

defendant was ready and willing to abide by the arbitration agreement. Contention was also raised that as fraud had been alleged by the plaintiffs against the defendants, the matter had of necessity to be decided by the Civil Court, rather than by arbitration. Neither of these pleas had been raised in the reply filed by the plaintiffs, nor was any such point taken before either of the Courts below. They cannot, therefore, be allowed to be raised for the first time in revision.

(9) In the result, the impugned order of the lower appellate Court is hereby set aside and the suit of the plaintiffs is ordered to be stayed in terms of section 34 of the Act. This revision petition is consequently accepted with costs. Counsel's fee Rs. 300.

**H. S. B.**

*Before: D. S. Tewatia and D. V. Sehgal, JJ.*

STATE OF PUNJAB AND OTHERS,—Appellants.

*versus*

RAM KISHAN,—Respondent.

Letters Patent Appeal No. 578 of 1981.

May 5, 1986.

*Punjab New Mandi Townships (Development and Regulation) Act (II of 1960) as amended by Act 16 of 1981—Section 13—Transferee of a plot committing default in payment of purchase price—Administration straightaway issuing show-cause notice under Section 13(3) for resumption of the plot and forfeiture of the amount already paid—No show cause notice issued as provided for under Section 13(1)—Transferee also not given any opportunity to comply with the provisions of Section 13(2)—Administrator—Whether has power to issue notice under Section 13(3) without first taking action under Section 13(2)—Action of the Administrator—Whether void ab initio and liable to be quashed.*

*Held, that a perusal of Section 13(1) of the Punjab New Mandi Townships (Development and Regulation) Act, 1960, as amended, reveals that, at first a notice to show-cause, within a period of thirty days, as to why penalty be not imposed is to be served on*

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the defaulter. The Administrator after considering the reply to the show-cause notice by the transferee and giving due opportunity of being heard in the matter and for reasons to be recorded in writing can make an order imposing the penalty and directing the transferee to pay the amount due alongwith the penalty within the period specified in the order. It is only if the transferee fails to comply with that order that notice calling upon the transferee to show-cause within a period of thirty days why an order of resumption of the site or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof, could be issued and then an order under sub-section (4) of Section 13 of the Act could be passed after considering the cause shown by the transferee. The notice under Section 13(3) of the Act could have been issued only after the transferee had failed to comply with the order passed under Section 13(2) of the Act and the Administrator had no power to issue notice under Section 13(3) of the Act without first taking action in terms of sub-sections (1) and (2) of Section 13. As such the action of the Administrator was void *ab initio* and the proceedings taken on the said notice are liable to be quashed.

(Para 7)

*Letters Patent Appeal Under Clause X of Letter of Patent against the judgment of Hon'ble Single Judge Mr. Justice I. S. Tiwana in the above noted case passed on February 6, 1981, praying that the appeal be accepted and the writ petition be dismissed with costs throughout.*

H. S. Riar, D.A.G., Punjab, for the Appellants.

#### JUDGMENT

D. S. Tewatia, J.— (Oral)

(1) Letters Patent Appeals Nos. 578 and 579 of 1981, involve common question of law and, therefore, a common judgment is proposed.

(2) The judgment under appeal decided two Civil Writ Petitions Nos. 3245 and 3244 of 1976 which too involved common question of law. In each case, the action of resumption in terms of section 13 of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 (hereinafter referred to as the Act), was impugned, *inter alia*, on the ground that the provisions of section 13 were *ultra vires* the provisions of Article 14 of the Constitution of India. It was asserted that section 12 of the Act provided recovery of any amount due from a transferee as arrears of land revenue where-

as section 13 of the Act authorized the competent authority to resume the site and forfeit the amount already paid. Out of the two legal remedies envisaged by sections 12 and 13, which one is to be resorted to in which case, no guidelines have been provided by the statute with the result that transferee identically situated could be discriminated against by taking resort to the provision of section 12 in one case while dealing with the other under section 13 of the Act. Section 13 of the Act was, therefore, struck down as unconstitutional by a Division Bench judgment of this Court rendered in *Shri Dharam Pal and others v. The State of Punjab and another* (1).

(3) Following the said Division Bench judgment the learned Single Judge quashed the resumption orders. The two pleas that were raised to question the maintainability of the petitions, one, based on the factum of latches and the other grounded on the factum of non-joinder of the persons who had sold out the given plot after resumption orders were made, were rejected so far as the first plea was concerned by observing that the action of the State Government was void *ab initio*, so the question of latches did not arise and the second plea by observing that the State Government had no title to pass and, therefore, the second transferee from the State Government acquired no right in the plot, hence it was not necessary to join them as respondents. A Division Bench judgment of this Court rendered in (*Ramji Dass v. The State of Punjab and others*) (2), was distinguished by observing that, in that case, constitutional *vires* of section 13 of the Act were not under challenge.

