

then all the rules of procedure contained in the Civil Procedure Code, including those relating to appeals or revision would apply to the proceeding. This he points out, would be contrary to the provisions of Sec. 146 (1-D) of the Code of Criminal Procedure which bar an appeal, review or revision from any finding of the Civil Court. From this he wants us to infer that the proceeding does not take the character of a civil proceeding even though it takes place before a civil court. We are not impressed by this argument. If sub-s. (1-D) had not been enacted (and this is really a new provision) an appeal or revision application would have been maintainable. Now that it is there, the only effect of it is that neither an appeal nor a revision is any longer maintainable. This consequence ensues because of the express provision and not because the proceeding before the civil Court is not a civil proceeding."

38. In *Collector, Varanasi v. Gauri Shankar Misra*, AIR 1968 SC 384, the question which arose for consideration was whether the High Court while hearing the appeal against the order of the arbitration under Section 19 (1) (f) of the Defence of India Act, 1939 functioned as a Court or as a persona designata. In considering that question, their Lordships also considered a similar question of law above, and it was held at page 386:

"The rule is well settled that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was stated by Viscount Haldane L. C. in *National Telephone Co. Ltd. v. Postmaster-General*, 1913 AC 546 thus:

"When a question is stated to be referred to an established Court, without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach and also that any general right of appeal from its decision likewise attaches. This statement of the law was accepted as correct by this Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.*, 1953 SCR 1028: (AIR 1953 SC 357)."

39. In *Ngwe Hmon v. Ma De*, (1913) 20 IC 281 (Low Bur) a similar question arose. It is a case which arose out of the contentious proceeding for granting Letters of Administration under the Probate and Administration Act (V of 1881) of the predecessor Act of the present Act. An order was made restoring the proceeding which was dismissed for default of appearance of the plaintiff on the adjourned date of hearing. An appeal was taken against the order of restoration to the Chief Court of Lower Burma under O. 9, R. 1 of the Code, but the appeal was dismissed as incompetent, in the view that the order appealed against was made in the course of procedure under O. 9, R. 9 of the Code, and the procedure in contentious cases was, under Sec. 83 of the present Act (similar to Sec. 268 of the present Act) governed by the Code of Civil Procedure and that Code gave no appeal from an order allowing an application to set aside order of dismissal for default of appearance.

40. These decisions in the cases discussed above, support my view, namely, that an order under O. 9, R. 9 of the Code can be passed in a probate proceeding, and remedy by appeal under O. 43, R. 1 of the Code can be availed of.

41. The cases relied on by the learned counsel for the respondent do not help him. In *Nawab Hameed Ali Khan* AIR 1965 SC 1798 (supra), the applicability of Sec. 86 (1) of the Code, which relates to the right of immunity of the Rulers, and which bars the jurisdiction of Civil Court in suits in case of non-compliance a provision of purely substantive right, to other civil proceedings, was in issue, and no such problem before us was involved in the case. In the case in hand, the nature of the order made in the course of the procedure in the probate proceeding and its appealability, are in question. As contrasted with S. 86 (1) of the Code, the provisions of O. 9, R. 8 and O. 9, R. 9 of the Code fall within the domain of adjective law under the Code. The decisions in AIR 1963 Mad 338 and AIR 1945 Mad 106 are also not authorities for the proposition of law in question; and my learned brother, Islam J., in his judgment has

given reasons, with which I also agree. It is an established principle of law that the case is an authority for what it decides and not from what can be deduced from it.

42. Another limb of argument of the learned counsel for the respondent may be considered. It was urged that dismissal of the application for default did not stand as a bar to the presentation of a fresh application and, therefore, O. 9, R. 9, C.P.C. has no application to a probate proceeding. In support of the contention, he relied on the case of *Ramani Devi v. Kumud Bandhu*, (1910) 14 Cal WN 924; *Surya Kumar Dev Choudhury* AIR 1926 Cal 1057 (supra); *Gorakh Ahir v. Jamuna Ahir*, AIR 1943 Pat 281. The contention does not bear close scrutiny, and it is rejected. The provision of O. 9, R. 9 does not warrant such a conclusion. The existence of a remedy by presentation of a fresh application cannot be a ground for holding such a view. Order 9, Rule 9 of the Code consists of two parts; the first part prohibits bringing of a fresh suit in respect of the same cause of action, and the second part prescribes a remedy to remove the order of dismissal of the suit. The ban in the first part has been lifted by the Act, but the second part exists, and it can be availed of. The case also has no bearing on the question before us. In these cases, the question was whether a probate proceeding dismissed for default of appearance barred the presentation of a second application on the doctrine of res judicata or under O. 9, R. 9 of the Code, and the question was answered in the negative. In none of these cases, it was held that O. 9, R. 9 could only be invoked in cases where the filing of a fresh petition was barred under the law.

43. For all reasons above, I am of the opinion that the appeal before us arising out of the order made under O. 9, R. 9 of the Code is competent. I am in respectful agreement with the view expressed in AIR 1919 Mad 112; AIR 1936 Lah 863; and AIR 1971 Pat 391. I am also of the opinion that in *Debi Charan v. Lilamani Debi*, ILR (1949) 1 Assam 54, the Division Bench of this Court has

laid down the correct proposition of law on the question.

44. As to the merits of the case, I agree with the views of my learned colleagues that the appeal should be allowed, and the case remitted to the District Judge for disposal on merits. The parties will bear their own costs.

Appeal allowed.

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FULL BENCH

M. SADANADASWAMY,

BAHARUL ISLAM AND D. PATHAK, JJ.*

Satyaranjan Paul Majumdar, Petitioner v. Assam Board of Revenue, Gauhati and others, Respondents.

Civil Rules Nos. 531 and 532 of 1972, D/- 5-1-1977.

(A) Assam Land and Revenue Regulation (1 of 1886), Ss. 151, 81 — Power of Board of Revenue under S. 151 to set aside sale — Application under S. 81 barred by time — Board can nevertheless set aside sale under S. 151. ILR (1949) 1 Assam 509, Civil Rule 202 of 1965, D/- 31-5-1967 (Assam) and AIR 1950 Assam 141, Overruled. (Paras 10, 11, 33, 41)

(B) Assam Land and Revenue Regulation (1 of 1886), Ss. 72 (3) and 67 — Publication of sale statement in Gazette — Section 73 (3) contemplates a case where the revenue payable on an estate exceeds Rs. 500/- — It has nothing to do with the arrear which has fallen due. (Para-21)

(C) Assam Land and Revenue Regulation (1 of 1886), S. 151 — Setting aside sale by Board — Reasons must be given for the order. (Para 21)

(D) Constitution of India, Art. 226 — Assam Land Revenue Regulation (1 of 1886), S. 151 — Sale set aside by Board on ground of fraud — Decision based on evidence — High Court cannot interfere. (Paras 21, 39)

Cases Referred: Chronological Paras
(1973) Civil Rule No. 312 of 1971 (Gau), D/- 8-6-1973 (Gau) 16, 20, 31, 34
(1973) Civil Rule No. 93 of 1971, D/- 11-5-1972 (Gau) 15, 20, 31, 34
AIR 1970 Assam 82 14, 20, 32
Assam LR (1969) Assam & Naga 92 (FB) 18
AIR 1968 SC 843 18
AIR 1966 SC 893 9, 18, 32, 33
AIR 1965 SC 1144 14
AIR 1965 SC 1585 18
(1965) Civil Rule No. 202 of 1965, D/- 31-5-1967 (Assam) 14, 20, 34
AIR 1964 SC 993 11
AIR 1958 SC 398 9, 11, 32
(1953) ILR 5 Assam 532 10, 14, 20
AIR 1952 SC 319 9
AIR 1950 Assam 141 10, 17, 20
ILR (1949) 1 Assam 379 18, 14, 20, 32
ILR (1949) 1 Assam 509 13, 14, 20
AIR 1941 FC 5 9

J. P. Bhattacharjee, S. N. Medhi and B. R. Dey, for Petitioner; B. K. Das, A. K. Laskar, P. Das, B. M. Goswami as Govt. Advocate, Assam, for Respondents.

