# Baladin vs Mst. Ram Piarey And Ors. on 9 August, 1952

## Equivalent citations: AIR1952ALL977, AIR 1952 ALLAHABAD 977

## Author: V. Bhargava

## Bench: V. Bhargava

JUDGMENT

Sankar Saran, J.

1. I have had the advantage of reading the judgments of my brothers Mushtaq Ahmad and V. Bhargava. After having given the matter my best consideration, I find myself in agreement with the view taken by Mushtaq Ahmad J.

2. It appears that one Raghunandan and his brother's widow Shrimati Ram Dulari made an application under Section 4, Encumbered Estates Act.

Their written statement filed under Section 8 of the Act contained a schedule of their property. This schedule included, inter alia, an item consisting of a half share in a Kachha house and its site and four neem trees. In other words, the applicants claimed title to not more than half share in the aforesaid item of the property and conceded that the remaining half share was owned by some one else.

3. The learned Special Judge published the required notice under Section 11 of the Act, but in the schedule of the property the entire house, and not a moiety share only therein, was described as the property of the applicants. At the time of sending the list of property to the Collector under Section 19 (2) of the Act, the same error was repeated. The Collector held the sale and in doing so put up the entire house together with its site and all the four trees to sale as the property of the applicants. One Debi Shankar purchased the house and the site. After his death, his widow Shrimati Surja Kunwar obtained a sale certificate. Thereafter, she sold the house together with the site to one Shrimati Ram Piari and her two sons.

4. The suit, which gave rise to this second appeal, was instituted by one Baladin. He claimed to be the owner of the other half share in the aforesaid items of property. He claimed possession of a half share in the house from Shrimati Ram Piari and her sons. His contention was that the Special Judge's act in including his property in the list of applicant's property was ultra vires and did not bind him.

5. The respondents raised several pleas in defence. They denied Baladin's title and possession within 12 years. They claimed to be the bona fide purchasers for value without notice of Baladin's title. Lastly, they pleaded that the suit was barred by the provisions of the Encumbered Estates Act.

6. The trial court overruled these pleas and decreed the suit. On appeal the learned Judge held that the suit was not maintainable and on this ground alone he allowed the appeal. He did not record findings on other issues. Hence, this second appeal.

7. It is a time honoured maxim of law that for every wrong there is a remedy and it can be obtained from an appropriate court. Section 9, C. P. C., lays down that civil courts shall have jurisdiction "to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred." In the present suit the plaintiff is seeking a remedy of a civil nature and he has prima facie a right to come to civil court, unless it can be shown that this right has been taken away either expressly or impliedly.

8. Reliance is placed, on behalf of the respondents, on Section 47, Encumbered Estates Act. It is contended that this section takes away the jurisdiction of the civil courts. It runs as follows:

> "Except as provided in Sections 45 and 46, no proceedings of the Collector or Special Judge, under this act, shall be questioned in any court."

Section 45 relates to appeals, and Section 46 to revisions and are irrelevant for the purposes of the point to be considered in this appeal. The material words to be interpreted in Section 47, are "under this Act."

9. There can be no doubt that if the order sought to be challenged by means of a civil suit is one which the Special Judge could legitimately pass under the provisions of the Encumbered Estates Act, it cannot be questioned in a civil court. If, however, it was of such a nature that the Special Judge was not empowered under any provision of that Act to pass, a civil court, in my judgment, will have jurisdiction to examine it in order to satisfy itself whether the Special Judge acted within the powers conferred on him by law. In this connection, it may be pointed out that there is no power conferred by any provision of the Encumbered Estates Act on a Special Judge to include the property of a third person in the list of the property of a landlord debtor and thereby to bring to sale the property owned by a person who is not an applicant before him. In this view of the matter, it will follow that the learned Special Judge's order including Baladin's property in the list of the applicant's property was not an act prescribed or authorised by the Act. It was, therefore, not an act done "under this Act", and it can, therefore, be challenged by a regular suit.

10. A number of authoritative pronouncements are available about the interpretation of the expression "under this Act." Section 16 (1), Defence of India Act provides that:

> "No order made in exercise of any power conferred by or, under this Act, shall be called in question in any Conrt."

Interpreting this provision of law, Lord Thankerton remarked in Emperor v. Shibnath Banerji, 72 Ind. App. 241 (P. c.) at p. 267, that this "sub-section assumes that the order is made in exercise of the power, which clearly leaves it open to challenge on the ground that it was not made in conformity with the power conferred."

Thus, it was held that if the order was in excess of the powers conferred by the Act, it could be challenged in the civil Court, notwithstanding the fact that Section 16 (1) ostensively barred jurisdiction of the civil Courts.

11. To the same effect is the dictum of the same learned Judge in Secretary of State v. Mask & Co., A. i. R. 1940 P. C. 105. There it was remarked that "The exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but such exclusion must, either, be explicitly expressed, or clearly implied. Even if jurisdiction is so excluded the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

12. Eeference may also be made to Section 15, U. P. Maintenance of Public Order Act (IV [4] of 1847). This section enacts that:

> "No order made in exercise of any power conferred by or under this Act, or any rule made thereunder shall be called in question in any Court."

This provision was interpreted by a Full Bench in the case of Rex v. Durga Das, 1948 ALL L. j. 491 (F. b.) as empowering the Courts to examine whether or not the executive had acted within the scope of the Act. Acting on the same princile, this Court set aside in Sam Nagina Rai v.

District Magistrate of Ghazipur, 1950 ALL L. J. 350 in exercise of its powers under Section 491, Criminal P. C., an order passed by a District Magistrate detaining, under the provisions of the said Act, a person who was not residing in his district. It was held that the Magistrate had no jurisdiction to act and therefore his order could be set aside by this Court.

13. The same principle was recognised in District Board of Farrukhabad v. Prag Dutt, 1948 ALL. l. j. 338 (F. b.). Section 131, District Boards Act, bars the jurisdiction of the civil and criminal Courts in matters relating to taxation. But this Court interfered with the District Board's order relating to taxation where it was found that the District Board had exceeded its powers under the Act.

14. The point to be considered is that if it is conceded that where there is lack of jurisdiction, a civil suit would lie, then it must be examined whether the present case is one in which the Special Judge had no jurisdiction to take cognizance of it or he made a mistake in exercise of his jurisdiction. I am clearly of the opinion that the Special Judge had no jurisdiction to include the other half of the house in the list of debtor-applicant's property. As already pointed out, there is no provision in the whole of the Act which confers jurisdiction on the Special Judge to include the property of a third person, nor is there any provision which empowers him to bring the property of a third person to sale. The present one is a case where the jurisdiction did not exist at all. A mistake in exercise of

jurisdiction is a totally different matter. To elucidate the point I would take an example. Suppose, Baladin had put forward his title to a half share of the property and had lodged a claim in respect thereof, and further suppose that after trial the Special Judge had rejected Baladin's claim. In that case Baladin could not come to regular Courts to question the Special Judge's order, or the order passed on appeal.

15. An order passed in purported exercise of jurisdiction does not stand on the same footing as an order passed in exercise of jurisdiction. In this connection, reference may be made to the recent case of Mt. Amadi Begum v. The District Magistrate, Agra, 1951 ALL. l. J. 669. That was a case under the U. P. Temporary Accommodation Re-quisition Act. Section 16 of the Act, enacted that:

> "No order made for exercise of any power conferred by or under this Act, shall be called in question in any Court."

The order which was sought to be challenged in that case purported to have been passed under the Act. Sapru and Agarwala, JJ., held that:

> "Section 16 does not cover orders made in the purported exercise of any power conferred by or under the Act, which orders are not in law covered by any provisions of the Act."

