

before taking cognizance of the case can direct the police to undertake investigation in the complaint. In that case the police officer would be performing all those powers of investigation which he would be entitled to while investigating a cognizable case as per the provisions given in Chapter XII of the Code. All these provisions, however, do not contemplate any direction by the Magistrate to the police to register FIR. With these observations, we return the reference to the single Bench.

J.S.T.

Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.
DALIP SINGH & OTHERS,—Petitioners.

versus

THE FINANCIAL COMMISSIONER-CUM-SECRETARY TO
GOVERNMENT, HARYANA & OTHERS,—Respondents.

C.W.P. No. 5781 of 1994

26th July, 1995

Displaced Persons (Compensation & Rehabilitation) Act, 1954—Ss. 8-A, 22, 24 & 33—Displaced Persons (Rehabilitation and Compensation) Rules, 1955—Rls. 90(15), 92—Constitution of India, 1950—Arts. 226/227—Cancellation of allotment due to non payment of mortgage amount—Allotment set aside by Chief Settlement Commissioner—Earlier sale of property by auction to be deemed void—Order of restoration of property after lapse of 8 years is proper—Power of Chief Settlement Commissioner under section 24(1) is not subject to provisions of Rule 92—Original order passed by the Managing Officer is liable to be declared void ab initio—Direction to refund the proportionate amount cannot be termed as illegal or arbitrary and in fact advances justice between the parties—Right of displaced persons to custodian property, stated.

Held. that a plain reading of Section 8-A and in particular sub-section (2) thereof shows that the Parliament intended to make a provision for recovery of the mortgage amount in respect of the properties abandoned by the displaced persons in the West Pakistan which on the date of their migration to India were subject to mortgage in favour of a person who is not resident of India. This provision nowhere speaks of automatic cancellation of allotment made in favour of a displaced person on account of non-payment of the mortgage amount.

(Para 10)

Further held, that this Court has consistently taken the view that an allotment made in favour of a displaced person cannot be cancelled due to the non-payment of mortgage money. We are in respectful agreement with the views expressed in the judgments and we hold that action of the Managing Officer in ordering cancellation of the allotment made in favour of Sunder Singh was without jurisdiction and void *ab initio*.

(Para 14)

Further held, that the powers vesting in the Chief Settlement Commissioner are wide and pervasive and he is entitled to exercise this power in case where the appeal has been rejected by the competent authority under section 22 or even where no appeal has been preferred. The use of the expression "may at any time call for the record" is clearly indicative of the legislative intent to clothe the Chief Settlement Commissioner with the power to pass an appropriate order where he finds that the order passed by a subordinate authority suffers from an illegality or which is otherwise improper. The order dated 26th September, 1968 will be deemed to have been passed by the Chief Settlement Commissioner in exercise of his power under section 24 of the Act and we find ample justification for such exercise of power by the Chief Settlement Commissioner because the initial order passed by the Managing Officer on 27th September, 1960 was a nullity.

Held, with the settling aside of the cancellation of allotment made in favour of the father of respondent No. 3 all subsequent proceedings taken by the authorities will be deemed to have been rendered without jurisdiction.

(Paras 15 & 16)

Further held, displaced persons (Rehabilitation and Compensation) Rules, 1955 have been framed by the Central Government for giving effect to the provisions of 1954 Act. Status of these rules is that of a subordinate legislation. One of the well recognised canons of interpretation is that a delegated legislation or subordinate legislation cannot prevail over the substantive legislation. Therefore, any provision contained in the Rules of 1955 cannot affect the provisions of 1954 Act. If at all there is an inconsistency between the Act and the Rules, the former will prevail as against the latter. If we examine Section 24 of the Act and Rule 92 of 1955 Rules in the light of the above principles, we have little hesitation in rejecting the argument of the learned counsel that the power vesting in the Chief Settlement Commissioner under section 24 is controlled by or is subject to the provisions of Rule 92. There is no warrant for restricting the scope of the power vesting in the Chief Settlement Commissioner by holding that the conditions contained in Rule 92 must be satisfied before that power can be exercised.

(Para 17)

Further held, that a look at the prayer made by the petitioners in their application dated 28th December, 1974 shows that the petitioners had prayed for setting aside the cancellation of sale and in the alternative they had prayed that the area originally belonging to respondent No. 3 may be withdrawn. In our opinion, on account of making an alternative prayer the petitioners cannot be denied a right to challenge the legality of the orders passed by the Financial Commissioner.

