Before K. Kannan, J.

PUNJAB SMALL INDUSTRIES & EXPORT CORPORATION LTD.— *Petitioner*

versus

SURINDER KUMAR, PROP. M/S GOYAL ALUMINUM WORKS AND OTHERS—*Respondents*

CR No.3647 of 2002

August 13, 2013

Arbitration Act, 1940 - Ss.14(2), 20, 28, 28(i) 30 & 33, 39, 41 - Code of Civil Procedure, 1908 - S.105 - Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 - Allotment of an industrial plot made in favour of an individual allottee on 22.4.1977 - A partnership deed dated 1.4.1977 between allottee and another person never produced before the authorities - Original allottee defaulted in payments of installments - Cancellation order passed on 21.6.1983 - Corporation also took out proceedings under Public Premises Act for eviction of allottee - Matter eventually referred to an Arbitrator - Plea before Arbitrator by allottee and his partner was that partner of allottee was also entitled to be heard - Application under O.I Rule X, moved before Arbitrator and reliance was placed upon some stray payments by partner of allottee towards installments to urge that he was entitled to be heard - Arbitrator passed an award

in favour of allottee and his partner holding cancellation dated 21.6.1983 bad - Court set aside award but Appellate Authority reversed the order of Court and upheld award - PSIEC filed present revision mainly on the ground that Arbitrator had misconducted himself in allowing partner of allottee to be represented before him - High Court held that partner being a stranger to the contract, because Arbitration agreement between Corporation and allottee, the partner could not be heard by Arbitrator - Civil Revision allowed and direction passed that Petitioner Corporation will be entitled to possession of plot in dispute.

Held, that as regards the finding arbitration had been rendered by impleading the second respondent in providing for some benefits by a show of concession for balance of payment in extending a schedule of repayments and interest, I must observe that the lower appellate Court has dealt with this issue from the point of view of two facts: (i) the application for impleadment had been sought before the Arbitrator by the second respondent under Order 1 Rule 10 CPC and it allowed such impleadment on 05.07.1994. Since the Corporation participated in the enquiry without challenging the order passed by the Arbitrator, it is barred from raising the challenge to this order before the Court in the application; (ii) The Corporation itself had recognized the possession of the second defendant and the dispute itself had been taken subsequent to receiving a portion of the consideration in the lease from the second respondent. It was, therefore, estopped from raising objection to the arbitral award passed in favour of the second respondent. It referred to a judgment of the Calcutta High Court in M/s Hindustan Steel Works Corporation Limited Versus M/s Bharat Spun Pipe Co.-AIR 1975 Calcutta 8 that allowed for a party, who was inducted into a partnership to seek for a reference before the Arbitrator although he himself was not a party to the arbitral agreement. This, in my view, is the most crucial issue for testing the validity of the order passed by the court below. The arbitral agreement is defined under Section 2(a) of the 1940 Act as follows:-

> *"Arbitration agreement means a written agreement to submit present or future differences to arbitration where an arbitration is named therein or not."*

The Act actually does not make any reference to an expression "party" to the agreement. The expression gets reflected in the first schedule to the 1940 Act that makes reference in clause 6, "to parties to the reference and all persons claiming under them....." Section 20 of the Act makes reference to any person, who has entered into an arbitration agreement, may apply to the Court for having an arbitration agreement filed in Court. The decisions have come about while examining Section 20 of whether non-parties or strangers to the contract could have any right under the arbitral agreement. Even in the absence of a specific reference to party to the arbitration agreement, the manner in which the rights of the parties have been dealt with as possible to be enforced through Section 20 and other provisions of the 1940 Act leave no doubt that a person, who was not a party, could not have been brought on record.

