
(2015) 03 AHC CK 0164

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17647 of 1995

Chetan Das

APPELLANT

Vs

Deputy Chief Settlement Commissioner and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92, Order 21 Rule 94, Order 41 Rule 11, 65
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 20, 24, 3(19), 3(5), 3(50)
Limitation Act, 1963 — Section 29(2)
Registration Act, 1908 — Section 89

Citation : (2015) 2 ESC 1043

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : S.N. Singh, A.K. Rai, C.K. Parikh and R.N. Singh, for the Appellant; A.C. Tripathi, Satish Mandhyan, Tarun Tiwari and Anuj Mandhyan, Advocates for the Respondent

Judgement

Ashwani Kumar Mishra, J—The present writ petition is directed against the order dated 10th January, 1995, passed by Deputy Chief Settlement Commissioner, U.P.-cum-Member, Board of Revenue, U.P. at Lucknow, as well as its subsequent order dated 6th April, 1995, rejecting the restoration application of the petitioner. The order impugned dated 10.1.1995 has been passed, allowing revision filed under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, whereby sale certificate dated 14.6.1968, issued in favour of four persons, including the petitioner, has been cancelled, and a direction has been issued to issue a fresh sale certificate in favour of deceased Tota Mal, for the reason that he alone was the auction purchaser. The order dated 10.1.1995 is reproduced:

"Heard the learned counsel for both the parties and perused the record of the case.

The sale certificate dated 14.6.1968 incorporating the names of the alleged co-purchasers Sri Amrumal S/o. Sri Manumal, Sri Khem Chand S/o. Sri Amru Mal and Sri Kakkoo Mal S/o. Sri Amru Mal is cancelled as the bidsheet shows that they were not the purchasers. Revision is allowed. The managing officer, Varanasi is directed to issue and the certificate of sale in favour of the revisionist, who are the heirs of the deceased Tota Mal, who was the auction-purchaser."

2. A restoration application was filed by the petitioner alleging that the order dated 10.1.1995 was passed upon a revision, which itself was highly belated, as it was filed after 23 years, and without there being any order for condonation of delay, the same was allowed ex parte, by a cryptic order, without hearing the petitioner. Various other grounds were pressed for restoration of the proceedings.

3. While rejecting the restoration application, learned Member of the Board of Revenue took note of the fact that a previous restoration application was filed by one Kakoo Mal on 18.1.1995, which was rejected by the following orders on 18.1.1995:

"Heard the learned counsel at length. The plea is that Kakoo Mal S/o. Amru Mal defendant No. 4 in the revision did not have notice of the hearing and the proceedings may be restored.

The revision had been decided on 10.1.95 setting aside the sale certificate issued by the managing officer, Varanasi on 14.6.1966 incorporating the names of the defendants as co-purchasers of the evacuee property. The ground for this decision is that the revisionist was the sole successful auction bidder.

Subsequently, it seems that the defendants, who were related to the revisionist had applied to the managing officer, Varanasi that they have no objection if their claim are adjusted against once purchase money to be paid by the revisionist. They also stated that they had no objection, if the sale certificate is issued in favour of the revisionist. It is also noticed that the wrong sale certificate was issued 1st years after the auction. Under the circumstances the defendants have no legal right of getting their names to be recorded in the sale certificate as co-purchasers. If there is any civil claim, they can enforce the same through the civil process. The revisionist the sale purchaser in the auction of the evacuee property and the Displaced Persons Act, 1954 cannot be invoked by quoting the facts unrelated to the auction.

I, therefore, do not consider that there is any sufficient ground to reopen the case which has already been decided on merits. The earlier sale certificate issued by the managing officer was a patent act a illegality and the defendants cannot be allowed to base their claim of the same."

4. Learned Member of the Board of Revenue took note of the fact that claims of 22 displaced persons had been adjusted towards payment of bid amount, but all such persons had agreed that sale certificate be issued in the name of Tota Mal. Learned Member also took note of the fact that Tota Mal himself had moved an

application that three more persons be admitted as co-purchaser, with each one having 1/4th share, including 1/4th share for himself, which was allowed, resulting in issuance of the sale certificate dated 14.6.1968, in favour of four persons. The revisional authority was of the view that inclusion of these additional three names was illegal, and consequently, it rejected the restoration application. Following paras of the subsequent order dated 6.4.1995, which is under challenge, are reproduced:

"5. Subsequently, the situation got further compounded when Tota Mal move the managing officer requesting that the sale certificate may be issued incorporating the name of three more persons besides himself. There three persons Amru Mal, Khem Chand and Kakoo Mal are shown as holding 1/4th share each alongwith Tota Mal in the sale certificate. It is, therefore, clear that against the compensation claim of twenty two persons which was utilized in paying for the auction money, only three were admitted as co-purchasers. The share of these co-purchasers also does not tally with their compensation claims utilized in the purchase. It is obvious that some settlement of money was made behind the scene between the parties. The action of the auction-purchaser Totamal in requesting that these three persons may be admitted as co-purchasers with a share of 1/4th each in the property, is clearly unauthorized under rule 76(a) & (b) of the Displaced Persons (C & R) Act, 1954 and the rules.

5. The managing officer was, therefore, acting illegally in admitting these three persons as co-purchasers in the sale certificate.

6. Therefore, there is no ground or justification for altering the verdict of the orders dated 10.1.95 and 18.1.95. However, as the sale certificate was issued in the June, 1968, the amended sale certificate is to issue on the same date is the name of Tota Mal, who was alive on date and not in the name of revisionists, who are the heirs of the deceased Tota Mal. To that extent the earlier order dated 10.1.95 stands amended. The opposite parties are free to seek civil remedy of their interest and can hope to regularize, what appears to be a sale, through the assertion that they may be associated as co-purchasers in sale certificate."

