account or the party who is called upon to account dies. The maxim *'actio personalis mortur cum persona'* a personal action dies with the person has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages *ex delicto* and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for the property received by him does not, therefore, affect the liability of his estate."

The scope of the provisions of section 306, Indian Succession Act and the maxim *"actio personalis moritur cum persona"*, therefore, appears to be well-settled and the claim of damages on account of loss to the estate of the injured would not abate on his death. Consequently this appeal is allowed with costs and the impugned order reversed. The case would now go back to the Tribunal for further proceedings in accordance with law.

H. S. B.

Before S. P. Goyal & I. S. Tiwana, JJ.

STATE OF PUNJAB AND ANOTHER,—*Appellants.*

versus

BHAGWANT SINGH,—*Respondent.*

L.P.A. No. 928 *of* 1983.

July 19, 1984.

Punjab Urban Estates (Development and Regulation) Act (XXII of 1964)—*Section* 11-*A*—*Allotment of plots made to a person cancelled without giving hearing to the affected party*—*Such cancellation*—*Whether proper*—*Rule of* audi *alteram partem*—*whether can be read into section* 11-*A*(1).

Held, that the provisions of Section 11-A of the Punjab Urban Estate (Development and Regulation) Act, 1964 do not postulate the issuance of any notice prior to the passing of an initial order of cancellation of allotment. Ordinarily, when a public authority passes an order affecting the civil rights of a person it would be required to comply with the fundamental principles of natural justice of affording an opportunity of hearing to him unless the statute excludes it expressly or impliedly. So it has to be seen on overall consideration of the provisions of section 11-A whether the Legislature intended to exclude the principle of *audi alteram partem* at the stage of the passing of initial order under sub-section (1) of section 11-A. Though it is not stated in so many words in sub-section (1) but from the provisions of sub-section (2) it is apparent that the order passed under the former sub-section is only a tentative one based on the material before the competent authority. Under sub-section (2) the aggrieved party has been provided with a right to move an application in writing to the State Government for review of the said order and a duty has been enjoined on the latter to pass a fresh order after giving an opportunity of being heard to such a person. When an order passed by a public authority is open to review by that very authority at the instance of the aggrieved person and an express power is incorporated in the statute to that effect, in our view, it would not be necessary to comply with the said principle of natural justice prior to the passing of the initial order which under such circumstances would be nothing but a tentative order. As such it has to be held that an opportunity of being heard need not be afforded to the allottee while passing an order cancelling the allotment in his favour under sub-section (1) section 11-A.

(Paras 5 & 6).

A. S. Sandhu, *Additional A.G.*, Punjab, *for the Appellant.*

K. P. Bhandari, Senior Advocate with Ravi Kapoor, Advocate, *for the Respondent.*

JUDGMENT

S. P. Goyal, J.

(1) This judgment will dispose of 22 appeals, L.P.As No. 913 to 934 of 1983, which involve common questions of law arising out of similar facts and circumstances. As the main arguments were heard in L.P.A. No. 928 of 1983 its facts alone have been noticed.

(2) The respondent, Shri Bhagwant Singh, was allotted Plot No. 2009 measuring 500 square yards situate in Phase 10 of the Urban Estate Sahibzada Ajit Singh Nagar out of the discretionary

quota,—*vide* orders of the Administrative Secretary exercising the powers of the State Government in May 1980. Soon thereafter in June 1980 the earlier allotment was substituted by Plot No. 707 in Phase 1. The allotment in his favour was cancelled,—*vide* order dated November 27, 1980, which was challenged by him through Civil Writ Petition No. 580 of 1981.

(3) The allotments of the plots in the said Urban Estate were governed by the Punjab Urban Estates (Development and Regulation) Act 1964 (for short called the Act). There was no express provision in the Act authorising the Government to cancel any allotment. To remove this lacuna, initially section 11-A was introduced in the Act by way of amendment with effect from May 24, 1981 through an ordinance. Later on the ordinance was converted into an Act by the Legislature on September 10, 1981 which was enforced with retrospective effect from May 24, 1981. In view of this change in the statute, the Government withdrew the said order of November 27, 1980 and the said writ petition was disposed of in accordance with the statement of the learned counsel for the State in the following terms :

> "It is stated by Mr. J. L. Gupta, learned counsel appearing for the respondents that the impugned order cancelling the allotment of the petitioner has been withdrawn. The learned counsel further states that if the Government thereafter takes any action for the cancellation of the allotment of the petitioners, then it would proceed in accordance with law and before passing any order, full opportunity of hearing would be given to the petitioners and a speaking order would be passed.
>
> In view of what has been stated by the learned counsel for the respondents, the learned counsel for the petitioners states that these petitions be dismissed as withdrawn. We order accordingly.
>
> It may be observed that in case an adverse order is passed against the petitioners and in case they choose to file fresh petitions in this Court, then they would be entitled to raise all the objections which they have taken in these petitions, available to them".

