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for over two years, we hold you solely responsible for any shortfall."

It admits of no dispute that the seven bales in question had huge shortages and the deception was discovered when these were opened on or about 15th of September, 1947. Nothing was done till they were sold for a paltry sum of Rs. 356-4-0 when their actual book value in Exhibit P. 49 was shown in the neighbourhood of Rs. 25,000. Every single entry in the register Exhibit P. 49 shows that actual amounts overdrawn were far in excess of the drawing power. All the documentary evidence, in our opinion, brings home the neglect of the Bank and it had itself in the letter quoted above fastened the blame on its Branch Manager. In our opinion, the suit of the plaintiff against the guarantee-brokers should not have been decreed and we would accordingly allow this appeal and dismiss the suit with costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

*B.R.T.*

CIVIL MISCELLANEOUS

*Before D. K. Mahajan, J.*

TRIBHUWAN PARKASH NAYYAR,—*Petitioner.*

*versus*

MEHAR SINGH CHADDAH AND OTHERS,—*Respondents.*

**Civil Writ No. 323-D of 1958.**

1962

November, 1st.

*Displaced Persons (Claims) Supplementary Act (XII of 1954)—S. 5—Chief Settlement Commissioner—Whether can revise order passed under the Displaced Persons (Claims) Act, 1950—Constitution of India (1950)—Article 226—Writ of* certiorari—*Relevant evidence ignored and decision based on pure surmises—Whether an error of law.*

*Held,* that an order passed under the Displaced Persons (Claims) Act, 1950, can be revised under section 5 of the Displaced Persons (Claims) Supplementary Act, 1954, *suo motu* by the Chief Settlement Commissioner. His power is not restricted to the revision of an order by the Claims Officer. A verified claim as defined in section 2(f) means a claim in respect of which a final order has been passed under the 1950 Act. Thus a claim which has been finally settled in revision under the 1950 Act would be covered by this definition. A clear distinction has been maintained between a decision by a Claims Officer and a final decision under the Act. Therefore, all final decisions under the 1950 Act are open to revision under section 5(1) (b) of the Displaced Persons (Claims) Supplementary Act, 1954.

*Held,* that the High Court will not, under Article 226 of the Constitution, interfere with an order of a tribunal where the questions of fact are erroneously decided, but where the relevant evidence is wholly ignored and the decision is based on pure surmises it is hard to contend that those errors would not be errors of law vitiating the order which can be quashed by the High Court by a writ of *certiorari.*

*Petition under articles 226 and 227 of the Constitution of India, praying that a writ in the nature of* Certiorari *or such other writ, order or direction as the Hon'ble Court thinks just and proper be granted quashing certain orders.*

D. N. BHASIN, ADVOCATE, for the Petitioner.

JINDRA LAL, ADVOCATE, for the Respondent.

## ORDER

MAHAJAN, J.—This is a petition under Articles 226 and 227 of the Constitution of India and is directed against the order of the Settlement Commissioner exercising the powers of the Chief Settlement Commissioner revising the order of the Chief Claims Commissioner passed in revision under the Displaced Persons (Claims) Act, 1950—hereinafter referred to as the 1950 Act. The Act

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under which the impugned order has been passed is called the Displaced Persons (Claims) Supplementary Act, 1954—hereinafter referred to as the 1954 Act.

The petitioner left behind in Lahore certain property with regard to which a claim was got verified in the year 1953 under 1950 Act. The order of the Claim Officer is annexure 'A' and the relevant part of that order reads thus :—

> "It is alleged by the claimant that he was offered Rs. 6,00,000 for this property on 4th May, 1944 by Shri Dwarka Das Sehgal. The original offer was made in writing and that original post card which bears the stamp of the post office has been produced before me and the said Shri Dwarka Das has also appeared before me as witnesss and he has admitted this fact. As the claimant did not accept that offer, the offer was raised by another Rs. 90,000, i.e., offer was made on 30th November, 1944 for Rs. 6,90,000, these are Exhibits C-5 and C-6. I have got a documentary proof of the fact that this property was fetching Rs. 160 per day, i.e., Rs. 4,800 per mensem and net annual rental value would come to Rs. 48,000. At 30 times this annual rental value which is minimum rate, the value would come to Rs. 14,40,000. The Claimant has assessed its value at Rs. 10,00,000. L. Dwarka Das put its value in 1946 at Rs. 7,50,000. I think it will be quite fair and serve the ends of justice if I hold that in 1946, the value of this porperty was Rs. 8,00,000 (Rupees eight lakh only). Thus the

total value assessed for this property comes to Rs. 8,00,000 (rupees eight lakhs only)."