(4) After the filing of the letters patent appeals, the Act has been amended by the Punjab Act No. 16 of 1981. As a result of the amendment, the existing provision of section 12 has been omitted. Section 13, as reframed has been made operative with retrospective effect from 1st November, 1966. By the provision of section 8 of the amending Act, the Legislature has validated all actions taken under the existing provisions of section 13 notwithstanding any judgment, etc.

(5) Mr. Riar, appearing for the respondent-State canvassed that, in view of the aforesaid amendments, the very basis of the

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(1) 1978 P.L.J. 396.

(2) CW 7170 of 1975 decided on 19th October, 1980.

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judgment of the Division Bench in *Shri Dharam Pal's case* (supra), goes and so is the case with the judgment rendered in Civil Writ Petition Nos. 3245 and 3244 of 1976 by the learned Single Judge because the learned Single Judge allowed these petitions solely on the basis of the judgment of the aforesaid Division Bench.

(6) There is, of course, no doubt that the amendment effected in the Act by Punjab Act No. 16 of 1981, had knocked down the very basis of the judgment under appeal but the question that next has to be seen is as to whether the action of the State Government, which was impugned in the aforesaid writ-petitions, is in conformity with the amended provisions of section 13 of the Act. The amended section 13 of the Act is in the following terms:—

13. *Imposition of penalty for failure to pay consideration money and resumption and forfeiture in certain cases:—*

- (1) If any transferee fails to pay the consideration money or any instalment thereof on account of any site or building, or both, under section 8, the Administrator may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty (which shall not exceed ten per centum of the amount due from the transferee) be not imposed upon him.
- (2) After considering the cause, if any shown, by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Administrator may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount due along with the penalty shall be paid by the transferee within such period as may be specified in the order.
- (3) If the transferee fails to pay the amount due along with the penalty, in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Administrator may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the site or building or both, as the case

may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof (which in no case shall exceed ten per centum of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both) should not be made.

- (4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Administrator may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale."

(7) A perusal of the aforesaid provisions reveals that, at first, a notice to show cause, within a period of thirty days, as to why penalty (which shall not exceed ten per cent of the amount due from the transferee) be not imposed upon him. The Administrator, after considering the cause shown by the transferee and giving him due opportunity of being heard in the matter and for reasons to be recorded in writing, can make an order imposing the penalty and directing the transferee to pay the amount due along with the penalty within the period specified in the order. It is only if the transferee fails to comply with that order that a notice calling upon the transferee to show cause within a period of thirty days why an order of resumption of the site or building or both, as the case may be, and the forfeiture of the whole or any part of the money, if any, paid in respect thereof, could be issued and then an order under sub-section (4) of amended section 13 of the Act could be passed after considering the cause shown by the transferee.

(8) In the present case, the competent authority, i.e., the Administrator had issued the notice of resumption in terms of section 13(3) of the Act straightaway asking the transferee to show-cause as to why the site be not resumed and the amount paid in connection therewith be not forfeited. This notice, under the amended provision of section 13(3) of the Act, could have been issued only after the transferee had failed to comply with the order passed

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under section 13(2) of the Act. The Administrator had no power to issue the impugned notice under section 13(3) of the Act without first taking action in terms of sub-sections (1) and (2) of the amended section 13. That means that the action of the Administrator, in the present case, was void *ab initio* and the proceedings taken on the said notice also suffered from the same vice.

(9) Resultantly, the judgment of the learned Single Judge to the extent it quashes the show-cause notice is sustained since the impugned action of the Administrator is *ultra vires* the provisions of the amended section 13 of the Act. In our view, the preliminary objections to the competency of the petitions on the ground of latches and non-joinder of second transferee, raised before the learned Single Judge and reiterated before us, are untenable for the very reasons given by the learned Single Judge, in his judgment. The letters patent appeals stand disposed of accordingly. No order as to costs.

(10) It may, however, be made clear that it would be open to the competent authority to take proceedings afresh in accordance with law.

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H.S.B.

Before: M. M. Punchhi, J.

INDER SINGH,—Petitioner.

*versus*

INSPECTOR GENERAL OF PRISONS AND OTHERS,—

*Respondents.*

Amended Criminal Writ Petition No. 116 of 1986.

May 7, 1986.

*Punjab Good Conduct Prisoners (Temporary Release) Act (XI of 1962)—Sections 3(1)(c), (e) and 4—Application for release on parole under Section 3(1) (c) made by convict—Said application declined by Inspector General of Prisons purporting to exercise the powers of State Government—No provision of law indicated*