

A

## SADHURAM BANSAL

v.

## PULIN BEHARI SARKAR &amp; ORS.

B

April 26, 1984

[FAZAL ALI, A. VARADARAJAN AND SABYASACHI MUKHARJI, JJ.]

*Code of Civil Procedure 1908, Order XL*

C

*Receiver appointed by Court—Property in custody of receiver—Interference with possession, not to be encouraged—No party can acquire title or right over property in possession of receiver.**Code of Criminal Procedure 1973, Section 145*

D

*Order passed in proceedings under this section—Does not affect title of parties to disputed premises—However reflects factum of possession.**Administration of Justice—Social Justice—Courts no longer merely protector of legal rights—Technicalities of law and procedure not to be insisted upon—Substantial justice to be meted out to parties—Necessity of.*

E

In a suit filed in the High Court for a declaration and relief in respect of several properties, the Official Receiver of the High Court was appointed Receiver. On the request of the parties, the Official Receiver, decided to sell one of the properties with the permission of the Court. The price of the property was fixed at Rs. 3.5 lakhs. The appellant offered a sum of Rs. 4 lakhs for purchase of the property, and by his advocate's letter-enclosed a draft for Rs. 1 lakh, being 1/4 of the amount. A meeting was held in the presence of the plaintiff and their counsel, and at the meeting the offer received from the appellant was considered and it was decided that the offer of Rs. 4 lakh by bank draft. The Official Receiver accepted the offer of the appellant, communicated the acceptance and requested the appellant to deposit the balance amount.

F

The Official Receiver, thereafter moved the High Court for directions to remove respondents 1 to 4 on the ground that they had trespassed into the property a few months earlier. Respondents 1 to 4 moved an application for being impleaded in the suit and contended that they were residing with their families under a licence since 1975 and had constructed pucca huts thereon and that with the knowledge of this continuous possession, the parties to the suit have filed the suit among themselves without impleading them (respondents 1 to 4).

The Single Judge rejected the aforesaid contentions of respondents 1 to 4 and held that though they were prepared to offer the sum of Rs. 1 lakh more than the appellant the property could not be sold to them.

The Division Bench, however allowed their appeal, directed respondents 1 to 4 to pay to the Official Receiver a sum of Rs. 1.25 lakhs immediately and the balance of Rs. 3.75 lakhs thereafter and on such payment ordered sale of the disputed property to respondents 1 to 4 and their 34 nominees on the ground that the Court should do social justice and in doing such justice no technicality of law would stand in its way.

Dismissing the Appeal to this Court,

HELD : [Per Fazal Ali & Sabyasachi Mukherji, JJ Majority]

In administering justice—social or legal—jurisprudence has shifted away from finespun technicalities and abstract rules to recognition of human beings as human beings. The Division Bench of the High Court had adopted the above approach, and no law is breached by the view taken by it. It is improper for this Court in exercise of the discretion vested under Art. 136 of the Constitution to interfere with that decision.

[595-FG; 622A-B]

[Per Fazal Ali, J.]

1. In our opinion, there appears to be some misapprehension about what actually social justice is. There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society. Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party. Living accommodation is a human problem for vast millions in our country. [595B-D]

2. Call it social justice or solving a socio-economic problem or give it any other name or nomenclature, the fact of the matter is that this was the best course in the circumstances that could have been adopted by the court.

3. Justice—social, economic and political—is preamble to our Constitution. Administration of justice can no longer be merely protector of legal rights but must whenever possible be dispenser of social justice.

[595H-596A]

4. The Division Bench of the High Court has done substantial justice by throwing aboard the technicalities particularly for the reason that court's frown over a champartous litigation or agreement even though the same may be valid. The Division Bench by its decision got more

**A** money for the owners on the one hand and one the other sought to rehabilitate the 38 families of the respondent who had already built permanent structures. [597G-H]

**B** In the instant case, the Division Bench was perfectly justified in accepting the offer of the respondents because : (a) the respondents were prepared to pay Rs. 1 lakh more than the appellant and the appellant did not pay the balance of Rs. 3 lakhs, (b) possession being 9/10th of title, the respondents being in actual possession would have no difficulty in becoming the owners, (c) respondents were prepared to purchase the property notwithstanding litigation, because if they became owners no one could challenge their title or possession. The Single Judge completely ignored two material aspects : (a) that a bulk of the consideration money viz. Rs. 3 lakhs out of Rs. 4 lakhs was not paid by the appellant, and (b) that an owner also has right to impose certain conditions, and in exercise of that, the condition that the purchaser would have to buy the land subject to the pending litigation was imposed. [597C-F; 5-6A-D]

(*Per Varadarajan, J. dissenting*)

**D** 1. The Division Bench had no right or justification to alter or modify the earlier order made for the sale of the property which had become final, or to hold that a subsequent offer made by respondents 1 to 4 to purchase the property for Rs. 5 lakhs should be accepted merely because it appears to be advantageous to the owners of the property in the name of social justice. [612F]

**E** 2. The benefit claimed on behalf of respondents 1 to 4 which cannot called a right, for there is no corresponding obligation—cannot be equated with or even brought anywhere near the social justice mentioned in the preamble of the Constitution. [612G]

**F** 3. Respondents 1 to 4 are trespassers in respect of the property which is in *custodia legis* and they are in contempt of the Court. They cannot be allowed to continue to be in contempt and urge it as a ground for obtaining the benefit of the sale of the property in their favour. If the appellant has not complied with any condition it may be ground for the owners and the Official Receiver not to accept his offer and refuse to sell the property to him and not for respondents 1 to 4 to raise any objection. The offer has been accepted rightly or wrongly more than once and therefore the appellant may have a right to sue for specific performance of the contract on the basis of that acceptance by the official Receiver given with the approval of the parties. The same is the position in regard to the delay of about a month in paying the balance of Rs. 3 lakhs by the appellant. [611D-F]

**H** In the instant case, the property has been agreed to be sold by private treaty and the Official Receiver has been authorised to sell the property either by public auction or by private treaty. The Court does not come into the picture in such a case and there is no need for the Court to approve

or confirm such sale. The parties who are *sui juris* must be deemed to have known their interest best when they chose to approve the sale of the property for Rs. 4 lakhs in favour of the appellant notwithstanding the fact that respondents 1 to 4 had offered to purchase the property for Rs. 5 lakhs. The appeal has therefore to be allowed. [612E; 613B]

*Everest Coal Company (P) Ltd v. State of Bihar & Others*, [1974] 1 SCR P. 571 at P. 573, *Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. & Others*, [1974] 3 SCR P. 678, *Jibon Krishna Mukherjee v. New Bheerbhum Coal Co. Ltd. & Anr.*, [1960] 2 SCR P. 198, *Tarinikamal Pandit & Others v. Prafulla Kumar Chatterjee*, [1979] 3 SCR P. 340, referred to.

(*Per Sabyasachi Mukherji, J.*)

1. The pendency of the proceedings under Section 145 of the Code of Criminal Procedure and order, if any, passed thereon does not in any way affect the title of the parties to the disputed premises though it reflects the status of possession. [616D]

*Bhinka and Others v. Charan Singh*, [1959] Suppl. 2 S.C.R. P. 798 referred to.

2. When the property is in custody of a receiver appointed by the court, the property is in the custody of the court and interference with such possession should not be encouraged and no party can acquire any title or right by coming in or over the property which is in the possession of the receiver or sanction of the court. [618F]

*Halsbury's Laws of England*, 4th Edn., Vol. 39 pages 451, 452 paragraphs 890, 891; *Kerr On Receivers*—16th Edn. pages 121 referred to.

3. The concept of social justice is not foreign to legal justice or social well-being or benefit to the community rooted in the concept of justice in the 20th century. The challenge of social justice is primarily a challenge to the society at large more than to the court immediately. Social justice is one of the aspirations of our Constitution. But the courts, are pledged to administer justice as by law established. [620F]

In the instant case, in formulating the concept of justice, however, the inarticulate factor that large number of human beings should not be dislodged from their possession if it is otherwise possible to do so cannot but be a factor which must and should influence the minds of judges. It is true that the persons who were alleged to be in possession are with unclean hands, but they came for shelter and built in huts. They do not want to be rehabilitated at competitive bargain price. In the circumstances they should not be denied rehabilitation on the ground of their original illegitimacy. [620G-H]

4. The felt necessities of time and in this case the convenience of the situation and the need for adjusting the rights of a larger number of

**A**) people without deprivation of any accrued right of anybody would be justice according to law. Before social justice as something alien to legal justice, is rejected, it should be remembered that a meaningful definition of the rule of law must be based on the realities of contemporary societies and the realities of the contemporary societies are—men are in acute shortage of living accommodation—and if they are prepared to bargain and rehabilitate themselves on competitive terms, they should be encouraged and no technical rules should stand in their way. That would be justice 'by highways' and not infiltration 'by bye-lanes'. [621H-622B]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 5887 of 1983.

**C**) Appeal by Special leave from the Judgment and Order dated the 25.7.1983 of the Calcutta High Court in Appeal No. 271 of 1983.

*S.S. Ray, S. N. Kaker, P. K. Mullick, R. Deb, N. P. Aggarwala* and *B.P. Singh* for the Appellant.

**D**) *G.L. Sanghi*, and *H.K. Puri* for Respondent.

*Anil Dev Singh* and *Ashok Sil* for Respondent No. 5.