(Para 16)

Further held, that the original order passed by the Managing Officer on 27th September, 1960 was void *ab initio* and the Chief Settlement Commissioner was right in setting aside the said cancellation of allotment, the directions given by the Financial Commissioner for restoration of a portion of land to respondent No. 3 and protecting the remaining land of the petitioners with a further direction to the authorities to refund the proportionate amount of auction money cannot be termed as illegal or arbitrary or unreasonable. Rather it is an order by which substantial justice has been done between the parties, but the result of the order passed by the Financial Commissioner is that respondent No. 3 will continue to enjoy the benefit of allotment made in favour of his father, who was admittedly a displaced person and the petitioners will also enjoy remaining property.

(Para 18)

A. S. Cheema, Sr. Advocate, Ms. Gurmit Kaur, Advocate with him, for the petitioners.

Rajiv Narain Raina, Dy. Advocate General, Haryana, for Respondent Nos. 1 and 2.

C. L. Ghai, Advocate, for respondent No. 3.

JUDGMENT

G. S. Singhvi, J.

(1) Both these petitions are directed against order dated 24th March, 1994 passed by the Financial Commissioner and Secretary to Government of Haryana, Rehabilitation Department, under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and, therefore, the same are being decided by a common order.

Singh, Balkar Singh and Sardar Singh, with a grievance that the
(2) C.W.P. No. 5781 of 1994 has been filed by Dalip Singh, Amrik order passed by the Financial Commissioner and Secretary to Government of Haryana (Rehabilitation Department) on 24th March, 1994, declaring that the land under mortgage should be restored to

respondent No. 3 and the remaining area of the disputed land should remain with the petitioners, is erroneous in law. The petitioners have stated that on account of the failure of respondent No. 3 Kharak Singh to deposit the mortgage debt, which stood in the name of Muslim nationals, prior to the partition, in respect of the land allotted to him, the Managing Officer (Redemption) cancelled the allotment of 4 Standard Acres and 9 Units of land,—*vide* order dated 27th September, 1960 and this order was implemented,—*vide* mutation No. 522 dated 9th February, 1962 whereby the property came to be recorded as custodian property. This parcel of land was put to auction along with other lands and being highest bidders at the auction held on 15th January, 1964 and 10th February, 1964 by Tehsildar-cum-Managing Officer, Thanesar (Kurukshetra), the petitioners got the disputed land. The sale made in their favour was confirmed and mutation was also sanctioned in their favour by the competent authority. After about three years of the confirmation of the sale, respondent No. 3 filed an appeal against the cancellation order dated 27th September, 1960 under Section 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'the Act'). This was dismissed by the Appellate Authority, but on a revision filed by respondent No. 3 under Section 24 of the Act, the Chief Settlement Commissioner passed order dated 26th September, 1968 directing that if the allottee pays the mortgage amount, the land retrieved in compliance with the order of the Managing Officer should be restored. According to the petitioners, respondent No. 3 deposited the mortgage amount and got a reference made from the Tehsildar (Sales)-cum-Managing Officer on 24th September, 1974 seeking cancellation of sale of land made in their favour on 10th February, 1964, and thereupon the Deputy Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, passed the order dated 24th October, 1974 cancelling the sale and ordered restoration of the possession to respondent No. 3. Revision Petition filed by the petitioners has been dismissed by the learned Revisional Authority,—*vide* impugned order dated 24th March, 1994.

(3) While challenging the impugned orders, the petitioners have contended that the sale of the land made in favour of the petitioners had become final and the Settlement Commissioner was left with no authority to cancel the auction sale by exercising the powers under Section 33 of the Act and no annulment of the sale could be made except after following the procedure prescribed in Rule 92 of the

Displaced Persons (Rehabilitation and Compensation) Rules, 1955 (hereinafter referred to as 'the Rules').

(4) Another contention of the petitioners is that the order passed in the year 1960, cancelling allotment made in favour of respondent No. 3, could not have been nullified after a lapse of more than one decade and no order prejudicially affecting the rights of the *bona fide* purchasers could be passed.