(Para 4)

Further held, that court below, however, has relied on a judgment of the Calcutta High Court that has allowed for a third party to participate in the arbitral proceedings. There is no unanimity on the subject from other Courts. The Delhi High Court has in its judgment in Shri Patanjal and another Versus M/s Rawalpindi Theatres Private Limited, Delhi-1970 AIR (Delhi) 19 held that third parties who are not parties to an arbitration agreement are not bound by the agreement and not being bound, they would, as a general rule, be disentitled to enforce the agreement. Enforcing the agreement must for our context mean enforcing the arbitral clause in the contract. This Court has also in one occasion in Sanjeev Goyal Versus H.L. Goyal and others-2010(2) RCR (Civil) 44 held that in a case where during the pendency of a suit relating to partnership firm the partners had sold off the property to a third party and the vendee had also been impleaded as a party. The other partners sought for reference of matter to arbitration in view of the arbitration clause. The Court held that the matter cannot be referred to arbitration because the vendee involved in the civil suit was not a party to arbitration agreement and the dispute between the parties could not be split up and the civil court alone would have jurisdiction. Though the case in Sanjeev Goyal did not directly dealt with the reference to arbitration sought by a third party, the underlining principle is that a third party can never be made a participant either on his invitation or at the compulsion of any other party to the arbitral agreement to be subjected to the Arbitrator's

jurisdiction. In my view, therefore, theArbitrator was in error in admitting the second respondent as a party and allowing him to make his claim only in order that he walked away with the award granted in his favour.

(Para 5)

Further held, that although, I find that the Arbitrator must himself not directed notice to a third party and allowed him also the benefit of the award, I still would hasten to address the points raised by the third parties, since he was invoking the jurisdiction not as a transferee but as a partner to the party to the arbitral agreement. If this partnership had come about earlier to the arbitration agreement and one of the partners was entering into an arbitration agreement, then by invoking the principle that the partners fulfilled a dual capacity as principal and agent, I would have had no difficulty in allowing for a third party, who was a partner, to be joined in the proceedings. In this case, the partnership itself has come about subsequently and it would also be required to be examined whether this partnership was a facade for legitimizing his induction in the premises and without inviting the odium of violation of the terms of lease and intermeddling with the assets of the Corporation without its concurrence.

(Para 7)

Further held, that the Arbitrator, in my view, has mis-conducted himself on two important aspects that fell for consideration, viz.: (i) whether the cancellation of lease was valid. It is in the context of the resistance to cancellation was being done at the instance of the allottee and the second respondent had a joint plea that they should be given time for making the installments that fell due; and (ii) whether the induction of the second respondent by the first respondent was legitimate and whether the Corporation itself would be estopped from contesting the second respondent's entitlement having regard to the fact that the Corporation allowed for the second respondent to claim some State subsidies and had also received some of the remittances made by the second respondent. In my view, theArbitrator could not have allowed the second respondent to obtain the benefit of allotment when there was no proceeding approving of such allotment. The Arbitrator himself had no power to rewrite a policy for the Corporation or make possible a compulsory recognition of a transfer of allotment made by the original allottee to another person without express orders of

concurrence by the Corporation. Public bodies are run on trust by people that they are governed by pre-set rules and regulations. Discretion, wherever they exist, must stay confined to areas which expressly permit the exercise of discretion. They shall be on matters of day-to-day administration and cannot be on issues of policy. If the original allotment was to promote employment amongst unemployed youth and there were relevant criteria before a person could have been chosen for allotment, such allottee cannot flout the rules by allowing for a seemingly suspicious entrustment through partnership only to be liquidated within a short time and allow for the partner inducted to assume the full benefits of allotment. It does not require great forensic skills to unravel that the partnership itself was a device to legitimize a third party entrant as a beneficiary, as we have examined in the preceding para. When the policy contained restrictions of allotment only to certain eligible class of persons, I find that that there has been no attempt made even before the Arbitrator to provide any data that the second respondent had all the eligibility for securing an allotment under the unemployed youth criterion, if it was to be applied to him.

(Para 13)

Hemen Aggarwal, Advocate, *for the petitioner.*

A.S. Rana, Advocate, for respondent No.1.

None for respondent No.2.

K. KANNAN, J.

I. <u>The subject matter of lis</u>

1. The revision is with regard to the validity of the award passed by the Arbitrator under the Arbitration Act of 1940 (for short, 'the 1940 Act'), in terms of which, a decree was passed by the by the appellate court reversing the judgment setting aside the award by the court of first instance. The validity of the decree upholding the award is in challenge by the Punjab Small Industries and Export Corporation Limited (hereinafter called, 'the Corporation'). The proceedings started with an application filed under Section 14(2), 30 and 33 of the Act by the Corporation objecting to an award made by the Arbitrator on 24.03.1995. The Arbitrator had entered a reference of dispute referred to him by the Corporation on 09.05.1994. The dispute was with reference to an allotment of an industrial shed in terms of lease deed executed by the first respondent-Mohan Lal Goyal as an