The Judgment of the Court was delivered by

**E**) FAZAL ALI J. This appeal by special leave against the judgment of the Calcutta High Court discloses an unfortunate litigation which proves the well-known legal maxim "delay defeats justice" and arises out of a Will executed by the testator which was hotly contested by various rival claimants resulting in an action which went on merrily and sprightly for almost three decades as a result of which in the back-waters of the long-drawn litigation most of the claimants died and their successors were interested not in the property but in the money which the property would bring, if sold.

**G**) As a result of interœcine dispute between the heirs, an Official Receiver had to be appointed to look after the property and the final end of the drama seems to have begun when the Receiver, on the request of the parties, decided to sell the property with the permission of the court by a private treaty least the litigation might draw the last drop of the blood of the property rights of the heirs. Meanwhile, some more events followed which made the task of the Receiver both complex and complicated as the respondents put up their claim to possession of the property either as trespassers or as licensees from some of the heirs.

Thus, while the negotiations for the private treaty were going on a new upshot in the guise of the respondents' claim seems to nip in the bud the attempt of the owners to get the property back. During the course of the three decades, lot of changes took place in Howrah—the population rose by leaps and bounds, a number of buildings came up and perhaps it became next to impossible for the heirs to occupy the premises again. To add to this, came up a new litigation in the shape of proceedings under s. 145 of the Code of Criminal Procedure between the parties.

The heirs having given up all hopes of getting vacant possession became "sadder and wiser" to sell the property if they could get a handsome amount for the same. A bargain was, therefore, struck, with the approval of the Receiver, by which the entire property was agreed to be sold to the appellant for a sum of Rs. 4 lakhs, under which he paid Rs. 1 lakh and promised to pay the remaining amount of Rs. 3 lakhs at an early date. The appellant also expressed his willingness to take the property under sale subject to the pending litigation.

The matter, however, did not end here because the trespassers jumped into the fray in order to stop or render the sale nugatory. When the matter came up before the court, it, on being satisfied that the sale was from all points of view in the interest of the heirs, affirmed the said sale. The appellant contended that the possessions of the premises by the respondents did not pose any problem because they being rank trespassers could be evicted summarily by the Receiver under the provisions of the Civil Procedure Code. But, we think that the matter was not so simple as that because once possession of the premises by the respondents had lasted for a year or more and proceedings under s. 145 of the Criminal Procedure Code had already started, the law had to take its normal course. So far as the criminal court it concerned, the only course which could at best be taken was to declare possession of the party who was in possession two months next before the initiation of the proceedings under s. 145 or of the party who was found to be in possession of the property at the relevant time.

The relevant portion of s. 145 may be extracted below:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.

**A** (4) The Magistrate shall then, without reference to the merits or the claims of any of the claims of any of the parties to a right to possess the subject of the dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :

**C** Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

**E** (6) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed."

**F** With this primordial preface and institutional introduction, we now proceed to summarise the facts of the case, most of which have been reflected in what we have said above.

**G** The story of the case begins with the execution of a Will and testament by one Jitendra Kumar Das on May 22, 1952 in favour of some of his near relations, in respect of premises No. 7, Duffers Lane, Liluah, Howrah as also some premises in No. 211, Old China Bazar Street, Calcutta. The suit was instituted for a declaration that the aforesaid Will was void and invalid, hence the legatees under the Will had no right, title or interest. The suit went on ding-dong from one stage to another until 1973 when, according to, the respondents, two of the owners, viz., Smt. Malati Das and

Jitendra Kumar Das or at least one of them put them (respondents) in possession of the Duffers Lane property under a leave and licence. During the course of their possession the respondents constructed permanent structures and have been regularly residing there since 1975.

It is alleged that in February 1983, fire broke out in the factory adjacent to the premises in question and fire-brigade men entered into the premises by breaking a portion of the wall to get access to the pond. It is the case of the appellant that on March 14, 1983, respondent Nos. 1 to 4 alongwith some miscreants forcibly entered into the land. This, however, is disputed and is the root of controversy in this case. It appears that the present appellant, who had not yet become a purchaser, informed the Official Receiver that certain persons had entered into the premises in question. On this the Official Receiver informed the parties. On 13th May, 1983 the Official Receiver authorised the appellant to take steps for protection of the property. It is difficult to appreciate how before a concluded contract and a conveyance in favour of the appellant, the Official Receiver could have authorised the present appellant to take steps for removal of respondents treating them unilaterally as trespassers. Order was obtained on May 24, 1983 from a learned Single Judge of the High Court directing the police to remove the unauthorised occupants. On June 22, 1983 respondent Nos. 1 to 4 made an application for being added as parties to the said pending suit for recalling the order for police help to eject them from the premises in dispute.

In the said application four of the respondents, viz., Pulin Behari Sarkar, Manick Seel, Gope Nath Sarkar and Sudhanshu Bimal Dey, mentioned the fact that they had come to know about the appointment of the Official Receiver from the police and they had further come to know about the offer made by the appellant for the purchase of the premises in dispute. The said applicants (being respondents herein) alleged that they alongwith their families, with the leave and licence of one of the co-owners, were residing in the premises since 1975 and had constructed pucca huts and in spite of the same, the appellant did not inform the Court of the said fact before obtaining police help against them. It is further alleged that on May 2, 1983 they had come to know that the appellant had obtained ex parte order from the learned Sub-Divisional Magistrate (Executive) directing the Superintendent of Police to restore possession of the disputed premises, comprising about six bighas of land, by arranging police pickets.

**A** Thereafter, the said applicants filed an application before the learned Sub-Divisional Magistrate (Executive), Howrah, under s. 145(5) of the Code of Criminal Procedure with a prayer to recall the ex parte Order mentioned hereinbefore and to call for a report from the local police and others regarding possession of the said applicants in the disputed premises. The Sub-Divisional Magistrate did not pass any order but adjourned the said application to 7th May 1983. Though no formal order was passed, the said application was kept on the record. After coming to know that certain other orders might be passed, the applicants moved a revision application under the Criminal Revisional Jurisdiction of the High Court and thereafter obtained the stay of the Order of 26th April 1983, passed by the learned Sub Divisional Magistrate. This position is not disputed. So, the Revision application under s. 145 of the Code of Criminal Procedure is still pending before the High Court.

**B** The learned Single Judge of the High Court did not make a deeper probe into the history of the litigation and the fact that if the respondents were in possession even as trespassers and proceedings under s. 145 were pending and had not been quashed, they could not have been summarily ejected. The learned Judge further noted that the respondents had offered to pay Rs. 1 lakh more for purchase of the premises in dispute but the learned Judge was of the view that the said offer cannot and should not be accepted.

**C** The Division Bench, however, was of the view that the offer made on behalf of respondents 1 to 4 should be accepted as there was no concluded contract of sale in favour of the appellant and hence there was no completed sale yet. The Division Bench further noted thus:

**D** "On the other hand, we find that 38 families have been residing in the disputed land. It is submitted by Mr. Bhabra that these persons are all trespassers without any vestige of title. It is, however, the case of the petitioners that they have been residing in the disputed land by making certain structures under the leave and licence of two of the owners of the said premises although one of the owners, Smt. Malati Das, who is alleged to have granted the licence, has denied granting land of such licence. If the disputed land is sold to the respondent No. 2, then 38 families who have been residing therein would be evicted with police help. In

our opinion, the Court should do social justice and in doing such justice any technicality of law will not stand in its way. Social justice requires that the disputed land should be sold to the petitioners and others residing on the disputed land. Moreover, the petitioners have offered to pay the price of Rs. 5,00,000, that is to say Rs. 1,00,000 more than the offer of the respondent No. 2."

At this stage, it may be necessary to notice the terms and conditions under which the owners agreed to sell the properties to the appellant, which may be extracted thus:

"We further understand that a meeting held by you it has been decided that an offer should be accompanied by a Bank Draft on State Bank of India of an amount equivalent to 25% of the offer.

We hereby make an offer for purchase of the above property for Rs. 4,00,000 (Rupees four lacs) *subject to the Vendors' making out a good and marketable title free from encumbrances on behalf of our client Sri Sadhuram Bansal of No. 23A, Netaji Subhas Road, Calcutta-700 001.* The sale will be completed within six months or such further extended time as may be agreed upon in one or more lots by one or more sale deeds in favour of our client or his nominee or nominees.

We hereby enclose a draft of State Bank of India for Rs. 1,00,000 drawn in your favour as desired by you.

After hearing from you that our client's offer had been accepted, we shall forward to you the agreement for sale for your approval."

This offer was made by the appellant on December 20, 1982 and at a meeting convened by the receiver the owners while generally agreeing with the terms of the said offer, imposed some conditions. For instance, Mr. Mitra, counsel for some of the Objectors while indicating his clients' view emphasised that the acceptance of the offer would be subject to the buyers agreeing to purchase the land with pending litigation; the exact sentence may be extracted thus:

"My clients have no objection with regard to the

A acceptance of the said offer of M/s. L.P. Agarwalla & Co. subject to their clients agreeing to purchase the same land with pending litigation in respect of the said property."

B Similarly, the counsel for the other owners also accepted the offer of the purchaser. After having accepted the offer, it was decided to circulate a draft agreement for sale for finalising approval of the owners.

C Before proceeding to another important stage in the case, it may be mentioned that from what has been extracted above, the offer of the appellant through their attorney (L.P. Agarwalla & Co.) was not accepted unconditionally but with certain reservations which on a close scrutiny ran counter to the stipulation mentioned in the offer of the purchaser. For instance, while the purchaser insisted that he would buy the properties subject to the vendor's making out a good and marketable title free from encumbrances but this does not appear to have found favour with one of the owners because the clients of Mr. Mitra had clearly indicated that the offer would be accepted only if the purchasers were prepared to buy the land with the pending litigation.