It is these two orders, which are under challenge in the present writ petition.

5. Facts, in brief, giving rise to filing of the present writ petition are that the Central Government had built 05 residential flats and 25 shops, upon a parcel of land, bearing Municipal No. B-47/203, situate at Ramapura, Godaulia, Varanasi, for rehabilitation of displaced persons. It was decided to auction the property amongst the displaced persons, under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the "Act"). An auction was conducted on 31.1.1961, in which the highest bid of Tota Mal amounting to Rs. 94,000/- was accepted. An initial amount of 10% i.e. Rs. 9,400/- was deposited with a sum of Rs. 392.49 paise, in cash, and adjustment of claim of Rs. 9,007.51 paise of Tota Mal, as displaced person. It appears that the competent authority, thereafter, directed Tota Mal to deposit balance amount,

so that the sale itself could be confirmed. It is alleged by the petitioner that Tota Mal was not having sufficient fund to deposit the amount, and he associated Amru Mal, another displaced person, who was related to Tota Mal, and his two sons. A letter was thereafter sent by Tota Mal on 20.4.1962 to the Regional Settlement Commissioner stating that pursuant to bid, sale certificate be issued in favour of Tota Mal himself, alongwith three sons of Amru Mal namely Khem Chand, Kakoo Mal and Chetan Das, with each one of them having 1/4th share. Certain proceedings continued in respect of the auction, which appears to have been cancelled, but thereafter the auction stood restored in appeal, and ultimately, required sum of Rs. 94,000/- was deposited by adjusting claim of other displaced persons, under the Act. A sale certificate was issued for the entire property on 14.6.1968 in favour of aforesaid four persons. Though sale certificate was issued in 1968, but no objection was raised against it by Tota Mal, who remained alive till 1980. Upon his demise, an original suit was filed by Smt. Gyani Devi widow of Tota Mal, as an indigent person, before the Civil Court at Varanasi, which was initially registered as Case No. 33 of 1983, and was subsequently renumbered as Original Suit No. 386 of 1989. In the said suit, a declaration has been sought that the suit property, which consisted of building No. B-47/203, consisting of 05 flats and 25 shops, situated at Mohalla Ramapura, Godaulia, Varanasi, be declared to be exclusive property of Tota Mal, and the plaintiffs be held entitled to receive rent etc. from tenants. Relief of cancellation of will dated 12.10.1979, allegedly executed by Tota Mal in favour of petitioner Chetan Das was also sought, alongwith relief of possession and damages. This suit is pending before Civil Court, Varanasi.

6. An application by the plaintiffs to appoint a receiver in the suit was rejected by the trial Court on 14.11.1985, which was affirmed by this Court on 20.12.1985, in FAFO No. 929 of 1985. An application for injunction in the suit was also filed, which was refused. The trial Court took note of subsequent developments, including the orders in revision filed under the Act, and an order was passed restraining the plaintiffs and defendant IInd Set, from interfering with the rights of defendants 1st Set (petitioner and others in the present writ petition), and a direction to maintain status quo was issued. This order of trial Court was challenged before this Court in FAFO No. 905 of 1995, which was summarily rejected, under Order 41 Rule 11 C.P.C., by observing that suit itself be decided within six months, on merits, without being influenced by any observations made by trial Court regarding rights of the parties.

7. During pendency of the suit, a belated revision, under Section 24 of the Act, No. 09 of 1990-1991 was filed against the sale certificate dated 14.6.1968 by Smt. Gyani Devi W/o. Late Tota Mal and his other heirs, without impleading the petitioner. This revision remained pending since April, 1991, and was ultimately allowed on 10th January, 1995. There are no orders available on record to demonstrate that any notices were issued to the petitioner, or any order was passed by the revisional authority condoning delay in filing of revision. The order itself, on face of the record, appears to have been passed without hearing and

adjudicating version of its beneficiary, including the petitioner. It is in this context and background that challenge has been made to the orders impugned.

8. I have heard Sri C.K. Parikh, learned counsel appearing for the petitioner, Learned Standing Counsel appearing for the respondent Nos. 1 & 2, and Sri B.D. Mandhyan, Learned Senior Counsel, assisted by Sri Anuj Mandhyan, appearing for the respondent Nos. 3 to 14.

9. Sri C.K. Parikh, appearing for the petitioner, has challenged the orders impugned essentially on the ground that the same are without jurisdiction, inasmuch as no revision under Section 24 of the Act was maintainable against a sale certificate; that the revision itself was entertained after 23 years, without issuing notices on the delay condonation application, and without affording an opportunity of hearing in the matter to the petitioner, the restoration application of petitioner has also been erroneously rejected; that the revision itself could not have been instituted or entertained and allowed during pendency of suit for declaration that the property in question exclusively belong to Tota Mal, and his heirs alone were entitled to have right in respect of the suit property, rendering suit itself meaningless; that act of sale crystallizes at the stage of execution of sale certificate, and not at the stage of conduct of bid, and the mere fact that Tota Mal was the highest bidder does not lead to an inference that he becomes the owner, ignoring subsequent developments; and that the revision after 23 years could not be allowed in the manner, as has been done.