SADANANDASWAMY, J.:— The Division Bench which heard these writ petitions.

*(Note:— The judgments in the case are printed in the order in which they are given in the certified copy.—Ed.)

tions was of the opinion that they involve an interpretation as to the scope and extent of S. 151 of the Assam Land and Revenue Regulation, 1886 in the light of the observations in Civil Rules Nos. 202 and 203 of 1965 disposed of on 31-5-1967, Civil Rule No. 312 of 1971 disposed of on 8th June, 1973 and Civil Rule No. 93 of 1971 disposed of on 11-5-1973. Hence these writ petitions have been referred to this Bench.

2. A plot of land measuring 4 kathas 2 lechas covered by Dag No. 405, Patta No. 120 of Mowkhowa Mouza, Golaghat Town, originally belonged to Abdul Sattar and Smt. Ayesha Bibi and in a part of the said land there is a building known as Tokani building. The building was in the occupation of some tenants at the relevant time. In respect of the said land arrears of land revenue for some years accrued and the Sub-Divisional Officer, Golaghat started a sale proceeding, namely, Land Sale Case No. 546/68-69 for bringing the land to sale by public auction. The said sale case was conducted by the Bakijai Officer and the formalities prior to sale were carried out by the Sub-Divisional Officer, Golaghat. With regard to the service of sale notice, the process server is alleged to have gone to the land and, not having found the original pattadars of the land, the notice was served by hanging it on the property in the presence of some of the witnesses including the present petitioner. Thereafter, the process-server sent his report to the Sub-Divisional Officer to that effect. The land was sold by public auction on 16-1-1969 and the highest bid of Rs. 1,401/- offered by the petitioner was accepted. The necessary deposits were made by the petitioner and after the expiry of 60 days from the date of sale it was duly confirmed.

3. On behalf of respondent No. 4, the Dacca Patty Masjid, its Secretary Abdul Jalil Bhuyan filed an application before the Board of Revenue, Assam under S. 81 of the Assam Land and Revenue Regulation read with S. 5 of the Lim. Act on 11-6-1971 alleging that about 1 katha of the land in question was gifted orally to the Masjid by the original pattadars in accordance with Mohammedan Law, that the said Masjid was in possession of a part of the land during the relevant time and that due to the default made by the Masjid in respect of the payment of land revenue, there was an arrear of revenue in respect of the land in question, that the provisions of Ss. 70 and 72 of the Assam Land and Revenue Regulation

were not complied with by publication of the notice of sale in the official Gazette. It was also contended that the present petitioner was a tenant in respect of a portion of a building standing on the land in question, that he deliberately defaulted in payment of rent for the years 1965-66 and 1967-68 and due to the fraud played by the petitioner the land was ultimately sold in auction. The Secretary of the Masjid alleged further that he came to know about the auction sale only on 22-3-1971 when he learnt of the notice issued on behalf of the petitioner to Sashi Bhushan Bakshi, another tenant on the premises, asking him to pay the rent to the petitioner who claimed to have purchased the land and the building in public auction. It was also alleged that the value of the land and the property standing thereon would be about Rupees two lakhs, that the auction sale was held in clear violation of the provisions of the Regulation and that the Masjid had no knowledge of the sale prior to 22-3-1971. The said application was numbered as Case No. 176RA/71. Respondent No. 5 claims to be another tenant residing in the premises standing on the land sold and he made a similar application. His application was registered as case No. 177 RA/71 before the Board of Revenue and a common order was passed by the Board in both the cases.

4. The petitioner entered appearance in the cases and filed an affidavit-in-composition alleging, among other things, that no part of the land sold was ever gifted to the Masjid, that the original pattadars of the land left for Pakistan long ago, that their whereabouts were not known, that the question of attachment of the movable properties belonging to the original pattadars before bringing the land to sale could not arise and that the provisions of the Regulation had been complied with. He also contended that there was inordinate delay in filing the applications under S. 81 of the Regulation and therefore the applications were clearly barred by limitation.

5. The Board of Revenue held that as the sale statement was not published in the Gazette as required under S. 72 (3) of the Regulation, since the arrear amounted to Rs. 1,206.85 p., the sale was ab initio void. It also held that the sale having been held for the arrears for the years 1959-60 to 1967-68 violates R. 152 framed under the Regulation. It further observed that the Jarikarak report states that he searched for the defaulters, could not trace them and therefore he posted

a copy of the sale statement at the Sarjamin and that the present petitioner signed as a witness to the report. This circumstance, in the view of the Board, lent support to the story of fraud raised by the applicants before it. With regard to the delay in making the application the Board observed that the delay from 1-4-1971 to 11-6-1971 had not been explained. But in view of the above circumstances and since in its opinion the sale was ab initio void, the Board set aside the sale in exercise of the powers conferred on it under S. 151 of the Assam Land and Revenue Regulation.

6. Respondents 8 to 10, claiming to be the original pattadars of the land in question, sought to be impleaded in the present writ petitions. This court passed an order on 23-2-1973 to the effect that they may be impleaded as parties subject to the objection, if any at the time of hearing. At the time of hearing, their application was not pressed and their application was accordingly dismissed by a separate order on 18-11-1976.

7. It is necessary to consider the relevant provisions of the Assam Land and Revenue Regulation, 1886 hereinafter referred to as "the Regulation". Chapter V of the Regulation deals with arrears and the mode of recovering them. Section 68 provides for penalty leviable on arrears of land revenue and the notice of demand. Section 69 provides that the Deputy Commissioner may order the attachment and sale of the movable property of the defaulter for the recovery of the arrear and the procedure for conducting the sale. Section 69-A provides for the attachment for a temporarily settled estate. Section 70 provides for sale of immovable property. Section 71 states that the property sold under Section 70 shall be sold free of all incumbrances. Section 72 provides that the Deputy Commissioner shall prepare a statement in the prescribed manner and prescribes the contents of such a statement. Section 72 (2) provides for publication of the list of all estates for which a statement has been prepared under sub-section (1) of S. 72. Section 72 (3) provides that if the revenue of any estate for which a statement has been prepared under sub-s. (1) exceeds five hundred rupees, a copy of the statement shall be published in the official Gazette. Section 73 enables the Deputy Commissioner to forbid the tenants of the defaulter to pay rents due to him by publishing a proclamation to that effect. Section 74 relates to the person who has to conduct