16. It will, thus appear that if the jurisdiction does not, in fact, exist, the mere fact that the Special Judge honestly believes that he possesses jurisdiction will not take away the civil Court's jurisdiction to question that order. A plaintiff, who can prove that the Special Judge's order was, in fact, without jurisdiction, can certainly claim relief through civil Courts. I have, therefore, come to the conclusion that Baladin's suit was maintainable in the civil Court.

17. It is not necessary in this case to express any opinion as to whether or not the case of Ram Ban Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. l. j. 385, was rightly decided. In that case there was no lack of jurisdiction and this point was clearly given prominence to by the learned Judges. Certain cases of Calcutta High Court were cited before them in which it had been held that if any Special Tribunal exceeded its jurisdiction, civil Court could question that order. Their Lordships distinguished the case before them from the Calcutta cases on the ground that there was no such "defect or irregularity in the proceedings" in the case before them.

18. I would, therefore, allow the appeal with costs, set aside the decree of the lower appellate Court, and remand the case to that Court with the direction that it shall, after determining the remaining issues in the case, dispose of the appeal before it afresh, according to law.

Mushtaq Ahmad, J.

19. As some doubt was felt about the correctness of the view taken in the Bench ruling in Ram Ran Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. l. J. 385, the learned Judges who heard this appeal originally referred it for decision to a larger Bench. They took care, if I may say so, to remark that in

a particular respect the present case was distinguishable from that ruling, and for this reason it would, strictly speaking, be unnecessary for the purpose of deciding this appeal to examine the correctness of the same, unless this Bench chooses to lay down a general rule, which would be a mere obiter. I would illustrate this position in proper context.

20. The appellant was the plaintiff in a suit for possession over a half portion of a land, now waste, on the northern side and two neem trees on the eastern side, as detailed in the plaint. The circumstances forming the background of the suit were these.

21. On 30,4-1936, one Raghunandan and his brother's widow, Mt. Ram Dulari,. applied under Section 4, Encumbered Estates Act. In their written statement under Section 8 of the Act they mentioned only one-half of a kachcha house with the site and four neem trees, that is, claiming only a half share in the house and its site and in the said trees. On 22-6-1938, the Special Judge published the necessary notice under Section 11 of the Act in respect of the whole of the said house and site together with the trees and not only of a moiety share in the same. On 12-10-1938, he forwarded a list of the landlords' properties to the Collector again mentioning the whole of the aforesaid house and site instead of only a half share therein. The Collector, in his turn, on 7-2-1942, sold the entire house and the site to one Debi Shankar, who obtained possession over it on 8-6-1942. Mt. Surja Kuar, widow of Debi Shankar, applied for a sale certificate on 3-2-1943, and later, on 4-5-1942, she sold the house to Ram Piari, defendant 1, and her two sons, defendants 2 and 3 in this case.

22. When all this had happened the suit giving rise to this appeal was filed on 5-2-1944, by the present plaintiff, Bala Din, claiming the relief I have already mentioned. His case was that Eaghunandan and his brother's widow, Mt. Ram Dulari, were owners only of a half share in the property, he himself owning the remaining half, so that the entire proceedings under the Encumbered Estates Act together with the sale deed executed by Mt. Surja Kuar in favour of the defendants 1 to 3 was null and void in so far as they concerned the plaintiff's half share.

23. The defence taken by the said defendants was that the plaintiff was not the owner of the half share claimed by him, that he had not been in possession of the house within twelve years and that these defendants were bona fide auction purchasers of the disputed share. It is not mentioned in the judgments of the Courts below that there was also a plea of the suit being barred under the provisions of the Encumbered Estates Act.

24. The trial Court rejected the defence and decreed the suit. The lower appellate Court dismissed it on the finding that it was barred by the order of the Special Judge dated 12-10-1938, forwarding the usual list of the landlords' properties to the Collector under the said Act.

25. The abstract question that seems to have arisen before the Bench making the reference was whether the suit was barred by the provisions of the Encumbered Estates Act. In the case of Ram Ran Bijai Prasad Singh v. Surjoo Singh, 1946 ALL. L. J. 385, referred to above, it had, no doubt, been held that where a claimant to a certain property claimed by a landlord-applicant under Section 4 of the Act had omitted to claim it under Section 11 thereof, he was debarred from filing a suit in the

civil Court to agitate his title. In the present case, as we have seen above, the one-half share in the house and the trees now in dispute had never been claimed by the landlords, Raghunandan and Mt. Ram Dulari, who had in fact expressly confined their assertions in their written statements under Section 8 of the Act only to the other half share. This, as also observed by the referring Bench, furnishes a feature of distinction between the said ruling and the present case, and the real question would be whether the view expressed in that ruling could also be taken in this case. I am definitely of the opinion that it cannot be, and that the suit giving rise to this appeal was not barred by any provision of the said Act.

26. Before entering upon a discussion of this legal point it would be convenient to mention that the landlords-applicants had actually claimed in their written statement under Section 8 of the Act only a half share. This being the position mentioned in the judgments of the Courts below and also very clearly in the referring order, it would hot ordinarily have been necessary to emphasise it in this judgment but for the fact that an elaborate argument was addressed by learned counsel for the defendants to this Bench that in the said written statement the whole of the house and not only a half share in it had been claimed by the applicants. There is no doubt a reference in the body of that document to an entire house, but in the schedule of properties the landlords confined their claim to a half share in the house in dispute. On the assumption that the two houses were the same learned counsel for the defendants wanted us to pin our attention only to the earlier statement and ignore altogether the later specification. Personally, even if the entire house in suit had been mentioned in the earlier part of the said written statement and later only a half share was specified as the only share liable to satisfy the landlords' debts, I would have had no hesitation in holding that they claimed only a half share in the house and no more. On the principle that the earlier statement would be deemed to be modified by the later one, and reading the document in its entirety, it would have been correct to hold that the landlords had claimed only a half share. But fortunately no difficulty of interpretation arises in this case as ultimately it was found and indeed I agreed that the house mentioned as a whole in the earlier part of that written statement was quite different from the house, a half share only in which was claimed in the schedule of properties. The learned Munsif on this point had observed :

> "There is also mention in Ex. 3 (the written statement of 10-9-1936) about a residential house, and in the oral statement parties admitted that Raghunandan had another residential house besides the house, now fallen, in suit."

The position thus is clinched that the landlords, so far as the house now in dispute is concerned, had claimed only a half share in it and no more.

27. The question, therefore, resolves itself into the simple issue whether even where the landlord-applicant, has not claimed a certain property, of course in the present case a half share in a house, but the same is notified by the Special Judge under Section 11 of the Act as property claimed by the landlord and the entire subsequent proceedings right up to sale have gone on, on the assumption that the landlord -had claimed that property, the real owner is debarred from claiming the same in a suit merely by reason of his omission to lay a claim to it under Section 11 of the Act. This is a question of course much easier than the larger question on which the Bench in Ram Ran

Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. L. J. 385 expressed itself. Even in that case the learned Judges, if I may say so with respect, took precaution to make the following observation to suggest that the rule laid down by them might not apply in all cases:

> "In the present case there is no suggestion whatever of any defect, or irregularity in the proceedings before the Special Judge and, therefore, the appellant cannot claim that the civil Court is invested with jurisdiction on this ground."

28. Conversely, this must mean that, where there was such a suggestion, namely where proceedings before the Special Judge were vitiated by "any" defect or irregularity," the civil Court could entertain a claim by a person who had not made it under the Encumbered Estates Act. I would now see whether there was any such defect or irregularity in the present case.