allottee in handing over the shed to the second respondent-Surinder Kumar without the concurrence and against the terms of the lease. The Arbitrator passed an award directing the second respondent to pay the balance of consideration mentioned in the lease deed with the first respondent and providing for time of the same in certain installments, namely, 40% of the amount that stood as balance to be paid within 30 days and 60% of the amount in four six monthly installments. The interest was awarded at 7½% per annum with 4% penal interest, if there was a failure to clear the dues in the next two years. The objection to the award was that the Arbitrator misconducted himself by allowing for the second respondent to participate in the enquiry although he was not an allottee or a party to the arbitral agreement. The court of first instance upheld this objection and found that the award was vitiated and had set aside the award. In the appeal filed before the Additional District Judge at Chandigarh by the second respondent claiming to be an assignee of interest of the original allottee, the appellate Court found that the arbitral award was justified and restored in full the award as it was passed by the Arbitrator.

II. <u>No bar of limitation if parties consented to extension of time</u>

(2) The first point for consideration is whether there had been any vitiating circumstance in the award that was passed that requires the intervention of this Court in revision. It was urged before the Court below that the award which was passed on 24.03.1995 was beyond a period of 4 months from the date when the Arbitrator entered reference on 09.04.1995 and hence, was vitiated. Taking up the issue of whether the Arbitrator misconducted himself by not passing an award within 4 months' time and setting aside the finding in that regard by the Court of first instance, the District Juge held that the Corporation was participating in the proceedings before the Arbitrator without setting out any objections. The District Judge referred to three decisions of the Supreme Court in: (i) ***M/s Kapoor Nilokheri Corporation Dairy Farm Society Limited*** versus ***Union of India and others (1),*** (ii) ***M/s Tarapore and Company*** versus **Cochin Ship-Yard Limited, Cochin and another (2);** (iii) ***Parsum Rao*** versus ***Calcutta Metropolitan Development Authority and another (3),*** to

(1) (SC) Volume 4 All India Arbitration & Trade Mark Law Reporter 73
(2) AIR 1984 1072
(3) AIR 1988 Supreme Court 205

hold acquiescence of a party to arbitration proceedings by participating in it will estop a person from contending that the jurisdiction was wrongly exercised by the Arbitrator by passing an award more than 4 months after the Arbitrator entered reference. This finding is itself brought about in a very confusion fashion by the learned Judge. He has referred it along side the issue of whether the Arbitrator had misconducted himself by allowing for a person, who was not a party to the arbitration, to be impleaded.

(3) Section 28 of the 1940 Act is the governing provision relating to the extension of time. That Section reads as follows:-

> **"28. Power to Court only to enlarge time for making award.**
>
> (i) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not enlarge from time to time for making the award.
>
> (ii) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

Clause (i) of the above Section of 1940 Act provides for the power of the Act to enlarge time, whether the time for making the award had expired or not and whether the award has been made or not. It means that even a post-facto enlargement of time by Court would be permissible. It could also be secured beyond the period of 4 months itself. Either way, there must be a permission granted by the Court to enlarge time. Clause (ii) of the said Section provides for a situation where the arbitral agreement between parties itself provided for a power of the Arbitrator to render adjudication beyond a period of 4 months. Such a self-contained clause in the arbitral agreement will be impermissible as opposed to the express statutory provisions. However, it shall become possible for the parties during the course of the arbitral proceedings to consent for enlarging the time for making the award. There is no reference anywhere in the order of the appellate Court that such consent was ever given by all the parties before the Arbitrator. Although, this objection regarding the validity of the award has been specifically set out in the grounds by the Corporation and also extracted in the order of the first Court, even the first Court has not

specifically entered a finding thereon. I find from the original file that parties have indeed given a written consent on 30.3.1995. There was therefore no bar of limitation and the objection taken by the corporation on this score is not tenable. I would, therefore, proceed to examine only the issue of the misconduct attributed to the Arbitrator on other grounds.

