

case and *Sewa Singh's case*, by which view we are even otherwise bound while sitting in a Division Bench. In fact the application under section 42 was given on September 7, 1966 (*vide* paragraph 4 of the written statement of respondent No. 1), and the Limitation Act, 1963 (on which alone counsel has relied for this argument), was enforced from 1st January, 1964. The argument has, therefore, no application to the facts of this case.

Moreover, the judgments of the Division Benches in *Bhagat Singh's case* as well as *Sewa Singh's case* have already been approved by a Full Bench of this Court in *S. Gurdial Singh and others v. The State of Punjab and others* (6). In that case the question of limitation had been raised before the Director. Condonation of delay in presenting the time-barred petition under section 42 of the Consolidation Act was sought before him. The delay was condoned by the Director on the ground that the petitioner was in the Army and could not pursue his case. After referring to the judgments in the cases of *Bhagat Singh* and *Sewa Singh* and some other cases, the Full Bench held that before the Additional Director could have extended the time, he had to come to a conclusion that during the entire period of three years the petitioner was incapable of moving the authority or there was any other good reason for his not doing so earlier. It was on that ground that the plea relating to rule 18 of the Consolidation Rules was allowed to prevail in the writ petition (C.W. 915 of 1966). The precise question relating to the propriety of permitting the question of limitation being raised for the first time in writ proceedings was not before the Full Bench.

No other point was argued before us in this case. The appeal, therefore, fails and is dismissed with costs.

S. B. CAPOOR, A.C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

JOGINDER PAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 76 of 1967

October 9, 1967

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 90 and 92—Acquired evacuee property auctioned and entire purchase money

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received—Auction—Whether can be set aside on the ground that price fetched is low—Managing Officer—Whether can confirm the auction under the directions of Settlement Commissioner.

Held, that under Rule 90(15) of the Displaced Persons (Compensation and Rehabilitation) Rules, when the purchase price in an auction of acquired property has been realised in full from the auction-purchaser, the Managing Officer has to issue a sale certificate, after the issue of which the sale can be set aside only under rule 92 of the Central Rules or by the Chief Settlement Commissioner in exercise of his powers under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) in suitable cases. The auction cannot be set aside because of the low price fetched at the auction. Simply because the amount of highest bid is on the lower side, this factor in itself cannot be considered to prove want of due publicity of the sale.

Held, that Rule 90(10) of the rules provides that the bid in respect of which the initial deposit has been accepted shall be subject to the approval of the Settlement Commissioner or an officer appointed by him. The Settlement Commissioner can appoint a Managing Officer for the purpose of confirming the sale and the sale can be confirmed by the Managing Officer under the direction of the Settlement Commissioner.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued quashing the order of Respondent No. 2, dated 18th November, 1966, and further praying that till disposal of the writ petition the intended sale of the house be stayed.

BABU RAM AGGARWAL, ADVOCATE, for the Petitioner.

R. S. AMOL, ADVOCATE, for the Respondents.

NARULA J.—This litigation relates to house No. 344-B situate at Sanaur in Patiala District. The house is an acquired evacuee property. On April 3, 1964, the house was put to auction and the petitioner gave the highest bid of Rs. 2,000 for it. Before the bid could be confirmed, Harnam Singh, respondent No. 3, made an application to the Managing Officer, Patiala, for the transfer of the house to him. His application was rejected by the order of the Managing Officer, dated September 16, 1964 (Annexure 'A'). After holding that Harnam Singh was not entitled to purchase the property at its fixed price and after rejecting his application, the Managing Officer further observed that there were chances of the property

fetching a higher price if it could be resold. Thinking that adopting such a course would give chances to both the parties, he refused to confirm the bid of the petitioner and directed the property to be reauctioned. Against the abovesaid order of the Managing Officer, both the sides went up in appeal to the Settlement Commissioner. The petitioner prayed for confirmation of his bid and respondent No. 3 prayed for an order of transfer of the house to him at its reserve price. Both the appeals were disposed of by the order of the Settlement Commissioner, dated nil (Annexure 'B'). The appellate authority held that the procedure which had been adopted by the Managing Officer in recording the evidence of Harnam Singh in support of his claim was not proper and, therefore, set aside the order rejecting Harnam Singh's application and remanded the case to the Managing Officer for passing fresh order after recording evidence of both the parties in that respect. Regarding the petitioner's claim for confirming the bid in his favour, the Settlement Commissioner held that there had been no irregularity in the conduct of the sale and that, therefore, if the Managing Officer found in the post-remand proceedings that Harnam Singh was not entitled to the transfer of house at the reserve price, the auction sale in favour of Joginder Paul petitioner should be confirmed by him. Against the order of the Settlement Commissioner (Annexure 'B'), none of the parties went higher. The resultant situation was that if Harnam Singh succeeded in establishing his claim to the transfer of the house, the sale in favour of the petitioner stood automatically deconfirmed; and that if Harnam Singh failed in getting his application granted, the sale in favour of the petitioner stood confirmed.