E Thereafter, the matter having been placed before the court, the receiver informed L.P. Agarwalla & Co. that the offer of the purchasers was accepted and the balance of Rs. 3 lakhs had to be paid *at an early date*. The letter informing L.P. Agarwalla & Co. was written by the receiver on 13.1.83. In the context of the circumstances mentioned above, the term 'at an early date' had to be construed literally so as to mean 'expeditiously and without any reasonable delay'. It cannot be interpreted to give a long rope to the purchaser to deposit the balance of the amount whenever he liked. It would have been better if the receiver could have fixed a particular date by which the balance amount was to be deposited, failing which the contract would stand cancelled. Even so, as a corollary of the correspondence between the parties, this condition must be read into the letter of the receiver. However, the balance of Rs. 3 lakhs was never paid until the matter came up to this Court. In between, the purchasers approached the receiver to evict the trespassers summarily even though by that time the contract had not passed into the domain of an executed contract but was only a executory contract and conferred no title on the purchasers. It seems to us that the purchasers were more concerned with taking the possession and evicting the trespassers because they knew full well

that in view of the proceedings under s. 145, it would have been A difficult for them to get the possession and therefore reserved the balance amount of Rs. 3 lakhs until they got the possession.

They, however, rose up from their deep slumber only when, B they realised that the respondents had made an application for being arrayed as parties to the suit by putting forward their case that since they were in possession of the properties and had also constructed their own structures, they could not be evicted summarily because the matter was sub judice.

In order, however, to cut the matter short, the respondents themselves made a clear offer to purchase the properties in question by paying Rs. 1 lakh more than the appellant and prayed to the court that their offer should be accepted. In fact, there was no bar to the receiver in accepting a higher offer because the appellant's offer had not yet been translated into action or become operative as the purchaser had not yet fulfilled the two conditions, viz., (1) not making the payment of the balance amount of Rs. 3 lakhs, and (2) not indicating that they would buy the properties subject to the pending litigation.

It was argued by the appellant that so far as he was concerned, E the contract was complete and could not be superseded even if a higher offer was made to the receiver. This argument cannot be accepted because the purchasers having themselves committed a breach of the contract could not insist that the contract should be enforced without their having complied with the conditions agreed to between the parties. Afterall, this was not a court sale where the highest bid was made and the amount was deposited that the sale became irrevocable.

In these circumstances the Division Bench directed that G Rs. 1,25,000 should be paid by the present respondents 1 to 4 on or before 1st August 1983, which it may be noted has been paid, and thereafter pay the balance sum of Rs. 3,75,000 by 29th August 1983 which could not be paid because in the meantime special leave to appeal was granted by this Court and a stay was obtained. The Division Bench further directed that in case payments were made within the time, the property in question should be conveyed to the persons named in the said Order. It was further directed that in case respondents 1 to 4 committed default in paying the purchase price within the stipulated time, the said order would stand vacated H

A and the Order of the Learned Single Judge would stand confirmed, i.e., the sale would be made in favour of the appellant.

Coming back to the facts, the respondents claimed before the learned trial Judge for investigation of their right to be in possession of the disputed premises by virtue of the leave or licence granted by one or two of the co-owners. The investigation of that point on evidence did not take place though there are passing observations in the decision of the learned Single Judge that Smt. Malati Das and Jitendra Kumar Das had no title or interest to create any licence in their favour and that one of them further denied having given any such licence. It has to be borne in mind that there has been no investigation of the respondents' right to be in the premises; even a trespasser cannot be thrown out of his occupation or possession, except by due process of law. The owners appeared in these proceedings and supported the appellant. In fact, in the affidavit filed on behalf of the Receiver it has been made clear that they leave the matter to this Hon'ble Court.

The appellant's rights which have not yet crystallised would not be hampered. Court's dominion over the property is still there. The Official Receiver is after all an agent of the Court as has been held by this Court in a number of cases.

E

In the case of *Everest Coal Company (P) Ltd. v. State of Bihar & Ors.*<sup>(1)</sup>, this Court reiterated that when a court placed a Receiver in possession of property, the property came under the custody of the court, the Receiver being merely an officer or agent of the court.

F

In *Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. & Ors.*<sup>(2)</sup> this Court reiterated the court's obligation to exercise discretion to make out a fair sale out of a bargain.

G

In *Tarinikamal Pandit & Ors. v. Prefull Kumar Chatterjee (dead) by Lrs.*<sup>(3)</sup> this Court reiterated (at p. 353) that the receiver was appointed under Order 40 Rule 1 and a property could be sold by the receiver on the direction of the Court even by private negotiations.

H

(1) [1978] 1 S.C.R. 571.

(2) [1974] 3 S.C.R. 678.

(3) [1979] 3 S.C.R. 340.

If, in these circumstances the court directs that on payment of a higher sum of money for the benefit of the owner, and without any breach of any legal right of the intending purchaser, the property can be conveyed to persons in occupation with large number of families, the Court acts properly and with social well being in mind.

Mr. S. S. Ray, appearing for the appellant, submitted that the entire question was a legal issue and there was no warrant for the learned Judges of the High Court to have imported the doctrine of social justice. In our opinion, there appears to be some misapprehension about what actually social justice is. There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society. Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party. Living accommodation is a human problem for vast millions in our country. The owners, in this case, are getting legally Rs. 1 lakh more.

We must remember that in administering justice-social or legal-jurisprudence has shifted away from finespun technicalities and abstract rules to recognition of human being as human beings, and as human needs and if these can be fulfilled without deprivation of existing legal rights of any party concerned, courts must lean towards that and if the Division Bench of the High Court, in the facts and circumstances of the case, has leaned towards that, it is improper for this Court in exercise of the discretion vested under Art. 136 of the Constitution to interfere with that decision. We would do well to remember that justice—social, economic and political—is preamble to our Constitution. Administration of justice can no longer be merely protector of legal rights but must whenever possible be dispenser of social justice.

Call it social justice or solving a socio-economic problem or give it any other name or nomenclature, the fact of the matter is that this was the best course in the circumstances that could have

been adopted by the court. Unfortunately, the Single Judge completely ignored the following important facts which have been indicated by me earlier:—

(1) that a bulk of the consideration money, viz., Rs. 3 Lakhs out of Rs. 4 Lakhs, was not paid by the appellant even until the time when the learned Single Judge had passed the order nor was it paid even when the matter was in the High Court, and

(2) the learned Single Judge overlooked the fact that an owner also has a right to impose certain conditions and in exercise of that he had imposed the condition that the purchaser would have to buy the land subject to the pending litigation whereas in the offer made by the purchaser he had placed the onus on the owners to give him a good marketable title free from litigation.

Thus, there was a clearcut contradiction on this point which does not appear to have been noticed by the Single Judge and perhaps not even by the owners because they were concerned more in getting the money as early as possible. The Division Bench, therefore, accepted the offer of the respondents and passed the following Order:

“In the circumstances, we vacate the said two orders of the learned Judge dated May 24, 1983 and May 26, 1983 and set aside the impugned order dated July 18, 1983 and direct as follows;

1. The petitioners shall pay sum of Rs. 1, 25, 000/- to the Official Receiver on or before August 1, 1983 and thereafter pay the balance sum of Rs. 3,75000 by August 29, 1983 to the Official Receiver.

2. If the aforesaid sums are paid within the dates mentioned above, the Official Receiver shall sell the land of the disputed premises No. 7, Duffers Lane, Lilluah, Howrah to the petitioners and to their following nominees who have been residing in the said premises....”

At page 90 in ‘The Dictionary of Essential Quotations’ com-

piled by Kevin Goldstein-Jackson, John Stuart Mill aptly observes thus:

“...the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

Striking, therefore, a just balance between the claims put forward by the appellant and the respondents, we are convinced that the Division Bench of the High Court was perfectly justified in accepting the offer of the respondents for the following reasons:

(1) that the respondents were prepared to pay much higher amount than the appellant (i.e., Rs. 1 Lakh more) even at the very behest; the appellant did not pay the balance of Rs. 3 lakhs, which was a substantial part of the consideration, at the earliest moment as stipulated in the agreement but deposited the amount only when the case came up before this Court,

(2) that possession being 9/10th of title and the respondents being in actual possession of the property would have had no difficulty at all in becoming the owners without any further litigation.

(3) that the respondents were prepared to purchase the property notwithstanding the litigation obviously because if they had become the owners, no one could have challenged their title or possession.

In such a situation, therefore, in our opinion, the Division Bench of the High Court has done substantial justice throwing aboard the technicalities particularly for the reason that courts frown over a champartus litigation or agreement even though the same may be valid. Thus, by its decision the Division Bench got more money for the owners on the one hand and on the other sought to rehabilitate the 38 families of the respondent who had already built permanent structures.

**A** For the reasons given above, we find ourselves in complete agreement with the judgment of the Division Bench of the High Court which we hereby affirm with the observations that since the dates mentioned in the Division Bench's Order have already passed, we modify the said Order to this extent that as the respondents have already paid a sum of Rs. 1.25 lakh to the Official Receiver they shall pay him the balance of Rs. 3.75 lakhs by August 15, 1984 and shall also insert a condition that they would be buying the properties notwithstanding the pending litigation, failing which the appeal shall stand allowed and the Order of the Single Judge stand restored. In the circumstances of the case, we make no order as to costs.