10. Sri B.D. Mandhyan, Learned Senior Counsel appearing for the respondents, on the other hand, submits that the writ petition itself is not maintainable, as the Act itself has been repealed by The Displaced Persons Claims and Other Laws Repeal Act, 2005, Sri Mandhyan submits that once the Act itself has been repealed, the proceedings of writ are liable to abate and all orders passed therein have become final, and the writ petition itself is liable to be dismissed. He further submits that it is undisputed that only Tota Mal had participated in the auction proceedings, and bidsheet etc. have also been highlighted to contend that Tota Mal had participated in the bid in his individual capacity, and thereafter, it was not open to associate anyone else in sale certificate. He further submits that Tota Mal was a simple person, who was ignorant of the local language, and since Amru Mal was his relative, as such, a power of attorney in his favour was executed, and taking advantage of the power of attorney, fraudulent manipulations were done, without his consent and knowledge, by Amru Mal, to include name of his sons. It is then submitted that highest bid of Tota Mal, which had been accepted, was since in his individual capacity, therefore, revisional authority has rightly passed orders, which requires no interference. Sri Mandhyan also submits that no limitation is prescribed in filing of a revision under Section 24 of the Act by virtue of law laid down by Delhi High Court in M.C. Rahbar and Another Vs. Union of India and Others , therefore, no question arose for delay condonation in revision. It is submitted that revision had remained pending for 05 years, and was duly contested by all concerned, who

had knowledge of it. He further submits that the petitioner had not contributed even a single naya paisa for purchase of the property, and the sale certificate dated 14.6.1968 was manipulated. Sri Mandhyan also submits that order in revision was passed after hearing the parties, and the same, therefore, requires no interference in the present writ petition.

11. On the basis of submissions advanced by learned counsel for the parties, following questions arise for consideration before this Court in the present writ petition:

(i) Whether the writ petition survives after the repeal of the Act of 1954, by virtue of the Displaced Persons Claims and Other Laws Repeal Act, 2005?

(ii) Whether right in property gets crystallized with acceptance of bid or such a right comes into existence only with deposit of bid amount and issuance of sale certificate?

(iii) Whether a revision under Section 24 of the Act of 1954 lies against a sale certificate?

(iv) Whether any limitation is prescribed for filing of revision under Section 24 of the Act of 1954?

(v) Whether the order impugned has been passed in accordance with law?

Question No. (i)-

12. Sri B.D. Mandhyan, at the very outset, has invited the attention of the Court to the Displaced Persons Claims and Other Laws Repeal Act, 2005, which has received the assent of the President on 5th September, 2005, and has been published in Gazette on 6th September, 2005, whereby The Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954 has been repealed. According to Sri Mandhyan, once the Act itself has been repealed, the orders passed thereunder are no longer open to challenge in the present writ proceedings, which is liable to abate. For said purposes, Sri Mandhyan has relied upon a Constitution Bench Judgment in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, AIR 2000 SC 811 : (2000) 68 ECC 1 : (2000) 119 ELT 257 : (2000) 1 JT 453 : (2000) 1 SCALE 369 : (2000) 2 SCC 536 : (2000) 1 SCR 518 : (2000) AIRSCW 364 : (2001) AIRSCW 2399 : (2000) 1 Supreme 412 .

13. On the other hand, Sri Parikh has placed reliance upon the language of Sections 6 and 24 of The General Clauses Act, 1897 to contend that as the Central Act itself has been repealed, in the instant matter, therefore, by virtue of Section 6(e), the proceedings of the writ petition have been specifically saved. Reliance has been placed upon judgments in State of Punjab v. Mohar Singh Pratap Singh, 1955 AIR SC 84 , Rayala Corporation (P) Ltd. and M.R. Pratap Vs. Director of Enforcement, New Delhi, (1970) CriLJ 588 : (1969) 2 SCC 412 : (1970) 1 SCR 639 , State of Punjab Vs. Harnek Singh, AIR 2002 SC 1074 : (2002) CriLJ 1494 : (2002) 1 Crimes 337 : (2002) 2 JT 70 : (2002) 2 SCALE

179 : (2002) 3 SCC 481 : (2002) 1 SCR 1060 : (2002) 1 UJ 433 : (2002) AIRSCW 811 : (2002) 1 Supreme 642 , General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, AIR 2002 SC 3126 : (2002) 176 CTR 569 : (2002) 257 ITR 338 : (2002) 6 JT 426 : (2002) 6 SCALE 198 : (2002) 7 SCC 1 : (2002) 2 SCR 106 Supp : (2002) 124 TAXMAN 432 : (2002) AIRSCW 3605 : (2002) 6 Supreme 116 , Full Bench Judgment of this Court in Indrapal Singh Vs. State of U.P. and Others, (2013) 10 ADJ 612 : AIR 2014 All 50 : (2014) 2 ALJ 553 : (2014) 2 AWC 1455 : (2014) 123 RD 504 : (2014) 1 UPLBEC 379 , and Doaba Nirmal Mandal (Regd.) and Another Vs. Financial Commissioner Revenue and Secretary to Government Punjab and Another, (2006) 143 PLR 174 .

14. Before proceeding to deal with the submissions advanced in this regard, it would be appropriate to notice the language of Section 6(e) of The General Clauses Act, 1897, which reads as under:

"6(e). Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

15. In the facts of the present case, by virtue of Repeal Act, 2005, the provisions of the Act of 1954 itself have been repealed. Since the Act of 1954 was a Central Act, which itself has been repealed, therefore, the provisions of Section 6(e) would come into play, and therefore, the present writ petition being a legal proceeding in respect of a right created under the repealed Act would be clearly saved from the affect of repeal. The Constitution Bench judgment relied upon by Sri Mandhyan does not help his cause, inasmuch as the said judgment of the Apex Court dealt with Section 6 of the General Clauses Act arising out of repeal of a Rule framed under a Central Act, which was not repealed. The aforesaid view has been reiterated by the Supreme Court in the Constitution Bench judgment in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, AIR 2000 SC 811 : (2000) 68 ECC 1 : (2000) 119 ELT 257 : (2000) 1 JT 453 : (2000) 1 SCALE 369 : (2000) 2 SCC 536 : (2000) 1 SCR 518 : (2000) AIRSCW 364 : (2001) AIRSCW 2399 : (2000) 1 Supreme 412 . Relevant portion of paras 32 and 33 of the judgment are reproduced:

"32.The decision of the Constitution Bench is directly on the question of applicability of Section 6 of the General Clauses Act in a case where a rule is deleted or omitted by a notification and the question was answered in the negative. The Constitution Bench said that "Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule" (page 656 of the Supreme Court Report).