III. <u>A third party to arbitral agreement has no right of impleadment</u>

(a) Precedents examined

(4) As regards the finding arbitration had been rendered by impleading the second respondent in providing for some benefits by a show of concession for balance of payment in extending a schedule of repayments and interest, I must observe that the lower appellate Court has dealt with this issue from the point of view of two facts: (i) the application for impleadment had been sought before the Arbitrator by the second respondent under Order 1 Rule 10 CPC and it allowed such impleadment on 05.07.1994. Since the Corporation participated in the enquiry without challenging the order passed by the Arbitrator, it is barred from raising the challenge to this order before the Court in the application; (ii) The Corporation itself had recognized the possession of the second defendant and the dispute itself had been taken subsequent to receiving a portion of the consideration in the lease from the second respondent. It was, therefore, estopped from raising objection to the arbitral award passed in favour of the second respondent. It referred to a judgment of the Calcutta High Court in ***M/s Hindustan Steel Works Corporation Limited*** versus ***M/s Bharat Spun Pipe Co. (4),*** that allowed for a party, who was inducted into a partnership to seek for a reference before the Arbitrator although he himself was not a party to the arbitral agreement. This, in my view, is the most crucial issue for testing the validity of the order passed by the court below. The arbitral agreement is defined under Section 2(a) of the 1940 Act as follows:-

> "Arbitration agreement means a written agreement to submit present or future differences to arbitration where an arbitration is named therein or not."

The Act actually does not make any reference to an expression "party" to the agreement. The expression gets reflected in the first schedule

(4) AIR 1975 Calcutta 8

to the 1940 Act that makes reference in clause 6, "to parties to the reference and all persons claiming under them....." Section 20 of the Act makes reference to any person, who has entered into an arbitration agreement, may apply to the Court for having an arbitration agreement filed in Court. The decisions have come about while examining Section 20 of whether non-parties or strangers to the contract could have any right under the arbitral agreement. Even in the absence of a specific reference to party to the arbitration agreement, the manner in which the rights of the parties have been dealt with as possible to be enforced through Section 20 and other provisions of the 1940 Act leave no doubt that a person, who was not a party, could not have been brought on record.

(5) The court below, however, has relied on a judgment of the Calcutta High Court that has allowed for a third party to participate in the arbitral proceedings. There is no unanimity on the subject from other Courts. The Delhi High Court has in its judgment in ***Shri Patanjal and another*** versus ***M/s Rawalpindi Theatres Private Limited, Delhi (5),*** held that third parties who are not parties to an arbitration agreement are not bound by the agreement and not being bound, they would, as a general rule, be disentitled to enforce the agreement. Enforcing the agreement must for our context mean enforcing the arbitral clause in the contract. This Court has also in one occasion in ***Sanjeev Goyal*** versus ***H.L. Goyal and others (6),*** held that in a case where during the pendency of a suit relating to partnership firm the partners had sold off the property to a third party and the vendee had also been impleaded as a party. The other partners sought for reference of matter to arbitration in view of the arbitration clause. The Court held that the matter cannot be referred to arbitration because the vendee involved in the civil suit was not a party to arbitration agreement and the dispute between the parties could not be split up and the civil court alone would have jurisdiction. Though the case in ***Sanjeev Goyal*** did not directly dealt with the reference to arbitration sought by a third party, the underlining principle is that a third party can never be made a participant either on his invitation or at the compulsion of any other party to the arbitral agreement to be subjected to the Arbitrator's jurisdiction. In my view, therefore, the Arbitrator was in error in admitting the second respondent as a party and allowing him to make his claim only in order that he walked away with the award granted in his favour.

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(5) 1970 AIR (Delhi) 19
(6) 2010(2) RCR (Civil) 44

(b) No challenge to interim order of impleadment necessary; correctness of interim order could be challenged in regular appeal

(6) The appellate court has observed that corporation has no right to challenge the correctness of the order of impleadment since it had become final by appeal having not been filed against the interim order. In my view, there is no question of a party to the agreement waiving his right to such an objection. Against an interim order passed by the Arbitrator, there was no compulsion at all for a party to bring it in appeal since all the appealable orders contemplated under Section 39 refer to post decisional matters of the Arbitrator. Since Section 41 of the 1940 Act allows for the provisions of the Civil Procedure Code to apply to all proceedings and on all appeals under the Act, I would take it that the provision under Section 105 of the Civil Procedure Code must be taken as incorporated under the 1940 Act. Section 105 of the Civil Procedure Code allows for a party to urge as a ground of appeal also the correctness of the order passed at the interlocutory stage. It shall, therefore, be perfectly competent for the Court to consider the same and the District Judge was not justified in making out a plea of estoppel against the corporation for not raising the objection immediately after the order of impleadment by filing an objection.

