at will and efficient management demands that power to appoint should necessarily include the power to dismiss. In Army matters the legislature has conferred on the Government the same proprietary rights as provided to employers to hire and fire without restrictions. Reliance has been placed by Mr. Aggarwala on certain decisions under the Industrial Disputes Act holding that even in a case where under the standing orders it is permissible to terminate the services with one month's notice or payment in lieu thereof without assigning any reason, it is not open to the employer to exercise that power in an arbitrary or capricious manner and the *bona fides* as well as the justifiability of the employer's act can be enquired into by the Tribunals constituted under the Industrial Disputes Act. I do not think that that principle can be extended to matters of army discipline. In my opinion, any alleged violation of natural justice in the matter of dismissal or removal from service does not confer a justiciable right on the persons subject to the Air Force Act, 1950.

In the result, this petition must fail and is dismsised with no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

RAMJI DASS,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 140 of 1963

July 26, 1966

Capital of Punjab (Development and Regulation) Act (XVII of 1952)—Ss. 8 and 9—Whether ultra vires being violative of Art. 14 of the Constitution—Chandigarh (Sale of Sites) Rules (1952)—Rules 8 and 11—Estate Officer or Chief Administrator—Whether can fix time for the execution of sale-deed by purchaser.

Held, that sections 8 and 9 of the Capital of Punjab (Development and Regulation) Act, 1952 are not hit by Article 14 of the Constitution and are not *ultra vires.* In exercise of the powers under section 22(2)(g) of the Act the State Government has framed rules called the Chandigarh (Sale of Sites) Rules, 1952,

Rule 11 of which deals with 'the terms and conditions for the breach of which any site or building may be resumed'. It is evident from this rule that it is only in the case of a continuous default that the Estate Officer can take action under section 9 of the Act. It is true that he has been given discretion that he may not so proceed and may take a lenient view and proceed under section 8, read with this very rule, to order recovery of the arrears with penalty, but this is for the benefit and advantage of the purchasers of sites, and merely because the legislature has provided for such lenient treatment, that does not mean that no guidance has been provided in what circumstances power under section 9 of the Act is to be exercised. When a purchaser fails pay the arrears with penalty and there is a subsisting default, then the Estate Officer can act under section 9 of the Act. Here is a guidance to the Estate Officer in what circumstances and on what consideraions he is to propoceed to resume a site under section 9 of the Act. This guidance under this rule made pursuant to section 22(2)(g) of the Act is clear enough and there is no ambiguity in this respect. It is thus not correct to say that no guidance has been given by the legislature to the Estate Officer, or, in appeal, to the Chief Administrator, in this respect when to proceed under section 8 and when under section 9 of the Act.

Held, that the word 'manner' in rule 8 of the Chandigarh (Sale of Sites) Rules, 1952, does not entitle the Estate Officer, or the Chief Administrator in appeal, to fix a time within which a conveyance deed must be executed by the purchaser and the imposition of any such condition is *ultra vires* and is liable to be quashed.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on the 3rd February, 1966 to a division bench for decision of the important question of law involved in the case. The case was finally decided by Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Mr. D. K. Mahajan on 26th July, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ or direction be issued quashing the impugned orders and further praying that the implementation of the order imposing penalty and the execution of conveyance deed be stayed till the decision of the writ petition.*

K. C. SUD, ADVOCATE, for the Petitioner.

MELA RAM SHARMA, ADVOCATE, for the Respondent.

ORDER OF THE DIVISION BENCH

MEHAR SINGH, C.J.—The petitioner, in this petition under Articles 226 and 227 of the Constitution, purchased a shop in

Sector 20-C at Chandigarh in a public auction for Rs. 15,000. He deposited 25 per cent of that amount on the same day, and the balance was to be paid in three equal instalments with interest at 4½ per cent per annum. The first instalment became due on January 10, 1961, but the petitioner defaulted, and the site of the shop was resumed on November 13, 1961, by the Estate Officer. On appeal, the Chief Administrator reversed that order and directed payment of instalment with interest, which payment was made by the petitioner. The second instalment became due on January 10, 1962, and again the petitioner defaulted. The Estate Officer then proceeded to resume the site under section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act 17 of 1952), and also forfeited the amount already paid by the petitioner. This order was made on May, 9, 1962. The appeal of the petitioner under section 10 of the Act was heard by the Chief Administrator on August 17, 1962. A copy of the order of the Chief Administrator is Annexure 'A' to the petition. The appeal of the petitioner was accepted 'subject to the conditions that (i) the arrears of instalment, with interest at the rate of 4½ per cent per annum, and a penalty to the extent of 10 per cent of the amount in arrears, are paid in cash within a period of thirty days from the date of the issue of this order, and (ii) a deed of conveyance in respect of the site is duly executed within the said period of thirty days'. A copy of this order was endorsed on August 20, 1962, to the petitioner and was received by him on the next day. The petitioner then filed a revision petition under sub-section (4) of section 10 of the Act to the State Government, about which he was informed on January 4, 1963, that the same had been rejected. It is after that that the petitioner filed a petition under Articles 226 and 227 of the Constitution challenging the validity and legality of the order of the Chief Administrator made on apeal.