33. The Full Bench appears to have lost sight of the position that all the relevant terms i.e. "Central Act", "Enactment" "Regulation", and "Rule" are defined in sub-section 3(7), 3(19), 3(5), 3(50) and 3(51) respectively of the General Clauses Act. When the term Central Act or Regulation or Rule is used in that Act reference has to be made to the definition of that term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate, meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import. The Full Bench has equated a Yule" with "statute". In our considered view this is impermissible in view of the specific provisions in the Act. When the legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a "Central Act" or "Regulation", it is not possible to apply the provision to a case of repeal of a "Rule". The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a "rule" and takes its colour from the definition of the term in the Act (General Clauses Act). At the cost of repetition we may say that the omissions in the judgment in M/s. Rayala Corporation (supra) pointed out in paragraph 17 of the judgment of the Full Bench have no substance as they are not relevant for determination of the question raised for the reasons stated herein."

16. The aforesaid proposition has been followed in State of Punjab Vs. Harnek Singh, AIR 2002 SC 1074 : (2002) CriLJ 1494 : (2002) 1 Crimes 337 : (2002) 2 JT 70 : (2002) 2 SCALE 179 : (2002) 3 SCC 481 : (2002) 1 SCR 1060 : (2002) 1 UJ 433 : (2002) AIRSCW 811 : (2002) 1 Supreme 642 , and General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, AIR 2002 SC 3126 : (2002) 176 CTR 569 : (2002) 257 ITR 338 : (2002) 6 JT 426 : (2002) 6 SCALE 198 : (2002) 7 SCC 1 : (2002) 2 SCR 106 Supp : (2002) 124 TAXMAN 432 : (2002) AIRSCW 3605 : (2002) 6 Supreme 116 . The same view has been expressed by Full Bench of this Court in Indrapal Singh Vs. State of U.P. and Others, (2013) 10 ADJ 612 : AIR 2014 All 50 : (2014) 2 ALJ 553 : (2014) 2 AWC 1455 : (2014) 123 RD 504 : (2014) 1 UPLBEC 379 , wherein after referring to the aforesaid decisions of the Apex Court, it has been observed that The General Clauses Act is a part of every Central Act, and has to be read, as such, in the Act, unless, it is specifically excluded. In view of the authoritative pronouncement of law on the question by the Apex Court, as reiterated by Full Bench of this Court, I am of the considered opinion that the proceedings of the present writ petition would not abate on account of repeal of Act of 1954, and the writ petition would be maintainable, and will have to be decided on merits. The objection raised by Sri Mandhyan, in this regard, consequently fails. The first question is decided, accordingly.

Question No. (ii)-

17. The revisional authority for the purposes of passing the order impugned has solely relied upon the fact that it was Tota Mal, who had individually participated in the auction bid, and it was his individual bid of Rs. 94,000/-, which was accepted. The revisional authority took note of the fact that name of other three persons namely Amru Mal and his two sons Khem Chand and Kakoo Mal were not shown as purchasers in the auction proceedings. The revisional authority proceeded on the premise that Tota Mal was the bidder, whose name bid was accepted, who became owner, and a subsequent addition of name in the sale certificate was impermissible.

18. Sri Parikh has invited the attention of the Court to the provisions of Section 20 of the Act read with Rules 76-A, 76-B, and 90(8), (12), (15) of the Rules. The aforesaid provisions are reproduced:

"S. 20 Power to transfer property out of the compensation pool.--(1) Subject to any rules that may be made under this Act, the managing officer or managing corporation may transfer any property out of the compensation pool-

(a) by sale of such property to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person, whether the property is sold by public auction or otherwise;

(b) by lease of any such property to a displaced person or an association of displaced persons, whether incorporated or not, or to any other person;

(c) by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other person, on such valuation as the Settlement Commissioner may determine;

(d) in the case of a share of an evacuee in a company, by transfer of such share to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person], notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913.) or in the memorandum or articles of association of such company;

(e) in such other manner as may be prescribed.

(2) Every managing officer or managing corporation selling any immovable property by public auction under sub-section (1) shall be deemed to be a Revenue Officer within the meaning of sub-section (4) of Section 89 of the Indian Registration Act, 1908 (16 of 1908).

(3) Where the ownership of any property has passed to the buyer before the payment of the whole of the purchase money, the amount of the purchase money or any part thereof remaining unpaid and any interest on such amount or part shall, notwithstanding anything to the contrary contained in any other law, be a first charge upon the property in the hands of the buyer or any transferee from such buyer and may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

4. [(1A) 3 For the purpose of transferring any property out of the compensation pool under sub-section (1), it shall be lawful for the managing officer or the managing corporation to transfer the same to a displaced person jointly with any other person or an association of displaced persons or otherwise.]

76-A. Adjustment of payment of price of properties or of public dues by association of claims--Notwithstanding anything contained in these rules the Central Government may, by general or special order made in this behalf allow, subject to such terms and conditions as may be specified in such order.

(i) payment of price of properties forming part of the compensation pool or any part of such price; or

(ii) payment of any public dues, by adjustment against the net compensation payable in respect of the verified claim of any displaced person.