**C** **V**ARADARAJAN, J. This appeal by special leave is directed against the order of a Division Bench of the Calcutta High Court dated 25.7.1983 made in an application of respondents 1 to 4 for the issue of an interim order pending consideration of the appeal filed against the order of a learned Single Judge of that High Court dated 18.7.1983 dismissing their application for being impleaded as defendants in Suit No. 2024 of 1952 on the file of that High Court as also in the application of the Official Receiver, Calcutta High Court affirmed by one Ashok Kumar Rai on 20.5.1983 and for staying and setting aside that Court's earlier orders dated 24.5.1983 and 26.5.1983.

**D** **F** **S**uit No. 2024 of 1952 was filed in the Calcutta High Court on 28.5.1952 by one Prasad Nath Das, husband of Malati Das and father of the then minors Prabir Kumar Das and Pradeep Kumar Das, for declaration and other reliefs in respect of certain properties including No. 7, Duffer's Lane, Howrah, hereinafter referred to as the 'disputed property' against certain persons including one Jitendra Kumar Das who is the second defendant in that Suit. The Official Receiver of the High Court was appointed as Receiver in that suit on 11.8.1953 in respect of certain properties including the disputed property and he took possession of the disputed property on 13.8.1953. An application was made in August 1982 for sale of the disputed property and distribution of the sale proceeds amongst the parties entitled thereto. On 11.10.1982 C. K. Banerjee, J. passed an order in that application for sale of the disputed property in these terms:

**G** **H** "In that view of the matter there will be an order for sale in terms of prayer (a). In the event the properties are

A

sold by private treaty the Official Receiver will call a meeting of the parties and obtain their approval to such sale by private treaty. The provisional allottees or any other party to the suit would be entitled to bring intending purchasers for the said property. There will also be an order in terms of prayer (b). In the event the properties are sold the petitioner Ajit Kumar Das would be paid a sum of Rs. 10000 out of the sale proceeds subject to adjustment against his share in the estate. The rest of the sale proceeds would be invested by the Official Receiver in short term fixed deposit in a nationalised bank for a period not exceeding one year and to be renewed from year to year until further orders of Court."

B

C

D

E

F

G

H

It has to be stated that the learned Single Judge fixed an upset price of Rs. 3,50,000 for the disputed property in that order and there is no dispute about it. The appellant Sadhu Ram Bansal offered a sum of Rs. 4,00,000 for the property to the Receiver by his advocate's letter dated 20.12.1982 enclosing a draft for Rs. 1,00,000 being one fourth of the amount and saying that the offer is subject to the vendors making out a good and marketable title free from encumbrances and that the sale will be completed within 6 months or such other time as may be agreed upon in favour of the appellant or his nominees. Thereinafter, a meeting was held before the Official Receiver on 12.1.1983 in presence of Prabir Kumar Das and Pradeep Kumar Das and their Counsel as also Jitendra Kumar Das and others. That meeting was convened in terms of a motion of a meeting dated 23.12.1982 for deciding upon the steps to be taken regarding the intending offers for the sale of the disputed property. In that meeting all the three offers received by the Official Receiver were placed before the parties for their consideration and it was decided that the offer of Rs. 4,00,000 made on behalf of the appellant should be accepted in view of the payment of Rs. 1,00,000 by bank draft. The Official Receiver thereupon accepted the offer of the appellant and communicated the acceptance by his letter dated 13.1.1983 and requested the appellant to deposit the balance of Rs. 3,00,000 at an early date. In view of Court's order dated 1.8.1983 another meeting was convened before the Official Receiver on 9.8.1983 and the parties to suit agreed in that meeting to sell the disputed property to the appellant for Rs. 4,00,000 in view of his prior payment of Rs. 1,00,000 by bank draft and sending the balance of Rs. 3,00,000 to the Official Receiver on 8.8.1983. Subsequently on the application of the Official

**A** Receiver, P. Banerjee, J. of the Calcutta High Court passed an order dated 24.5.1983 directing the police to remove respondents 1 to 4 from the disputed property and put the Official Receiver in possession thereof on the allegation of the Official Receiver that they had trespassed into the property a few months earlier. That order was modified on 26.5.1983 as regards the designation of the Deputy Inspector General of Police to whom also the earlier letter dated 24.5.1983 was directed. On 22.6.1983 respondents 1 to 4 namely, Pulin Behari Sarkar, Manik Seal, Gopinath Sarkar and Sudhansu Bimal Dey moved the Calcutta High Court for being impleaded as defendants in Suit No. 2024 of 1952 (wrongly mentioned in that application as Suit No. 2024 of 1982) as well as in the application of the Official Receiver affirmed by one Ashok Kumar Rai on 20.5.1983 and for staying and setting aside the said orders dated 24.5.1983 and 26.5.1983 as stated above. In that application respondents 1 to 4 alleged that they came to know from the police about the orders dated 24.5.1983 and 26.5.1983 on 18.6.1983, that Suit No. 2024 of 1982 (mistake for Suit No. 2024 of 1952) had been filed by Prasad Nath Das on 28.5.1982 (mistake for 28.5.1952), that the Official Receiver had been appointed on 11.8.1982 (mistake for 11.8.1952), that the Court has granted leave to the Official Receiver to sell the property either by public auction or by private treaty subject to a reserve price of Rs. 3,50,000 and that the offer of Rs. 4,00,000 made by the appellant has been accepted and one-fourth of the amount has already been paid to the Official Receiver. Respondents 1 to 4 further stated in that application that they are residing on the disputed property with their families under a licence since 1975 and have constructed pucca huts thereon and that with knowledge of their continuous possession of the property as licencees since 1975 the parties to the suit have filed the suit among themselves without impleading them (respondents 1 to 4) as parties knowing fully well that they would not get possession of the same if they filed the suit against them.

**G** This application of respondents 1 to 4 was opposed by the appellant through a counter-affidavit of his son Sajan Kumar Bansal. It was stated in that counter-affidavit *inter alia* that in the application filed for grant of leave to the Official Receiver to sell the disputed property it was alleged that it was under the unauthorised and illegal occupation of one Kamal Hosiery, claiming to be tenant of the property on a rent of Rs. 100/- per month for a long time and that no rent has been paid to or collected by the Official Receiver in the last 20 years. It was also stated in that counter-affidavit that in

the draft agreement for sale it is stated there is litigation for the last 20 years between the Official Receiver on the one hand and Kamal Hosiery on the other and that Second Appeal No. 1267 of 1982 filed by Kamal Hosiery against the Official Receiver was pending in the Calcutta High Court. Denying that there was any such licence as claimed by respondents 1 to 4 it was stated in that counter-affidavit that in the proceedings taken by respondents 1 to 4 under s. 145 of the Code of Criminal Procedure in the Court of the Sub-Divisional Executive Magistrate, Sadar, Howrah respondents 1 to 4 claimed to have been in possession of the disputed property for the last 15 years which will take us to 1968 and not 1975. It is that application of respondents 1 to 4 for being impleaded as parties to Suit No. 2024 of 1952 and for staying and setting aside the High Court's orders dated 24.5.1983 which came up before Monjula Bose, J. Three points were urged before that learned Judge.

The first point urged before the learned Judge was the alleged deliberate omission of the parties to Suit No. 2024 of 1952 to implead respondents 1 to 4 as parties with the object of getting a receiver appointed and having the property sold behind their back. The learned Judge rejected that contention of respondents 1 to 4 in these terms :

"I accept the contentions of the learned Advocate for the purchaser Sadhu Ram Bansal as also the contentions of the Learned Advocate for the learned Official Receiver that deliberate mis-statements have been made in the petition with a view to impress upon the Court that the suit was filed without impleading the petitioners (respondents 1 to 4) as parties so that possession could be obtained and an order of appointment of Receiver and leave to sell the property could be obtained behind the back of the petitioners (respondents 1 to 4). It is significant that the proceedings were instituted in 1952 (Suit No. 2024 of 1952) and the Official Receiver was appointed as Receiver as far back as in 1953. Since that date the suit property is in the possession of the Official Receiver as officer of the Court. The petitioners (respondents 1 to 4) claim to be in possession since 1975 with the leave of one Malati Das and Jitendra Kumar Das. It is significant that the said Malati Das was brought on record only in the year 1977 after the death of her husband and in any event no leave or licence could have been granted by either Malati Das or Jitendra Kumar Das when the

A Official Receiver was in possession of the suit premises. On 21.6.1983 Malati Das appeared in Court and denied giving any leave to any of the parties to remain in possession of the suit premises. Falsity of the petitioners' case is thus *prima facie* apparent and it appears that they have no *locus standi* to intervene in this proceeding and seek any order to be added as party-defendants to the suit and/or any other proceeding in connection therewith."

B The second point urged before the learned Single Judge was as regards the validity of the orders dated 24.5.1983 and 26.5.1983 made for delivery of possession of the property to the Official Receiver with police aid and without notice to respondents 1 to 4. It was contended before the learned Single Judge on behalf of respondents 1 to 4 that those orders made behind the back of respondents 1 to 4 who would be affected thereby are invalid in law and should, therefore, be set aside. The learned Judge rejected that contention in these terms :

C "In any event the decision reported in A.I.R. 1957 Calcutta 252 is an authority for the proposition that the Court has unfettered discretion and ample power to do justice. The Court is also fortified in its view by the decision in *Hira Lal Patni v. Mookaram Sethiya*, reported in A.I.R. 1962 SC 21 where the Court viewed that under Order 40 Rule 1 the Court may remove any person who interferes or intermeddles with the Receiver's possession. In my view different considerations apply in cases where property in the possession of Court through its officers are sought to be the Receiver of the Court is sought to be interfered with, and the cases cited are distinguishable. To my mind the orders passed on the 24th and 26th May, 1983 are orders passed by the Court in the course of the administration of the estate through the agency of the Receiver and the said orders were passed at the instances of the Receiver in the circumstances stated in the affidavit affirmed by Ashoke Roy on 4th July, 1953. It is apparent from paragraph 5 (vii) that certain persons had entered the premises on the 14th March, 1983, requiring the Official Receiver to take steps with the police authorities and it appears that his letters went unheeded requiring an application to be made for seeking direction upon the police authorities to remove the squatters and thereby assistance sought in the administration

of the estate by the Receiver. The case reported in A.I.R. 1962 SC 21 *Hira Lal Patni v. Mookaram Sethiya* is an authority in support of this proposition.\* The order for police help thus obtained cannot be said to have been obtained improperly or by suppression of any fact.”