29. Section 8, Encumbered Estates Act, requires the landlord-applicant to file a written statement mentioning, among other things "the nature and extent of his proprietary rights in land." Section 11 (1) requires the Special Judge to "publish a notice ..... specifying the property mentioned by the applicant under Section 8 ....."

On a bare reading of these two sections, it is manifest that the. Special Judge is to notify only the property or properties "mentioned by the applicant under Section 8" and no more or less. In respect of this property he is vested with jurisdiction to do a number of things mentioned in the later sections of the Act, and the chain of proceedings ultimately ends in the liquidation of the landlord's debts by the Collector from the property, "the nature and extent of the property mentioned in the notice under Section 11". having been conveyed to him by the Special Judge under Section 19 (2) of the Act. Here, again, the reference is to the property "mentioned in the notice under Section 11" which itself, as already shown, refers to "the property mentioned by the applicant under Section 8." These two Sections 11 and 19, so far as the specification of the property is concerned, are confined strictly to the property claimed by the landlord in his written statement under Section 8. Where the Special Judge either under the one or the other section has gone beyond that property he has obviously gone in excess of his powers, and this is the same thing as to say that he has exercised jurisdiction which he never had. The words "defect" and "irregularity" in the passage quoted by me above from the judgment in Ram Ran Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. L. J. 385 would be clearly illustrated where, as in this case, the Special Judge notifies a property which had never been claimed by the landlord in his written statement under Section 8, and where such is the position the civil Court would of course have jurisdiction to declare the real owner's claim to such property, even though he may not have made it under Section 11 of the Act.

30. Mr. R. C. Ghatak appearing for the defendants-respondents pleaded Section 47, 'Encumbered Estates Act as a bar to the suit. That section enacts:

> "Except as provided in Section 45 (appeals) and 46 (revisions) no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court."

He argued that whatever the Special Judge in this case had done under Sections11 and 19 of the Act qua the one-half share now in dispute should be taken to have been done "under this Act." That is to say, according to him, once the Special Judge acting as such notifies a certain property under Section 11 and has ultimately communicated the same under Section 19 to the Collector, no matter whether the same had or had not been claimed by the landlord in his written statement under Section 8 thereof, he must be held to have done so 'under the Act.' To my mind, this was a novel proposition and, if closely scrutinized, it would lead to appalling absurdities. I specifically put it to the learned counsel as to what he would say if the Special Judge had notified properties entirely different from those mentioned by the landlord in his written statement. He answered that even such a case did not affect his jurisdiction, although it might furnish an instance of irregularity in the exercise of it. This answer, to my mind, is a measure of the utter unsoundness of the contention, for, once the Special Judge had purported to act under Section 11 of the Act, he was free to bring within the enclave any property, even though the landlord himself might not have first claimed it. Putting the argument to another test, suppose a suit was filed in a civil Court in respect of property admittedly within the jurisdiction of that Court, but a decree was passed in the plaintiff's favour embracing so many other properties which were actually beyond the jurisdiction of the Court, could the decree be upheld merely on the excuse that the suit had been filed in a proper Court and that whatever decree that Court had passed must be accepted as intra vires? I think the answer must be in the negative.

31. The words "under the Act" in Section 47 of the Act may be easily appreciated by referring to a number of decisions illustrating the extent to which a Court acting under a particular statute may be deemed to have exercised its jurisdiction rightly, the same also evolving the limits within which such jurisdiction may be so exercised and beyond which the Court may be deemed to have no jurisdiction at all. Cases have arisen on this point under various enactments defining the extent of the jurisdiction of Courts and also laying down the precise terminus where such jurisdiction ends and discrediting the legal value of the proceedings taken in contravention of those limits from the point of view of jurisdiction.

32. In Secretary of State v. Mask & Co., A.i.r. 1940 P. C. 105 it was observed :

> "The exclusion of the jurisdiction of the civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, -civil Courts have jurisdiction to examine into cases where the provisions of the Act. have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

This dictum was followed by a Full Bench of this Court in District Board of Farrukhabad v.

Prag Dutt, A. i. R. 1948 ALL. 382 (F.b.), where the question was whether the action of the District Board in levying a tax in excess of the limit enjoined by the Professions Tax Limitation Act could be challenged in the civil Court in spite of the provisions of Section 131, U. P. District Boards Act, x [10] of 1922. This section provides :

> "(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act or in the United Provinces Local Bates Act, 1914.
>
> (2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final: provided that it shall be lawful for the appellate authority, upon application or on his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order."

The District Board in this case levied a tax beyond the amount prescribed by the Professions Tax Limitation Act. The civil Court was held to have jurisdiction to set aside the assessment.

33. Again, in District Board, Dehra Dun v.

Damodar Dutt, I. L. R. (1944) ALL. 611, the Board had brought a suit for the recovery of a certain sum of money on account of circumstances and property tax. It was contended by the defendant that he did not reside within the rural area. The Board pleaded that under Sections 128 and 131, U. P. District Boards Act, the defendant could not raise the plea, after he had been assessed to the tax, that he was not a resident of the rural area.

The learned Judges observed :

> "The answer to this contention is that all this presupposes that the District Board had jurisdiction to impose the tax. Where the very foundation of the claim of the Board, that is, its very jurisdiction, is challenged, no provision of the Act can come into operation. We have, there-
>
> fore, come to the conclusion that the learned Small Cause Court Judge was right in holding that, once it is establish ed that Kishan Datt did not reside within the jurisdiction of the District Board of Dehra Dun, the latter had no right to impose any tax."

In this case it was laid down that the word "assessment" in Section 131 of the Act meant "assessment" in accordance with law. This, again, is based on the rule that any action done by the Board within the framework of the U. P. District Boards Act could not be annulled by the civil Court, its jurisdiction being barred by Section 131 of the Act, but that, if the Board went contrary to the provisions and beyond its jurisdiction, a suit in the civil Court lay.

34. In Chairman of Giridih Municipality v. Suresh Chandra Mozumdar, 35 cal. 859, it was emphasised :

> "Section 116, Bengal Municipal Act, does not take away the jurisdiction of civil Courts in a case in which it is alleged and established that the assessment, the propriety of which is in controversy, ia open to objection on the ground that it is ultra vires."

To the same effect is the decision in Jesraj Jai-chandlal v. Chairman of Natore Municipality, 58 cal. 1356, where it was remarked :

> " the civil Courts have jurisdiction to entertain a suit brought by an assessee for a declaration that the sum assessed by a Municipality as licence fee for a 'yard or depot for trade in Jute' was not legally recoverable, where the action of the commissioners of the municipality exceeded their statutory powers, and as such the levy of a license fee of Rs. 326 was ultra vires because the entire area in respect of which the license fee was levied by the municipality was not a 'yard or depot for trade in jute'."

In the U. P. Municipalities Act, 1916, also there are corresponding provisions attaching finality to the order of the Municipal Board subject to a right of appeal to the Collector, and Section 321, U. P. Municipalities Act, expressly provides :

> "(1) No order or direction referred to in Section 381 shall be questioned in any other manner or by any other authority than as is provided therein.
>
> (2) The order of the appellate authority confirming, setting aside or modifying any such order or direction shall be final."

At least in two Full Bench decisions of this Court, one in Munna Lal v. Municipal Board, Cawnpore, I. l. R. (1937) ALL. 43 (F. b.) and the other in Dr. Brij Behari Lal v. Emperor, I. L. R. (1943) ALL. 317 (F.B.) it was laid down that the jurisdiction of the civil Court could not be denied where the Board in the former and the criminal Court in the latter case had gone beyond the powers prescribed by the Act and acted in disregard of the limitations subject to which alone those powers could be exercised.