Against this order, a revision was preferred by the claimant to the Claims Commissioner and the Claims Commissioner allowed the revision and raised the verified claim to Rs. 10,00,000. In pursuance of this verified claim, the petitioner purchased certain properties under the Displaced Persons (Compensation & Rehabilitation) Act, 1954, and is in possession of those properties.

When the 1954 Act came into force, a notice was issued to the petitioner under that Act on the 8th November, 1957, requiring him to show cause why his verified claim under the 1950 Act should not be revised. In pursuance of that notice, the matter was taken up by the Settlement Commissioner *suo motu* and the impugned order was passed revising the verified claim of rupees ten lacs and it was reduced to Rs. 15,000. It is against this order that the present petition is directed.

The contentions of the learned counsel for the petitioner are as follows:—

(1) that the order under the 1950 Act by the Claims Commissioner in revision had become final and could not be reopened in revision *suo motu* by the Chief Settlement Commissioner or his delegate, particularly when no proceedings under the 1950 Act were pending ;

(2) that there is no valid delegation of power by the Chief Settlement Commissioner to the Settlement Commissioner and, therefore, the impugned order is without jurisdiction; and

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(3) that there are errors apparent on the face of the record so far as the impugned order goes and, therefore that order should be quashed.

Before examining these contentions, it will be proper to set out the scheme and the relevant provisions of the 1954 Act. As the preamble of this Act denotes, it was enacted "to provide for the disposal of certain proceedings pending under the Displaced Persons (Claims) Act, 1950 and for matters connected therewith". 'Claim' is defined in section 2(b) and is in these terms:—

> (i) any claim registered under the principal Act and pending on the appointed day; or
>
> (ii) any claim submitted to any authority under the principal Act by any person migrating to India from any tribal area and pending on the appointed day;
>
> and includes any application filed on or before the 12th December, 1952, for setting aside an *ex parte* order of a Claims Officer passed under the principal Act and pending on the appointed day, if the application was not, on the date on which it was filed, barred by limitation under the rules made under the principal Act;"

Verified claim is defined in section 2(f) and is in these terms:—

> "2.(f) 'verified claim' means any claim registered under the principal Act in respect of which a final order has been passed under that Act;"

Section 3 of the 1954 Act, deals with the appointment of Chief Settlement Commissioner, etc. Section 4 deals with verification of claims. Section 5 is the section with which we are concerned in the present controversy and is in these terms:—

"5. (1) Notwithstanding anything contained in the principal Act, the Chief Settlement Commissioner—

(a) may, on an application for revision made to him within time by any person aggrieved by the decision of the Claims Officer, call for the record of the case and make such order in the case as he thinks fit.

*Explanation.*—For the purposes of this clause, an application for revision shall be deemed to be or to have been made within time, if—

* * * *

(b) may, on his own motion, but subject to any rules that may be made in this behalf, revise any verified claim and make such order in relation thereto as he thinks fit.

(2) No order varying the decision of the Claims Officer or revising any verified claim which prejudicially affects any person shall be made without giving him an opportunity of being heard."

We are in fact not concerned with the various provisions of the 1954 Act, excepting section 10 which provides for the delegation of power. The Chief Settlement Commissioner has the power to delegate all or any of his powers under the Act to the

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Joint or Deputy Chief Settlement Commissioner or any Settlement Commissioner or Additional Settlement Commissioner as may be specified by the Chief Settlement Commissioner.