The third point urged by respondent 1 to 4 before the learned Single Judge was that they were prepared to offer a sum of Rs. 1,00,000 more than the amount offered by the appellant and that the property should be ordered to be sold to them. The learned Single Judge rejected that contention in these terms:

“The third point ...has no merit and is not required to be considered inasmuch as the Court by its order dated 11th October, 1982 directed that the Official Receiver will sell the property by public auction or private treaty to the highest offerer or offerers subject to a reserve price of Rs. 3,50,000 and had directed that in the event the property is sold by private treaty the Official Receiver would call a meeting of the parties and obtain approval for such sale. It appears from the records of the minutes of the Receiver's meeting held on 12.1.1983 that in the presence of parties each one of them supported the sale to M/s: L. P. Aggarwal's client, namely, Sadhu Ram Bansal and as such the Official Receiver accepted the offer of the said Sadhu Ram Bansal, after the parties considered the price offered to be adequate. The case reported in A.I.R. 1970 SC 2037 is an authority in support of the proposition that once a Court comes to a conclusion that the price offered is adequate no subsequent higher offer can constitute a valid ground for refusing confirmation. To my mind although the transaction in suit does not require to be confirmed as the Official Receiver was invested with the direction given on 11th October, 1982 the said decision with the approval of the parties cannot now be re-opened and/or reagitated.”

For the above reasons the learned Single Judge dismissed the petition of respondents 1 to 4 with costs. Against that order respondents 1 to 4 filed an appeal before the Division Bench. In that appeal respondents 1 to 4 made an application for an interim order, and it came up for consideration before the Division Bench consisting M. M. Dutt and C. K. Banerjee, JJ. After setting out some facts leading to the application filed by respondents 1 to 4 for being

**A** added as parties to Suit No. 2024 of 1952 as well as in the application of the Official Receiver and for staying and setting aside the High Court's orders dated 24.5.1983 and 26.5.1983 referred to above, what M. M. Dutt, J. who spoke for the Bench has stated in the order impugned in this appeal is this:

**B** "At the hearing of this application Mr. Som Nath Chatterjee, learned Counsel appearing on behalf of the petitioners has offered to purchase the disputed land at a sum of Rs. 5,00,000. It has also been offered by him that the petitioners would deposit in Court a sum of Rs. 1,25,000 being the 25 per cent of the sale price within a week and pay the balance sum of Rs. 3,75,000 within a month thereafter.

**C** The application has been vehemently opposed by the respondent No. 2, the purchaser. Mr. A. C. Bhabra, learned Counsel appearing for respondent No. 2 submits that as parties themselves have agreed to sell the disputed land to the respondent No. 2 this Court has no jurisdiction to override the said agreement and direct the sale of the disputed land to the petitioners. In our opinion this contention is without substance. The sale has not yet been completed. As stated already respondent No. 2 paid a sum of Rs. 1,00,000 being 25 per cent of the sale price some time in January 1983 and since then respondent No. 2 has not paid the balance sum of the sale price. If the sale had been completed there is no question of any offer being made by the petitioners for the sale of the disputed land to them. Moreover, the sale will be subject to the approval of the Court. As the sale has not yet been completed there is no scope for the approval of the sale.

**D** On the other hand, we find that 38 families have been residing in the disputed land. It is submitted by Mr. Bhabra that those persons are all trespassers without any vestige of title. It is, however, the case of the petitioners that they have been residing in the disputed land by making certain structures under the leave and licence of two of the owners of the said premises although one of the owners, Smt. Malati Das who is alleged to have granted the licence, has denied granting of such licence. If the disputed land is sold to respondent No. 2 then 38 families who have been resi-

ding thereon would be evicted with police help. In our opinion the Court should do social justice and in doing such justice no technicality of law will stand in its way. Social justice requires that the disputed land should be sold to the petitioners and other residing on the disputed land. Moreover, the petitioners have offered to pay a price of Rs. 5,00,000 that is to say, Rs. 1,00,000 more than the offer of the respondent No. 2. In the circumstances, we vacate the said two orders of the learned Judge dated 24.5.1983 and 26.5.1983 and set aside the impugned order dated July 18, 1983."

The learned Judges directed respondents 1 to 4 to pay to the Official Receiver a sum of Rs. 1,25,000 on or before 1.8.1984 and the balance of Rs. 3,75,000 by 29.8.1983 and ordered that on such payment the Official Receiver shall sell the disputed property to respondents 1 to 4 and their 34 nominees mentioned in the impugned order without any other descriptive particulars and have observed that in the event of default in payment of the sum of Rs. 5,00,000 as aforesaid their order will stand vacated and the learned Single Judge's order dated 18.7.1983 shall stand confirmed.

Thus it is seen that the learned Judges of the Division Bench have set aside the impugned order of the learned Single Judge dated 18.7.1983 and directed the sale of the disputed property to respondents 1 to 4 and their 34 nominees subject to the condition that respondents 1 to 4 deposit a sum of Rs. 1,25,000 by 1.8.1983 and the balance of Rs. 3,75,000 by 29.8.1983 towards the sale price of Rs. 5,00,000 offered by respondents 1 to 4 mainly on the ground of social justice and incidentally having regard to the fact that sale has not yet been approved by the Court without however deciding the question whether approval of the Court to complete the sale of the disputed property by the Official Receiver to the appellant by private treaty subject to the approval of the parties which has been given on 12.1.1983 and 9.8.1983, as stated above, is necessary or not. They have at the same time observed in their impugned order that the order dated 18.7.1983 of the learned Single Judge will stand confirmed if respondents 1 to 4 fail to deposit the sum of Rs. 1,25,000 by 1.8.1983 and the balance of Rs. 3,75,000 by 29.8.1983. The learned Judges of the Division Bench have thus left in tact the order dated 18.7.1983 of the learned Single Judge in the event of respondents 1 to 4 not taking advantage of the opportunity given to them in the name of social justice to purchase the disputed property for

A Rs. 5,00,000 by paying that amount in two instalments as aforesaid. Hence this appeal by special leave.

With respect to the learned Judges of the Division Bench of the High Court I am at a loss to understand how their order which virtually disposes of the appeal filed by respondents 1 to 4 against the order of the learned Single Judge dated 18.7.1983 declining to add them as parties to Suit No. 2024 of 1952 as well as in the application moved by the Official Receiver in May 1983 and to stay and set aside the orders dated 24.5.1983 and 26.5.1983 and directs the sale of the disputed property to respondents 1 to 4 and their 34 nominees on payment of the sum of Rs. 5,00,000 in two instalments as mentioned above could be made in an application which has been filed by respondents 1 to 4 for only an interim order pending disposal of the main appeal filed against the order of the learned Single Judge dated 18.7.1983. I also fail to see what remains to be done by the learned Judges of the Division Bench in the main appeal filed by respondents 1 to 4 against the learned Single Judge's order dated 18.7.1983 after the learned Judges of the Division Bench have passed the order impugned in this appeal before this Court. That appeal before the learned Judges of the Division Bench has now become totally redundant and unnecessary, for what respondents 1 to 4 wanted has been ordered in their favour viz., setting aside the orders dated 24.5.1983 and 26.5.1983 which is one of the prayers in the application made before the learned Single Judge and the sale of the property in their favour and in favour of their nominees for Rs. 5,00,000 subject to payment of that amount in two instalments within the time mentioned above, a relief which was not even prayed for by them in their application before the learned Single Judge but granted even before they had been impleaded as parties in the suit or in the application filed by the Official Receiver in May 1983, which prayer was refused by the learned Single Judge and has not been granted even by the learned Judges of the Division Bench in their order made in the application filed only for interim relief. This must strike any one as an extraordinary feature in this case, and I therefore think it must be noticed before proceeding to consider the merits of the case in the light of the arguments advanced by Mr. S.S. Ray, Senior Counsel appearing for the appellant and Mr. G.L. Sanghi, Senior Counsel appearing for respondents 1 to 4 in the appeal. Another extraordinary feature in this case is that in the name of social justice the learned Judges of the Division Bench of the High Court have conferred the benefit of purchasing the disputed property on rank trespassers, not ordinary trespassers in respect of

property in the possession of some private individual who is not vigilant about his rights but trespassers in respect of property which is in *custodia legis* through a Receiver who was vigilant enough to move the Court for a direction that the police to remove respondents 1 to 4 from their unlawful possession of the disputed property and put him in possession thereof after his own letters to the police for help in that behalf did not evoke the necessary response. I will now proceed to consider how respondents 1 to 4 are rank trespassers in respect of the disputed property which is in *custodia legis* and are contemniers who are liable to be committed for contempt and not persons on whom any benefit could be conferred by any Court of law.