35. The conclusion to which the above authorities inevitably lead us is that, where a person or Court vested with a certain power has acted, to use the words of the Judicial Committee in Secretary of State v. Mask & Co., A. I. R. 1940 P. C. 105, 'within the framework' of the law creating that power, the order passed cannot be challenged in the civil Court. On the other hand, if the order passed involves a transgression of the limits of the power conferred, and this may take a variety of forms, the jurisdiction of the civil Court to declare it invalid and determine the rights of the parties according to law remains unaffected.

36. Applying this rule to the present case, I have already noted that under Section 11 (1), Encumbered Estates Act, the Special Judge could notify only the 'property mentioned by the applicant under Section 8 . . .', neither more nor less, and that, sunder Section 19 (2), thereof, he could inform the Collector 'of the nature and extent of the property mentioned in the notice under Section 11 ', that is to say, the property originally mentioned by the landlord in his written statement under Section 8 of the Act. If, as in this case, he notified property not mentioned in that written

statement and, therefore, not claimed by the landlord as his, the notification was, on the face of it, beyond the terms of Section 11 (1) and Section 19 (2) of the Act. This only means that to that extent he had no jurisdiction either to notify under the one or to communicate to the Collector under the other sub-section. The Collector in his turn having derived his authority to deal with the property under the later sections of the Act from the order of the Special Judge under Section 19 (2), which itself, as shown, was without jurisdiction, the entire proceedings taken by him were also without jurisdiction. And consequently the auction-purchase, dated 7-2-1942, by Debi Shanker and the subsequent sale-deed dated 4-5-1943 by his widow Surja Kunwar to defendants l to 3 were also illegal and created no title in favour of these purchasers respectively.

37. Mr. R. C. Ghatak, learned counsel for the defendants-respondents, invited the attention of the Bench to a number of cases and contended that the order of the Special Judge, even in so far as it covered the one half share now in dispute in the land, was final. These were: (1) Req v. Income Tax Commrs. (1888) 21 Q. b. d. 313; (2) Brij Raj Krishna v. S. K. Shaw & Bros., A. I. R. 1951 S. C. 115, (3) Janardhan Beddy v. State of Hyderabad, A. I. R. 1951 S. C. 217 and (4) Baleigh Investment Co., Ltd. v. Governor-General in Council, 74 Ind. App. 50 (P. C.). I would deal with these cases seriatim.

38. The first case Req. v. Income Tax Commrs. (1888) 21 Q. b. d. 313 was one under Section 133 of 5 and 6 VICT. c. 35, and the question there was whether an order of the Commissioners for General Purposes on a claim for re-payment of tax was final and not open to be questioned. Learned counsel relied on the following passage in the judgment of Lord Esher, M. R. :

> "I have been laying down what in my opinion is the general rule of conduct for those charged with that inquiry, but the question arises who are to make that inquiry. In the first instance obviously the Commissioners for General Purposes. They have to determine that question, and they must determine it, as it seems to me according to the rule I have laid down. But when they have determined it, can their decision be questioned afterwards? It will be said on the one side that their jurisdiction depends on the decision of that question and, applying a well-known formula, that they cannot give themselves jurisdiction by a wrong decision on the facts, I have considered that formula with great care and, though it is correct enough for certain purposes, I think its application is often misleading. When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shewn to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.
>
> "But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further of do something more. ... In the second of the two

> cases I bave mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existenceof the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction. In this case I think the Act gave the Commissioners for General Purposes jurisdiction to inquire into and finally determine the question whether the applicant has brought his case within the terms "at the end of the year" interpreted in the sense I have mentioned. If they determine that he has not, then they cannot proceed further in the matter".

39. No such general rule as was contended for by the learned counsel for the respondents is, in my opinion deducible from the above passage. It only meant that, where the Commissioners for General Purposes alone had been vested with power to investigate into a state of things and, on finding that the same existed, to pass a certain order, there was no jurisdiction in any other authority to question the result of that investigation or that order. The two important elements to bear in mind in this connection are that there was power vested in the Commissioners to make an investigation as a preliminary step to his passing the final order on a claim for refund and that in the case cited he did actually exercise that power and made the necessary investigation. Viewed in this light, the passage in question hardly improves the respondent's position and presents no inconsistency at all with the legal position I have set forth above on the authority of the various rulings earlier , noted. Setting the passage in the context of the present case there hardly appears to be anything common between the two. Here, not only there was no power vested in the Special Judge to deal with any property which the landlord applicant had not claimed in his written statement under Section 8, Encumbered Estates Act but the Special Judge in fact never made any determination of the landlord's title one way or the other in respect of the one-half share now in dispute.

A determination properly so-called must involve the prerequisite of an issue or controversy between certain parties to the proceedings. The very fact that an order passed by the Special Judge under Section 11, Encumbered Estates Act is under Sub-section (4) thereof to "be deemed to be a decree of the civil Court" suggests that there is to be some sort of 'adjudication which .... conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit'. In the present case, as mentioned more than once, the landlords-applicants had never claimed the one-half share now in dispute as their own, and consequently there could be no controversy between them and any other party as to whether they owned that share. A fortiori, there could be no occasion before the Special Judge for a 'determination' of any such controversy, and, therefore, it could in no sense be claimed that there, was any investigation about the said title and much less that the Special Judge had ever made it against the landlords, so that the same could not be challenged subsequently in a civil suit. All these features are conspicuously absent in the ruling which I am considering.

40. The second case Brij Raj Krishna v. S. K. Shaw & Bros., A. I. R. 1951 S. C. 115, was one under the Bihar Buildings (Lease, Bent. and Eviction) Control Act, in of 1947, in which it was held that the

power of the House Controller to determine whether circumstances existed which justified the tenant's eviction was absolute. Their Lordships quoted with approval the following passage from the judgment of Sir James Colville in Colonial Bank of Australasia v. Willan, (1874) 5 P. C. 417:

> "Accordingly, the authorities . . . establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defects appear on the face of it, to be taken as conclusive of the facts stated therein; and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that, any such fact, however, essential, has been erroneously found."

41. Here also the essential elements to be noted are that the Judge should have jurisdiction over the subject-matter and that the adjudication should not disclose any defects on the face of it. I have already pointed out in connection with the ruling first explained that in the present case the Special Judge had neither any jurisdiction to determine the landlords' claim qua the one-half share now in dispute nor did he have any occasion to determine or actually did determine such a claim. The answer to this ruling of the Supreme Court is also the same as to the first case cited by the learned counsel for the respondents.

42. The third case Janardhdn Ready v. State of Hyderabad, A. I. R. 1951 S. C. 217, was one of a writ under Article 32 of our Constitution, in which the following passage was invoked by the learned counsel for the respondents in his support :

> "But for the purpose of the present case, it is sufficient to point out that even if we assume that there was some defect in the procedure followed at the trial, it does not follow that the trial Court acted without jurisdiction. There is a basic difference between want of jurisdiction and an illegal or irregular exercise of jurisdiction, and our attention in which mere non-compliance with the rules of procedure has been made a ground for granting one of the writs prayed for. In either ease, the defect, if any, can according to the procedure established by law be corrected only by a Court of appeal or revision. Here, the appellate Court which was competent to deal with the matter has pronounced its judgment against the petitioners and the matter having been finally decided is not one to be reopened in a proceeding under Article 32 of the Constitution."

