 1964 P.L.R. 318 (F.B.)

(17) When faced with this situation learned counsel for the respondent, referred to the provisions of section 148 of the Code of Civil Procedure and submitted that Mr. Rajni Kant could extend the time under that section which says:

> "Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

(18) The difficulty in accepting this contention is that the power under section 148 of the Code of Civil Procedure has been given to the Court and the learned counsel could not point out as to how an Officer acting under the Act, could take advantage of this provision. The whole of the Code of Civil Procedure has not been made applicable to the Act. Section 26 of the Act, which deals with this matter, reads:

> "(1) Every Officer appointed under this Act shall, for the purpose of making any inquiry or hearing any appeal under this Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit, in respect of the following matters, namely:—
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> (a) summoning and enforcing the attendance of any person and examining him on oath;
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> (b) requiring the discovery and production of any document;
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> (c) requisitioning any public record from any court or office;
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> (d) issuing commission for examination of witnesses;
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> (e) appointing guardians or next friends of persons, who are minors or of unsound mind ;
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> (f) any other matter which may be prescribed ; and any proceeding before any such officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860) and every such officer shall be deemed to be a civil court within the meaning of sections 480 and 481 of the Code of Criminal Procedure, 1898 (Act V of 1898).
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> (I-A) Every Officer appointed under this Act may for the purpose of making an inquiry under this Act and generally for

the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act, require any person to submit to him such accounts, books or other documents or to furnish to him such information relating to any evacuee property acquired under this Act as he may reasonably think necessary.

(2) The Chief Settlement Commissioner or any other officer hearing an appeal under this Act shall subject to the provisions of this Act, have such further powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) when hearing an appeal."

(19) A reading of this section would show that section 148 of the Code of Civil Procedure has not been made applicable to the proceedings under the Act. Mr. Rajni Kant could not, therefore, take advantage of this provision.

(20) Learned counsel then referred to the inherent powers of the Court under section 151 of the Code of Civil Procedure, which says:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

(21) It would be seen that this section also deals with the inherent power of the *Court*. In the first place, it has not been pointed out by the learned counsel that the provisions of section 151 have been made applicable to proceedings under the Act. Secondly, the Officers acting under the Act are not Courts and they derive their authority from the provisions of the statute under which they are functioning and no authority has been cited before us that even these Officers would have inherent powers like that of a Court under the Code of Civil Procedure. Thirdly, section 151 does not itself give or clothe someone with any power. The power mentioned under this section inheres in a Court itself and all that this section states is that nothing in the Code will be deemed to limit or otherwise affect that inherent power to pass such orders as it may think necessary in the interest of justice or to prevent abuse of the process of the Court. Not a single authority of any Court has been cited before us in support of the proposition that a power of this kind inheres in any Tribunal or an Officer acting under the provisions of a particular statute. Whatever power one wants to exercise must be given to him by the statute itself..

(22) Learned counsel then referred to a Supreme Court ruling in *Mahant Ram Das* v. *Ganga Das* (8), in support of the proposition that Mr. Rajni Kant could act under section 151 of the Code of Civil Procedure for extending the time for the deposit of the purchase price. In this decision, the facts were that on 30th March, 1954, an order was passed by the High Court granting the plaintiff a period of three months to pay the court-fee for the trial Court and also for the High Court. The time had to be computed from the date the counsel for the appellant was informed by the High Court office about the amount of the deficit court-fee, which was payable by his client. The office of the High Court gave this intimation to the counsel on April 8, 1954. Consequently, the time to deposit the deficit court-fee was to expire on July 8, 1954. The appellant was not able to find the money for that purpose by that date. His advocate then asked the Deputy Registrar of the High Court to place that case before the vacation Judge on 8th July, 1954, as the High Court was closed at that time, so that a request for the extension of time could be made. This extension it appears, was to be given by a Division Bench and since no such Bench was sitting on that day, the appellant filed an application on that very date, viz., 8th July, 1954, requesting that he be allowed to pay a part of the amount immediately and the balance within a month thereafter. This application was placed before a Division Bench, consisting of Ramaswamy and Ahmad JJ. on 13th July, 1954, and they dismissed the same after observing that by virtue of the order of the Bench, dated 30th March, 1954, the appeal had already stood dismissed, as the amount was not paid within the time given. The appellant then gave another application under section 151, Code of Civil Procedure, and it was rejected by Imam C.J. and Narayan J. on 2nd September, 1954, because the learned Judges were of the view that the proper remedy for the appellant was to put in an application for review. The appellant then filed another petition under section 151 read with Order 47, rule 1, Code of Civil Procedure, giving reasons as to why he could not find the requisite money within limitation. He offered to pay the deficit money within such further time as the High Court might fix. This application came up for hearing on 27th September, 1955, before Ramaswamy and Sinha JJ. They held that the application did not fall within the purview of Order 47, rule 1 of the Code. The argument of the appellant's counsel that time could have been extended under section 148 or section 149 of the Code was also not accepted by the learned Judges, and they held that