76-B. Deed of transfer to be made out--Where any person in occupation of a property forming part of the compensation pool has associated with himself any other displaced person having a verified claim whose net compensation is to be adjusted against the purchase price in pursuance of rule 76-A, the transfer shall be made out jointly in the name of all such persons specifying the extent of interest of each in the property:

Provided that where every such displaced person who has so associated himself sends an intimation in writing to the Settlement Commissioner that the deed of transfer may be made out in the name of person in occupation, or the deed of transfer may be made in the name of such persons.

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

(8) The person declared to be the highest bidder for the property at the public auction shall pay in cash or by a cheque drawn on a scheduled bank and endorsed "good for payment upto six months" or in such other forms as may be required by the Settlement Commissioner, immediately on the fall of hammer a deposit not exceeding 20 per cent of the amount of his bid to the officer conducting the sale and in default of such deposit the property may be resold.

(12) The balance of the purchase money may, subject to the other provisions of these rules be adjusted against the compensation payable to the auction purchaser in respect of any verified claim held by him. In any such case the auction purchaser shall be required to furnish within seven days of the receipt of intimation about the approval of bid, particulars of the compensation filed by him:

Provided that the Settlement Commissioner or any officer appointed by him in this behalf may, for reasons to be recorded in writing, extend the aforesaid period of seven days by such further period not exceeding fifteen days as the Settlement Commissioner or such other officer may deem fit:

Provided further that the period extended under the preceding provision may further be extended (without any limit of time) by the Chief Settlement

Commissioner.

(15) When the purchase price has been realised in full from the auction purchaser, the Managing Officer shall issue to him a sale certificate in the form specified in Appendix XXXII 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 relates is situated. If the auction purchaser is a displaced person and has associated with himself any other displaced person having a verified claim 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."

19. Relying upon the aforesaid provisions, Sri Parikh submits that the Act as well as the Rules clearly admit inclusion of other displaced persons for securing purchase of the property by the bidder, and such persons are entitled to be joined as purchasers. Sri Parikh, therefore, submits that mere fact that Tota Mal had individually taken part in the bid would not lead to an inference that he alone became the owner of the property pursuant to the bid and that inclusion of other names was unauthorized. It is submitted that right in the property is created only when the entire bid money is paid and a sale certificate is issued. The submission is that mere making of highest bid does not entitled the bidder to secure a sale certificate, and it is only pursuant to payment of its price, in cash or by adjustment of claim, that such right in the property is created with issuance of sale certificate.

20. Act of 1954 was a special Act enacted to secure payment of compensation and rehabilitation grant to displaced persons. The term displaced person was defined in Section 2(b) of the Act. Considering the adversities, which were being faced by these displaced persons, the legislature treated such displaced persons as a separate class in themselves, and provisions for allotment and sale of properties to them was separately provided. Section 20 clearly made reference to sale of property to a displaced person or any association of displaced persons. Sub-section 4 of Section 20 clearly made it lawful for managing officer to transfer the property to a displaced person, or to a set of displaced persons jointly, with any other person or an association of displaced persons or otherwise. Provision in Rules were also introduced, accordingly. Transfer of property, therefore, was made legal to an individual displaced person or jointly to a group of displaced persons of the same genus.

21. Hon"ble Supreme Court in Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, AIR 1958 SC 289 , while dealing with the provisions of the Act of 1954 observed as under in Para 10:

"10. It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has

to be approved by the Settlement 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 property for the purchaser has yet to pay the balance of the purchase 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 approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only Upon the issue of it a transfer of the property takes place. Condition of sale No. 7 in this case, furthermore, expressly stipulated that upon the payment of the purchase price in full the ownership would be transferred and a sale certificate issued. It is for the appellants to show that the property had been transferred. They have not stated that the sale certificate was issued, nor that the balance of the purchase money had been paid. In those circumstances, it must be held that there has as yet been No. transfer of the salt pans to respondents Nos. 4 and 5. The appellants cannot therefore claim the benefit of S. 29 and ask that they should not be evicted. Mr. Purshottam Trikamdas contended that the sale certificate will in any event be granted and that once it is granted, as the form of this certificate shows, the transfer will relate back to the date of the auction. It is enough to say in answer to this contention that assuming it to be right, a point which is by No. means obvious and which we do not decide, till it is granted No. transfer with effect from any date whatsoever takes place and none has yet been granted."

22. Again in *Bishan Paul Vs. Mothu Ram*, AIR 1965 SC 1994 , following observations were made in paras 9 to 11, which are reproduced:

"9. The passing of title thus presupposes the payment of price in full and the question is at what stage this takes place. Obviously, there are several distinct stages in the sale of property. These are: (a) the fall of the hammer and the declaration of the highest bid; (b) the approval of the highest bid by the Settlement Commissioner or officer appointed by him; (c) payment of the full price after approval of the highest bid; (d) grant of certificate; and (e) registration of the certificate.

10. The first and last in this series, namely, the fall of the hammer and the registration of the certificate are not critical dates for this purpose and they have not been suggested as the starting point of title. It is also clear that till payment of full price title is in abeyance for the rules themselves say that if the price is not paid the auction purchaser has no claim to the property. Under Section 65 of the Code of Civil Procedure, title is deemed to commence from the date of auction and not when the sale becomes absolute. Sale becomes absolute under the Code after the period of thirty days, during which sale may be asked to be set aside, has passed. When that time has passed and no application to set aside the sale has been made the sale becomes absolute (Order 21, R. 92) and a

certificate then issues (Order 21, R. 94). Under the corresponding section of the Code of 1882 (Section 316) the certificate was required to bear the date of the confirmation of sale and title vested from the date. The amendment of the Code in 1908 now antedates title, by a fiction, to the date of the auction.