43. The answer to the argument of the learned counsel is contained in the above passage itself. There is certainly no lack of jurisdiction where the Court having jurisdiction merely exercises it with irregularity. Where, however, there is no jurisdiction at all in regard to a certain matter or subject and the Court wrongly assumes jurisdiction over the same, there is no question of a mere irregularity in the exercise of jurisdiction, and the case would clearly come within the category of a pure absence of jurisdiction. With reference to the present case, once again it may be repeated, the Special Judge had no jurisdiction to deal with the share now in suit, and, indeed, if we could assume that he had jurisdiction over it, he no doubt proceeded to deal with it otherwise in accordance with the rules contained in the rele vant sections of the Encumbered Estates Act.

There was no mistake in applying those rules, once it could be taken that he had power to include this share in the notice published by him under Section 11 of the Act. This case also, therefore, does not advance the position in favour of the respondents.

44. The fourth and the last case Raleigh Investment Co. Ltd. v. Governor-General in Council, 74 Ind. App. 50 (P.c.), was one under the Indian Income Tax Act on appeal from an order of the Federal Court of India. Section 67 of the Act provides that "no suit shall be brought in any civil Court to set aside or modify any assessment made under this Act ..." There was an assessment made under the Act, and the Judicial Committee merely held that it could not be challenged otherwise than in the manner provided therein. The assessment itself implied the determination of a question specifically within the jurisdiction of the Income Tax authorities. There was no suggestion, and in fact none could be made, that those authorities had no jurisdiction to make the assessment. This case, therefore, does not furnish an instance of the Income Tax. authority having acted without jurisdiction and is thus no answer to the appellant's contention with reference to Sections 8, 11 (1) and 19 (2), Encumbered Estates Act.

45. A careful scrutiny of these cases relied upon by the learned counsel for the respondents makes it apparent that they are not only distinguishable but they in fact materially support the rule uni formly adopted in the various cases relied upon by the learned counsel for the plaintiff-appellant and examined by me in detail above.

46. There was some argument with regard to the suit being barred under Section 47, Encumbered Estates Act, learned counsel for the appellant contending that it was not so barred as the appellant was not a party to the proceedings before the Special Judge. That he was a party is fully made out by the fact, as shown by the order-sheet, that he was expressly impleaded after he had made an application on 9-7-1938, that he should be "exempted from the case", and that he was actually examined as a witness, presumably in support of that application. But while the plaintiff could not contend that the suit was not barred on account of his not having been a party to those proceedings, the bar contended for by the respondents is negatived by the most vital circumstance, as already discussed, that the Special Judge had no jurisdiction to deal with the share now in suit.

47. There was a, further argument by the learned counsel for the plaintiff-appellant that there being no provision in the said Act analogous to the provision in Section 13 thereof an order under Section 11 could not be deemed as final. This formed the main basis of the view taken by a Bench of the Oudh Chief Court in the case of Ram Dal v. Suraj Bux, A. I. R. 1948 oudh 271, in which in fact the ruling of this Court in Ram Ban Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. l. j. 385, which led to the present reference, was not followed. In the former case, it was held that a suit by a person claiming property which he had omitted to claim under Section 11, Encumbered Estates Act, was not barred, whereas in the latter it was ruled that such a suit was barred, the learned Judges at the same time suggesting that the position might be otherwise if the proceedings before the Special Judge were vitiated by any defect or irregularity. There is, thus a direct conflict between these two decisions which there may be an occasion in a proper case to set at rest. In the present case, however, it is not necessary to enter upon the controversy, as the initial defect of absence of jurisdiction in the Special Judge to deal with the share now in dispute is by itself decisive of the

appeal.

48. For the above reasons I have come to the conclusion that the suit was not barred by the provisions of the Encumbered Estates Act. I would, therefore, allow this appeal with costs, set aside the decree of the lower appellate Court and remand the case to that Court with a direction that it shall, after determining the remaining issues in the case, dispose of the appeal before it afresh according to law.

V. Bhargaya, J.

49. The facts of this case have been given in detail by my brother, Mushtaq Ahmad, J. I, therefore, need only mention a few salient points which require consideration for the decision of this appeal.

50. The appellant brought this suit for possession over half portion of a plot of land which was once the site of a house and for possession over four nim trees. The house is said to have fallen down some time after April 1936. The case put forward by the appellant was that half of that house belonged to him whereas the remaining, half belonged to Raghunandan and his brother's wife, Ram Dulari. Baghunandan and Ram Dulari applied under Section 4, Encumbered Estates Act, on 30th April 1936, and thereafter in their written statement under Section 8, Encumbered Estates Act filed on 10th September 1936, they showed half of that house as their property. On 22nd January 1938, the notification under Section 11 (1), Encumbered Estates Act was issued by the Special Judge, and the whole house was shown in this notice as belonging to the landlord-applicants, Raghunandan and Ram Dulari. On 12th October 1938, the Special Judge forwarded a list of property liable to attachment and sale in the debts of the landlord applicants under Section 19, Encumbered Estates Act. The Collector thereupon took proceedings for the sale of the property and in the sale the whole house was sold and purchased by one Debi Shanker. On 8th June 1942, possession was delivered to Debi Shanker over the whole house. The whole of this property was then acquired by respondents 1 to 3 through a sale executed by Surja Kuar, widow of Debi Shanker, on 24th May 1943. The present suit was filed by Baladin appellant in 1944. The main defence in the suit was that no suit lay for a claim to ownership by Baladin as it was barred by the provisions of the Encumbered Estates Act.

51. The first aspect of the question that has to be noticed is that the plea that no suit claiming ownership of the house could at all be filed by Baladin due to the provisions of the Encumbered Estates Act cannot in this form be accepted. The only bar to a suit under the Encumbered Estates Act is laid down in Section 47 of that Act which is as follows :

> "Except as provided in Sections 45 and 46, no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court."

This provision does not support the proposition that no suit at all can be entertained in which there may be a claim to some property that has been subject to a determination by the Special Judge under Section 11 and has been found to be liable to attachment and sale in the debts of the landlord applicants and has been subsequently mentioned as such in the list prepared under Section 19 (2). This point came up before a Full Bench of this Court at Lucknow in Krishna Pal Singh v. Mt.

Babban, Second Appeal no. 602 of 1946, D/- 12-11-1951. The Full Bench in that case held that the mere fact that the property had been mentioned in the list under Section 19 (2), Encumbered Estates Act did not make the landlords-applicants the owners of the property and the utmost that could happen was that the person, who should have objected under the Encumbered Estates Act but had not objected, might be held debarred from objecting to the attachment, mortgage or sale of property in satisfaction of the debts of the landlords-applicants, though on the latter point no opinion was expressed by that Full Bench. It is this question which was left open by the Full Bench that has to be considered in this case, because in this case the property now in dispute was not only mentioned in the list under Section 19 (2) but has actually been sold by the Collector under Section 24, Encumbered Estates Act. The question that here arises is whether the sale by the Collector can be challenged by a suit in a civil Court. Learned counsel for the appellant cited the case of Secretary of State v. Mask & Co., A. I. r. 1940 P. C. 105 wherein their Lordships observed that :

> "The exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

52. That ease is of little assistance to the appel lant in this case because here the respondents have relied on the explicit and clearly expressed exclu sion of the jurisdiction of the civil Courts laid down in Section 47, Encumbered Estates Act quoted above.