the sale and the time for conducting it. Section 75 provides that the sale may be stayed if the defaulter pays the arrear of revenue and the prescribed fee at any time before the date fixed for sale. Sections 77 and 78 provide for the deposit of the purchase money by the purchaser and for resale in case he fails to do so as prescribed. Section 78-A provides for setting aside the sale on deposit of the amount due to the Government in addition to a specified percentage of the amount within the sixtieth day from the date of sale. Under Section 79 an application in writing may be made to the Deputy Commissioner to set aside the sale on the ground of material irregularity or mistake in publishing or conducting it. It also provides that no sale shall be set aside on this ground unless the applicant has sustained substantial injury by reason of the irregularity or the mistake. Section 80 states that on compliance with Section 78 and in case no application for setting aside the sale has been preferred, the sale shall be final on the sixtieth day from the date of sale subject to the provisions of Ss. 81 and 82. If an application has been preferred for setting aside the sale and it has been dismissed then the sale shall be final from the date of the dismissal or on the sixtieth day from the date of sale whichever is later. Section 81 empowers the Board to set aside the sale on the ground of hardship or injustice on an application made to them within one year of the sale becoming final under S. 80. Section 82 provides that a sale shall not be annulled by a Civil Court unless it has been made contrary to the provisions of the Regulation and the plaintiff has sustained substantial injury by reason of neglect of the provisions. Sub-ss. (2) and (3) of S. 82 provide for other conditions subject to which a suit to annul such a sale lies. Section 83 recognises the right of a person injured by any act or omission in connection with a sale to file a suit for damages. Section 84 provides for refund of the purchase money when a sale is set aside. Sub-section (1) of S. 85 provides for the purchaser being put into possession after a sale has become final and for the grant of a certificate to him. Sub-section (2) of the same section refers to the contents of such a certificate. Sub-section (3) of S. 85 states that the certificate granted under this section shall be conclusive evidence that every step in publishing and conduct of the sale has been carried out according to the requirements of the Regulation and that the title of

any person to whom such a certificate has been granted shall not be questioned under S. 82 or otherwise by reason of any omission for irregularity regarding the publication and the conduct of the sale. The proviso to that sub-section states that nothing in the sub-section shall affect the power conferred on the Board by S. 81. These are the relevant sections of Chapter V for our purpose.

8. Section 147 provides for appeals. The proviso to that section sets out the orders against which no appeal lies. One of such orders is the order of a Deputy Commissioner under S. 79 setting aside or refusing to set aside the sale. Another such order is one expressly declared by the Regulation to be final subject to the provisions of S. 151. Section 147 is one of the sections contained in Chap. 8 of the Regulation which relates to the procedure to be followed under the Regulation. In the same chapter is found S. 151 which reads as follows:—

"The Board, a Deputy Commissioner, a Settlement Officer and a Survey Officer may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit."

Under S. 80 as noticed above, the sale is made final after the sixtieth day in case no application for setting aside the sale has been made under S. 78-A or S. 79 but subject to the provisions of Sections 81 and 82. Under S. 85 (3) a sale certificate is conclusive evidence of the title of the purchaser as well as of compliance with the requirements of the Regulation relating to the conduct and publication of the sale as well as the service of notice etc. But this has been made subject to the power conferred on the Board by S. 81.

It is the contention of the petitioners that the power given to the Board under S. 151 is subject to the provisions of Section 81. It is their contention that under S. 81 the Board has power to set aside a sale only if an application is made to them within one year of the sale becoming final under Section 80 and that they can do so only on the ground of hardship or injustice. It is urged by them that these two grounds cover all the cases in which a sale can be set aside including cases of fraud as well as lack of jurisdiction. It is thus contended by them that a sale of land held under Chap. 5 of the Regulation can be set aside by the Board only under S. 81. Since in the present case the application filed by the respon-

dents 4 and 5 before the Board were beyond the time prescribed under S. 81 and since they failed to establish sufficient cause for condonation of delay in filing the said applications, it is urged that the Board had no jurisdiction to set aside the sale. It is further urged that even according to the findings of the Board itself, the order of the Board setting aside the sale in exercise of its powers under S. 151 is without jurisdiction.

9. In AIR 1958 SC 398 (Nagendra Nath Bora v. Commr. of Hills Division and Appeals Assam) the powers of the appellate authorities under S. 9 of the Eastern Bengal and Assam Excise Act (1 of 1910) came up for consideration. Section 9 as set out in the said decision reads as follows:— (at p. 405)

"9 (1) Orders passed under this Act or under any rule made hereunder shall be appealable as follows in the manner prescribed by such rules as the State Government may make in this behalf:

(a) to the Excise Commissioner, any order passed by the District Collector or a Collector other than the District Collector,

(b) to the Appellate Authority appointed by the State Government for the purpose, any order passed by the Excise Commissioner.

(c) In cases not provided for by Cls. (a) and (b) of sub-s. (1), orders passed under this Act or under any rules made hereunder shall be appealable to such authorities as the State Government may prescribe.

(d) The appellate Authority, the Excise Commissioner or the District Collector may call for the proceedings held by any officer or person subordinate to it or him or subject to its or his control and pass such orders thereon as it or he may think fit."

The appellate and revisional powers of the authorities were held to be very wide and co-extensive with the powers of the primary authority under the Act and it was observed as follows:— (at p. 405)

"Neither the Act nor the rules made thereunder, indicate the grounds on which the first Appellate authority, namely, the Excise Commissioner, or the Second Appellate Authority (the Excise Appellate Authority) has to exercise his or its appellate or revisional powers. There is no indication that they make any distinction between the grounds of interference on appeal and in revision. That being so, the powers of the Appellate Authorities in the matter of settlement, would be co-

extensive with the powers of the primary authority, namely the District Collector or the Sub-Divisional Officer. See in this connection, the observations of the Federal Court in Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, 1940 FCR 84 at p. 102: (AIR 1941 FC 5 at p. 13) and of this Court in Ebrahim Aboobakar v. Custodian-General of Evacuee Property, 1952 SCR 696 at p. 704: (AIR 1952 SC 319 at p. 322). In the latter case, this Court, dealing with the powers of the Tribunal (Custodian-General of the Evacuee Property), under S. 24 of Ordinance No. 27 of 1949, observed:

"Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts' ".

And further,

"In the instant cases, the Appellate Authority is contemplated by S. 9 of the Act, to be the highest authority for deciding questions of settlement of liquor shops, as between rival claimants. The appeal or revision being undefined and unlimited in its scope, the highest authority under the Act could not be deprived of the plenitude of its powers by introducing considerations which are not within the Act or the rules."

The High Court had come to the conclusion that the Appellate Authority could not make their own choice of the person to be offered the settlement of the liquor shops irrespective of the recommendation of the Deputy Commissioner or the officer conducting the settlement. In its opinion the appellate bodies would be exceeding their jurisdiction under the law if they did so. This finding was held to be erroneous by the Supreme Court. In AIR 1966 SC 893 (Ram Swarup v. Shikar Chand) the revisional powers of the Deputy Commissioner under S. 7-F of the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) came up for consideration. Section 7-F as set out therein reads as follows: (at p. 896)

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in S. 3 or requiring any accommodation to be let or not to be let to any person under S. 7 and may make such orders as appears to it necessary for the ends of justice."

While observing that the revisional powers

of the State Governments were conferred in very wide terms it was observed as follows:— (at p. 896)

"It is clear that the power conferred on the State Government by S. 7-F to revise the orders passed by the Commissioner under S. 3 (3) is very wide. In the first place, the State Government need not necessarily be moved by any party in that behalf. It may call for the record suo motu and it can exercise its powers in the interests of justice. In other words, whenever it is brought to the notice of the State Government either by a party aggrieved by the order passed by the Commissioner or otherwise, that the order passed by the Commissioner is unfair or unjust, the State Government may in the ends of justice pass an appropriate order revising the order made by the Commissioner. That in brief is the scheme of the relevant provisions of the Act relating to the grant of permission to the landlord to sue his tenant in ejectment"

Section 3 (3) of the same Act as set out in the same decision reads as follows:— (at p. 895)

"3 (3). The Commissioner shall, as far as may be, hear the application within six weeks from the date of its making, and if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act, he may confirm or set aside the order of the District Magistrate."