(5) In their reply respondent Nos. 1 and 2 stated that land measuring 4 Standard Acres 9 Units (50 Kanals), which was allotted to Sunder Singh son of Bura Mal (father of respondent No. 3) was cancelled due to the non-payment of mortgage amount. Against this respondent No. 3 filed an appeal and then a revision petition, which was accepted by the Chief Settlement Commissioner on 26th September, 1968. In the meantime land measuring 17 Kanals and 4 Marlas was put on auction on 10th February 1964 and being the highest bidders sale certificates were issued in favour of the petitioners under Rule 90(15) of the Rules. This auction was set aside by the Deputy Secretary (Rehabilitation)-cum-Settlement Commissioner because the cancellation of the allotment which was made in favour of the father of respondent No. 3 was itself void. Further case of the respondents is that in terms of Section 8-A of 1954 Act, the non-payment of mortgage amount could have enabled respondents Nos. 1 and 2 to make recovery of the said amount as arrears of land revenue, but the allotment made in favour of Sunder Singh could not have been cancelled, and therefore the order passed by the Chief Settlement Commissioner on 20th June, 1969 was perfectly justified. The respondents have pleaded that the impugned orders do not suffer from any error of law requiring interference by this Court.

(6) Facts of C.W.P. No. 0556 of 1964 are almost identical. Only difference is that the petitioners in this case had purchased the land at the auction held on 15th January, 1966. In all other aspects their case is similar to that of the petitioners in C.W.P. No. 5781 of 1964.

(7) The first contention urged by Shri A. S. Cheema is that the Chief Settlement Commissioner was not vested with any power to annul the cancellation of mortgage which was ordered by the Managing Officer as early as in the year 1960. Shri Cheema argued that the power under Section 92 of the Act could have been exercised by the Appellate Authority only on filing of an appeal within the period of limitation and as no appeal was filed by respondent No. 3

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within the period of limitation, the order passed by the Managing Officer became final and it could not have been set aside by the Chief Settlement Commissioner in the year 1968. Second contention of Mr. Cheema is that the petitioners who had purchased the land at an open auction and who had paid the entire price could not have been deprived of their rights in the property merely because at a subsequent point of time the Chief Settlement Commissioner had allowed respondent No. 3 to deposit the mortgage amount. He further argued that cancellation of the auction after a period of 10 years of its confirmation suffers from patent arbitrariness, and, therefore, the orders passed by the Deputy Secretary as well as the Financial Commissioner should be quashed. Mr. Rajiv Raina and Mr. C. L. Ghai supported the impugned orders. They argued that under Section 8-A of the Act of 1954, which has been given retrospective effect, the cancellation of the allotment made in favour of the father of respondent No. 3 was itself void and, therefore, the Chief Settlement Commissioner did not commit any illegality in setting aside the cancellation order. Mr. Ghai invited our attention to the prayer made by the petitioners in their petition dated 28th December, 1974 and argued that when the petitioners had themselves made an alternative prayer that the areas originally belonging to respondent No. 3 may be withdrawn without affecting the entire sale, they cannot now make a grievance against the orders passed by the Financial Commissioner.

(8) Displaced Persons (Compensation & Rehabilitation) Act, 1954 was enacted by the Parliament to provide for the payment of compensation and rehabilitation grant to displaced persons. In the year 1968—this Act was amended by Amending Act No. 17 of 1968 with a view to make provision for recovery of the mortgage amount in respect of the properties which were left by the displaced persons in West Pakistan. Therefore, by the Amending Act Section 8-A has been inserted giving an option to the displaced persons either to retain the property on their paying in cash amount deductible from the compensation or to surrender the portion of the property of a value equivalent to the amount of such deduction and on their failure to make the payment, the amount has been made recoverable as arrears of land revenue. Section 8A, which is relevant in this case, is reproduced below :—

“8A. Payment of compensation in cases of mortgage properties.—

- (1) Where any compensation is payable to any displaced person in lieu of property abandoned by him in West Pakistan

which on date of his migration from West Pakistan was subject to a mortgage in favour of a person who is not resident in India, the Settlement Commissioner shall, after giving a reasonable notice to the displaced person, determine the principal sum for which the property was so mortgaged and such portion of the principal sum so determined as bears the same proportion as the compensation payable to the displaced person bears to the value of the verified claim of the displaced person in respect of that mortgaged property shall be deductible from the compensation payable in respect of the mortgaged property :

Provided that where compensation has been paid to any displaced person without such deduction having been made. the displaced person shall pay to the Central Government the amount of such deduction within three months of the determination thereof or such longer period as may be prescribed.

Provided further that where compensation has been paid to any displaced person by sale or any other mode of transfer to him of any property from the compensation pool. the displaced person may, within the aforesaid period of three months or, as the case may be, within the aforesaid prescribed period—

- (a) either retain the property on his paying in cash the aforesaid amount, or
- (b) surrender a portion of that property of a value equivalent to the amount of such deduction, such value being determined by the Settlement Commissioner in the prescribed manner.