(8) A.I.R. 1961 S.C. 882.

these sections apply only to cases which were not finally disposed of and that time under them could be extended only before the final order was actually made. The request to extend time under the inherent powers of the Court was also rejected for the same reason. This application was also then dismised. The matter was, thereafter, taken to the Supreme Court on certificate. While dealing with the same, the said Court held:

"The application for extension of time was made before the time fixed by the High Court for payment of deficit court-fee had actually run out. That application appears not to have been considered at all, in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time even if the original period fixed has expired and section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on July 13, 1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from July 8, 1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often to be inexpedient. Such procedural orders, though peremptorily (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it canont be said that, if the appellant

had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is *Lachmi Narain Marwari* v. *Balmukand Marwari* (9). No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council. But we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under section 151 of the Code of Civil Procedure were filed. If the High Court had felt disposed to take action on any of these occasions, sections 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable sympathy, but to whose aid it erroneously felt unable to come.

In our opinion, the High Court was in error on both the occasions. Time should have been etxended on July 13, 1954, if sufficient cause was made out and again, when the petitions were made for the exercise of the inherent powers."

(23) It was on the last few observations of the Supreme Court in the passage quoted above, that the learned counsel for the respondent relied and submitted that apart from sections 148 and 149, time could have been extended under the provisions of section 151 of the Code. In addition to what I have already mentioned, that section 151 applies to Courts, it is further to be noted that in the above Supreme Court decision, it is clearly stated by the learned Judges that it were sections 148 and 149 of the Code, which would have clothed the High Court with ample power to extend the time and do justice to the appellant, meaning thereby that it were not the provisions of section 151, which would have given the said power to the High Court.

(9) I.L.R. 4 Patna 61=A.I.R. 1924 P.C. 198.

If that had been the intention, then the learned Judges would not have proceeded further after observing—

> "But we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under section 151 of the Code of Civil Procedure were filed."

The next sentence that immediately followed, namely—

> "if the High Court had felt disposed to take action on any of these occasions, sections 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable symapthy, but to whose aid it erroneously felt unable to come"—clearly shows that according to the Supreme Court, the power was given to the High Court for the extension of time under sections 148 and 149 and not section 151 of the Code.

(24) The view that I have taken of the above noted Supreme Court decision finds support in the ruling given by the Calcutta High Court in *Sm. Lakshmi Balal Chanak* v. *Brojendra Nath Pain and others* (10), where it was observed:

> "In that case (*Mahant Ram Dass's case*) the application for extension of time was made before the time fixed by the Patna High Court for payment of deficit court-fees. The said application, however, came up for hearing after the period had expired. Hidayatullah J. (as he then was) observed that, section 148 of the Code, in terms, allowed extension of time, even if the original period fixed had expired. The Supreme Court has expressly laid down that the Court has power to condone the delay and extend the time fixed under section 148, Civil Procedure Code, even if the original time fixed by the Court had expired."

(25) In view of the foregoing, I would hold that Mr. Rajni Kant had no jurisdiction to allow further extension of time to respondent No. 2 to deposit the balance of the auction price by 28th February, 1970.

(10) A.I.R. 1971 Cal. 243.

(26) In view of what I have said above, this appeal succeeds, the judgment of the learned Single Judge is reversed, the order made by Mr. Rajni Kant, granting extension of time to respondent No. 2 for the deposit of the balance of the purchase price is quashed and the auction sale, dated 24th August, 1959, in favour of respondent No. 2 is set aside. The Rehabilitation Department can now take further proceedings regarding the auction sale held in favour of the appellants on 17th January, 1969, in accordance with law. In the circumstances of this case, I would make no order as to costs.

GOPAL SINGH, J.— **I agree.**

K. S. K.

REVISIONAL CIVIL

Before Harbans Singh, C.J.

BALWANT SINGH—*Petitioner.*

versus

GURDIAL SINGH ETC.—*Respondents.*

Civil Revision No. 383 of 1971.

October 27, 1971.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(v)—Demised premises continuously in occupation and use for and on behalf of the tenant during the absence of the tenant—Section 13(2)(v)—Whether applies.

Held, that clause (v) of sub-section (2) of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 covers a case where the premises are locked and have not been actually used for the requisite period. It has no application to a case where the premises are continuously in use though not by the tenant itself but by some body on his behalf. However, where the tenant transfers his lessee rights or passes the possession and user of the premises in favour of somebody else, such a case is covered by clause (ii)(a) and not clause (v) of sub-section (2) of Section 13 of the Act. The basic idea underlying clause (v) is the idea of "actual user" of the premises. That being so, clause (v) covers a case where the premises are not in "actual use" either by the tenant or by some on his behalf