11. This fiction cannot apply here for the simple reason that no such provision is made in the rules. It is, therefore, contended for the appellant that the approval of the bid does not confer title because the balance of the price has still to be paid and the property must continue to be evacuee property till the certificate issues. This line of reasoning was accepted in *Manoharlal v. Rent Control and Eviction Officer, Bareilly*, *Motandas v. Gopaldas*, *Pamandas v. Mst. Lachhmi Bai*, *Deptylal v. Collector of Nilgiris*, and in two unreported cases of Punjab High Court--*Ranjit Singh v. Anup Singh*, (C.R. No. 524 of 1959 (Punj)), and *Hiralal Khanna v. Gurcharan* (C.R. No. 461 of 1960 (Punj.)) referred to in *Jaimal Singh and Another Vs. Smt. Gini Devi*, AIR 1964 P&H 99 : (1964) 1 ILR (P&H) 516 . The last mentioned case has dissented from, the earlier view of that Court and has approved of *Harkishan Lal v. Bansilal*, 64 Pun LR 55 , *Harbans Singh Vs. Sohan Singh and Another* , and *Mohar Singh v. Moolchand*, 65 Pun. LR 253. In the former group of rulings support is derived from a decision of this Court in, whereas the latter group distinguishes that case holding that no such point was decided in it."

23. In *Surinder Singh Vs. Central Government and Others*, AIR 1986 SC 2166 : (1986) JT 578 : (1986) 2 SCALE 550 : (1986) 4 SCC 667 : (1986) 3 SCR 946 , after considering the judgment in *Bombay Salt & Chemical Industries (supra)*, the Apex Court held as under in Para 14:

"14. Learned counsel for the appellant urged that the respondents being the highest bidders at the subsequent auction sale had no right in the property and as such they were not entitled to any opportunity of hearing before the Central Government. He placed reliance on a decision of this Court in *Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others*, AIR 1958 SC 289 . We have considered the said decision, where in this Court has 960 taken the view that the highest bidder at an auction sale does not get any right or interest in the property till the auction sale is approved, confirmed and the sale-deed is executed in his favour. The respondents even though they were the highest bidders at the subsequent auction sale do not have any right or interest in the "property" in dispute. The question is however not whether they have any "right or interest" in the property but whether they would be prejudicially affected. They would certainly be affected, adversely if the appellant get relief in proceedings under Section 33 of the Act in respect of the said property. Respondents have been in possession of the property since long and further more on the basis of their highest bid made at the subsequent sale they have sufficient interest in the matter to contest the appellant's petition made under Section 33 of the Act. We are therefore in agreement with the High Court that respondents should have been afforded opportunity of hearing before any order

on the appellant's petition was passed. Since no such opportunity was afforded, the High Court was justified in quashing the orders of Sri Rajni Kant. We accordingly uphold the High Court's order to that extent."

24. Again in *Dr. Bhargava and Co. and another Vs. Sh. Shyam Sunder Seth* by L.Rs., AIR 1995 SC 377 : (1994) 4 JT 595 : (1995) 110 PLR 1 : (1994) 3 SCALE 156 : (1994) 5 SCC 471 : (1994) 1 SCR 445 Supp : (1994) 2 UJ 603 , the provisions of Sub-rule (15) of Rule 90 of the Displaced Persons (Compensation and Rehabilitation), Rules, 1955 was considered by the Apex Court. Para 6 of the said judgment is reproduced:

"6. It is obvious from the rule reproduced above that the title in the property cannot pass to the auction-purchaser unless the purchase price has been realised in full. Till the time the full price of the evacuee property sold at auction is realised from the highest bidder, the question of transferring the property to him or his perfecting the title in the said property does not arise..."

25. From the aforesaid propositions, it is clear that the mere fact that Tota Mal had participated in the bid individually would not lead to the conclusion that the property in question, which was purchased after accepting contributions from other displaced persons, could only be in the name of Tota Mal. Factors such as association of other persons in paying the amount of Rs. 94,000/-, by adjusting their claims under the Act, as well as letter of Tota Mal dated 20.4.1962 etc. could not be ignored. Since a suit for declaration is already pending before the Civil Court, wherein all such issues are required to be examined, therefore, this Court would refrain from making any further observations on the claim of the parties, on merits, as this might adversely effect the determination of cause by the Civil Court, at the first instance. However, the order passed by the revisional authority directing the cancellation of sale certificate dated 14.6.1968, merely for the reason that Tota Mal alone had participated in the bid and the other three persons were not parties to the bid, cannot be sustained. The revisional Court, therefore, was not justified in holding the sale certificate dated 14.6.1968 to be illegal, and thus directing it to be cancelled for the sole reason that Tota Mal alone had participated in the bid, and three other persons were not participants to the bid. The reason assigned for cancellation of the sale certificate dated 14.6.1968, therefore, is not liable to be sustained. Question No. 2, therefore, is answered by holding that right in the property was not created merely at the stage of making of bid by Tota Mal, and it was only after payment of the bid amount and issuance of sale certificate that right in the property got crystallized.