What is contended on behalf of the respondents is that because of the provisions of Section 47 it is not open to the appellant to challenge the proceedings of sale by the Collector. The respondents' predecessor-in-interest, Debi Shanker, acquired this property through the sale held by the Collector under Section 24, Encumbered Estates Act, and there is thus a clear and express bar to the title of the respondents being challenged which can be done only by challenging the validity of the proceed ings of the Collector. The appellant cannot have a declaration that he is the owner and cannot obtain a decree for possession unless the Courts first hold that the sale of the property by the Collector in the Encumbered Estates Act proceed ings was not justified and unless they set aside that sale. This is, therefore, a case where the jurisdiction of civil Courts is clearly barred un less it can be held that, for want of jurisdiction, the sale by the Collector was null and void and can be treated as such by any other Court.

53. The next contention of the learned counsel for the appellant is that the sale by the Collector was null and void and could convey no title in respect of the property now in suit, because this sale proceeded on the basis of the list sent by the Special Judge under Section 19 (2), Encumbered Estates Act and the Special Judge acted without jurisdiction in including this property in that list. There are two answers to this contention. The first is that it is immaterial whether the Special Judge showed this property in the list under Section 19 (2) rightly or wrongly in exercise of proper jurisdiction or without jurisdiction when the question to be judged is as to whether the sale by the Collector was or was not without jurisdiction. There can be no doubt at all that under Section 24.

Encumbered Estates Act the Collector had complete jurisdiction to sell all the property that may have been mentioned in the list under Section 19 (2) prepared by the Special Judge; and this jurisdiction vested in him, even if that property was mentioned wrongly or without jurisdiction by the Special Judge. Section 47, Encumbered Estates Act, would stand in the way of the sale by the Collector being challenged in a civil Court as long as the Collector at least acted in the exercise of his jurisdiction in making that sale.

54. The second, and the one that appears to be the more proper answer is that it is not possible to hold in this case that the mention of this property in the list under Section 19 (2) by the Special Judge was without jurisdiction. It may be possible to hold that this mention of the property in suit in the list was wrong or, possibly, even against law and facts, but it is not possible to hold that it was entirely without jurisdiction. The appellant's contention is based on the fact that in the written statement filed by the landlords applicants under Section 8, Encumbered Estates Act, the property mentioned was the half share of the applicants in the kutcha residential house with the land and four trees appurtenant thereto, and there was no mention of it at all in any of the claims filed by the creditors under Section 10 contending that the property in suit also belonged to the landlords-applicants, so that the Special Judge had no jurisdiction to show this property also in the notice issued by him under Section 11 (1), Encumbered Estates Act, and thereafter to include this property in the list under Section 19 (2). Firstly, it was argued by the learned counsel for the respondents that in the written statement of the landlords-applicants under Section 8 what was claimed by the landlords-applicants was the whole house and not merely half the house. In the body of the written statement there was a mention of a residential house and it was stated that the whole of it belonged to the landlords-applicants. In the schedule which was referred to in the body of the written statement as showing the property which was liable to attachment and sale for satisfaction of the debts of the landlords-applicants the description of one of the items of property was in the following words :

> "Ek qita makan sakunti kham mahduda zail jis me Thakur Ji birajman hain mai arazi va char darakhtan nim baqadar nisf hissa sayelan."

Learned counsel for the respondents interpreted these two descriptions to mean that the whole residential house had been claimed by the landlords-applicants as their property and contended that it was merely an error that the word 'nisf' in the schedule portion was written only once instead of being written twice. His contention is that, if in the schedule the word 'nisf' is read as being repeated and written twice over it would mean that the two landlords-applicants each owned half of that house so that the whole house was claimed to be liable to attachment and sale in satisfaction of the debts of th landlords-applicants.

This interpretation cannot however be accepted in this case. In the present case, there is a mention in the judgment of the trial Court that, in the oral statement before that Court, parties admitted that Raghunandan, the landlord applicant, has another residential house. This admission clearly shows that the residential house mentioned in the body of the written statement was that residential house and not the house which stood on the land now in dispute. I, however, feel that, though in this case we have materials to come to this finding, it would not be justified on our part now to sit in

judgment over the Special Judge and hold that, even without such an oral statement of the partie.s before him, the Special Judge also was bound to reject the contention which is now put forward by the learned counsel for the respondents in this case and that he could not possibly have come to the conclusion that the whole house was being claimed in the written statement. Probably, even without the oral statements of the parties which were made in the course of the present suit, if we had been dealing with the Encumbered Estates Act proceedings, we might still have come to the view that only half the house was being claimed and not the whole house. But it cannot be said that it is a case in which the Special Judge could not have possibly on any interpretation come to the view that the whole house was being claimed as that of the landlords-applicants. Our opinion today that, if the Special Judge had held such a view that view would be wrong, would not divest the Special Judge of his jurisdiction to treat the whole house as having been claimed as the property of the landlords-applicants. It would only lead to the conclusion that the Special Judge, if he did so, was wrong. A mere wrong view held by the Special Judge cannot lead to the conclusion that he had no jurisdiction at all to deal with the whole house. In this connection, it is very important to take notice of the language of Section 11 (1), Encumbered Estates Act, under which the notice is issued by the Special Judge for the purpose of inviting all the persons concerned to file their claims in respect of the property which he intends to consider in order to find out which of it is liable to attachment and sale in satisfaction of the debts of the landlords-applicants, Section 11 (1) says that :

> "The Special Judge shall publish a notice in the manner specified in Section 9 specifying the property mentioned by the applicant under Section 8 or by any claimant under Section 10."

55. When issuing the notice under Section 11, therefore, it is the duty and the function of the Special Judge to 'specify the property' in that notice. In specifying the property, he is enjoined by this provision to specify the property that may have been mentioned by the applicant under Section 8 or by any claimant under Section 10. The specification of the property in the notice is, therefore, an act which the Special Judge does in exercise of his jurisdiction. If the Special Judge has a right to specify the property, he can specify it correctly or incorrectly, rightly or wrongly. Mere incorrect or wrong specification will not mean that the specification was without jurisdiction. In the present case it is admitted on all. hands that in the notice issued under Section 11 (1) when specifying the property the Special Judge mentioned the whole house and not merely half the house. This specification may have been incorrect or wrong, but it cannot be said that this specification was without jurisdiction. If it can be held that the Special Judge could, even by a wrong interpretation of the written statement of the landlords-applicants hold that the whole house was claimed by the landlords-applicants and, on that incorrect view, specified the whole house in the notice, such specification would only be wrong specification. It would not be specification without jurisdiction. The question whether the specification was right or wrong could be challenged in appropriate proceedings permitted by the Encumbered Estates Act itself. The mere fact that, now in this appeal, in the light of further information available as a result of oral statement made by parties in the trial Court, we are of the view that the specification was clearly wrong, cannot justify our holding that the Special Judge in making the specification was wrong and, in any case, even if he was wrong that he acted without jurisdiction and did not merely commit a mistake of facts or law. It is a well recognised principle that, if a Court has jurisdiction to do a thing, it has jurisdiction to do it rightly or to do it wrongly. In

the Encumbered Estates Act proceedings, the Special Judge had the jurisdiction to specify the property and consequently he had jurisdiction to specify it rightly or wrongly. The law required him to specify it in accordance with the mention of the property in the written statement under Section 8. If he specified it not in accordance with the written statement but by making a variation in the property mentioned in the written statement, he can only be said to have exercised his jurisdiction wrongly and such exercise of jurisdiction which was vested in the Special Judge cannot now be challenged in this independent suit nor the subsequent proceedings taken by him held to be null and void.