Mr. Ray submitted rightly that respondents 1 to 4 are rank trespassers in respect of the disputed property which is in *custodia legis*. The case of respondents 1 to 4 is that they became licencees in respect of the property in 1975 under a leave granted to them by Malati Das and Jitendra Kumar Das. This case has been found by Monjula Bose, J. to be false having regard to the fact that Malati Das came on record as a legal representative of her husband Prasad Nath Das only in 1977 and she appeared in Court and denied having granted any such licence to respondents 1 to 4. There is no documentary evidence about the alleged grant of the licence. If at all, it could only have been oral. Respondents 1 to 4 have not examined Jitendra Kumar Das to prove the alleged grant of the licence. Jitendra Kumar Das is a party to the approval granted on 12.1.1983 and 9.8.1983 for the sale of the disputed property by the Official Receiver to the appellant by private treaty. It is impossible that such a valuable property has been allowed to be enjoyed by respondent 1 to 4 for no benefit or consideration to the owners by any of the owners of the property. Respondents 1 to 4 had no consistent case about when the alleged leave was granted. In the present proceedings their stand is that it was granted in 1975. But in the proceedings before the Sub-Divisional Executive Magistrate, Sadar, Howrah under s. 145 Criminal Procedure Code they stated that the licence was granted 15 years prior to the date of that petition which will take us to 1968 as stated above. Therefore, factually the alleged grant of licence does not appear to be true as has been found by Monjula Bose, J. Mr. Sanghi on the other hand, contends that the "right" claimed by respondents 1 to 4 has not been gone into or determined and that they are entitled to the equitable relief granted to them by the learned Judges of the Division Bench on the basis of their admitted possession of the property. The contention that their

**A** position has not been determined by the learned Single Judge is not correct.

In paragraph 801 and 808 at pages 403 and 407 of Halsbury's *Laws of England*, Fourth Edition, Volume 39 we find the following passage:

**B**

"A receiver is a person appointed for the collection or protection of property. He is appointed either by the court or out of court by individuals or corporations. If he is appointed by the court, he is an officer of the court deriving his authority from the court's order. If he is appointed out of court, he is an agent and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed and derive from the general law of agency.....A receiver appointed by the court is in no sense an agent or trustee for the party at whose instance the appointment is made. He is an officer of the court appointed for the benefit of all the parties to the action, and their rights among themselves are not affected."

In *Kerr on Receivers*, Fifteenth Edition, we find the following passage at page 155:

**E**

"A person who disturbs or interferes with the possession of a receiver is guilty of a contempt of court, and is liable to be committed. In extreme or aggravated cases, the court will, for the purpose of vindicating its authority, order a committal. The court is generally satisfied with ordering the party in contempt to pay the costs and expenses occasioned by his improper conduct, and also the costs of the application to commit."

This Court has observed in *Everest Coal Company (P) Ltd. v. State of Bihar & Others*<sup>(1)</sup> thus:

**G**

"When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such an interference

(1) [1978] 1 S.C.R. 571 at 573.

and invites the contempt penalty of likely in validation of the suit or other proceedings."

It is not disputed that after the institution of Suit No. 2024 of 1952 in the High Court, the Official Receiver was appointed as Receiver in respect of the disputed property on 11.8.1953 and that he took possession of the same on 13.8.1953 and it continues to be in *custodia legis* through the Receiver since then. This has been found by Monjula Bose, J. in the order dated 18.7.1983. When the property is in *custodia legis* neither Malati Das nor Jitendra Kumar Das, who may have rights of ownership in the property, could grant any licence in 1975 or at any time after the Receiver had been appointed and possession had been taken in August 1953. Even if there was such a grant of licence it is invalid in law. Even if possession of the property had been obtained by respondents 1 to 4 pursuant to any such grant of licence it would, in law, be only that of trespassers. Therefore, even on the admitted case of respondents 1 to 4 that their possession started in 1975 as licencees, in the light of the undisputed fact that the Receiver got into possession of the property as far back as in August 1953 under the orders of the Court, the possession of respondents 1 to 4 could only be that of trespassers. They are trespassers who are liable to be committed for contempt of the Court inasmuch as they are trespassers in respect of the property which is in *custodia legis*. Their possession and conduct have to be frowned upon by the Court and not treated as grounds for conferring a benefit on them to purchase the property *albeit* for a higher amount than the amount for which the Official Receiver has agreed to sell the property to the appellant with the approval of the parties to the suit. The learned Judges of the Division Bench have treated this illegal act of trespass of respondents 1 to 4 on the property which is in *custodia legis* as the ground for conferring the benefit on them in the name of social justice, and it is this order which Mr. Sanghi, with all his vehemence, wants this Court to confirm. In my view it will be totally wrong to do so. It was conceded by Mr. Sanghi that while rendering social justice no violence to any established and well-known principles of law could be committed. In these circumstances, I am of the opinion that no relief could be granted to respondents 1 to 4 who are trespassers in respect of the property in *custodia legis* on the basis of their wrongful possession which is a continuing act of contempt of the Court.

Mr. Sanghi invited this Court's attention to the Calcutta High

- A Court's order dated 11.10.1982 for the sale of the disputed property particularly to the portion thereof which says that Rs. 10,000 out of the sale proceeds should be paid to Ashok Kumar Rai subject to adjustment against his share and that the balance should be invested by the Official Receiver in fixed deposit every time for a term not exceeding one year. A sum of Rs. 1,00,000 was sent by a bank draft to the official Receiver along with the offer made on behalf of the appellant for purchasing the property for Rs. 4,00,000. According to the offer made in that letter the appellant had to pay the balance of Rs. 3,00,000 within six months from 13.1.1983. Mr. Sanghi invited this court's attention to the non-payment of the balance of Rs. 3,00,000 until it was sent to the Receiver on 8.8.1983 in spite of the Receiver asking for its payment at an early date by his letter dated 13.1.1983 by which he had communicated the approval of the parties granted on 12.1.1983 for the sale of the disputed property to the appellant for Rs. 4,00,000 and submitted that the appellant has not complied with the spirit of the order for the sale of the property by private treaty. Mr. Sanghi next invited this Court's attention to the fact that in the parties' meeting held before the Receiver on 12.1.1983 to consider which of the 3 offers made to the Official Receiver could be accepted Mr. D.N. Mitra, Advocate for Prabir Kumar Das and Pradeep Kumar Das had stated that they have no objection to the sale subject to the appellant agreeing to purchase the property subject to pending litigation. The pending litigation referred to by Mr. Mitra evidently refers to the litigation about the property pending in Second Appeal No. 1267 of 1982 filed in the Calcutta High Court by Kamal Hosiery against the Official Receiver. The appellant's learned Counsel had earlier offered in his letter dated 20.12.1982 to purchase the property for Rs. 4,00,000 subject to the vendors making out a good and marketable title free from encumbrances. The Official Receiver has not referred to that condition mentioned by the Advocate for Prabir Kumar Das and Pradeep Kumar Das that the acceptance of the offer of the appellant is subject to his agreeing to purchase the property subject to the pending litigation but he has merely stated in his letter dated 13.1.1983 that the appellant's offer to purchase the property for Rs. 4,00,000 has been accepted and that he should pay the balance of Rs. 3,00,000 at any early date. The parties had accepted the appellant's offer even in the subsequent meeting held on 9.8.1983 after the appellant had sent the balance of Rs. 3,00,000 on 8.8.1983 to the Receiver. Mr. Sanghi submits that there was a counter-offer by reason of the statement made on behalf of the two plaintiffs Prabir Kumar Das and Pradeep Kumar Das in the meeting convened

by the receiver on 12.1.1983 that the appellant's offer should be accepted subject to the condition that he will purchase the property subject to the pending litigation and that there should have been a fresh acceptance by the appellant thereafter, and he has not done so and therefore there is no concluded contract. There is no such conditional acceptance as the condition required by Prabir Kumar Das and Pradeep Kumar Das has not been specially communicated to the appellant by the Official Receiver for his acceptance. Therefore there is no merit in this contention of Mr. Sanghi.

Mr. Sanghi next submitted that respondents 1 to 4 have offered Rs. 5,00,000 for the disputed property and that since the owners of the property stand to gain a sum of Rs. 1,00,000 by accepting that offer, the order for sale of the property made by the learned Judges of the Division Bench in favour of the respondents 1 to 4 and their 34 nominees should be confirmed.

Respondents 1 to 4 are trespassers in respect of the property which is in *custodia legis* and they are in contempt of the Court. They cannot be allowed to continue to be in contempt and urge it as a ground for obtaining the benefit of the sale of the property in their favour. If the appellant has not complied with any condition it may be a ground for the owners and the Official Receiver not to accept his offer and refuse to sell the property to him and not for respondents 1 to 4 to raise any objection. The offer has been accepted rightly or wrongly more than once and therefore the appellant may have a right to sue for specific performance of the contract on the basis of that acceptance by the Official Receiver given with the approval of the parties. The same is the position in regard to the delay of about a month in paying the balance of Rs. 3,00,000 by the appellant. In *Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. & Others* <sup>(1)</sup> it has been held that the executing court had committed no material irregularity in the conduct of the sale in accepting the highest offer and concluding the sale at Rs. 11,50,000 though the market value of the property may be over Rs. 17,00,000. In *Jibon Krishna Mukherjee v. New Bheerbhum Coal Co. Ltd. & Anr.* <sup>(1)</sup> it has been held that the sale held by the Receiver appointed by the Court is not governed by the provisions of Order 21 rule 89 of the Code of Civil Procedure which enables the persons specified in sub-rule 1 to have the sale held in execution

(1) [1974] 3 SCR 678

(2) [1960] 2 SCR 198

**A** proceedings set aside on the two conditions therein mentioned being satisfied, namely, as regards the deposit of poundage, balance of decree amount due etc. In that case, as in the present case, the Receiver was given liberty to sell the property by private treaty or by public auction. In *Tarinikamal Pandit & Others v. Prafulla Kumar Chatterjee* <sup>(1)</sup> we find the following observation :

"The procedure envisaged for sale generally and sale of an immovable property under Order 21 is sale by public auction. Sale by a Court through the Receiver appointed by Court is not contemplated under these provisions.....A Receiver is appointed under Order 40 Rule 1 and a property, can be sold by the Receiver on the direction of the Court even by private negotiation."