IV. Partnership was a device to induct a stranger to take over the premises

(a) Partnership never disclosed at all relevant times

(7) Although, I find that the Arbitrator must himself not directed notice to a third party and allowed him also the benefit of the award, I still would hasten to address the points raised by the third parties, since he was invoking the jurisdiction not as a transferee but as a partner to the party to the arbitral agreement. If this partnership had come about earlier to the arbitration agreement and one of the partners was entering into an arbitration agreement, then by invoking the principle that the partners fulfilled a dual capacity as principal and agent, I would have had no difficulty in allowing for a third party, who was a partner, to be joined in the proceedings. In this case, the partnership itself has come about subsequently and it would also be required to be examined whether this partnership was a facade for legitimizing his induction in the premises and without inviting the odium of

violation of the terms of lease and intermeddling with the assets of the Corporation without its concurrence.

(8) The deed of lease for a period of 99 years issued by the Corporation was in the name of Mohan Lal Goyal and it does not make a reference to any partnership. Amongst the covenants of lease, there is a clause (iii) that the lessee shall not transfer his or her right in the site for the period of 15 years from the date of allotment. Clause (ix) bars the lessee from carrying on any activity other than that mentioned in the lease deed. Clause (xiv) states that the lesseeshall not make any change in the constitution of partnership, private limited concern without the previous approval of the Director of Industries, Punjab. An affidavit that all partners are educated/ unemployed shall have to be furnished. This clause makes it clear that apart from the interdict by sale, if the lessee had been a partnership even a constitution of the firm cannot be modified without the prior approval of the Director of Industries. The other partners are also required to be educated/unemployed since the scheme of allotment of the property itself was to provide gainful employment to the unemployed. We have already seen that the lease was not in favour of a partnership. In the rent control proceedings, we have come by decisions dealing with the ground of eviction for sub-letting or transfer to not to include a case of partnership of a tenant with some other person. The idea is, so long as the possession is not wholly lost to yet another person by transfer, by allowing for another person to join, it cannot constitute an actionable breach of covenant by a tenant. Even a mere execution of a partnership could not have meant a transfer of interest, but in the ultimate bargain, if the lessee was effacing himself and was allowing the partnership arrangement as a device of transfer, it should only be seen that the partnership itself was not bona fide and it was a deliberate plan to induct a third party, who was not an allottee, to secure the benefits of allotment. The allotment was made on 22.04.1977 and if the partnership had been entered into even on 01.04.1977, the allotment itself would have been only in favour of the partnership; the application for allotment should have been only in the name of partnership. If the partnership had been formed subsequent to the request by the 1st respondent for allotment, at least before the lease deed was executed commencing from 03.04.1978, the parties must have informed the corporation to get the lease in favour of the partnership, if it were a honest transaction and not a make-believe

device. The non-disclosure at the time of allotment and at the time of execution of the lease themselves show the mala fide intention of the respondents 1 and 2.

(b) Documents belie the plea of the respondents that the corporation acquiesced in partnership arrangement and allowed for later transfer to 2nd respondent.

(9) In the application filed for impleadment at the instance of second respondent, the 2nd respondent has averred that the lessee- Mohan Lal Goyal constituted a partnership firm effective from 01.04.1977, that is, even prior to the date of allotment in favour of the 1st respondent. The partnership deed appears to have registered on 05.07.1971 and the second respondent would claim that the partnership continued upto 26.04.1980 and it was dissolved and handed over to the second respondent. The second respondent has claimed that he forwarded the details of partnership and subsequent dissolution and informed the Director of Industries on 02.05.1980 about his interest in the property. The averment is that the Director sought for some more formalities to be fulfilled before his possession could be regularized. Although the second respondent has averred that the Corporation admitted the second respondent's status and also availed to him some subsidies, I do not find any basis for a claim to acceptance of the induction of the 2nd defendant by the Corporation in the records. In fact, the second respondent himself was admitting that the Corporation filed a petition for ejectment against the second respondent under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1973 complaining of his status as unauthorised occupant. It appears that the application for ejectment was dismissed and it is this turn of events that ultimately precipitated in the reference of the dispute to the Arbitrator.

