

## REVISIONAL CIVIL.

Before Bhandari, C. J.

ASSISTANT CUSTODIAN, EVACUEE PROPERTY,  
AMRITSAR, through and on behalf of MOHD KHALIL, son  
of MAULA BUX, RAJPUT of AMRITSAR, Gilwali Gate, now in  
Pakistan,—Petitioner.

versus

SETH RATTAN CHAND AND ANOTHER,—Respondents.

Civil Revision No. 257 of 1952.

1953

May 28th

*Code of Civil Procedure (V of 1908) Section 151—Scope of—Order contrary to law—Court has inherent power to review or revise the same—Evacuee Property sold in execution of decree in direct contravention of Section 17 of the Administration of Evacuee Property Act—Sale confirmed by Court—Application by Custodian to set aside the sale—Sale whether can be set aside—Executing Court refusing to set aside sale—Revision.*

*Held*, that in view of the positive prohibition imposed by section 17 of the Administration of Evacuee Property Act, the executing court had no power to sell or confirm the sale of evacuee property. As the action of the executing court was contrary to law it was at liberty to review its own order and to set aside the sale. The executing Court having declined to do so the High Court set aside the sale in Revision.

*Petition under Section 44 of Act IX of 1919, for revision of the order of Shri Dev Raj Saini, Sub-Judge, IV Class, Amritsar, dated the 20th May, 1952, dismissing the petition.*

I. D. DUA, for Petitioner.

Y. P. GANDHI, for Respondent (Udham Singh).

## JUDGMENT.

BHANDARI, C. J. The sole point for decision in the present case is whether the executing Court was justified in declining to set aside the sale of a certain house which was made in contravention of the provisions of section 17 of the Evacuee Property Act.

Bhandari,  
C. J.

The facts of the case are very simple indeed. One Mohammad Khalil had mortgaged a certain house situate at Amritsar, with one Seth Rattan Chand. On the 4th May 1948 Seth Rattan Chand brought a suit for the recovery of the mortgage money and was able to obtain a preliminary decree on the 28th December, 1948, and the final decree on the 27th July 1949. The house in question was brought to sale on the 14th February 1951

Assistant Custodian, Evacuee Property Amritsar, etc.,  
 v.  
 Seth Rattan Chand and another  
 ———  
 Bhandari, C. J.

and was purchased by one Udham Singh for a sum of Rs. 2,125. The sale was confirmed in favour of the auction-purchaser on the 17th March 1951. Four months later, i.e., on the 29th July 1951, the Custodian of Evacuee Property put in an application for the setting aside of the sale on the ground that the house in question was evacuee property and the sale of evacuee property was prohibited by section 17 of the Evacuee Property Act, 1950. The executing Court dismissed the application on the ground that the application did not lie as it had been presented after the 17th October 1950, i.e., the date mentioned in subsection (2) of section 17 of the Act of 1950. It is against this order that the present revision has been preferred.

Section 17 as it appears in the Administration of Evacuee Property Act, 1950, is in the following terms—

“ 17. Exemption from attachment, sale, etc.—

(1) Save as otherwise expressly provided in this Act, no property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

(2) Save as otherwise expressly provided in this Act, any attachment or injunction subsisting on the commencement of this Act, in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of evacuee property under orders of a Court or any other authority made after the 1st day of March, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within six months from the commencement of this Act.

The Act of 1950 was amended by the Administration of Evacuee Property (Amendment) Act, 1951. This section does not appear to have been sufficiently comprehensive and accordingly the Legislature substituted a new section by section 3 of the Administration of Evacuee Property (Amendment) Act, 1951. The earlier section declared that no property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority but the later section declared that no such property shall be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or other authority. It declared further that any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void. Subsection (2) of the later section ran as follows :—

“Where, after the 1st day of March, 1947, any evacuee property which has vested in the Custodian or is deemed to have vested in the Custodian under the provisions of this Act, has been sold in execution of any decree or order of any Court or other authority, the sale shall be set aside if an application in that behalf has been made by the Custodian to such Court or authority on or before the 17th day of October, 1950.”