**C** In the present case the property has been agreed to be sold by private treaty and as required by the order made for the purpose

**D** the approval of the parties has been obtained by the Official Receiver who has been authorised to sell the property either by public auction or by private treaty. The Court does not come into the picture in such a case and there is no need for the Court to approve or confirm such sale. The parties who are *sui juris* must be deemed to have known their interest best when they chose to approve the sale

**E** of the property for Rs. 4,00,000 in favour of the appellant not with standing the fact that respondents 1 to 4 had offered to purchase the property for Rs. 5,00,000 therefore, in my view the learned Judges of the Division Bench had no right or justification to alter or modify the earlier order made for the sale of the property by even private treaty, which had become final, or to hold that subsequent offer made by respondents 1 to 4 to purchase the property for Rs. 500,000 should be accepted merely because it appears to be advantageous to the owners of the property in the name of social justice.

**F** I am unable to persuade myself to hold that the benefit claimed on behalf of respondents 1 to 4—I would not call it a right, for there is no corresponding obligation—can be equated with or even brought anywhere near the social justice mentioned in the preamble of our Constitution.

**G** For these reasons, I am of the opinion that the learned Judges of the Division Bench were not right in interfering with the well considered order of the learned Single Judge Monjula Bose, J. by

their order made in the application of respondents 1 to 4 for a mere interim order pending consideration of the appeal preferred by them against that order of the learned Single Judge dated 18.7.1983 in the manner done by them which has rendered the main appeal itself redundant and wholly unnecessary as stated above. The impugned order of the learned Judges of the Division Bench which purports to stand on the fragile and imaginary prop of social justice has no legs in law to stand and cannot be allowed in law to stand. I would, therefore, allow the appeal and set aside the order of learned Judges of the Division Bench and restore that of the learned Single Judge dated 18.7.1983 with costs quantified at Rs. 3,000 and payable by respondents 1 to 4.

SABYASACHI MUKHARJI, J. With respect I agree with the order proposed by Brother Fazal Ali. In view, however, of the question posed in this case, I would like to recapitulate the facts as I view these and to state the principles upon which I would like to rest my concurrence with the order proposed. Though the controversy arises in a long pending litigation, the question before this Court lies within a short compass.

Premises No. 7, Duffers Lane, Howrah, comprising of about six bighas of land is nearabout Calcutta. It formed part of the estate of one late Radha Kanta Das, since deceased. The premises is hereinafter called "the disputed premises". Suit No. 2024 of 1952 was filed in the High Court of Calcutta on May 29, 1952 by one Prasad Nath Das claiming a decree for construction of the will and testament of the said Radha Kanta Das since deceased and for declaration that the purported will dated May 22, 1952 executed by one Jitendra Kumar Das, since deceased in respect, inter alia, of the disputed premises was invalid, void and for other reliefs. The Official Receiver was appointed receiver over certain properties belonging to or alleged to have belonged to that estate including the disputed premises on or about August 11, 1953. Some of the parties to the suit, namely respondents Nos. 13, 14 and 15 to this appeal took out an application for granting leave to the Officer Receiver to sell the disputed premises, as some of the parties required immediate funds. An order was passed on October 11, 1982 by a learned Single Judge of the High Court directing the Official Receiver to sell the disputed premises either by a public auction or private treaty to the highest offerer subject to a reserved price of Rs. 3,50,000 and the order further directed that "in the event the property is sold by private treaty, the Official Receiver, High Court, Calcutta, would call a meeting of the parties and obtain their approval to such sale by private treaty. The provisional allottees or any other party to

- A the suit would be entitled to bring intending purchasers for the same." On December 20, 1982 by a letter, an offer was made to the Official Receiver for purchase of the said premises for Rs. 4,00,000 on behalf of the present appellant. The said letter contained the following :—
- B "We make an offer for purchase of the above property for Rs. 4,00,000 (Rupees four lacs) subject to the Vendors' making out a good and marketable title free from encumbrances."
- C A Bank draft for Rs. 1,00,000 in favour of the Official Receiver was also sent along with it. At a meeting held on Jan. 12, 1983, the said offer along with two other offers were considered by the representatives and advocates appearing for the different parties in the suit. It appears that parties more or less agreed that the offer received on behalf of the appellant was best but one Shri B.N. Mitra, representing his client observed that it might be accepted subject to the appellant's agreeing "to purchase the same land with pending litigation in respect of the said property." It may be mentioned that the terms in which the Official Receiver intimated by letter dated January 13, 1983 addressed by the Official Receiver to the advocate of the present appellant contained the following :—
- E "This is to inform you that your client's offer of Rs. 4,00,000 for the purchase of the above premises has been accepted.
- F You are, therefore, requested to advise your client to deposit the balance sum of Rs. 3,00,000 at an early date."
- G It would be relevant to bear in mind that it was not communicated that the acceptance of the offer was subject to the appellant's agreeing to purchase the land with pending litigation in respect of the said land. The offer of the appellant which had been originally communicated did not contain any condition that the offer to purchase was subject to pending litigation. It was, therefore, urged before us that there was no acceptance of the offer by letter dated January 13, 1983 because the acceptance was with a condition. It was urged that it was really a counter offer. The Division Bench of the High Court came to the conclusion that there was no concluded contract.
- H Such a view is a view which is possible to take, and as such the Division Bench proceeded on the basis that there was no concluded

bargain between the appellant and the parties represented by the receiver. It may, however, be mentioned that in February, 1983, it is stated, certain documents were forwarded to the appellant's advocate. It may be mentioned that in the letter referred to herein-before dated December 20, 1982, the appellant had also stipulated that the sale be completed within six months or such further extended time as may be agreed upon in one or more lots by one or more sale deeds in favour of the appellant or his nominee or nominees. The letter dated January 13, 1983 by the Official Receiver also requested the appellant to deposit the balance sum at an early date. It may be mentioned that the said balance sum was deposited after August, 1983 after the special leave was granted in this matter by this Court. It is also significant to bear in mind that though the application for sale of the property in question was made because the parties were in urgent need of money, there does not appear to be any document or letter asking the appellant for the money.

It is alleged that in February, 1983, fire broke out in the factory adjacent to the premises in question and fire brigade men had entered into the premises by breaking a portion of the well to get access to the pond inside the disputed premises. It is the case of the appellant that on March 14, 1983, the respondents nos. 1 to 4 along with some miscreants had forcibly entered into the disputed premises. This, however, is disputed by the contesting respondents nos. 1 to 4 herein, out of whose application to the High Court for intervention, the order impugned was passed by the Division Bench and which is the subject matter of this appeal leave, they in their application asserted that they had come to know about the appointment of the Official Receiver from the police and they further came to know about the offer made by the appellant for the purchase of the premises in dispute. The said respondent alleged that they along with 38 families with the leave and licence of one of the co-owners were residing in the premises in question since 1975 and had constructed pucca huts and structures and in spite of the same, according to the said respondents, the appellant did not inform the court of the said fact before obtaining police help against them. The said respondents claimed that they were licencees under the original owners, Smt. Malati Das and Jitendra Nath Das, in certain specified plots mentioned in their application. They further alleged that on May 2, 1983, they had come to know that the appellant had obtained ex parte order from the Sub-Divisional Magistrate (Executive) directing the Superintendent of Police to restore possession of the premises in dispute by arranging police help. The applicants had

**A** filed an application before the learned Sub-Divisional Magistrate under Section 145 of the Code of Criminal Procedure with a prayer to recall the ex-parte order mentioned hereinbefore and to call for a report from the local police regarding possession of the said applicants in the said disputed premises. The Sub-Divisional Magistrate, it was alleged, did not pass any order and was pleased to direct to put up the said application on May 7, 1983. Though no formal order was passed the said application was kept on record. The applicants further alleged that coming to know that certain other order might be passed, the applicants moved a revision application under the Criminal Revisional jurisdiction before the High Court and thereafter had obtained the stay of the order of April 26, 1983 passed by the learned Sub-Divisional Magistrate. The said application under Section 145 of the Code of Criminal Procedure is pending.

**D** The pendency of the proceedings under Section 145 of Code of Criminal Procedure and order, if any, passed thereon does not in any way affect the title of the parties to the disputed premises though it reflects the factum of possession. See the decision of this Court in the case of *Bhinka and Others v. Charan Singh*. (1)

**E** It is in this background that the applicants in their application before the learned Single Judge of the High Court prayed that their claim to be in possession and their right to be in possession should be determined and as such they should be added as defendants to the suit and as a consequence, the order for police help granted by the High Court in ejecting the applicants should be recalled. The said application came up to be heard by a learned Single Judge of the High Court and by an order passed and judgment delivered, the learned Judge rejected the application holding that the respondents nos. 1 to 4 being the applicants therein were trespassers and had no right to be in possession of the premises after the Official Receiver had been appointed receiver and further it was held that the parties had no right to grant any leave or licence after the property came under the custody of the Official Receiver as receiver appointed in the suit. The learned Judge further held that a sale had been concluded in favour of the present appellant and therefore though noting that the respondents nos. 1 to 4 being the applicants therein had offered to pay a sum of Rs. 1,00,000 more for the purchase of the premises in dispute, the learned Judge rejected the said offer and dismissed their application.