While considering the powers conferred on the Commissioner under S. 3 (3) the High Court had held that the jurisdiction conferred on the Commissioner under S. 3 (3) is exactly similar to the jurisdiction conferred on the High Court under S. 115 of the Civil P. C. It was held by the Supreme Court that the illegality or the irregularity to which S. 3 (3) refers need not necessarily be correlated with questions of jurisdiction and that the High Court was not justified in introducing the limitation pertaining to questions of jurisdictions in determining the scope of the revisional power conferred on the Commissioner by S. 3 (3).

10. In (1953) ILR 5 Assam 532 (Hemo Ali v. State of Assam) an appeal was presented to the Revenue Tribunal under S. 147 of the Regulation against the grant of patta. The appeal was barred by time. The Tribunal, however, interfered in the exercise of its revisional jurisdiction and reversed the order of settlement in favour of the grantee. The grantee filed a suit for declaration that the order of the Tribunal was ultra vires

and without jurisdiction. The Tribunal did not extend the period of limitation for the appeal. It was contended that the right of appeal had been lost by efflux of time and that the Tribunal exceeded its jurisdiction. Rejecting the said contention, it was observed as follows:—

"Under S. 151 the Tribunal had the power to call for any proceeding held by any officer subordinate to it and pass such orders thereon as it thought fit. There is no period of limitation provided for the exercise of this jurisdiction. The jurisdiction may be invoked by an aggrieved party. The Tribunal may of its own motion call for the records of any proceeding. The jurisdiction is supervisory and could be exercised at any time. There is no force in the contention that the revisional jurisdiction could not be exercised because the appeal that had been filed was found to be time barred. If the Tribunal discovered any material irregularity or illegality in the proceedings, it had ample jurisdiction to interfere even though the appeal was time barred. Normally the Tribunal may not interfere in such cases but where it considers interference necessary, it has the power to do so."

It was further urged that where a right of appeal exists and is not availed of, the revisional jurisdiction under S. 151 could not be exercised. That contention was also rejected since there is nothing in the language of S. 151 to justify that interpretation and that the restriction placed on the revisional powers of the High Court under S. 115 of the Civil P. C. does not apply, since no such condition is attached to the exercise of jurisdiction under S. 151 of the Regulation. It was, therefore, held that it can be exercised even in cases where there is a right of appeal and has not been availed of.

We are in respectful agreement with the above-said observations. The same principle applies to a case where the aggrieved party could present an application for setting aside the sale under S. 81 of the Regulation but has not availed of the remedy. Even in cases where the remedy under S. 81 is barred by limitation, it is open to the authority specified under S. 151 of the Regulation to exercise its powers of revision, since there is no limitation of time for the exercise of such power within the terms of S. 151, even assuming it is a revisional power. It is true that the authority under S. 151 cannot pass an order

tion, for example, it is bound by the terms of S. 153 of the Regulation. But in the case of revenue sales it has wide powers and can pass all legal orders, as observed in AIR 1950 Assam 141.

11. While considering the scope of S. 151 of the Code of Civil Procedure the Supreme Court observed as follows in AIR 1964 SC 993 (Arjun Singh v. Mohindra Kumar) (at p. 1003):

"It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates."

Relying on these observations it is urged by the petitioners that since S. 81 specifically provides for sales being set aside the Board cannot set aside a sale under S. 151 of the Regulation. But in this case we are not concerned with the inherent powers of the Board of Revenue. We have to consider the scope and extent of the powers under the specific provisions in the Regulation, namely, S. 151. Under S. 115 of the Civil P. C. there are restrictions on the exercise of the revisional powers of the High Court. Such a power can be exercised only in a case decided by any subordinate Court and the decision must be one against which no appeal lies. The scope of the revisional power is further limited by Cls. (a), (b) and (c) of S. 115 but under S. 151 of the Regulation no such restrictions have been placed on the powers of the Board. The powers of the Board under S. 151 have been conferred in the widest terms. These powers can be exercised suo motu or on an application filed before it. There is no period of limitation prescribed under the Regulation for such an application. There is also no period of limitation for the exercise of such power. It may exercise its power in respect of any proceeding held by any officer subordinate to it. As observed by the Supreme Court in AIR 1958 SC 398 (Nogendra Nath Bora v. Commr. of Hills Division and Appeals, Assam (AIR 1958 SC 398)) the powers of the Board

are co-extensive with those of the officers subordinate to it.

12. It is the contention of the petitioners that a sale which has become final under S. 80 can be set aside only under S. 81 and that if it was the intention of the legislature to empower the Board to set aside such a sale under S. 151 of the Regulation there would have been a specific provision to that effect under Ss. 80, 81 and 85 as is found in Ss. 39 and 42 of the Regulation. Under S. 39 the order of a Settlement Officer has been made final subject to the provisions of S. 151 of the Regulation. Under S. 42 the order of the Settlement Officer fixing the rent has been made final subject to the provisions of S. 151 of the Regulation. It is, therefore, contended that the only power conferred on the Board to set aside a sale which has become final under S. 80 is under S. 81. But it is to be noticed that under S. 147 it is provided that no appeal shall lie against orders expressly declared by the Regulation to be final subject to the provisions of S. 151. Hence the specific provision in Ss. 39 and 42 to the effect that the orders under those sections are final subject to the provision of S. 151 indicates that the orders under those sections are not appealable. The proviso to S. 147 specifies the orders against which no appeal lies. Hence an appeal would lie against all orders under the Regulation which are not so excluded to the authorities specified in Cls. (a), (b), (c) & (d) of S. 147. But in respect of orders which are appealable there is no specific mention in the particular Sections of the Regulation under which such orders are passed to the effect that the orders passed under those Sections are appealable under S. 147. Similarly the mere fact that there is no mention in any particular Section of the fact that the order passed under that Section is subject to S. 151 does not mean that the orders passed under those Sections are not subject to S. 151 of the Regulation.

13. Section 151 has been considered in a number of decisions of this Court. In ILR (1949) 1 Assam 379 (Abhi Ram Lahkar v. Gurang Kachari) the land was sold for realisation of arrears of revenue in April 1946 by the Sub-Deputy Collector. In June 1946 the Additional Deputy Commissioner purporting to act under S. 151 set aside the sale on the ground that the sale proceeds were insufficient to pay the arrears. It was contended that the sale could be set aside only where

there has been an irregularity or illegality in conducting the sale and that there was no irregularity or illegality in the conduct of the sale in that case. Rejecting the contention it was observed that S. 151 is in the widest possible terms and that no limit is imposed by the language of the Section on the discretion of the superior officer in setting aside the orders of the subordinate officer under that Section. It was held that the order setting aside the sale ought not to be interfered with unless it is made without jurisdiction and in that case it was held to be no one without jurisdiction. In ILR (1949) 1 Assam 509 (Sarbeswar Borah v. Province of Assam) it was held that S. 151 of the Regulation cannot be invoked where a right of appeal has been given and has not been exercised within the period of limitation allowed by law. The learned Chief Justice appears to have assumed that an application under S. 151 does not lie against an order which is appealable. Such a limitation is to be found in S. 115 of the Civil P. C. but the language of S. 151 of the Regulation does not warrant the imposition of a similar condition.

