

## CIVIL MISCELLANEOUS

Before Bishan Narain, J.

RAJINDER NATH B. MARA,—Petitioner.

*versus*

I. N. CHIB AND OTHERS,—Respondents.

Civil Writ No. 340-D of 1959.

*Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 90(12) (13) (14) (15)—Auction purchaser—Whether can call upon the Department to cancel an associate tendered by him and to substitute another one in his place.*

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*Held*, that when a bid is accepted, a contract for the sale of the property between him and the department comes into existence. Under the rules as long as these verified claims are not scrutinised the persons who wish to associate in the transaction of the sale can be said only to make an offer to be associated. No rights are created in their favour till their claims are scrutinised and transfer is made in favour of the auction-purchaser and the associates. Before that stage arises it is open to the Department to reject any proposed associate on the ground that he has no verified claim or that his verified claim is less than the amount stated by him in his offer of association. The auction-purchaser can also ask the Department to cancel the associate tendered by him and to substitute another one in his place because essentially the sale is in favour of the auction-purchaser and a person who proposes to be associated in the transaction has no right to insist on his remaining so till his claim has been scrutinised by the Department.

*Petition under articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction may be passed calling for the records of the respondent No. 1 and for quashing of the order of the respondent No. 1, dated the 4th May, 1959, and directing respondent No. 1 that the sale certificate be issued in favour of the petitioner alone or that the petitioner may be treated as an associate of respondent No. 2, for the purchase of the property, i.e., Plot No. 138B, Block No. 10, Golf Link Area, New Delhi, and for the issue of such other orders and directions as this Hon'ble court may deem most just and proper under the circumstances of the case.*

SHIV CHARAN SINGH, ADVOCATE, for the Petitioner.

R. S. NARULA, ADVOCATE, for the Respondent.

## ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—Rajinder Nath B. Maira has filed this petition under articles 226 and 227 of the Constitution challenging the validity of the order made by the Chief Settlement Commissioner on 4th May, 1959.

The facts leading to this petition are these. Plot No. 138-B, Block No. 10, Golf Link Area, New Delhi, was sold by public auction on 9th January, 1955. Shri M. C. Mohan gave the highest bid of Rs. 31,150 and paid the initial deposit of 10 per cent on the same day. At that time the Rules under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, had not been framed. They were framed on 21st May, 1955. The auction-purchaser did not deposit the balance of the amount due from him and the deposit was forfeited by the Assistant Settlement Commissioner on 23rd December, 1955. This order was made under Rule 90(14) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Thereafter on 20th April, 1956, Shri M. C. Mohan and the petitioner entered into an agreement by which the auction-purchaser agreed to associate the petitioner in this transaction. Accordingly, a power of attorney was executed in favour of the petitioner and through him an appeal was filed against the order dated 23rd December, 1955, before the Assistant Settlement Commissioner. The officer concerned accepted the appeal and set aside the order of the forfeiture of the earnest money and further called upon him to deposit the remaining purchase-price. On 21st June, 1956, the petitioner made an application to be associated in the transaction. It appears that after this date M. C. Mohan and the petitioner fell out. On 7th July, 1956, M. C. Mohan cancelled the power of attorney which he had granted to the petitioner

and on 13th February, 1957, he wrote to the Department that Lajjya Ram Kapur, respondent No. 3, should be associated in the transaction. On the other hand, the petitioner made an application on 22nd April, 1957, that he had a right to remain an associate in the transaction and that his rights could not be affected on the ground that the auction-purchaser had proposed another associate in the transaction. The petitioner's application was dismissed on 6th December, 1958, and his appeal was dismissed by the Chief Settlement Commissioner on 4th May, 1959. It is against this order that the present writ petition is directed.

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and others  

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Bishan Narain, J.

The only point that requires determination in this case is whether an auction-purchaser can validly call upon the Department to cancel an associate tendered by him and to substitute another one in his place.