(1) [1959] Suppl. 2 S.C.R. 798.

As mentioned hereinbefore there was an appeal from this decision to the Division Bench of the High Court. The Division Bench was of the view that the offer made on behalf of the respondents nos. 1 to 4 should be accepted. The Division Bench took the view that there was no concluded contract for sale in favour of the present appellant. The Division Bench was of the view that there was not then any completed sale. The Division Bench further noted as follows :—

A

B

C

D

E

F

G

H

“On the other hand, we find that 38 families have been residing in the disputed land. It is submitted by Mr. Bhabra that these persons are all trespassers without any vestige of title. It is however, the case of the petitioners that they have been residing in the disputed land by making certain structures under the leave and licence of two of the owners of the said premises although one of the owners, Smt. Malati Das, who is alleged to have granted the licence, has denied granting of such licence. If the disputed land is sold to the respondent No. 2 then 38 families who have been residing therein would be evicted with police help. In our opinion, the Court should do social justice and in doing such justice any technicality of law will not stand in its way. Social Justice requires that the disputed land should be sold to the petitioners and others residing on the disputed land. Moreover, the petitioners have offered to pay the price of Rs. 5,00,000 that is to say Rs. 1,00,000 more than the offer of the respondent No. 2.”

The Division Bench directed that Rs. 1,25,000 should be paid by present respondents 1 to 4 on or before August 1, 1983 which it may be noted has been paid and thereafter pay the balance sum of Rs. 3,75,000 by August 29, 1983 which sum however could not be paid because in the meantime special leave to appeal was granted by this Court and a stay had been obtained. It may be mentioned that the balance of the consideration of Rs. 3 lacs offered by the present appellant has been paid only after the special leave had been obtained from this Court. The Division Bench further directed that in case payments were made within the time, the property in question should be conveyed to the persons named in the said order. It was further directed that in case the respondents 1 to 4 committed default in paying a sum of Rs. 1,25,000 or 3,75,000 within the stipulated time, the said order would stand vacated and the order of

**A** learned Single Judge would stand confirmed i.e. sale would be made to the appellant.

**B** It is the validity and the propriety of the said order which is impugned in this appeal. The question mainly is whether there was a concluded and confirmed sale in favour of the appellant and if not could the Court direct the disputed premises to be conveyed to respondents nos. 1 to 4 for the benefit of 38 families relying on social justice.

**C** On the question whether in the facts and circumstances that have happened, the Court could pass the order it had done, some contentions were urged whether the sale in question was a court sale or a private sale or a sale by the receiver and whether confirmation of the court was required for such a sale. Some of the decisions cited at the Bar on this point have been noted by my Brother. In the view I have taken it is not necessary in this case to decide whether a confirmation of sale by the court in the circumstances under which the property was directed to be sold was necessary or not, though it may be sufficient to note that there was some divergence of opinion on this point. On the nature of the possession by the receiver and how interference with such possession should be dealt with by law have also been noted in the observations in Halsbury's *Law of England*, 4th Ed., Volume 39 pages 451 and 452, paragraphs 890 and 891. See also *Kerr On Receivers*—15th Edition page 155 and also *Kerr On Receivers*—16th Edition pages 121 and 122. It is well-settled that when the property is in custody of a receiver appointed by the court, the property is in the custody of the court and interference with such possession should not be encouraged and no party can acquire any title or right by coming in or over the property which is in the possession of the receiver without leave or consent of the receiver or sanction of the court. It was urged that in as much as no such leave had been obtained by the respondents nos. 1 to 4, possession, if any, of the said respondents or entry into the land by the said respondents at a time when indisputably there was receiver was illegal. In view of the facts that have happened and in the light of the controversy before us now, in my opinion, it would be futile to determine at this stage whether the entry of the respondents nos. 1 to 4 was legal or illegal. It may be mentioned, however, that so long as proceedings under Section 145 of Code of Criminal Procedure were pending before the appropriate court, without any adjudication of the respondents nos.

1 to 4's right to be in possession and directing that they be physically ejected by police help without hearing them or without notice to them is not a correct legal position to take for court of law administering justice. But it is not necessary for the purpose of this appeal to express any final opinion on that.

It appears in the background of the facts and circumstances of the case that the Division Bench took the view that there was no concluded contract of sale in favour of the appellant and it appears to us that such a view was a possible view to be taken in view of the facts I have mentioned and if that is so, such a conclusion cannot and should not be interfered with in appeal under Article 136 of the Constitution. Assuming even that though not legally but as a reality of fact, the respondents nos. 1 to 4 were and are in possession of the dispute premises, they want to purchase the premises by paying more than the offer then made, the offer made by the appellant to purchase the premises in dispute seems to be rather low in the context of facts and circumstances prevailing in such areas nearabout Calcutta. The area comprises of about six bighas i.e. about 120 cottahs of land. It has been suggested in one of the affidavit on behalf of respondents nos. 1 to 4 that the prices prevalent in those areas are about Rs. 14,000 per cottah. Therefore it was suggested that in the transaction between the appellant and receiver or with the parties, there is more than what meets the eye. We, however, need not speculate on the same. The facts on which I would like to rest my decision are: (1) there is not a concluded contract in favour of the appellant. This view has been accepted by the Division Bench. It is a possible view. This view should not be interfered within appeal under article 136 of the Constitution; and (2) the fact is that the respondents 1 to 4 are in possession with large number of their families. The original entry might be, if their version is rejected, illegal and without the authority of the court as no leave was obtained but their possession is a reality. Illegitimacy of entry does not debar them from offering a higher price in purchasing a property, contract for sale in respect of which has not yet been concluded; and (3) the property is *in custodia legis*. Though the court directed the receiver to sell, as the sale has not been concluded, the court retains its power to direct its officer to sell to such other person the transaction of which will apparently benefit the parties as appearing from the facts on record or as from the facts which meet the eye. (4) The factor that large number of people are in possession with their families and conclusion of sale

A to them would cause non-interference with their continuance are factors which the court can and should take into consideration in deciding the controversy in this case. (5) There has not indeed been any proper adjudication of the right of the respondents nos. 1 to 4 to be in possession of the premises in question and even if their entry was tainted with illegality, it is not of such a magnitude, in view of subsequent facts that because of illegitimate entry, they will be deprived of the right to bargain on proper terms to purchase the property which is in the custody of the court. If there has not been any proper sanction of the court, this is only a procedural irregularity and as is well-settled that rules of procedures are Hand Maids of justice not their mistresses.

B

C

D

E

F

G

H

The appellant in this appeal poses a question whether the concept of social justice empowers the court to grant relief in favour of persons who interfere with the admitted possession of the receiver at the expense of the bona fide purchaser at a court sale. As I see the facts, the basis upon which this question is posed namely, that the appellant is a bona fide purchaser of the property is not correct in the light of the view taken by the Division Bench. There had not been, any concluded contract of sale when the Division Bench passed the order.

The concept of social justice is not foreign to legal justice or social well-being or benefit to the community rooted in the concept of justice in the 20th century. The challenge of social justice as I see it, is primarily a challenge to the society at large more than to the court immediately. Social justice is one of the aspirations of our Constitution. But the courts, we must remember are pledged to administer justice as by law established. In formulating the concept of justice, however, the inarticulate factor that large number of human beings should not be dislodged from their possession if it is otherwise possible to do so cannot but be a factor which must and should influence the minds of judges in the facts of this case. It is true that the persons who were alleged to be in possession are with unclean hands but they came for shelter and built in hutments. They do not want to legitimise their stay by illegal entry, they want to be rehabilitated at competitive bargain price. Should they be denied that opportunity on the ground of their original illegitimacy ? I am definitely of the opinion that in these circumstances they should not be so denied rehabilitation. In administering justice—justice according to law in this case, no law is breached in the view taken

by the Division Bench of the Calcutta High Court. The American Bar Association in its report in 1964 had observed that jurisprudence has shifted away from finespun technicalities and abstract rules to practical justice to a recognition of human beings, as the most distinctive and important feature of the universe which confronts our senses, and of the function of law as the historic means of guaranteeing that preeminence. (See *The Fourteenth Amendment Centennial Volume* Edited by Bernard Schwartz, page 10). I therefore respectfully agree with Brother Fazal Ali when he says that in administering justice—social or legal, jurisprudence has shifted away from finespun technicalities and abstract rules to recognition of human beings as human beings.

It is true that original entry was illegal and we are sometimes urged "to do a great right, do a little wrong" (See the plea of Bassanio in *Merchant of Venice*). In this case, however, the court has done no legal wrong at all. The court has only ignored the non-compliance of not seeking court's leave for the alleged grant of licence.

In administering justice, or social legal, we do well to bear in mind the words of Justice Holmes "The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labour will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past." (*The Common Law* by Oliver Wendell Holmes—Edited by Mark De Wolfe Howe—Lecture I—page 1).

The felt necessities of time and in this case the convenience of the situation and the need for adjusting the rights of a larger number

- A of people without deprivation of any accrued right of anybody would be justice according to law. Before we reject social justice as something alien to legal justice, we should remember that a meaningful definition of the rule of law must be based on the realities of contemporary societies and the realities of the contemporary societies are men are in acute shortage of living accommodation and if they are prepared to bargain and rehabilitate themselves on competitive terms, they should be encouraged and no technical rules should stand in their way. That would be justice 'by highways' and not infiltration 'by bye-lanes'.
- B
- C In that view of the matter, I hold that there is no merit in this appeal. I agree with the order proposed by Brother Fazal Ali and the reasons given by him.

N.V.K.

*Appeal dismissed*