Question No. (iii)-

26. Sri Parikh has contended that what was challenged before the revisional Court under Section 24 was a sale certificate and not an order, and therefore, the revision itself was not maintainable. Section 24 of The Displaced Persons (Compensation and Rehabilitation) Act, 1954 reads as under:

"S. 24. Power of revision of the Chief Settlement Commissioner.--

(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer an Assistant Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, canceling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under sub-section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

27. The issue framed is no longer *res Integra*, inasmuch as a Full Bench of Rajasthan High Court in *Partumal and Another Vs. Managing Officer and Others*, AIR 1962 Raj 112 , had occasion to deal with the scope of revision contemplated under Section 24 of the Act. Paras 23, 24, 25 and 27 of the said judgment are reproduced:

"23. Section 24(1) no doubt confers very wide powers of revision on the Chief Settlement Commissioner. However, Clause 2 of the said section affords some indication on the point. By clause 2, the Chief Settlement Commissioner is authorised to cancel leases of immovable property and the order of cancellation of leases is subject to revision by the Central Government on an application filed in that behalf within 30 days by an aggrieved party. It stands to reason that if the Chief Settlement Commissioner had been given powers of cancellation of sales under Sub-clause (i) of Section 24, the law would have provided at least similar machinery for revision of such orders. Sale of immovable property stands much higher than a lease among the modes of transfer of immovable property and it cannot be conceived that when a safeguard of revision by the Central Government was provided against cancellation of a lease under an order of the

Chief Settlement Commissioner, no such safeguard would have been considered necessary in the matter of cancellation of sales by him.

24. We can thus safely infer that Section 24(1) did not authorize cancellation of sales after they are completed. No doubt, allotments can be set aside under Section 24 of the Act, but after such allotments ripen into sales, they cannot be cancelled. We, therefore, hold that the Chief Settlement Commissioner or the Settlement Commissioner exercising his power had no authority to cancel sale of property and the order dated 10th January 1961, passed by him was without jurisdiction and invalid. Mr. Raj Narayan for the State has cited the decisions in *Bara Singh Vs. Joginder Singh and Others*, AIR 1959 P&H 370 and *Ram Rattan Kapur Vs. Union of India (UOI) and Others*, AIR 1961 P&H 387. *Ram Rattan Kapur's* case, *Ram Rattan Kapur Vs. Union of India (UOI) and Others*, AIR 1961 P&H 387 was decided on the authority of *Bara Singh's* decision, *Bara Singh Vs. Joginder Singh and Others*, AIR 1959 P&H 370. In *Bara Singh Vs. Joginder Singh and Others*, AIR 1959 P&H 370 it has been held that an execution of a deed of conveyance amounts to drawing up of a formal document only and the same would become invalid no sooner the order of allotment is set aside by the appellate or revisional authority. The observations of the learned Judges are as follows:

"In any case where a managing officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error, and, similarly, where a managing officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annul the transfer.....the sanad or its grant being founded solely on the decision to transfer permanent ownership that sanad must necessarily fall with the reversal of the decision on which it is based".

25. With due respects to the learned Judges, we think the proposition of law as laid down by them cannot be accepted. The allotment of property, no doubt can be cancelled in revision under Section 24 of the Act; but after a sale takes place, it cannot be disturbed by setting aside the order of allotment. The sale cannot be held to be only a formal expression of the order of allotment. Title to property is created by the sale and the vendee thereby acquires interest in the property. It would be too much to read in Section 24 of the Act to hold that it extends to cancellation of sales by expressly providing for cancellation of allotments. We are unable to regard execution of a sale-deed as only a formal expression of an order of allotment dependent on its subsistence. This Court had occasion to consider this aspect of the question in *Govind Ram Vs. Regional Settlement Commissioner Rajasthan, Jaipur and Others*, AIR 1960 Raj 177. After referring to the various provisions of the Act and the rules under which evacuee property may be allotted, leased and sold, it was observed as follows:

"In our opinion, it is inconceivable on the very face of it that a transfer of property by the Central Government under Section 10 read with Rule 33, should

be challenged in an appeal to the Chief Settlement Commissioner. We may also in this connection refer to Section 20 which empowers the Managing Officer or Corporation to transfer the property. These powers are distinct from the powers of the Central Government under Section 10 of the Act. Even, these powers are to be exercised subject to rules. Rule 33 will operate in such cases also and, therefore, the transfer in such cases will also be on behalf of the President. Further, Rule 34 inter alia provides that when a property is transferred to any person under Chapter 3 of the Rules, the property shall be deemed to have been transferred to him where such person had made an application for payment of compensation before 31st October, 1953, from the first day of November, 1953. Section 20 read in the light of these rules, contemplates an act of sale and not an order liable to be challenged in appeal or revision. In these circumstances, the respondent's contention that the actual transfer should pre-suppose an order of transfer and that order of transfer could be challenged by means of appeal or revision under Sections 23 and 24 of the Act.....

27. We are definitely of the opinion that under Section 24 of the Act, the Settlement Commissioner, New Delhi had no authority of canceling the sale executed in favour of petitioner No. 2 and his order in this behalf is wholly without jurisdiction and cannot be regarded as valid, and the Managing Officer cannot be allowed to take shelter under an invalid order of the Settlement Commissioner, for resuming the property of the petitioners and in auctioning the same. The action of the Managing Officer in doing so is not warranted by law and as it interferes with the fundamental rights of the petitioner, he is entitled to protection under Article 226 of the Constitution. The petition is allowed and a direction in the nature of a writ of prohibition is issued against the Managing Officer, and the Regional Settlement Commissioner restraining them from interfering with the property of the petitioners as described in the petition and auctioning the same. The petitioners shall get costs of this petition from the opposite parties Nos. 1 and 2."