The relevant rules that require consideration are contained in sub-rules (12), (13), (14) and (15) of Rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which exclusively deal with this matter. Rule 90 lays down the procedure for sale of property forming part of compensation pool by public auction. Sub-rule (12), lays down that it is open to the auction-purchaser to pay the balance of the purchase money by getting his own verified claim adjusted against the compensation payable to any other person holding any such verified claim who is willing to associate himself with the auction-purchaser. After the verified claims by the auction purchaser of his proposed associates are offered, then under sub-rule (13) it is the duty of the Regional Settlement Commissioner to scrutinise the compensation of all these persons and find if any further sum is due from the auction-purchaser towards the purchase-price. If any such amount,

Rajinder Nath is due, then it is his duty to call upon the auction-  
 B. Maira, purchaser to make good the deposit. If the balance  
 v. of the purchase price is not deposited within the  
 L. N. Chib fixed time, then the auction is liable to be set  
 and others, aside and the initial deposit is liable to be for-  
 Bishan Narain, J. feited (sub-rule 14). Sub-rule (15), provides that  
 when the full purchase price has been realised  
 from the auction-purchaser then a *sanad* shall be  
 issued to him and his associates, transferring the  
 property jointly to them. The Supreme Court  
 construing rule 90 in *M/s Bombay Salt and Chemi-  
 cal Industries v. L. J. Johnson and others* (1), has  
 laid down as follows:—

“It is clear from the rules and the conditions  
 of sale imposed under Rule 90(3) and  
 set out in the notice of sale that the  
 declaration that a person was the highest  
 bidder at the auction does not amount  
 to complete sale and transfer of the  
 property to him. The fact that the  
 bid has to be approved by the Settle-  
 ment Commissioner shows that till  
 such approval which the Commissioner  
 is not bound to give, the auction-  
 purchaser has no right at all. It  
 would, further, appear that even the  
 approval of the bid by the Settlement  
 Commissioner does not amount to a  
 transfer of the property for purchaser  
 has yet to pay the balance of the pur-  
 chase-money and the rules provide  
 that if he fails to do that he shall not  
 have any claim to the property. The  
 correct position is that on the appro-  
 val of the bid by the Settlement Com-  
 missioner, a binding contract for the  
 sale of the property to the auction-  
 purchaser comes into existence. Then

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(1) A.I.R. 1958 S.C. 289.

the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place.”

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and others,

Bishan Narain, J.

It, therefore, follows that in the present case when the bid of M. C. Mohan was accepted, then a contract for the sale of the property between him and the Department came into existence. Such a contract does not confer any rights on the parties. Under the rules, after the bid has been accepted, the auction-purchaser has to pay the balance of the purchase-money. This he can do either by paying cash or by getting it adjusted towards his verified claim or by getting other persons with verified claims associated in the transaction with him. These associates can pay only by getting their verified claims adjusted and not by paying cash. Now these verified claims have to be scrutinised by the Department before they are accepted. In my view, as long as these verified claims are not scrutinised the persons who wish to associate in the transaction of the sale can be said only to make an offer to be associated. No rights are created in their favour till their claims are scrutinised and the transfer is made in favour of the auction-purchaser and the associates. Before that stage arises, it is open to the Department to reject any proposed associate on the ground that he has no verified claim or that his verified claim is less than the amount stated by him in his offer of association. In the present case the proceedings had not reached the stage of scrutiny by the Department at all and the disputes between the parties began before this stage could have been reached. I am, therefore, of the opinion that the petitioner had no right to insist that his offer to be associated in this transaction must be accepted. It is true that

Rajinder Nath the Department is not exercising any power in  
 B. Maira, this matter and that it is the auction-purchaser  
 v. who wants another associate to be accepted by  
 I. N. Chib the Department. I see nothing improper or  
 and others, wrong in this offer by the auction-purchaser.  
 Bishan Narain, J. After all it is a concession given to the auction-  
 purchaser to pay the purchase money by getting  
 adjusted verified claims of other persons. Essen-  
 tially the sale is in favour of the auction-pur-  
 chaser and in my opinion a person who proposes  
 to be associated in the transaction has no right to  
 insist on his remaining so till his claim has been  
 scrutinised by the Department. After the  
 scrutiny it may or may not be open to the  
 auction-purchaser to propose another associate  
 and request the Department to disassociate a  
 previous associate because that question does not  
 arise in the present case. It is clear to me that  
 in the present case at the stage when the differ-  
 ences between the parties took place, the peti-  
 tioner had no right to get himself associated in  
 the transaction of auction-sale in favour of Shri  
 M. C. Mohan. If he has no such right then he  
 has no grievance in the matter and thus the im-  
 pugned order has not contravened any right  
 vesting in him.

For these reasons, I dismiss this petition but  
 make no order as to costs.

R. S.

REVISIONAL CIVIL.

Before Shamsher Bahadur, J.

ABID HUSSAIN,—Petitioner.

versus

ROSHAN DASS,—Respondent.

Civil Revision No. 65-D of 1959.

1960

Sept. 6th.

Delhi and Ajmer Rent Control Act (XXXVIII of  
 1952)—Section 13(2)—Arrears of rent—Whether include the