14. In Civil Rule No. 202 of 1965 (Mustt. Someswari Bora v. Assam Board of Revenue) the applications for setting aside the sale were barred by limitation under S. 81 of the Regulation but instead of dismissing the applications as barred by limitation the Board purported to act in exercise of its powers under S. 151 and though there was no attempt to prove collusion or fraud, set aside the sale on the ground that certain irregularities took place in the service of notice, the publication of the sale notice and other matters. The power under S. 151 was considered by this Court to be a power of revision similar to the one under S. 115 of the Code of Civil Procedure. It was, therefore, held that it cannot be exercised where a right of appeal or other remedy is provided. In this case also it was assumed that there was a limitation on the power exercisable under S. 151 of the Regulation similar to the limitation contained in S. 115 of the Civil P. C., namely, that it is exercisable only when no appeal lies, against the order of the subordinate officer. But there is no warrant for such an assumption as noticed above. The power under S. 151 of the Regulation was next considered as an inherent power similar to S. 151 of the Civil P. C. and following the decision in AIR 1965 SC 1144 (Ramkarandas

Radhavallabh v. Bhagwandas Dwarkadas) it was held that where specific provision for setting aside the sale has been made under S. 81, there is no scope for the exercise of the inherent power of the Board under S. 151 of the Regulation. Here again it appears to have been assumed that the power under S. 151 of the Regulation is an inherent power similar to the power of a Court under S. 151 of the Civil P. C. But S. 151 of the Regulation does not speak of any inherent power of the Board or the other authorities mentioned in that section. It is a power conferred specifically under S. 151 of the Regulation. Hence the principles which apply to the exercise of the inherent power under S. 151 of the Civil P. C. do not apply to the exercise of the powers conferred specifically under S. 151 of the Regulation. The decision in ILR (1949) 1 Assam 509 (Sarbeswar Borah v. Province of Assam) was followed. The provisions in Ss. 39 and 42 of the Regulation that the action was subject to the powers of the Board under S. 151 was noticed and an inference was drawn that whenever the legislature intended that a certain action was subject to the powers of the Board under S. 151 specific mention had been made in the Regulation. It was, therefore, inferred that the absence of such a provision in other Sections of the Regulation should lead to the inference that the power under S. 151 was excluded. This inference does not appear to us to be warranted for the reasons stated already. (1953) ILR 5 Assam 532 (Hemo Ali v. State of Assam) and ILR (1949) 1 Assam 379 (Abhi Ram Lahkar v. Gurang Kachari) were not followed.

In AIR 1970 Assam and Naga. 82 (Abdul Gani Sarkar v. Assam Board of Revenue) the petition before the Board was under S. 81 as well as under S. 151 of the Regulation. The Board entertained it after the expiry of one year mentioned under S. 81 but treated it as a petition under S. 151. It was held that the Board had wide powers and the question of limitation would not affect the jurisdiction of the Board.

15. In Civil Rule No. 93 of 1971 (Gau) (Sabharam Kurmi v. Assam Board of Revenue) the application for setting aside the sale was barred by time under S. 81 of the Regulation. The Board refused to condone the delay. Since apart from the grounds of injustice and hardship the authority of the officer to hold the sale in the absence of earlier action under S. 69 of the Regulation was questioned

the Board entertained the application in exercise of its powers under S. 151 of the Regulation. The finding of the Board that the officer had no authority to hold the sale was upheld by the High Court. The decision in Civil Rule No. 203 of 1965 was distinguished on the ground that it was confined to the facts of that case, namely, that the only ground on which the Board had set aside the sale in that case was on the ground of hardship and injustice. It was held that the said decision would not apply to a case where the jurisdiction of the officer holding the sale was in question.

16. In Civil Rule No. 312 of 1971 (Gau) (Jogeswar Bora v. Krishnakanta Das) the application before the Board under S. 81 alleged fraud on the part of the purchaser as well as grounds of hardship and injustice. The application was apparently barred by limitation but the Board treated it as an application under S. 151 of the Regulation, since it noticed certain startling facts in the case, that the notice was issued to be served on a dead pattadar that the purchaser were minors, amongst other things. The Board observed that though the alleged fraud was not proved, the conduct of the father of the minors, who was also a pattadar, cannot be said to be above Board. The decision in Civil Rule No. 203 of 1965 was explained as applicable to a case where the grounds urged before the Board were of hardship and injustice alone. The decision in Civil Rule 93 of 1971 was followed, since the Board had found good reasons apart from hardship and injustice to set aside the sale under S. 151 of the Regulation. The Board was held entitled to do so under S. 151 of the Regulation.

17. In AIR 1950 Assam 141 (Sib Charan Das v. Manik Chandra Agarwalla) the suit was filed for a declaration that the order of the Revenue Tribunal setting aside the sale of land was illegal and without jurisdiction. Both the learned Judges of the Division Bench came to the conclusion that the Revenue Tribunal exceeded its jurisdiction. The patta stood in the name of a minor. The father of the minor pattadar, acting as guardian of his son, preferred an appeal against the sale of the minor's property. The appeal was filed in August, 1945. The sale had been confirmed and the sale certificate had been issued in May, 1944. The appeal was described as one for setting aside the sale under S. 151 of the Regulation. The sale was set aside on the ground that the arrears of revenue was actually sent

by Money Order to the Mouzadar but owing to the change of Mouzadar the amount was not credited to the Government. The Tribunal observed that the delay in moving the Court had not been satisfactorily explained but it was condoned in the special circumstances of the case. The finding of the Tribunal was that the Mouzadar had failed to function and this had materially contributed to the sale and the loss of the estate to a minor. It was held by this Court that the Tribunal can interfere on appeal or in revision under S. 151 with orders of sale on all legal grounds, but that if a sale was sought to be set aside on the ground of hardship or injustice it could be set aside only within one year from the date the sale became final. It was also observed that the powers of the Tribunal under S. 151 of the Regulation are very wide that it may pass any order it deems fit after calling for the proceeding held by the Subordinate Officer, but that it has no power to pass arbitrary orders, that its order must be legal and within the limit of its jurisdiction and must be within the frame-work of the Regulation, that the Tribunal cannot pass, for instance, an order which the Regulation forbids. It was also observed that it cannot pass any order in violation of a statutory direction contained in the Regulation, whether express or implied.

18. In Assam LR (1969) Assam and Naga 82 (FB) (Ka Idis Mary Khar Kongor v. Ka Theirit Lyngdon) a Full Bench considered the powers of the High Court under R. 36 of the Civil Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, the relevant part of which reads as follows :

"The High Court or Deputy Commissioner may, on application or otherwise, call for the proceedings of any case decided by any officer subordinate to him and pass such orders as he may deem fit."

The decisions of the Supreme Court in AIR 1965 SC 1585 (State of Kerala v. K. M. Charia Abdulla and Co.); AIR 1966 SC 893 (Ram Swarup v. Shikar Chand) and AIR 1968 SC 843 (Swastik Oil Mills Ltd. v. Commr. of Sales Tax, Bombay) were considered and it was held that under R. 36 the powers of the High Court are not confined to the question of jurisdiction as in a civil revision under S. 115 of the Civil P. C. but that it may exercise the same powers as in the case of a first appeal. It was further held that the revising authority under this Rule may pass any order as it may deem

fit and is also competent to reappreciate the evidence and pass an order setting aside the appreciation made by the lower authority.

19. It is further contended on behalf of the petitioners that if revenue sales are set aside at any time even on an application which is barred under S. 81 of the Regulation, there will be uncertainty as to the title of purchasers under such sale and that it would scare away bona fide purchasers. It is true that the intention of the legislature based on public policy is to protect the title of the purchasers when restrictions have been placed as to the conditions under which such sales are to be set aside, namely, those under Ss. 79, 80, 81, 82 and 85. But the authority exercising the revisional powers under S. 151 is expected to bear this in mind while setting aside a revenue sale.

20. In our opinion ILR (1949) 1 Assam 379 and (1953) ILR 5 Assam 532 were correctly decided and ILR (1949) 1 Assam 509, Civil Rule No. 202 of 1965 and AIR 1950 Assam 141 were not correctly decided, Civil Rule No. 93 of 1971 (Gau), Civil Rule No. 312 of 1971 (Gau) and AIR 1970 Assam and Naga 82 were also correctly decided though not for the reasons stated therein.