It has been one of the allegations of the petitioner that on August 17, 1962, he was orally informed by the Chief Administrator that his appeal was accepted setting aside the order of resumption made by the Estate Officer and that he was to make a deposit of the arrears of the instalment due, which, the petitioner says, was deposited on August 19, but when on August 21, 1962, he received copy of the order of the Chief Administrator, he was surprised to discover that it contained two conditions on which the appeal had been accepted. His position has been that the Chief Administrator never informed him that the order in appeal was subject to those

conditions. He then avers that the order was in fact written on August 20, when the Chief Administrator as an after-thought added those conditions in the order. It was then conveyed to him on August, 21, 1962. The Chief Administrator has made return in reply to this allegation and has clearly and unmistakably denied that those are the facts. He states that the whole of the order, with the conditions, was announced to the petitioner and written and signed on August 17, 1962, but its copy was typed in his office on August 20, 1962, and despatched to the petitioner. The learned counsel for the petitioner says that the order itself bears no date, which is true, but there is no reason to doubt in the least the return of the Chief Administrator in reply to the allegations of the petitioner in this behalf. It would perhaps have been better if the order had been dated and it is hoped that this omission will not occur again, to enable a party, as the petitioner in this case, to make such an allegation. So, in the wake of the categorical statement by the Chief Administrator in this respect, this allegation by the petitioner cannot be accepted as correct.

It has then been pointed out by the learned counsel for the petitioner that in his reply the Chief Administrator says that the appeal of the petitioner was accepted subject, in accordance with the Government's policy in such matters, to the payment of the amount of instalment in arrears with interest and penalty within thirty days, and he contends that this decision of the Chief Administrator in appeal was not a judicial decision because it was dictated by a Government policy. This is rather an unfortunate manner of stating a plain thing by the Chief Administrator for the matter is expressly covered by rule 11 of the Chandigarh (Sale of Sites) Rules, 1952, which rule reads—

> "11. In case an instalment is not paid by the transferee by the 10th of the month following the month in which it falls due, a notice shall be served on the transferee calling upon him to pay the instalment within a month together with a penalty which may extend to ten per cent of the instalment payable. If the payment is not made within the said period or such extended period as may be determined by the Estate Officer, but not exceeding three months in all from the date on which the instalment was originally due, the Estate Officer may proceed to have the same recovered as an arrear of land revenue or to take action under section 9 of the Act".

It is immediately evident that the Chief Administrator ordered payment of interest and imposition of penalty at ten per cent per annum on the arrears in the exact terms of this rule. The policy of the Government has already been translated into this rule, and merely because the Chief Administrator has not made any reference in his reply to this rule, but has referred to the subject-matter of the rule as the policy of the Government, that does not make his order in this respect not a judicial order. This approach is devoid of substance.

It is then urged by the learned counsel for the petitioner that while, according to rule 11, the first condition could be imposed by the Chief Administrator, there has been no justification and jurisdiction in the Chief Administrator to impose the second condition that the petitioner is to have the deed of conveyance in respect of the site executed within thirty days of the date of the order. In this respect the relevant rule is rule 8, and it reads—

> "8. On receipt of at least 25 per cent of the sale price, whether the sale is effected by allotment or by auction, the transferee shall execute a deed of conveyance in the form annexed to these rules as Schedule 'B' in such manner as may be directed by the Estate Officer."

The learned counsel says that according to this rule no time could be fixed either by the Estate Officer or, in appeal, by the Chief Administrator for the execution of the deed of conveyance. Now, the whole thing depends upon the meaning and scope of the word 'manner' as used in this rule, for the conveyance deed is to be executed by the purchaser, after complying with other things stated in the rule, 'in such manner as may be directed by the Estate Officer'. In the Shorter Oxford English Dictionary the meaning of the word 'manner' is 'mode of handling', and 'the way in which something is done or takes place; mode of action or procedure'. The learned counsel for the respondents has pointed out that this part of the rule refers to this that where the price of the site is a small amount and the purchaser is readily able to procure the stamp-paper, then he is told to purchase it himself, but where the price is a huge amount, the purchaser is asked to deposit the amount, which is then sent to the office of the Financial Commissioner and an embossed stamp-paper for the amount is obtained. The learned counsel says that it is this manner of obtaining of the stamp-paper

that is referred to in this part of the rule. That may be so. But it does not, in view of the meaning of the word, as given above, appear to have within its meaning and scope the fixation of the time by the Estate Officer or, in appeal, by the Chief Administrator, within which a conveyance deed must be executed by the purchaser. This part of the order of the Chief Administrator is not thus within rule 8 and is *ultra vires* of his powers.