V. Cancellation of allotment a direct result of breach of terms of lease; arbitration precipitated by inability of corporation to effectuate resumption by 2 nd respondents' presence

10. The cancellation of lease has come about at a time when the originally allottee, namely, the first respondent did not make the payment and the second respondent himself appears to have volunteered some payments and defaulted again. When the Corporation's attempt to eject the second respondent respondent failed, the only course open was to force

an adjudication on the validity of the cancellation of lease made by it for non-payment of the installments payable under the lease deed and secure an ejectment of the premises against the allottee. The Corporation made an issue of the fact that only 10% of the premium/ consideration had been paid at the subsidized rate by the first respondent and the respondent had defaulted in making the further payments. A show cause notice had been issued before cancellation on 15.04.1982 and after failing in his attempt to secure ejectment of the allottee, the Corporation had resorted to arbitration for a finding that the cancellation ordered on 21.06.1983 was legal and it was entitled to get vacant possession of the industrial plot at Bathinda and a right to seek remedy under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act of 1973.

(11) The arbitral reference has come about subsequent to the cancellation of the lease and the dismissal of the petition under the Public Premises (Eviction of Unauthorized Occupants)Act. In the meanwhile, the first respondent himself had made a representation seeking for transfer of liability in the name of the second respondent on the basis of the transfer effected in his name after the dissolution of the partnership. It can be noticed that during the time of allotment in 1977 till the time when the action for upholding the cancellation of lease was sought by the Corporation, there is no one single communication that is brought before Court to uphold the contention of the second respondent that the Corporation had either expressly authorized the transfer of the industrial shed or the lease in favour of the second respondent. Even an inference of acquiescence is not possible, for, I have gone through the record and I find that every time the Corporation has only sounded on the liability of the second respondent to surrender possession as one who held his possession without any authority. I have already referred above about a letter of representation from the first respondent seeking for transfer of liability. Even in the year 1981, soon after the lease, the Corporation has issued a notice on 16.01.1981 that the Sectional Officer, in-charge of Bathinda has noticed that the second respondent was using the industrial shed and that the occupation was unauthorized. Even before the Arbitrator on the application being allowed for impleadment, the Corporation has again reiterated that there was no contract between the

petitioner and the second respondent at any time and that the Corporation was under no obligation to accept the payment from the second respondent. I cannot therefore find that the Arbitrator was justified in accepting plea of the second respondent that he should be treated as an allottee, that the lease could not have been cancelled and that the transfer was bound to be accepted by the Corporation.

(12) Even for arguments' sake, if the transfer must be taken as legitimate, such transferee cannot obtain rights larger than the allottee himself, if the admitted facts are examined. The original allotment of the shed had been to educated/unemployed persons under the Employment Promotion Program after calling applications for eligible persons through an advertisement issued on 26.11.1976. When the allotment of Shed No.E-6 was made, it was to a specific person, namely, Mohan Lal Goyal and the allotment letter had been issued in his name only fixing the price of the shed at Rs.97,000/-. The Corporation increased the price at 35% from Rs.97,000/- to Rs.1,30,692/- by a letter dated 18.04.1979 purporting to act within its power for the additional levy which became necessary. It appears that the price was subsequently reduced to '97,000/- again evidenced through the letter of the Corporation on 06.09.1989. The initial order of cancellation of lease had been made on 21.06.1983, the legitimacy of which was required to be adjudicated before the Arbitrator on a pointed reference to the fact that the installments that were required to be paid had not been paid. It could be seen that even subsequently when the second respondent was engaging the Corporation in certain parleys for being granted an opportunity to make the payments and for reduction of the sale price which was ultimately accommodated, the balance had not been paid in the manner required to be done. I find from the records there is a reference to fact of payment of ' 9,314/- by the second respondent on 14.09.1989. This was supposed to represent a monthly installment out of balance that remained payable on 12.07.1989 to an extent of '1,75.959. I cannot understand as to how any payment made subsequent to the cancellation ever obtain any relevance or make possible a scope for recalling the order of cancellation made.