21. It is further contended on behalf of the petitioners that the order of the Board is not sustainable and ought to be quashed even assuming that the Board had the power to set aside the sale under S. 151. The Board set aside the sale on three grounds. The first is that the sale statement was not published in the Gazette as required under S. 72 (2). The arrear amounted to Rs. 1206.85 paise. Under S. 72 (3) it is provided that if the revenue of any estate exceeds Rs. 500/- and a statement has been prepared in respect of that estate under sub-s. (1) of S. 72, a copy of the statement shall be published in the official Gazette. Under S. 67 it is provided that if land revenue is not paid on the date when it falls due, it shall be deemed to be an arrear. Section 72 (3) speaks of the revenue of an estate and not the arrear which has fallen due. Hence what is contemplated is that in cases where the revenue payable on an estate exceeds Rs. 500/- a copy of the statement shall be published in the official Gazette. The purpose is that wider publicity should be given to a sale of more valuable property. The petitioners are, therefore, justified in contending that this finding of the Board is incorrect.

The second reason given by the Board is that the sale for the arrears in respect of the years 1959-60 to 1967-68 violates R. 152 framed under the Regulation. But it is not possible to know the reason why the Board arrived at such a finding since no reasons are given in support of that finding. The Board should state the reasons for its findings. Otherwise it will not be possible for the Court to understand why a particular finding has been given, whether its order is questioned in a suit or in a writ petition. A finding not based on any reason will be considered to be arbitrary.

The third reason given by the Board relates to fraud. It is observed by the Board that the Jarikarak reported that he searched for the defaulters, could not trace them and therefore he posted a copy of the sale statement at the Sarjamin and that the auction purchaser, the present petitioner, signed as a witness to that report. The Board expressed the opinion that this circumstance lends support to the story of fraud raised by the applicants before it. It is contended on behalf of the present petitioner before us that there was no material before the Board to come to the conclusion that the sale was vitiated by fraud and that therefore the finding of the Board is not sustainable. Respondent Nos. 4 and 5 alleged in their applications before the Board that the present petitioner was a tenant under the pattadars, was entrusted by the pattadars with the payment of the land revenue on the property sold, that he fraudulently defaulted in the payment of arrears of land revenue and brought about the sale and purchased the property himself. As against this the present petitioner contended that there was a civil litigation between himself and the pattadars which went upto the High Court and was finally decided only in the year 1971 and that the allegation of entrustment was neither true nor probable. It is contended that in view of this circumstance, namely, the litigation between the parties at the relevant time it was not possible for the Board to come to the conclusion that the petitioner had been entrusted with the payment of land revenue by the pattadars and that the whole foundation of the case of fraud set up by the applicants before the Board ought to fail. According to respondents 4 and 5 the value of the property sold was rupees two lakhs but even according to the petitioner the value was Rupees 50,000/-. The petitioner purchased the property at the sale.

The above allegations and counter allegations were before the Board. The Board seems to have attached importance to the presence of the petitioner at the time of the copy of the sale statement being posted on the property. The fact that litigation was going on between the petitioner and the pattadars might have led the Board to infer that the petitioner knew the addresses of the pattadars at that time but deliberately did not disclose the same and allowed the service of the copy of the sale statement in the above-said manner on the property by the revenue official. The Board has not said so in its order. But it was possible for the Board, on the materials placed before it, to draw an inference of fraud being played by the auction-purchaser. The finding of the Board is not one without any evidence to support it. Even if it were a case in which this Court would take a different view on the same evidence it would not be a case for interference. The scope of interference under Art. 226 is limited. Insufficiency of evidence to support the finding of fraud arrived at by the Board is not a ground for interference under our writ jurisdiction. The sale could be set aside by the Board even on the ground of fraud alone. There is therefore no sufficient reason to interfere with the order of the Board.

These writ petitions are, therefore, dismissed but in the circumstances of the case, parties shall bear their own costs.

D. PATHAK, J.: 21-A.—I agree with the opinion expressed with reasons and the conclusion reached by my learned brother, Sadanandaswamy J. that the petitions be dismissed.

BAHARUL ISLAM, J.: 22.—An area of 4 Kathas 2 Lechas of land of Golaghat town covered by K. P. Patta No. 126 was sold on 16-1-69 for arrears of land revenue. The Dacca Patta Masjid, Golaghat Town, represented by its Secretary (respondent No. 4 in Civil Rule 531/72 and respondent No. 5 in Civil Rule No. 532/72) made an application under S. 81 of the Assam Land and Revenue Regulation (hereinafter called 'the Regulation'). The application was barred by limitation. No application for condonation of the delay was made before the Board. The Board did not condone the delay. After hearing the parties, the Board found—
(i) The arrear amounted to Rs. 1206.85; under S. 72 (3) of the Regulation the sale statement had to be published in the Gazette, but as it was not so published, the sale was ab initio void; (ii) The sale

for the years 1959-60 to 1967-68 violated R. 152 of the Regulation; and (iii) The sale was vitiated by fraud.

23. Only two points have been urged before us by learned counsel of the petitioner. They are: (i) there being a specific provision under S. 81 of the Regulation for setting aside a sale, the exercise of powers by the Board under S. 151 of the Regulation was without jurisdiction; and (ii) the finding of the Board that the sale was void on the three grounds mentioned by it in the order, is unsustainable in law.

24. Let us now examine the scope and content of powers under S. 151 of the Regulation. Section 151 is in the following terms:

"151. The Board, a Deputy Commissioner, a Settlement Officer and a Survey Officer may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit".

In support of his contention, learned counsel for the petitioner refers to S. 80 and submits that the sale has been given a finality under that section subject only to Ss. 81 and 82 and the finality is not subject to S. 151 of the Regulation.

25. Section 80 provides:

"80 (1). A sale on which the purchase-money has been paid as directed in S. 78, and against which no application under S. 78A or 79 has been preferred, shall subject to the provision of Ss. 81 and 82, be final at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(2) A sale against which such an application has been preferred and has been dismissed by the Deputy Commissioner shall, subject as aforesaid, be final from the date of the dismissal, if more than sixty days from day of sale, if less, then at noon of the sixtieth day as above provided".

Section 81 is in the following terms:

"81. The Board may, on application made to them at any time within one year of a sale becoming final under S. 80, set the sale aside on the ground of hardship or injustice".

The relevant portion of S. 82 also may be set out:

"82. (1) A sale of arrears of revenue shall not be annulled by a Civil Court, except on the ground of its having been made contrary to the provisions of this Regulation, and on proof that the plain-

tiff has sustained substantial injury by reason of the neglect of those provisions.

(2) A suit to annul such a sale shall not be entertained upon any ground, unless that ground has been specified in an application made to the Deputy Commissioner under S. 79, or unless it is instituted within one year from the date of sale becoming final under S. 80.

(3)"

26. The first question is what is the nature of the power exercised by the Board under S. 81? Is it an appellate power or a revisional power as the decision in Civil Rules Nos. 202 and 203 of 1965 of this Court seems to have held? In my opinion the power given to the Board under S. 81 of the Regulation is neither an appellate power nor a revisional power, inasmuch as the Board does not sit on judgment on an order passed by the Deputy Commissioner or any other subordinate officer or authority. Under S. 81 it does not examine the correctness or otherwise of any findings of such an officer.