The last argument that is canvassed by the learned counsel for the petitioner is that sections 8 and 9 of the Act are *ultra vires* being hit by Article 14 of the Constitution inasmuch as unguided and uncanalised power is given to the Estate Officer either to recover the amount of the arrears as land revenue under section 8 or to resume the site under section 9 in case of default in payment or non-payment of any consideration money or instalment thereof in regard to the purchase of a site. The learned counsel says that when a default occurs, it is left to the sweet will of the Estate Officer either to proceed under section 8 to recover the amount as arrears of land revenue, or to proceed to resume the site under section 9. The legislature, according to him, has provided no guidance in this respect when he is to proceed under one section and when under the other. The two sections read thus—

"8. (1) Where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building under section 3 or of any rent due in respect of any lease, or where any transferee or occupier makes any default in the payment of any fee or tax levied under section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

(2) In the case of any default in the payment of an amount payable under this Act, the outstanding amount in default together with any sum, if any, directed to be paid by way of penalty under sub-section (1) may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrear of land revenue.

9. In the case of non-payment of consideration money or any instalment thereof on account of the transfer of any site

> or building under section 3 or of any rent due in respect of the lease of any such site or building or in the case of the breach of any other conditions of such transfer or breach of any rules made under this Act, the Estate Officer, may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money, if any, paid in respect thereof."

It is evident that though in part the sections do not correspond, but, with regard to the effect of the default in payment or non-payment of the consideration money or any instalment thereof in regard to the purchase of a site, the language of the two sections is, for all practical purposes, exactly the same. In section 22(2)(g) of the Act power has been given to the State Government to make rules in regard to 'the terms and conditions for the breach of which any site or building may be resumed'. It is rule 11 which deals with this subject-matter. This rule has already been reproduced above. It is evident from this rule that it is only in the case of a continuous default that the Estate Officer can take action under section 9 of the Act. It is true that he has been given discretion that he may not so proceed and may take a lenient view and proceed under section 8, read with this very rule, to order recovery of the arrears with penalty, but this is for the benefit and advantage of the purchasers of sites, and merely because the legislature has provided for such lenient treatment, that does not mean no guidance has been provided in what circumstances power under section 9 of the Act is to be exercised. When a purchaser fails to pay the arrears with penalty and there is a subsisting default, then the Estate Officer can act under section 9 of the Act. Here is a guidance provided to the Estate Officer in what circumstances and on what considerations he is to proceed to resume, a site under section 9 of the Act. This guidance under this rule made pursuant to section 22(2)(g) of the Act is clear enough and there is no ambiguity in this respect. It is thus not correct to say that no guidance has been given by the legislature to the Estate Officer, or, in appeal, to the Chief Administrator, in this respect when to proceed under section 8 and when under section 9 of the Act. So that this argument has not been substantiated by any valid approach to the provisions of the two sections considered with section 22(2)(g) and rule 11. This very argument was considered by a Division Bench of this Court consisting of Falshaw, C.J., and my learned brother, Mahajan, J.. who

delivered the judgment of the Division Bench, in *Jagdish Chand-Radhey Sham* v. *The State of Punjab,* Letters Patent Appeal No. 218 of 1965, decided on February, 21, 1966, and was repelled by the learned Judges. My conclusion as to this is the same and I agree with the learned Judges as respects this matter. It is, however, necessary to point out that, on the facts of this case, this argument really does not arise, and the reason for that is that in this case there has been no resumption of the site purchased by the petitioner in view of the order made in appeal by the Chief Administrator. In fact the petitioner has been given the lenient treatment under section 8 of the Act, when his site could legitimately have been resumed, in the circumstances of the case and the persistent defaults made by him, under section 9 of the Act. So that the question of the vires of section 9 of the Act really does not arise in this case. It is not correct that, if there was any substance in this argument of the learned counsel, both sections 8 and 9 of the Act would have been constitutionally invalid being violative of Article 14. The most that could possibly happen is, if this argument was to be accepted, that it may have affected the provisions of section 9 of the Act only. Nothing, however, can be said against the vires of section 8 of the Act and action has been taken against the petitioner only under that section.

At the end it is urged by the learned counsel for the petitioner that now the time given to the petitioner by the Chief Administrator for complying with his order has expired and the result will be that the Estate Officer may refuse to accept payment by him in terms of the order of the Chief Administrator in appeal and will probably proceed to resume the site under section 9 of the Act, which will be a great hardship to him. There is much to be said for this and so the direction to the Chief Administrator is that he is to extend the time, for compliance by the petitioner with his order, to August 10, 1966.

In consequence the second condition in the order of the Chief Administrator in appeal is quashed and with the direction as above, this petition of the petitioner succeeds only partly and is otherwise dismissed, but in the circumstances of the case, there is no order in regard to costs.

B.R.T.