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Coming back to the contention of the learned counsel, his first contention is that there was no claim pending when the 1954 Act came into force. According to him, 1954 Act only deals with the disposal of proceedings pending under the 1950 Act, and with matters connected therewith. His contention is that as the claim was registered under the 1950 Act and a revision against it had been decided under the 1950 Act, there were no proceedings pending under that Act and thus no action could be taken under section 5 of the 1954 Act. If reference is made to section 5(1)(b), it would be clear that it specifically confers power of revision on the Chief Settlement Commissioner with regard to claims which had been registered under the 1950 Act and *qua* which a final order had been passed under that Act. It cannot be disputed that the order of the Claims Commissioner under the 1950 Act would be a final order though the learned counsel sought to urge that there the final order would be the order of the Claims Officer and for that he relied on section 6(3) of the 1950 Act. Section 6(3) of the 1950 Act is in these terms:

> "6. (3) The decision of the Claims Officer shall be final :
>
> Provided that the Chief Claims Commissioner may call for the record of any case which has been decided by the Claims Officer and may make such order in the case as he thinks fit and no order varying the decision of the Claims Officer shall be made without giving the person

concerned an opportunity of being heard."

It is significant that in section 5(1)(a) of the 1954 Act a decision made by the Claims Officer under the 1950 Act alone is open to revision at the instance of any person aggrieved thereby, and if the intention of the legislature was that the same rule should prevail when the Chief Settlement Commissioner in the *suo motu* exercising his power of revision under section 5(1)(b) is entertaining a revision against a decision under the 1950 Act, the same expression could have been used. But on the other hand in the exercise of his powers the Chief Settlement Commissioner can under section 5(1)(b) revise a verified claim. His power is not restricted to the revision of an order by the claims officer. A verified claim as defined in section 2(f) means a claim in respect of which a final order has been passed under the 1950 Act. Thus a claim which has been finally settled in revision under the 1950 Act would be covered by this definition. A clear distinction has been maintained between a decision by a Claims Officer and a final decision under the Act. Therefore, all final decisions under the 1950 Act are open to revision under section 5(1)(b). The first contention of the learned counsel that an order passed under the 1950 Act could not be revised in revision under section 5 of the 1954 Act *suo motu* by the Chief Settlement Commissioner is without substance and must be repelled.

So far as the second contention is concerned, it is urged that the Settlement Commissioner was not delegated the powers of the Chief Settlement Commissioner and, in any case, according to the learned counsel, the second notification expressly took away powers conferred on the Settlement

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Commissioner by the first notification. It may be mentioned that there are two notifications under which powers have been delegated by the Chief Settlement Commissioner to the Settlement Commissioners named therein. In the first notification of the 18th of February, 1956, published in the Government of India Gazette, Part II, section 3, page 195, dated 18th February, 1956, the Chief Settlement Commissioner specifically delegated his power under section 5 to the Settlement Commissioner, whose order is being impugned. The second notification dated 30th April, 1956, was publishd on the 4th May, 1956, in the Government of India Gazette, and is reproduced in the Lahore Law Times of 1956, Part VI, page 42. In this notification certain other powers were delegated to the Settlement Commissioners including powers under section 4 of the Act. The Settlement Commissioner, whose order is being impugned is also one of them. It will be clear from both these notifications that they do not cover the same field. It is only Mr. M. S. Chadha, who out of the Settlement Commissioners covered by the second notification has been conferred the special powers of revision under section 5 of the Act. It cannot be said in these circumstances, that the latter notification wiped out the former because both of these deal with different powers. It cannot be disputed that the Chief Settlement Commissioner could delegate his various powers at various times under various notifications. That being so, the second contention is also devoid of force and is repelled.