27. Under S. 79 of the Regulation an application in writing may be made to the Deputy Commissioner within sixty days from the date of the sale to set the sale aside. The application may be made only on two grounds: on the ground of (i) some material irregularity or (ii) mistake in publishing or conducting the sale. Besides there is a restriction in the exercise of the powers by the Deputy Commissioner under S. 79. The restriction is that the sale shall not be set aside on the ground of material irregularity or mistake in publishing or conducting the sale unless the applicant proves that he has sustained substantial injury by the reason of the irregularity or mistake complained of. But the grounds mentioned in S. 79 are not the grounds on which an application may be made under S. 81. The Board under S. 81 is not required to see whether the Deputy Commissioner committed any error in finding or the material irregularity or mistake within the meaning of S. 79, or whether the applicant has been able to prove substantial injury by reasons of such material irregularity or mistake. The ground on which an application under S. 81 may be made is 'hardship' or 'injustice'. True it is that hardship or injustice may be the result of a sale defective on account of the grounds mentioned in S. 79; but under S. 81 the ground itself must be 'hardship' or 'injustice'. In my opinion, therefore, the power is exercised by the Board in the process of the sale. That process of

the sale has been given finality under S. 80 of the Regulation, subject to S. 81.

28. Under Section 82 a Civil Court can annul a revenue sale only on the ground of the sale having been made contrary to the provisions of the Regulation and on the proof that the plaintiff has sustained substantial injury by reason of the neglect of these provisions. There is a further restriction to the suit, namely, that the suit shall not be entertained unless the ground on which the suit has been brought has been specified by the plaintiff in the application to the Deputy Commissioner under S. 79. In other words, sub-s. (2) of S. 82 presupposes that before the plaintiff brings a suit under S. 82 (1) he must have made an application under S. 79, but the only ground on which an application under S. 79 may be made, as stated above, is 'material irregularity or mistake in publishing or conducting the sale'. So a suit does not lie on any ground other than the two grounds mentioned under S. 79.

29. Thus it is clear that the finality within the meaning of S. 80 is confined to the ground of hardship or injustice under S. 81, and material irregularity or mistake in publishing or conducting the sale under S. 79 read with S. 82.

30. But yet there may be another category of sales which cannot be set aside by the Deputy Commissioner in terms of S. 79 or by the Board in terms of S. 81. Such sales are sales conducted by an officer not competent to do so under S. 74 of the Regulation, or a sale in which there was no arrear of revenue in respect of an estate sold, or a sale which has been obtained by fraud, or a sale otherwise void. A sale without jurisdiction for having conducted by an incompetent person, a sale on account of the estate having been sold even in the absence of revenue due possibly through mistake, a sale obtained by fraud, or a sale otherwise void are, in my opinion, not sales that can be set aside under Ss. 79 and 81. Void sales cannot acquire finality and create right in favour of the auction-purchaser. A sale which is preceded by a sale proclamation in publishing or conducting which some material irregularity or mistake was committed, and a sale otherwise valid has resulted in hardship or injustice are, in my opinion, sales contemplated under Ss. 79 and 81, respectively. Such sales are subject to Ss. 81 and 82 within the meaning of S. 80 of the Regulation. Undoubtedly the powers of the Board under S. 151 can be invoked in cases not covered by Ss. 81 and 82 read with S. 79.

31. This seems to be the ratio of the decisions of this Court in Civil Rule No. 93 of 1971 disposed of on 11-5-1973, and Civil Rule No. 312 of 1971 disposed of on 8-6-1973.

In the case in Civil Rule No. 93/71 "some one for the Sub-Divisional Officer held the auction sale", but he had no power to do so. Although the application under S. 81 of the Regulation before the Board was barred by limitation, the Board exercising power under S. 151 of the Regulation set aside the sale. The order of the Board was not interfered with by this Court.

In the case in Civil Rule No. 312/71, the application under S. 81 of the Regulation before the Board was also barred by limitation. The Board invoking the powers under S. 151 of the Regulation set aside the sale on the ground, inter alia, that although fraud was not proved, the conduct of the auction-purchaser was not "above Board", inasmuch as the sale notice was issued to, and served on a dead pat-tadar and that two minors were allowed to bid, and their bid was accepted. This Court refused to interfere with the order of the Board.

In my opinion, therefore, the revisional powers of the Board can be invoked under S. 151 of the Regulation on the grounds other than those mentioned under S. 81 and S. 82 read with S. 79 of the Regulation.

32. But there is no justification to put restrictions to the powers of revisional authority, to wit the Board in the instant case, when the statute has not done so.

This Court in the case of Abhi Ram Lahkar v. Gurang Kachari, reported in ILR (1949) 1 Assam 379 held:

"S. 151 of the Assam Land and Revenue Regulation (1 of 1886) is in the widest possible terms. No limit is imposed by the language of the section on the discretion of the superior officer in setting aside the orders of his subordinate under that section".

In the case of Abdul Gani Sarkar v. Assam Board of Revenue, reported in AIR 1970 Assam & Naga 82 a Division Bench of this Court, in examining the scope of S. 151 of the Regulation and the powers of the Board thereunder observed: (at p. 83)

"It is sufficiently a wide power and could be invoked in an appropriate case and the question of limitation would not affect the jurisdiction of the Board"

In my opinion the above two decisions have correctly interpreted S. 151. The

interpretation gets support from the following decisions of the Supreme Court.

In the case of Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam, reported in AIR 1958 SC 398 their Lordships of the Supreme Court, examining the scope and powers of the appellate and revisional authorities under S. 9 of the Eastern Bengal and Assam Excise Act, observed: (at p. 408)

"The appeal or revision being undefined and unlimited in its scope the highest authority under the Act, could not be deprived of the plenitude of its powers by introducing considerations which are not within the Act or the rules".

In the case of Ram Swarup v. Shikar Chand reported in AIR 1966 SC 893, their Lordships of the Supreme Court examined the scope of S. 7-F of the U. P. (Temporary) control of Rent and Eviction Act, 1947. The section reads as follows: (at p. 896)

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in S. 3 or requiring any accommodation to be let or not to be let to any person under S. 7 and may make such orders as appears to it necessary for the ends of justice." Examining the above section, their Lordships observed: (at p. 896)

"It is clear that the power conferred on the State Government by S. 7-F to revise the orders passed by the Commissioner under S. 3 (3) is very wide. In the first place, the State Government need not necessarily be moved by any party in that behalf. It may call for the record suo motu and it can exercise its powers in the interest of justice. In other words, whenever it is brought to the notice of the State Government either by a party aggrieved by the order passed by the Commissioner or otherwise, that the order passed by the Commissioner is unfair or unjust, the State Government may in the ends of justice pass an appropriate order revising the order made by the Commissioner."

33. The language of S. 151 of the Regulation shows that the power of the Board is very wide and unrestricted. The Board can suo motu call for the records of a case and pass an appropriate order. The Board also can pass an appropriate order on an application filed by an aggrieved party. There is also no limitation for exercise of powers under S. 151 of the Regulation. In my opinion the decision of the Supreme Court in AIR 1966 SC 893 (supra) clinches the point.

34. The decision of the Division Bench of this Court in the case of Musstt. Somswari Bora v. Assam Board of Revenue (Civil Rule No. 202 of 1965) was referred to before the Benches hearing Civil Rules 93/71 and 312/71 (supra). Their Lordships observed that the decision of this Court in Civil Rule No. 202/65 was confined to the facts of that case.

In Civil Rule No. 202/65 an application was made before the Board under S. 81 of the Regulation for setting aside a sale. The application was barred by limitation. The Board, however, exercised powers under S. 151 of the Regulation and set aside the sale on the ground of "certain irregularities" that took place in the publication and service of sale notice. Their Lordships observed:

"In our opinion, the scope of S. 151 of the Regulation is not as wide as its vagueness of language seems to indicate. It can only be invoked where no specific provision has been made in the Regulation and in regard to a matter specifically not covered by the Regulation".