(2) If any displaced person fails to pay any amount which is liable to be deducted from his compensation under subsection (1), or fails to surrender the property of the value equivalent to such amount, such amount may be recovered in the same manner as an arrear of land revenue.”

(9) Rule 90(15) and Rule 92 of 1955 Rules, on which reliance has been placed by the learned counsel for the petitioners, are also reproduced below :—

“90. Procedure for sale of property by public auction.--

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(15) When the purchase price has been realised in full from the auction purchaser, the Managing Officer shall issue to him as sale certificate in the form specified in Appendix XXXI or XXXIII, as the case may be. A certified copy of the sale certificate shall be sent by him to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property to which the certificate relate is situated. If the auction purchaser is a displaced person and has associated with himself any other displaced person having a verified whose net compensation is to be adjusted in whole or in part against the purchase price, the sale certificate shall be made out jointly in the name of all such persons and shall specify the extent of interest of each in the property.

92. *Procedure for setting aside a sale.*—Where a person desires that the sale of any property made under rule 90 or 91 should be set aside because of any alleged irregularity or fraud in the conduct of sale (including in the case of a sale by public auction in the notice of the sale) he may take an application to that effect to the Settlement Commissioner or any officer, authorised by him in this behalf to approve the acceptance of the bid or tender, as the case may be.

(2) Every application for setting aside a sale under this rule shall be made—

(a) Where the sale is made by public auction, within seven days from the date of the acceptance of the bid ;

(b) Where the sale is made by inviting tenders, within seven days from the date when the tenders were opened.

(3) If after consideration of the facts alleged, the officer to whom the application is made under this rule is satisfied that any material irregularity or fraud has been committed in the publication or the conduct of the sale, he may make an order that the property be re-auctioned or be resold by inviting fresh tenders, as the case may be :

Provided that no sale can be set aside under this rule unless upon the facts proved such officer is satisfied that the applicant has sustained substantial injury by reason of the irregularity or fraud, as the case may be.

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- (4) Notwithstanding anything contained in this rule, the Settlement Commissioner may, of his own motion, set aside any sale under this chapter if he is satisfied that any material irregularity or fraud which has resulted in a substantial injury to any person has been committed in the conduct of the sale."

(10) A plain reading of Section 8A and in particular sub-section (2) thereof shows that the Parliament intended to make a provision for recovery of the mortgage amount in respect of the properties abandoned by the displaced persons in the West Pakistan which on the date of their migration to India were subject to mortgage in favour of a person who is not resident of India. This provision nowhere speaks of automatic cancellation of allotment made in favour of a displaced person on account of non-payment of the mortgage amount.

(11) This provision became subject-matter of interpretation before this Court in *Budha Ram v. Behari Lal and others* (1), and after making a reference to Section 8A this Court rejected an argument advanced by the appellant that the Rehabilitation Authorities were fully justified in cancelling the allotment made in favour of displaced persons on the ground that the lands left by such persons in West Pakistan were under mortgage with Muslims and the mortgage money had not been paid by them to the Rehabilitation Authorities. While rejecting the contention this Court observed:—

"There is no merit in this contention. The provisions of S. 8-A quoted above do not show that the Managing Officer had any power vested in him to cancel the allotment made in favour of the displaced person on account of non-payment by him of the mortgage money. All that the section laid down was that in a case where it was found that a displaced person had mortgaged his land to the Muslims in Pakistan and had come over to India and land had to be allotted to him, then a notice would be issued to him by the Settlement Commissioner for determining the principal sum for which the property was so mortgaged. After having ascertained that, such portion of that amount as bore the same proportion as the compensation payable to the displaced person bore to the value of the verified claim

of the displaced person in respect of that mortgaged property, would be deducted from the compensation payable on account of the mortgaged property. In a case where compensation had already been paid to the displaced person without any such deduction having been made (which would be the position in several cases, because this section 8-A was introduced in the main Act only in 1968 but with retrospective effect), the displaced person was given the option to pay the amount due from him within three months of the date on which the said amount was determined. Where the displaced person had been given compensation by means of transfer of property to him out of the compensation pool, he was given the alternative either to (a) retain the property given to him and pay the amount due in cash ; or (b) surrender a part of the property equivalent to the amount due; the authorities had been given the power to recover the said amount as arrears of land revenue. These provisions could not be constructed to mean that he authorities were entitled to cancel the allotment for the non-payment of the mortgage money. No such power was given to the Managing Officer under this section. A definite procedure has been prescribed in this section which is to be followed by the authorities concerned and after complying with the same, they are authorised to recover the amount due from the displaced person as arrears of land revenue but only if he does not pay the same or surrender the property of the value equivalent to that amount. That recovery, of course, can be made by selling the property allotted or any other property or by any other mode mentioned in Section 67 of the Punjab Land Revenue Act, 1887."