(4) Before dealing with this matter any further, it would be proper at this stage to notice the provisions of section 11-A introduced by the Amendment Act of 1981 ;

"11-A Power to cancel sale, lease or other transfer—

(1) if it appears to the State Government that any sale, lease or other transfer of any site in an urban estate has been made in contravention of this Act or any rules made thereunder is fraudulent or is otherwise inexpedient, it may, notwithstanding anything contained in any contract or any other law for the time being in force, by an order in writing, stating reasons therefor, cancel such sale, lease or other transfer.

(2) Any person aggrieved by an order made under sub-section (1) may within thirty days of the date of communication of the order to him, make an application in writing to the State Government for review of the said order and the State Government may, after giving an opportunity of being heard to such person, either rescind, vary or confirm the said order.

(3) * * * * *

(4) No order under sub-section (1) shall be made in respect of any sale, lease or other transfer made :—

(a) prior to the commencement of the Punjab Urban Estates (Development and Regulation) Amendment Act, 1981.

(i) If such sale, lease or other transfer was made more than two years prior to such commencement, or

(ii) after the expiry of the year from such commencement, or

(b) after the commencement of the Punjab Urban Estates (Development and Regulation Amendment Act, 1981, after the expiry of a period of one year from the date of such sale lease or other transfer.

* * * * *

Although the provisions of section 11-A do not postulate the issuance of any notice prior to the passing of an order of cancellation of allotment yet to comply with the undertaking given by the counsel for the State in the Court, the respondent was served with a notice on March 22, 1982 requiring him to show cause within 15 days of the receipt thereof as to why action contemplated in the said sub-section may not be taken against him. Instead of showing cause against the proposed action, the respondent wrote to the Secretary to the Government, annexure P-12, dated April 7, 1982, requiring him to supply copies of a large number of documents mentioned therein to enable him to give reply. The respondent was, however, not supplied with copies of any document and instead served with the impugned order dated May 22, 1982 to the effect that the allotment made in his favour had been cancelled by the Government in exercise of its powers under section 11-A of the Act. It is this order which was impugned by him through C.W.P. No. 3628 of 1982 which was allowed by the learned Single Judge,—*vide* judgment dated May 30, 1983 and the said order quashed. Aggrieved thereby the State has come up in these Letters Patent Appeals.

(5) The learned Single Judge without considering the provisions of Section 11-A in detail assumed that the power given therein could be exercised by the competent authority only after affording a reasonable opportunity of hearing to affected party. We are of the opinion that the view expressed by the learned Single Judge is not legally sustainable.

(6) As already observed above, the provisions of sub-section (1) of Section 11-A do not provide for any opportunity being given to the allottee prior to the passing of the order cancelling allotment in his favour. Ordinarily when a public authority passes an order affecting the civil rights of a person it would be required to comply with the fundamental principles of natural justice of affording an opportunity of hearing to him unless the statute excludes it expressly or impliedly. So it has to be seen on overall consideration of the provisions of section 11-A whether the Legislature intended to exclude the principle of *audi alteram partem* at the stage of the passing of initial order under sub-section (1) of section 11-A. Though it is not stated in so many words in sub-section (1) but from the provisions of sub-section (2) it is apparent that the order passed under the former sub-section is only a tentative one based on the material before the competent authority. Under sub-section (2) the aggrieved

party has been provided with a right to move an application in writing to the State Government for review of the said order and a duty has been enjoined on the latter to pass a fresh order after giving an opportunity of being heard to such a person. When an order passed by a public authority is open to review by that very authority at the instance of the aggrieved person and an express power is incorporated in the statute to that effect in our view, it would not be necessary to comply with the said principle of natural justice prior to the passing of the initial order which under such circumstances would be nothing but a tentative order. We need not elaborate this matter any further because this question squarely stands covered by an authoritative pronouncement of the Supreme Court in *Swadeshi Cotton Mills etc.* v. *Union of India etc. etc.* (1) wherein Sarkaria, J. speaking for the Court enunciated the general principle in the following terms :—

> "The general principle—as distinguished from an absolute rule of uniform application—seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates—post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all informal trappings and dilatory features at the pre-decisional stage, unless, viewed praginatically, it would paralyse the administrative process or frustrate the need for utmost promptitude".