The application in the case now under consideration was made not before the 17th October, 1950, as specified in subsection (2) of section 17 but on the 29th July, 1951, and the executing Court had accordingly declined to entertain it on the ground that it had been presented after the expiry of the due date.

Mr. Gandhi, who appears for the auction-purchaser, contends that as the application was presented after the prescribed date, the Court below was justified in declining to set aside the sale. He contends in the alternative that even

Assistant  
Custodian,  
Evacuee  
Property  
Amritsar, etc.,  
v.  
Seth Rattan  
Chand and  
another  
—  
Bhandari,  
C. J.

Assistant  
Custodian,  
Evacuee  
Property  
Amritsar, etc.,  
v.  
Seth Rattan  
Chand and  
another  
—  
Bhandari,  
C. J.

though the sale itself was probably void in view of the comprehensive provisions of section 17, the Court having confirmed it on the 17th March 1951, was *functus officio* and had no power to review or to revise its own order. My attention has been invited to *Satia Nand v. Jhangi Ram and another* (1), and *Muttalooru Bojjanna v. Boya Kristappa* (2). These decisions do not appear to me to be strictly relevant. It is the inherent power of a Court of law to revise its own orders if it is satisfied that the orders are contrary to law. In *Aijaz Ahmad v. Nazirul Hasan and another* (3), a Division Bench of the Allahabad High Court held that a Court has inherent jurisdiction to recall and cancel its invalid orders, and to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The learned Judges went to the length of stating that there is no rule of law that debars a Collector from recalling his order confirming a sale if he is satisfied that the order ought to be recalled in order to secure the ends of justice. A similar view was taken in *Govinda Padayachi v. Velu Murugayya Chettiar and another* (4), and it was held that where an execution sale is held in contravention of the express direction of the Court, the Court has inherent jurisdiction to set aside the sale without any application by the judgment-debtor under Order 21, rule 90. In a Full Bench decision of the Lahore High Court, reported as *Gauri v. Ude and others* (5), it was held that there may be cases in which a strict application of Order 21, rule 92, might work some hardship; but any rules of this kind are subject to the operation of section 151 and consequently that the Court can remedy injustice by review also. In a recent decision of this Court in Civil Revision Application No. 211 of 1951 Weston, C. J., actually set aside a sale which had already been confirmed by the executing Court and ordered refund of the purchase-money to the auction-purchaser.

(1) A.I.R. 1932 Lah. 238  
(2) A.I.R. 1947 Mad. 268  
(3) A.I.R. 1935 All. 868  
(4) A.I.R. 1933 Mad 399  
(5) A.I.R. 1942 Lah. 153 (F.B.)

It is common ground that the house which was attached and sold in the execution of the decree obtained by Seth Rattan Chand in the present case was evacuee property, that this property vested in the Custodian and that it could not be attached or sold in the execution of a decree. In view of the positive prohibition imposed by section 17 of the Administration of Evacuee Property Act, it seems to me that it was not within the power of the executing Court to bring it to sale or to confirm the sale. As the action of the executing Court was in contravention of the express provisions of law, it was, in my opinion, within the power of the said Court to review its own order and to set aside the order of the 17th March 1951 by which the sale was confirmed. Unfortunately the Court declined to take the only course which was open to it under the circumstances of the case.

For these reasons, I would allow the petition, set aside the order of the executing Court as well as the order, dated the 17th March 1951, by which the sale was confirmed in favour of Udham Singh. I further direct that the auction-purchaser will be entitled to recover from the decree-holder through the executing Court any amount which may have been paid by him to the decree-holder on account of the price of the property in question. There will be no order as to costs of this Court.

Assistant  
Custodian,  
Evacuee  
Property  
Amritsar, etc.,  
v.  
Seth Rattan  
Chand and  
another  
—  
Bhandari,  
C. J.