28. The Full Bench judgment of the Rajasthan High Court in Partumal (supra) was also quoted with approval by the Apex Court in the Constitution Bench judgment in Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, AIR 1964 SC 1536 : (1964) 7 SCR 103 . Again in Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, AIR 2011 SC 2161 : (2011) 5 SCALE 423 : (2011) 5 SCC 607 : (2011) 7 SCR 468 : (2011) 4 UJ 2475 : (2011) AIRSCW 3033 : (2011) 3 Supreme 569 , the provisions of Section 24 was considered by the Apex Court in Paras 134 and 135 of the said judgment, which are reproduced:

"134. Section 24 of the Act gives power of revision to Chief Settlement Commissioner either on his motion or an application made to him to call for the record of any proceeding under the Act in order to satisfy himself as to legality or propriety of any order passed therein and to pass such order in relation thereto as he thinks fit. The Section also provides that the said powers can be used in

relation to the orders passed by Settlement Commissioner, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a Managing officer or a managing corporation. A bare reading of the Section shows that the Chief Settlement Commissioner can revise the order if in his opinion that the orders passed by the officers named in the Section are either illegal or improper.

135. In the instant case, the Chief Settlement Commissioner has invoked his revisional powers at the request of the allottees/displaced persons to revise the proceedings and the order passed by the Collector-cum-Deputy Custodian under the provisions of the Evacuee Property Act dated 28.5.1979. In view of the plain language of the Section, there cannot be two views. In our view, what the Chief Settlement Commissioner can do is only to revise the orders passed by those officers who are notified in the Section itself and not of the officers under the provisions of the Evacuee Property Act, if the orders passed by the named officers in this Section is either illegal or improper. To this extent, we are in agreement with the submission made by the learned senior counsel Shri Ranjit Kumar. Therefore, the orders passed by the Chief Settlement Commissioner in exercise of his revisional powers under the Displaced Persons Act is without jurisdiction and non-est in law."

In view of the discussions made above, this Court finds that the sale certificate dated 14.6.1968, did not qualify to be an order passed by the authorities, which could be subjected to challenge in a revision under Section 24 of the Act, and the question is answered accordingly.

Question No. (iv)--

29. Sri Mandhyan referring to the judgment of the Delhi High Court in *M.C. Rahbar and Another Vs. Union of India and Others* , has submitted that the power of Chief Settlement Commissioner to proceed even suo moto, does not admit of a limitation period, as stated in Rule 104 of the Rules of 1955, providing for revision to be presented within the same period, as an appeal. The Delhi High Court after taking note of the provisions of Section 24(1) was pleased to hold that once no limitation had been prescribed in the section itself, and the expression used are "at any time", such right of the revisional authority could not be limited under the Rules, which provided a period of 30 days for filing of the appeal/revision.

30. The argument advanced by Sri Mandhyan in so far as it refers to the period of 30 days provided under Rule 104 is concerned, is liable to be accepted. The period of revision cannot be held to subsist only for a period of 30 days. However, the question will have to be examined from a different perspective. Even if, no limitation is prescribed under the Act, yet the exercise of power has to be within a reasonable time, depending upon the facts and circumstances of each case. While dealing with the provisions of The Bombay Land Revenue Code 1879, Hon"ble Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and*

Others, AIR 1969 SC 1297 : (1969) 2 SCC 187 : (1970) 1 SCR 335 , was pleased to observe in Para 13 that expression "at any time", even without a period of limitation prescribed in the section, has to be exercised within a reasonable time, depending upon the facts and circumstances of each case. Similar view was reiterated by the Apex Court in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, (1997) 6 SCC 71 . The term "at any time" therefore cannot be given an unguided and arbitrary scope. Examining the issue from a different perspective also, this Court finds that as the provisions of the Indian Limitation Act have not been excluded, therefore, by virtue of Section 29(2) of the Limitation Act, the outer limit of three years stipulated in Article 137 of the Limitation Act will have to be read.

31. Coming to the facts of the present case, this Court finds that the sale certificate was issued in the year 1968. Tota Mal remained alive for a period of 12 years, but no challenge to the sale certificate was made by him. Upon his death, his widow Smt. Gyani Devi has instituted suit, which is pending since 1983. Even if complete knowledge of the facts are to be taken from 1983, the filing of the revision in 1990 was clearly beyond the period of three years. The revision, therefore, was clearly barred by time. The issue is answered accordingly.

Question No. (v)-

32. In view of the discussions and findings aforesaid, I am of the considered opinion that exercise of power by the revisional Court, in passing the order impugned, without the petitioner having been impleaded and heard, was wholly arbitrary and illegal. In view of the findings already returned, this Court has no hesitation in holding that neither the revision was maintainable against the sale certificate, nor such a revision could be entertained after 23 years, as has been done. Even the reasoning assigned for passing the order on merits is not liable to be sustained. Accordingly, the orders dated 10.1.1995 and 6.4.1995 have not been passed in accordance with law, and are unsustainable.

33. In view of the discussions aforesaid, the writ petition succeeds and is allowed, and the order impugned dated 10th January, 1995, and subsequent order dated 6th April, 1995, as well as all consequential action pursuant to it, are set aside. Before parting, however, this Court would like to clarify that this judgment has been delivered only in the context of the orders passed by the revisional Court, and the claim of the parties has not been adjudicated on merits. Any observation made in this judgment shall not prejudice the rights and contentions of the parties in the pending Suit No. 386 of 1989, which would be determined by the competent Civil Court, in accordance with law. It is unfortunate that despite a direction issued by the Division Bench of this Court in FAFO No. 905 of 1995, the proceedings of the suit have not been concluded so far. The interim arrangement, so far as the property is concerned, shall continue to be governed by the order dated 15.5.1995 passed in Original Suit No. 386 of 1989, as affirmed by the Division Bench of this Court in FAFO No. 905 of 1995, on 27.9.1995. The proceedings of the suit would be concluded forthwith by the

Civil Court on merits, by fixing short dates, without granting any adjournment to either of the parties, except by imposing cost, which would not less than Rs. 1,000/- for a day.