In the post-remand proceedings Shri Om Parkash; Managing Officer, found in his order, dated April 28, 1965 (Annexure 'C') that Harnam Singh had not come into possession of the house in dispute before the relevant date; and proceeded to reject Harnam Singh's application for transfer on that ground. In view of the order which had already been passed by the Settlement Commissioner, the Managing Officer proceeded to confirm the highest bid of the petitioner as no irregularity had been found in the conduct of the sale in his favour. The petitioner was naturally satisfied with the order of the Managing Officer. Equally obviously, Harnam Singh could not be satisfied with it and he went, therefore, in appeal to the Settlement Commissioner. His appeal was rejected by the order of Shri Tejinder Singh, Settlement Commissioner, Punjab, Jullundur, dated October

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18, 1965 (Annexure 'D') on the ground that he had no jurisdiction to pass any order in the case as the order, dated April 28, 1965, had itself been passed by the Settlement Commissioner.

Harnam Singh then went up in revision to the Chief Settlement Commissioner against the post-remand order of the Settlement Commissioner, dated April 28, 1965 (Annexure 'C'). The revision petition was disposed of by the impugned order of Shri Ajit Kumar, Chief Settlement Commissioner, Punjab, Jullundur, dated November 18, 1966. He rejected Harnam Singh's claim about his having been in occupation of the property since before January 1, 1963, on merits as well as on the ground that his case had already been examined twice and rejected as many number of times. He finally held that Harnam Singh, respondent, was not entitled to the transfer of property at the reserve price. After recording the above finding, the learned Chief Settlement Commissioner adopted a somewhat curious course. He held that since the reserve price of the house in dispute was shown in the register *Sikni* as Rs. 2,172 the highest bid of Rs. 2,000 given by the petitioner should not be accepted as such a bid which was up to 40 per cent below the reserve price, could be accepted according to the departmental instructions, only by a Settlement Officer or an Additional Settlement Officer; and that the Settlement Officer could not have asked the Managing Officer or the Settlement Commissioner to confirm the sale. On that ground alone, the sale in favour of the petitioner and the order of the Managing Officer exercising the powers of Settlement Commissioner, dated April 28, 1965, were set aside; and the property was directed to be reauctioned. In arriving at that conclusion, the Chief Settlement Commissioner also took into consideration the opinion of the Managing Officer expressed in his original order, dated September 16, 1964 (Annexure 'A'), without realising that the said order had ceased to exist in the eye of law after having been set aside by the appellate authority in the undated order of the Settlement Commissioner (Annexure 'B'). Before closing the order, the Chief Settlement Commissioner made a conjecture to the effect that it appeared to him "that due publicity for the sale had not been made". No material whatever on which such a finding could be based was either referred to by the Chief Settlement Commissioner or has been referred to at the hearing of this petition. In fact a finding of fact had already been recorded about Harnam Singh having failed to point out any irregularity in the sale.

The order of the Chief Settlement Commissioner has been attacked by Mr. Babu Ram Aggarwal, learned counsel for the petitioner in this case, on various grounds. Firstly it appears to me to be clear that the undated order of the Settlement Commissioner (Annexure 'B') finally decided the fate of the auction sale in favour of the petitioner subject only to the rights of Harnam Singh, respondent No. 3, which were the subject-matter of his application for transfer of the house to him at its reserve price. Both the parties as well as the department were bound by that order as it had not been set aside or varied by any higher authority in any appropriate proceedings against that particular order. *

Even otherwise the impugned order in so far as it directs re-auction of the property in question cannot be sustained. Sub-rule (10) of rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Central Rules) provides that the bid in respect of which the initial deposit has been accepted shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose. The undated appellate order (Annexure 'B') had been passed by the Settlement Officer, who was vested with powers of Settlement Commissioner. It is not disputed that he had the authority to confirm the sale in favour of the petitioner. What seems to have weighed with the Chief Settlement Commissioner is that the Settlement Commissioner could not have left even the passing of formal order of confirmation to the Managing Officer. This appears to be based on some misapprehension of the legal position. What the Managing Officer really did in this case in his post-remand order, dated April 28, 1965, was merely to follow the direction given by the Settlement Commissioner. The real order confirming the sale subject to one eventuality had been passed by the Settlement Commissioner himself. That eventuality having been finally taken out of consideration, the confirmation of the sale could not be interfered with. Moreover, the Settlement Commissioner can at best be deemed to have appointed the Managing Officer for the purpose of confirming the sale in the circumstances directed in the order of the Settlement Commissioner and this is expressly permitted by sub-rule (10) of rule 90. ■