(12) In *Summa Ram and another v. Chain Singh and others* (2), this Court applied the aforesaid observations made in *Budha Ram's case* (supra) in a matter where only part of the allotment was cancelled due to non-payment or mortgage amount. A learned Single Judge of this Court held that the observations made in *Budha Ram's case* (supra), which were based on the provisions of Section 8-A would be equally applicable where the cancellation is of the whole

of the land allotted or only part of it. In *Gopal Chand and others v. The Financial Commissioner, Revenue and Secretary to Government, Haryana and others* (3), a learned Single Judge of this Court held that failure of the allottee to pay the amount or surrender a part of the property could entitle the authorities to recover the mortgage amount under Section 8-A (2) as arrears of land revenue but they had no jurisdiction to cancel a part of the allotment and an order passed for cancellation of the allotment made in favour of the displaced persons only on the ground of non-payment of mortgage amount would be illegal and without jurisdiction. The learned Judge further held that if the cancellation of the allotment is found to be without jurisdiction, subsequent auction of the property or issue of the sale certificate will have to be treated as illegal and void.

(13) In *Jagir Singh and others v. The Chief Settlement Commissioner, Punjab and others* (4), this Court held that where on cancellation of allotment by an illegal order the land was sold in lots and sale certificates were issued but the Chief Settlement Commissioner set aside the cancellation of allotment in exercise of the plenary powers vested in him under Section 24 of the Act, the auction will be void *ab initio*. It has been further held that even after issuance of the sale certificate in pursuance of the auction the Chief Settlement Commissioner was entitled to set aside the sale under Section 24 of the Act and Rule 90 of the Rules was subject to the plenary powers of the Chief Settlement Commissioner.

(14) From the above authorities it is evident that this Court has consistently taken the view that an allotment made in favour of a displaced person cannot be cancelled due to the non-payment of mortgage money. We are in respectful agreement with the views expressed in the above referred judgments and we hold that action of the Managing Officer in ordering cancellation of the allotment made in favour of Sunder Singh (father of respondent No. 3) was without jurisdiction and void *ab initio*.

(15) Argument of the learned counsel for the petitioners that the Chief Settlement Commissioner could not have set aside the cancellation of allotment because no appeal was preferred by respondent No. 3 within the period specified in Section 22(1) of the Act is,

(3) A.I.R. 1981 Punjab and Haryana 125.

(4) A.I.R. 1970 Punjab and Haryana 507.

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in our opinion, without merit. Section 22 of the Act provides for an appeal by any person aggrieved by an order of the Settlement Officer or a Managing Officer and such appeal is required to be filed within 30 days with a discretion to the Settlement Commissioner to condone the delay where the appellant satisfies the Appellate Authority that he was prevented from filing the appeal in time by a sufficient cause. Section 23 contains provisions for appeal before the Chief Settlement Commissioner against the orders of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or a Managing Corporation. Limitation for filing such an appeal is also 30 days with a discretion to the Chief Settlement Commissioner to condone the delay in appropriate cases. Section 24(1) of the Act confers power of revision on the Chief Settlement Commissioner. By virtue of this provision the Chief Settlement Commissioner has been empowered to call for the record of any proceedings under the Act in which an order has been passed by a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Managing Officer or a Managing Corporation. This power can be exercised by the Chief Settlement Commissioner at any time for the purpose of satisfying himself as to the propriety and legality of such order and he is entitled to pass an appropriate order as he may think fit. It is in exercise of this power that the Chief Settlement Commissioner passed order dated 26th September, 1968 and declared that in case the allottee pays the mortgage amount the land be restored to him. Thereafter, respondent No. 3 deposited the mortgage amount and on a reference made by the Tehsildar (Sales), the Settlement Commissioner set aside the sale effected in favour of the petitioner with a view to give effect to the order passed by the Chief Settlement Commissioner. The powers vested in the Chief Settlement Commissioner are wide and pervasive and he is entitled to exercise this power in case where the appeal has been rejected by the competent authority under Section 22 or even where no appeal has been preferred. The use of the expression "may at any time call for the record" is clearly indicative of the legislative intendment to clothe the Chief Settlement Commissioner with the power to pass an appropriate order where he finds that the order passed by a subordinate authority suffers from an illegality or which is otherwise improper. The order dated 26th September, 1968 will be deemed to have been passed by the Chief Settlement Commissioner in exercise of his power under Section 24 of the Act and we find ample

justification for such exercise of power by the Chief Settlement Commissioner because the initial order passed by the Managing Officer on 27th September, 1960 was nullity.