56. Reliance was placed on the remarks of a Bench of this Court in Ram, Ban Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. l. j. 385 where, when holding that Section 11 required all claims to the property to be put forward in the proceedings before the Special Judge and that his order with regard to the property claimed by any claimant under Section 11 must have the effect of a decree of the civil Court and the jurisdiction of the civil Court is barred, it was remarked that :

> "In the present case there is no suggestion whatever of any defect or irregularity in the proceedings before the Special Judge and therefore the appellant cannot claim that the Civil Court is invested with jurisdiction on this ground."

57. It was contended that the Bench in laying down that proposition impliedly held the view that, if there had been any defect or irregularity in the proceedings before the Special Judge, there would have been jurisdiction in the civil Court to entertain the claim with regard to that property by a person who had not laid such a claim under the Encumbered Estates Act. I do not think that such an implied meaning can be attributed to the Bench and can be justifiedly rsad in the remarks of the learned Judges. The case before them was one in which there was no suggestion of any defect or irregularity in the proceedings before the Special Judge and, therefore, when they gave their conclusion, they took this factor into account. It cannot be said that they intended to lay down that, in any case in which there might have been any defect or irregularity whatsoever in the proceedings before the Special Judge, the civil Court would have jurisdiction to consider the claim of the person who had not filed any objection under the Encumbered Estates Act. This proposition was not directly before them and they were not called upon to pronounce upon it. Their remarks must be held to be confined to, and meant for application to, the facts of the case before them. Learned counsel for the appellant also relied upon a Full Bench decision of this Court in District Board of Farrukhabad v. Prag Dutt, 1948 ALL. l. J. 338 (F.b.). The learned Chief Justice when dealing with the question of jurisdiction remarked as follows :

> "If an assessment is made within the framework of the Act but the assessment is wrong, it may not be possible for the civil Court to give to the assessee any relief and his remedy may be confined to an appeal under the Act.
>
> If, on the other hand, the assessment complained of is beyond the competence of the board and is, therefore, an illegal imposition, the civil Court should certainly have jurisdiction to interfere."

58. These remarks, if applied to the case before us, would not show that the order of the Special Judge was without jurisdiction. It was competent for the Special Judge to specify the property in the notice under Section 11 (1). The specification of the property was not beyond the competence of the Special Judge. All he did at best was to specify the property wrongly and such wrong specification would not make his subsequent proceedings relating to that property proceedings without jurisdic-tion. Similarly the case of District Board, Dehra Dun v. Damodar Datt, I.l.r. (1944) ALL. 611 is also of no assistance to the appellant. In that case it was held that the very foundation of the claim of the Board, that is, its very jurisdiction, Was challenged and consequently no provision of the Act came into operation. There the want of jurisdiction of the District Board was founded on the fact that the assessee did not at all reside within the jurisdiction of the District Board. It cannot be said that in the case before us there was any similar want of jurisdiction in the Special Judge to declare the property in suit as liable to attachment and sale in satisfaction of the debts of the landlords-applicants. In factfit is conceded that his declaration in respect of half the house was correct and the only dispute is with regard to the other half which is now the subject-matter of this suit. If one half of the house was within the jurisdiction of the Special Judge I cannot see how anyone can contend that the Special Judge had no jurisdiction to deal with the other half of the house also and grant a similar declaration in respect of it. Learned counsel for the appellant also relied on two decisions of the Calcutta High Court in Chairman of Giridih Municipality v. Surish Chandra Mozumdar, 35 Cal. 859 and Jesraj Jaichandlal v. Chairman of Natore Municipality, 58 cal. 1356. In my opinion, neither of these two cases carries us any further as there is no parallel between the facts of those cases and the facts of the case now bef6re us.

59. In order to decide the question whether in the present case the action of the Special Judge amounted merely to an irregularity or illegality or whether it amounted to exercise of jurisdiction not vested in him, much greater assistance is available from some cases in England where the question of jurisdiction was dealt with. In Beg. v. Income Tax Commrs., (1888) 21 Q. b. d. 313 Lord Esher, M. R., when dealing with the question as to what amounts to want of jurisdiction and what amounts to an irregular or illegal exercise of jurisdiction held that :

> "I have been laying down what in my opinion is the general rule of conduct for those charged with that inquiry, but the question arises who are to make that inquiry. In the first instance obviously the Commissioners for General Purposes. They have to determine that question, and they must determine it, as it seems to me, according to the rule I have laid down. But when they have determined it, can their decision be questioned afterwards? It will be said on the one side that their jurisdiction depends on the decision of that question and, applying a well-known formula, that they cannot give themselves jurisdiction by a wrong decision on the facts. I have considered that formula with great care and, though it is correct enough for certain purposes, I think its application is often misleading. When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give to that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether the state of

> facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

60. The principle laid down thus is that where exercise of jurisdiction depends upon determination of a fact and the Court is also entrusted with the duty of determining that fact an incorrect determination of the fact does not result in exercise of jurisdiction not vested in the Court and the order of the Court in such a case cannot be challenged on the ground that it was passed with-

out jurisdiction. In the case before us it is true that there was no duty cast on the Special Judge to make a determination of a fact but there was, instead, a duty to specify the property in the notice under Section 11 (1). In such a case even an incorrect specification of the property would not amount to exercise of jurisdiction not vested in the Special Judge.

61. In R. v. Weston-Super-Mare Justices, Ex Parte Barkers (Contractors) Ltd., (1944) 1 ALL. e. r. 747 at p. 750 it was held that :

> "It may seem rather a fine distinction, but I think there is a distinction between a jurisdiction which is in fact limited as in the case Bex v. Bradford, (1908) 1 K. B. 365 by certain requirements, and a case in which a person of a particular description or having a particular capacity or status is fixed with responsibility for doing or not doing a particular thing. In such a case it is part of the issues which the Magistrates have to decide when the information is brought against a person said to be acting in that capacity or having that status."

62. Thus where the status or capacity of a person has to be determined by the Magistrates themselves to give them power to take proceedings against that person, it was held that an incorrect decision would not raise a question of jurisdiction.

63. In Bex v. Ludlow, Ex parte Barnsley Corporation, (1947) 1 K. B. 634 at p. 639 Lord Goddard C. J., held that :

> "A person, who is aggrieved by the decision of such a tribunal as that to which I have referred, can only apply to the Court by way of certiorari to bring up the order and quash it if the tribunal has acted outside its jurisdiction. If it is acting within its jurisdiction, it is now settled law that absence of evidence does not affect the jurisdiction of the tribunal to try the case, nor does a misdirection by the tribunal to itself in considering the evidence nor what might be held on appeal to be a wrong decision in point of law. None of these matters are grounds on which the Court can grant certiorari." His Lordship quoted with approval the remarks of Greer, L. J. in Bex v. Minister of Health & Williams, (1939) l K. b. 232. that :
>
> "Where the proceedings are regular on their face and the Magistrates had jurisdiction, the superior Court will not grant the writ of certiorari on the ground that the Court below has misconceived a point of law. When the Court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction, merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence or convicts without evidence."

After quoting these remarks his Lordship went on to hold that :

> "The reason is that if Parliament has chosen to make the lower tribunal or body the absolute judges of the matters before it.and to give no appeal, this Court cannot interfere in a matter regarding which the lower Court haa been clothed with jurisdiction by Parliament".

64. Finally, I am also referred to the remarks of Lord Goddard, C. J. in Bex v. The Licensing Authority for Goods Vehicles for the Metropolitan Traffic Area, Ex parte B. E. Barrett Ltd., (1949) 2 K. b. 17 where in connection with an application for a writ of certiorari his Lordship held that :

> "For a certiorari, where jurisdiction is in question, the Court must be satisfied that there was either an absence of jurisdiction or an excess of jurisdiction, and to allow an order of mandamus to go there must be a refusal to exercise the jurisdiction. The line may be a very fine one between a wrong decision and a declining to exercise jurisdiction; that is to say, between finding that a litigant has not made out a case, and refusing to consider whether there is a case. Though the line is a fine one, the Court can generally distinguish between the two, and it must depend upon the facts of each particular ease."