The Chief Settlement Commissioner seems to have lost sight of sub-rule (15) of rule 90 which states that when the purchase price has been realised in full from the auction-purchaser, the Managing Officer has to issue a sale certificate, after the issue of which the

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sale can be set aside only under rule 92 of the Central Rules or by the Chief Settlement Commissioner in exercise of his powers under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954), in suitable cases. Error of law is apparent on the face of the impugned order (setting aside the sale on the ground of an alleged irregularity) in two respects. Firstly it has been stated in the impugned order that it appeared to the Chief Settlement Commissioner that the publicity for the sale had not been made simply because of the low price fetched at the auction. This factor by itself cannot be considered to prove want of due publicity of the sale, even if it can be presumed that the amount of the highest bid was on the lower side. Secondly, the hyper-technical ground of the sale not having been confirmed by the Settlement Commissioner (mentioned in the impugned order as Settlement Officer/Assistant Settlement Officer due to some departmental instructions), but by the Managing Officer is not only untenable as being based on mere departmental instructions contrary to sub-rule (10) of rule 90 of the Central Rules, but also appears to be factually non-existent in the instant case in the circumstances already dealt with. In these circumstances; it appears to me to be impossible to sustain the impugned order.

Mr. R. S. Amol, the learned counsel for Harnam Singh, respondent; could not say much in reply to the criticism levelled against the impugned order by Mr. Babu Ram Aggarwal. He, however, vehemently argued that under sub-rule (5) of rule 90; the auction of every property in the compensation pool is subject to a reserve price though such price has not to be disclosed and that this implies that the departmental authorities can refuse to sell a property if it does not fetch even the reserve price. No fault can be found with the argument of the learned counsel in so far as it goes. But the stage for refusing to accept the bid had already passed in this case. The bid had not only been accepted and the sale confirmed, but full price thereof had been realised by the department from the petitioner and even a sale certificate had been issued to him long before the impugned order was passed. That is not a stage for refusing to accept the bid of an auction bidder.

It was then contended by Mr. Amol that no one has a right to come to this Court under Article 226 of the Constitution and claim that his bid must be confirmed. That may indeed be so. But in this case, the petitioner is not aggrieved of any such order as is envisaged by Mr. Amol. What he is aggrieved of is that after the final order of confirmation made by the Settlement Commissioner,

the Chief Settlement Commissioner had no jurisdiction in a subsequent independent petition for revision against another and different order to set aside a completed sale in favour of the petitioner without there being any legal justification for the same. Mr. Amol then referred to the judgment of Tek Chand. in *Girdhari Lal and another v. Shri L. J. Johnson and others* (1), wherein it has been held that rule 22 of the Central Rules is worded in a language which gives considerable amount of discretion, and that the use of the words "ordinarily" and "unless Central Government otherwise directs" in sub-rules (1) and (2), respectively of rule 22 admit of considerable flexibility, which leaves the matter to the exclusive jurisdiction of the authorities under the Act which matter is not open for examination by the High Court under Article 226 of the Constitution. Here again the fallacy in the argument of the learned counsel for Harnam Singh is that if Harnam Singh had come to this Court under Article 226 of the Constitution and claimed that he was entitled to obtain the property because it was allottable within the meaning of rule 22 and that the refusal of the Government to transfer the property to him in spite of that fact was illegal, the judgment of Tek Chand, J., in *Girdhari Lal's case* (supra) could have been cited against him as a complete answer. The petitioner is not claiming any relief under rule 22 of the Central Rules. He is an auction-purchaser and has not to depend upon the phraseology of rule 22. The judgment of this Court in *Girdhari Lal's case* is, therefore, of no assistance to me for deciding this writ petition.

No other point having been argued before me, this writ petition succeeds for the reasons already recorded. The judgment and order of Shri Ajit Kumar, Chief Settlement Commissioner, dated November 18, 1966 (Annexure 'E') in so far as it directs the setting aside of the sale in favour of the petitioner and the reauction of the house in dispute is set aside. Parties are, however, left to bear their own costs in this Court.

K. S. K.

(1) 1961 P.L.R. 183.