VI. The defect in the award of arbitrator pointed out

(13) The Arbitrator, in my view, has misconducted himself on two important aspects that fell for consideration, viz.: (i) whether the cancellation of lease was valid. It is in the context of the resistance to cancellation was being done at the instance of the allottee and the second respondent had a joint plea that they should be given time for making the installments that fell due; and (ii) whether the induction of the second respondent by the first respondent was legitimate and whether the Corporation itself would be estopped from contesting the second respondent's entitlement having regard to the fact that the Corporation allowed for the second respondent to claim some State subsidies and had also received some of the remittances made by the second respondent. In my view, the Arbitrator could not have allowed the second respondent to obtain the benefit of allotment when there was no proceeding approving of such allotment. The Arbitrator himself had no power to rewrite a policy for the Corporation or make possible a compulsory recognition of a transfer of allotment made by the original allottee to another person without express orders of concurrence by the Corporation. Public bodies are run on trust by people that they are governed by pre-set rules and regulations. Discretion, wherever they exist ,must stay confined to areas which expressly permit the exercise of discretion. They shall be on matters of day-to-day administration and cannot be on issues of policy. If the original allotment was to promote employment amongst unemployed youth and there were relevant criteria before a person could have been chosen for allotment, such allottee cannot flout the rules by allowing for a seemingly suspicious entrustment through partnership only to be liquidated within a short time and allow for the partner inducted to assume the full benefits of allotment. It does not require great forensic skills to unravel that the partnership itself was a device to legitimize a third party entrant as a beneficiary, as we have examined in the preceding para. When the policy contained restrictions of allotment only to certain eligible class of persons, I find that that there has been no attempt made even before the Arbitrator to provide any data that the second respondent had all the eligibility for securing an allotment under the unemployed youth criterion, if it was to be applied to him.

(14) If the second respondent secured the benefit of subsidies, I can only observe that the benefit was wrongly given. The officer that made possible the second respondent to bag such an advantage was recommending

for a wrong cause. There ought not to be an estoppel against the Government or a functionary of a State body. It should be such as to operate as a promissory estoppel that the person to whom the statement or representation was made must have altered the situation to some detriment. In this case, the second respondent has come by no detriment at all, but has taken the benefit of gratuitous subsidy which he ill-deserved. Even the fact that the Corporation received one or two installments from the second respondent ought not to make any difference, for, he must be only taken as a volunteer making the payment on behalf of the original allottee. This cannot also be a ground legitimizing his possession.

(15) It must be noticed that the Corporation was also receiving one installment post cancellation but I find nothing on record that shows that the Corporation received any amount from the second respondent after being specifically informed of the first respondent transferred the premises to the second respondent. The Corporation had a serious misgiving that the allotment made to the first respondent had been wrongly transferred to the second respondent. It had taken action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act and I have already observed that the arbitration itself was necessitated only by a direction of the Collector in his proceedings that he should have the dispute resolved of whether the second respondent's possession could be characterized as unlawful or not. I have no doubt in my mind that the possession of the 2nd respondent was not lawful for all the reasons referred to above. The award passed by the Arbitrator which stood confirmed through decree of Court allowing for the second respondent to continue in possession and offering to him the opportunities to make good the defaults was lending the premium to an unlawful occupant. The award was wholly untenable and the lower appellate court failed to recognize the legal import of such an unlawful transfer and made wrong inferences from some voluntary payments made by the second respondent. The award of the Arbitrator that was affirmed by the court below is untenable in law and both the award and the decree are required to be set aside.

VII. Disposition:

(16) The award of the Arbitrator is set aside and the order of the lower appellate Court granting decree in terms thereof is also consequently set aside. The Corporation shall have a decree for possession of the property from respondents 1 and 2. The remedy for mesne profits shall be worked out in independent proceedings and since the relief will have to be worked out against the second respondent, who is in possession, whose possession is held to be unauthorized and also held that the arbitral proceedings against the second respondent itself was not appropriate, the landlord will have the remedy for determination of mesne profit without in any way being fettered by the bar of Order 2 Rule 2 CPC. The revision petition is allowed with costs. Counsel's fee Rs. 20,000/-.

P.S. Bajwa

3299/HC ILR—Govt. Press, U.T., Chd.