We have, therefore, no hesitation in reversing the view expressed by the learned Single Judge and in holding that an opportunity of being heard need not be afforded to the allottee while passing an order cancelling the allotment in his favour under sub-section (1) of section 11-A.

(1) A.I.R. 1981 S.C. 818.

(7) The learned counsel for the respondent then contended that the earlier petition filed was got dismissed by the State on an express undertaking that no fresh order would be passed without affording an opportunity of being heard to the allottee and as such the Government was bound to afford such an opportunity. It is highly doubtful proposition because once the learned counsel for the State stated in the Court that the order of cancellation has been withdrawn the writ petition had become infructuous and there was no need to give any further undertaking. We however, do not propose to discuss in detail the various aspects about the binding nature of the undertaking as we feel that the respondent should be allowed an opportunity of resorting to the remedy provided under sub-section (2) of section 11-A which he could not avail because of the bona fide belief that the Government was found to afford a reasonable opportunity of being heard before passing order of cancellation. The learned counsel for the respondent however, strenuously opposed the adoption of such a course and pleaded that the discretion exercised by the learned Single Judge in quashing the impugned order should not be interfered with. We are unable to accede to the contention of the learned counsel. If the impugned order is quashed, the Government would not be able to pass a fresh order because of the bar of limitation provided in section 11-A. Moreover, a similar course was adopted by the Supreme Court in *Swadeshi Cotton Mills etc.'s case* (supra) and without quashing the impugned order the case was remanded to the government to pass a fresh order after hearing the aggrieved party. The learned counsel for the respondent also pointed out the hurdle of limitation in the way of the respondent for claiming review of the impugned order under the provisions of sub-section (2). But as the learned Additional Advocate General appearing on behalf of the Government stated that the bar of limitation would not be invoked and the review petition if filed would be disposed of on merits, the apprehension of the learned counsel has lost all its meaning.

(8) As we are sending back the case to the Government for disposal of the review applications, if any, filed by the respondents, we are not dealing with the other several points raised by them in the petitions. It is, however, made clear that this judgment would not debar them from raising those points afresh in any future petitions to be filed by them concerning these allotments.

(9) In the result these appeals are allowed, the judgment of the learned Single Judge is set aside to the extent it quashed the

impugned order. It is further ordered that the respondents in all these appeals shall file review petitions as envisaged by sub-section (2) of section 11-A within a month from the date of this judgment and the competent authority shall pass a fresh order on merits after affording reasonable opportunity to the allottees in accordance with law. In the circumstances of the case the parties are left to bear their own costs.

H.S.B.

Before D. S. Tewatia & Surinder Singh. JJ.

THE COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

THE HARYANA CO-OPERATIVE SUGAR MILLS LTD., ROHTAK,—*Respondent.*

Income Tax Reference No. 46 *of* 1977

July 19, 1984.

Income-tax Act (XLIII of 1961).—Section 41(1)—Unclaimed cane price shown by assessee as his own income—Exemption claimed on the ground that such sum was not a trading receipt as there was no cessation of liability to pay amount to claimants—Such unclaimed price—Whether can be assessed to Income-tax Act as the income of the assessee—Onus to show that the amount is not the income of the assessee—Whether lies on the assessee.

Held, that the assessee having treated a given amount as his own income, then the said amount has to be treated as the income of the assessee and to be brought to tax by virtue of the provisions of section 41(1) of the Income-tax Act, 1961, if two conditions are satisfied; (i) that the amount had been allowed as deduction in some earlier year and (ii) that during the assessment year in question, the assessee has received the benefit representing a given amount by way of cessation or remission of the liability in regard ot the said amount. In a case where the assessee has given the treated amount as income and mentioned it in the profit and loss account as such then *prima facie* the assessing authority would be entitled to hold that the second condition in question stood satisfied and if the assessee despite the above fact asserted that though the amount stood credited in the profit and loss account, the assessee was not entitled