(16) With the setting aside of the cancellation of allotment made in favour of the father of respondent No. 3 all subsequent proceedings taken by the authorities will be deemed to have been rendered without jurisdiction. Shri Cheema may be correct in stating that at the time of sale of properties in favour of the petitioners no order declaring the cancellation of allotment as void had been passed, but that in our opinion cannot make any difference. If the cancellation of allotment brought about by order dated 27th September, 1960 was void *ab initio*, declaration to that effect made by the Chief Settlement Commissioner—*vide* his order dated 26th September, 1968 will operate retrospectively, and, therefore the order passed by the Settlement Commissioner on 24th October, 1974 with a view to give full effect to the directions given by the Chief Settlement Commissioner cannot be treated as illegal or arbitrary. This conclusion of ours is fully supported by the judgment of this Court in *Jagir Singh v. Chief Settlement Commissioner* (supra).

(17) Argument of Shri Cheema that the cancellation of sale made in favour of all the petitioners could not have been set aside without following the procedure in Rule 92 of 1955 Rules, appears to be attractive but does not stand a close scrutiny. Admittedly, these rules have been framed by the Central Government for giving effect to the provisions of 1954 Act. Status of these rules is that of a subordinate legislation. One of the well recognised canons of interpretation is that a delegated legislation or subordinate legislation cannot prevail over the substantive legislation. Therefore, any provision contained in the Rules of 1955 cannot affect the provisions of 1954 Act. If at all there is an inconsistency between the Act and the Rules, the former will prevail as against the latter. If we examine Section 24 of the Act and Rule 92 of 1955 Rules in the light of the above principles, we have little hesitation in rejecting the argument of the learned counsel that the power vesting in the Chief Settlement Commissioner under Section 24 is controlled by or is subject to the provisions of Rule 92. In our opinion, there is no warrant for restricting the scope of the power vesting in the Chief Settlement Commissioner by holding that the conditions contained in Rule 92 must be satisfied before that power can be exercised. Thus, the direction given by the Chief Settlement Commissioner on 29th June, 1968 cannot be declared as illegal or without jurisdiction. Moreover when the order passed by the Chief

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Settlement Commissioner had become final it was obligatory for all other authorities, including the Settlement Commissioner, to take steps for the cancellation of the allotment/auction of the disputed property and their actions cannot be treated as nullity. We are further of the opinion that with the passing of the order for restoration of property to respondent No. 3 the sale of property by way of auction and all subsequent actions would be deemed to have become void and there was no necessity for compliance with the requirement of Rule 92 of the Rules.

(18) Before concluding we may refer to the argument of Shri Ghai, learned counsel for respondent No. 3, that the petitioners had themselves given up their claim regarding the parcel of the land allotted to the father of respondent No. 3, and, therefore, they are not entitled to challenge the legality of the order passed by the Financial Commissioner. A look at the prayer made by the petitioners in their application dated 28th December, 1971 shows that the petitioners had prayed for setting aside the cancellation of sale and in the alternative they had prayed that the area originally belonging to respondent No. 3 may be withdrawn. In our opinion, on account of making an alternative prayer the petitioners cannot be denied a right to challenge the legality of the orders passed by the Financial Commissioner. However, in view of our conclusion that the original order passed by the Managing Officer on 27th September, 1960 was void *ab initio* and the Chief Settlement Commissioner was right in setting aside the said cancellation of allotment, the direction given by the Financial Commissioner for restoration of a portion of land to respondent No. 3 and protecting the remaining land of the petitioners with a further direction to the authorities to refund the proportionate amount of auction money cannot be termed as illegal or arbitrary or unreasonable. Rather it is an order by which substantial justice has been done between the parties, but the result of the order passed by the Financial Commissioner is that respondent No. 3 will continue to enjoy the benefit of allotment made in favour of his father, who was admittedly a displaced person and the petitioners will also enjoy remaining property.

(19) For the reasons mentioned above, both the writ petitions fail and the same are dismissed.

R.N.R.