65. The views expressed in all these cases clearly lead to the conclusion that, since the Special Judge in this case had the power to specify the property in the notice under Section 11 (1), his error, in specifying the property so as to include property for which there was no basis provided by the written statement under Section 8 or the claims under Section 10, would be a ease of exercising jurisdiction wrongly and not a case of exercising jurisdiction not vested in the Special Judge.

66. The view which was expressed by Lord Esher, M. R. in Beg. v. Income Tax Commissioner, (1888) 21 Q. b. d. 313 referred by me above was fully approved by our Supreme Court in Brij Raj Krishna v. S. K. Shaw and Bro., A. i. R. 1951 S. C. 115 and it was held that :

> "There can be no doubt that the present case falls within the sapond category mentioned by Lord Esher, because here the Act has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is non-payment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if the Controller may be assumed to have wrongly decided the question of nonpayment of rent, which by no means is clear, his order cannot be questioned in a civil Court."

67. In Janardhan Reddy v. State of Hyderabad, A. i. r. 1951 S. C. 217, their Lordships pointed out the difference between 'want of jurisdiction' and 'illegal or irregular exercise of jurisdiction' in the following words :

> "There is a basic difference between want of jurisdiction and an illegal or irregular exercise of jurisdiction, and our attention has not been drawn to any authority in which mere non-compliance with the rules of procedure has been made a ground for granting one of the writs prayed for. In either case, the defect, if any, can according to the procedure established by law be corrected only by a Court of appeal or revision."

68. In the present case also, the Special Judge was clothed with the jurisdiction to specify the property in the notice under Section 11 (1) and, even if it be held that he wrongly specified the property, it is not possible to hold that he was acting without jurisdiction and, therefore, his error could only be corrected by the appropriate remedy provided against his order under the provisions of the Encumbered Estates Act. His order could not be challenged in a separate proceeding in a civil Court.

69. This question may be dealt with in one more aspect. In this suit what is really sought to be challenged is the sale which was held by the Collector under Section 24, Encumbered Estates Act, which transferred the property in suit to the predecessor in interest of the respondents. This sale had proceeded on the basis of the list under Section 19 (2) by the Special Judge and the sale cannot be disturbed unless it be held that the property in suit was included in the list under Section 19 (2) by the Special Judge without any jurisdiction. In my opinion, the jurisdiction of the Special Judge to include or not to include this property in the list under Section 19 (2) arose as a result of the notice under Section 11 and not as a result of the property being mentioned in the written statement of the landlords-applicants under Section 8 or the claims of the creditors under Section 10. It was the notice under Section 11 (1) which, according to the scheme of the Act required all claimants to the property sought to be declared as liable to be attached and sold in satisfaction of the debts of the landlords-applicants to come forward and file their claims before the Special Judge. It was, therefore, this notice under Section 11 (1) which gave jurisdiction to the Special Judge to make a declaration in respect of the property mentioned therein and it was this very notice that was meant to call upon all claimants to come forward and contest the mention of the property in the notice as

being liable to attachment and sale in satisfaction of the debts of the landlords-applicants. Any proceedings which took place prior to the issue of the notice would not, and cannot, be considered to be proceedings conferring jurisdiction on the Special Judge or determining what jurisdiction is to be exercised by him. According to the principle of natural justice all that would be required is that no declaration should be made by the Special Judge in respect of any property unless the possible claimant to that property received notice and had had an opportunity of contesting that notice in the manner provided by the statute. This requirement of natural justice was in this case fully satisfied because the property in suit was included in the notice under Section 11 (1) and the appellant could have filed an objection if he had desired to do so. In this connection notice may also be taken of the fact that the appellant was already a party to the proceedings before the Special Judge when this notice under Section 11 (1) was issued.

70. I need not enter into any detailed discussion on the question whether Baladin appellant was or was not a party to the proceedings before the Special Judge as I entirely agree with the view taken by my brother, Mushtaq Ahmad J., that in this case the appellant could not contend that the suit was not barred on account of his not having been a party to the proceedings before the Special Judge. He had been expressly impleaded as a party and he had even applied for being exempted from the case. The appellant on the issue of the notice under Section 11 had the right and opportunity to file his claim to the property in suit before the Special Judge and, if he had filed any claim, the Special Judge undoubtedly would have had the right to decide it. He could have decided it rightly or he could have decided it wrongly. It was, of course, at that stage open to the appellant to have objected on the ground that the property, which he is now claiming, was not even mentioned in the written statement under Section 8 by the landlords-applicants or in the claims filed by the creditors under Section 10. If such an objection had been filed by the appellant, there can be no doubt at all that it would have been a competent and proper exercise of his jurisdiction by the Special Judge to decide that objection. In deciding the objection the Special Judge may have held, even though wrongly, that the property in suit was liable to attachment and sale in satisfaction of the debts of the landlords-applicants and, in case he had done so, nobody could have possibly argued that he had acted in excess of his jurisdiction. At best, all that could be said was that he had exercised his jurisdiction wrongly. The mere fact that no objection was filed by the appellant would not change the nature of the powers exercised by the Special Judge and cannot possibly have the effect of converting wrong exercise of jurisdiction into exercise of excess jurisdiction. Considering the question in this light also, it is perfectly clear that it must be held that, even if the inclusion of the property in suit in the list under Section 19 (2) by the Special Judge was wrong, it was not without jurisdiction and consequently the sale held on its basis by the collector cannot now be challenged in the civil Court due to the bar of Section 47, Encumbered Estates Act.

71. It is obvious from the whole scheme of the Encumbered Estates Act that, while the Act was designed to grant special relief by a particular procedure to landlord debtors, it was also considered necessary that the persons who may later acquire rights in the property of the landlords-applicants should have protection and should not be placed in the position of the ordinary auction-purchasers in an execution sale. It was with this object that the Act laid down that a notice should be published specifying the property sought to be attached and sold in satisfaction of the debts of the landlords-applicants and required the Special Judge to determine all claims to the property by third

parties before permitting the transfers of the property by the Collector. In such a case, it was felt necessary that the Special Judge, who was to determine the claims, should have all the powers of a civil Court and it was even laid down that his decision of claims under Section 11 would have the force of a decree of the civil Court. All these provisions were made for the specific protection of persons taking property from the Collector under the Act and consequently Section 47 was enacted so as to create a bar against the proceedings before the Collector or the Special Judge being challenged in any other Court. In the present case the whole scheme of this Act had been fully complied with by the Special Judge. He did include this pro-

perty in the notice under Section 11 (1) and invited claims in respect of it from all persons concerned by publishing that notice. It was only when no objection was filed that he included this property in the list under Section 19 (2) and thereupon the Collector proceeded to sell the property. The mere fact that the mention in the notice at the initial stage was not strictly in accordance with the written statement under Section 8 or the claims under Section 10 would not invalidate such proceedings of the Special Judge and the Collector.

72. On these grounds I have come to the conclusion that this suit is barred by the provisions of the Encumbered Estates Act and I would, therefore, dismiss the appeal with costs.

73. By the Court.--In view of the opinion of the majority, we allow the appeal with costs, set aside the decree of the lower appellate Court and remand the case to that Court with a direction that it shall, after determining the remaining issues. in the case, dispose of the appeal before it afresh according to law.