The last contention advanced is that the order of the Settlement Commissioner is not only perverse but suffers from legal infirmities which are apparent on the face of the record. In the major part of the order, the Settlement Commissioner

exercising the powers of the Chief Settlement Commissioner has merely dealt with the means of the claimant to acquire the property. He has nowhere disputed that the property in question did not belong to the claimant. Major part of the decision suggests that he was driving towards that end but he suddenly stopped in view of the registered deed of gift and held that the property *qua* which the claim under the 1950 Act was verified did belong to the claimant. In this situation, the entire discussion as to the means of the claimant is beside the point, and all he had to determine was the value of the property. It did not matter how the property had been acquired, so long as the claimant owned it. When he comes to deal with the value of the property he has wholly gone on conjectures. As would be clear from the order of the Claims Officer under the 1950 Act, the value of the property had been fixed with reference to the offers contained in the post-cards. Exhibits C-5 and C-6 and the statement of the author of the post-cards, namely, Dwarka Das Sehgal as also the rental value of the property. The Settlement Commissioner on purely conjectural grounds has come to the conclusion that the post-cards are not genuine documents. He has nowhere dealt with the statement of Dwarka Das Sehgal which was accepted by the Claims Officer, nor has he dealt with the rental value of the property. It is significant that the rental value of the property was accepted by the Claims Officer as well as by the Claims Commissioner and, therefore, it was incumbent on the Settlement Commissioner while fixing the value of the property to deal with the rental value of the property. While dealing with the post cards, Exhibit C-5 and C-6, he came to the conclusion that the post-cards were forged because in one of them Delhi was mentioned as the place where the offer could be considered. According to him

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there would be no point in mentioning Delhi, because the claimant was not in Delhi then. He lost sight of the fact that the claimant was employed at the relevant time in Delhi in the Ministry of Defence and, therefore, there was nothing unusual in the writer mentioning Delhi in the post-card. With regard to the other post-card, the conjecture is that the postal stamp was over written. There is not an iota of evidence on this part of the case. I have seen this post-card and find that this contention is also not justified. There is no material whatever on the record on the basis of which these post-cards could be held to be forged documents.

It will be apparent from the mere reading of both the orders that relevant evidence on the record has totally been ignored by the Settlement Commissioner. In my view, therefore, there are clear errors of law apparent on the face of the record. Mr. Jindra Lal, who appears for the State, urges that all these errors, if at all, are errors of fact and as such they are not amenable to review under Article 226 of the Constitution and he relies on a decision of the Supreme Court in *Shri Ambica Mills Company Limited* v. *Shri S. B. Bhatt and another* (1). It is true that this Court will not under Article 226 of the Constitution interfere with an order of a tribunal where the questions of fact are erroneously decided, but where the relevant evidence is wholly ignored and the decision is based on pure surmises it is hard to contend that those errors would not be errors of law. In this view of the matter, I am of the view that the order of the Settlement Commissioner exercising the powers of the Chief Settlement Commissioner is erroneous on the face of it and, therefore, it should be quashed and I accordingly quash the same. It

(1) A.I.R. 1961 S.C. 970.

will be open to the Department to reconsider the entire matter as to valuation and come to a proper conclusion on evidence.

The Department will before it reconsiders the matter issue notice to the petitioner and hear him and also receive any fresh material which the petitioner may like to place before it. As the department has succeeded on the principal questions of law, I would leave the parties to bear their own costs.

*B. R. T.*

CIVIL MISCELLANEOUS

*Before Inder Dev Dua, J.*

PIR TIRATH NATH,—*Petitioner*

*versus*

THE CHIEF SETTLEMENT COMMISSIONER, PUNJAB, AND OTHERS,—*Respondents*

**Civil Writ No. 1038 of 1961.**

*Cypres doctrine—Meaning, scope and effect of.*

1962

November, 5th.

*Held,* that the cy pres doctrine broadly stated, would connote that when a general charitable intention is expressed by the donor it would not be permitted to fail on the ground that the mode, if specified, cannot be executed, and, that the law would substitute another mode as near as possible to the mode specified. The real core of this doctrine is that when the donor has prescribed a particular mode of application, which mode is incapable of being performed, but the donor's overriding or dominant charitable intention transcends the particular mode of the prescribed application, the Court is entitled to carry out the dominant charitable intention as if the particular direction did not exist at all. But when the particular mode of application is the essence of the donor's intention and that mode becomes incapable of being performed then the Court cannot possibly