In the above case (Civil Rule 202/65) it was nobody's case that the sale was void; the ground was not covered by S. 81 and S. 82 read with S. 79 of the Regulation. That apart, the proposition of law laid down in the case seems to run counter to the observation of their Lordships of the Supreme Court in the two decisions cited above. In my opinion, therefore, the decision in Civil Rule No. 202 of 1965 has not laid down the correct proposition of law.

35. Let us now turn to the facts of the case in hand. The finding of the Board is:

"The Jarikarak reports that on 5-2-1968 (?) (admittedly it should be 5-12-1968) he searched for the defaulters, could not trace them and therefore he posted a copy of the sale statement at the Sarjamin. One S. Paul Majumdar, Ward Commissioner, Ward No. 4, signed as a witness by signature dated 5-12-1968. It is not challenged that this witness and the auction purchaser are one and the same person. This lends support to the story of fraud raised by the appellants".

In other words the finding of the Board is that the sale has been vitiated by fraud.

36. The petitioner submits that the inference of the Board that the sale was obtained by fraud from the fact that the service of the sale statement was signed by the auction-purchaser is unsustainable. The submission is not sound. What the Board has really done is that it has considered the two rival versions of the parties on the alleged "fraud". The petitioner

before the Board (respondent No. 4 in Civil Rule 531/72) in para. 5 of his petition alleged:

"That the opposite party No. 1, Satya Ranjan Paul Majumdar (petitioner herein) is a tenant in respect to a portion of the said building and house measuring about 15 lechas of land and he was entrusted by the pattadar, Abdur Sattar, to make payment of his rent and Municipal taxes but he deliberately defaulted in making payment of land revenue for the years 1965-66 and 1967-68 and as a result of such default the said properties were sold out in auction at Rs. 1,401/- in land sale case No. 546 of 1968-69 and the said Satya Ranjan Paul Mazumdar, the caretaker, purchased the said land and building of Tokani Building in the said land case on 16-1-1969. The said auction purchaser was an accessory to, and participant in, the sale and it clearly indicates the fraud."

In para. 8 of the petition he (respondent No. 4) further alleged:

"That the petitioner begs to state that the value of the property would be about Rs. 2,00,000/- (Rupees two lakhs), it being situated in the centre of the first class trade site within the Golaghat Municipality and the said opposite party No. 1 in the meantime sold out 10 lechas of land at Rs. 5,000/- to one Smt. Maya Deb Roy, wife of Shri Arabinda Deb Roy, resident of Ward No. V of Golaghat Town and the second plot of land measuring about 1 katha was sold out to one Bankilal Kanu, son of late Jogeswar Kanu, Ward No. IV of Golaghat Town and has already made wrongful gain by his fraudulent act aforesaid."

In para. 9, he stated that as he had no knowledge, nor any notice of the sale as the same was surreptitiously done behind his back, he had no opportunity to make the application for setting aside the sale either under S. 79 or S. 81 of the Regulation within the stipulated periods.

37. In the affidavit-in-opposition filed by him, the petitioner, merely denied the above-mentioned allegations of respondent No. 4. He stated that one of the petitioners in the application under S. 81

of the Regulation filed Title Suit No. 17 of 1964 for the eviction of the petitioner from the building on the land in question and, as such, the allegations of respondent No. 5 could not be believed.

38. The Board appears to have considered the two rival contentions of the parties on the question of fraud and in doing so, it has pressed into service the report of the Process Server of the sale statement, and finds that the fact that the petitioner signed the Process Server's report lends "support to the story of fraud raised by the appellants", accepted the version of respondent No. 4 and rejected the denials of the petitioner, and found that the sale was vitiated by fraud. This is a finding of fact. It cannot be said to be perverse. It is not a finding based on no evidence.

39. Fraud vitiates a transaction. The fundamental principle is that no one shall be allowed to reap the benefit of his own fraud. If the Board finds fraud as a sufficient ground for setting aside a sale, it cannot be said to be without jurisdiction, or such other error as needs interference by the High Court under Art. 226.

40. As the Board can set aside the sale on the ground of fraud alone, we need not examine the correctness or otherwise of the two other findings of the Board, namely, whether the sale was void for alleged violation of S. 72 (3) of the Regulation and whether the sale was also bad, it being for the arrears for the years 1959-60 to 1967-68 and violative of R. 152 framed under the Regulation.

41. In my opinion a sale can be set aside by the Board in exercise of its power under S. 151 of the Regulation in an appropriate case, either suo motu, or on an application by an aggrieved party under S. 81 of the Regulation. Needless to say that under S. 151 the Board cannot pass any arbitrary order on extraneous considerations.

42. I agree with the order proposed by my brother Sadanandaswamy, J. for the reasons given above.

Petition dismissed.

END

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Goa, Daman & Diu J. C.'s Court

AIR 1977 GOA, DAMAN & DIU 1
TITO MENEZES, J. C.

Anand Timblo and another, Applicants v. Pandurang Baburao Prabhu, Respondent.

Civil Misc. Appln. No. 96 of 1975, D/- 26-6-1976.

(A) Civil P. C. (1908), O. 14, R. 1 — Framing of issues — Landlord's bona fides to recover building for demolition and reconstruction — Question of unprofitability of new construction is an incidental question and does not require a new issue to be set out.

(B) Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, Sec. 30 (1) (b) and Goa, Daman and Diu Decree No. 43525, Article 53 (1) (b) — Difference between — Reasonable and bona fide requirement of landlord — Though in Article 53 (1) (b) there is no mention that the requirement must be reasonable and bona fide that does not mean that the requirement need not be bona fide — Bona fides may be implicit in some cases — Provisions of Section 30 (1) (b) and Article 53 (1) (b) are not substantially different.

Cases Referred: Chronological Paras

AIR 1971 SC 942 = (1970) 3 SCR 734 2
AIR 1964 SC 1372 = (1964) 5 SCR 174 2

M. S. Usgaonkar, for Applicants;
M. P. Shinkre, for Respondent.

ORDER:— The applicants pray that the judgment and order of this Court dated September 18, 1975 be reviewed.

2-A. The first error pointed out by Shri Usgaocar, learned advocate for the

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applicant is that the ruling mentioned by me in support of the finding that the pre-conditions for the recovery of a building for the purpose of reconstruction are almost similar in the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called "the Act") and in the Decree No. 43525 and that therefore the new suit is governed by the provisions of Sec. 31 (1) (b) of "the Act" is erroneous. I agree with this contention. The ruling which I meant to quote in support is M/s. Thungabhadra Industries Ltd. v. Govt. of Andhra Pradesh, AIR 1964 SC 1372. I therefore order that the words "M/s. Panchmal Narayana v. Basthi Venkatesha, AIR 1971 SC 942" be deleted from the said judgment dated September 18, 1975 and instead the words "M/s. Thungabhadra Industries Ltd. v. Govt. of Andhra Pradesh, AIR 1964 SC 1372", be written.

2. The next contention is that there was no issue on the question as to whether construction of new buildings were unprofitable and that in any event the question of unprofitability of a new construction is not relevant for the purpose of finding the bona fide of a landlord desiring to recover a building for demolition and reconstruction. I am unable to agree with Shri Usgaocar that there is any error on this point. I have in the said judgment stated, "I am in agreement with Shri Shinkre that lack of funds and show want of bona fide on the part of the landlord and disentitles him to recover premises under Section 30 of 'the Act'." Further in paragraph 8 of the judgment I have stated "The plaintiff No. 2 and the defendant have deposed to facts that in a way go to show that the new construction