

CASE NO.:
Appeal (civil) 161 of 1999

PETITIONER:
Raj Kumar

RESPONDENT:
State of Haryana & Ors.

DATE OF JUDGMENT: 06/04/2004

BENCH:
R.C. Lahoti & Ashok Bhan.

JUDGMENT:
J U D G M E N T

BHAN, J.

The dispute in this appeal pertains to the claim to House No. 3 situate in Block No. 13, Mohalla Kasabad, Hisar, Haryana which is an evacuee property under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (for short 'the Act'). Father of the appellant Radha Kishan was a displaced person. He had a verified claim of the value computed as Rs. 6,000/-. He occupied 400 Sq. Yards out of the 700 Sq. Yards of the property in dispute. Office of the Regional Settlement Commissioner vide communication dated 3.5.1957 noted that the assessed claim of the Radha Kishan was Rs. 6,000/-. The house was valued at Rs. 5,844/-. Radha Kishan was required to deposit a sum of Rs. 2,973/- against his claim. Radha Kishan deposited it with the Treasury Officer, Hisar being the total amount payable against the said claim for which he was issued a receipt dated 12.6.1957 acknowledging the payment of Rs. 2,973/- (Ex. P1). Settlement Officer vide communication dated 13.6.1957 certified that Radha Kishan had deposited the full amount payable towards the claim. On 3.3.1969 Radha Kishan filed an application with the Treasury officer, Haryana for issuance of a certificate of having deposited the outstanding amount towards his claim. Treasury Officer vide certificate dated 5.3.1969 verified that the total amount payable towards the claim in the amount of Rs. 2,973/- had been deposited.

The house property in question was allotted to different displaced persons to satisfy their claims. A part of it measuring (400 Sq. Yards) was allotted to Radha Kishan and the other part measuring (300 Sq. Yards) was allotted to Hari Chand, now represented by his son Om Prakash, respondent No.3.

The Chief Settlement Commissioner assessed the value of the property at over Rs. 15,000/-. Since the value was assessed over Rs. 15,000/- the then Settlement Commissioner held that it was not an allotable property and accordingly rejected the claim of the appellant as well as Respondent No. 3.

The restriction that the property valued at more than Rs. 15,000/- was not allotable was removed and thereafter the appellant as well as Respondent No. 3 filed applications for allotment of the property in dispute. This claim was rejected by the Settlement Officer as well as the Deputy Chief Settlement Commissioner exercising the powers of the Chief Settlement Commissioner in view of the earlier order passed by the Chief Settlement Commissioner. The order of the Deputy Chief Settlement Commissioner dated 24.3.1977 has been attached as Annexure P-2.

Appellant filed Revision Petition No. 33(67) 77 and Respondent No. 3 filed Revision Petition No. 33 (16) 87 before the Central Government under Section 33 of the Act. The powers of the Central Government have been

delegated to the Financial Commissioner, Haryana at Chandigarh. Before the Financial Commissioner appellant as well as Respondent No. 3 entered into a settlement which was taken on record. It may be noted that State of Haryana as well as Tehsildar, Sales, Hissar (managing officer) were made parties and the compromise was affected in their presence. As per this settlement northern side of the house in dispute came to the share of Om Prakash (Respondent No. 3) and southern portion came in favour of the appellant. Financial Commissioner accepted the settlement and passed orders accordingly. Parties took possession of their respective shares. In the compromise arrived at between the parties the Revision Petition No. 33 (67) 77 filed by the appellant was disposed of in terms of the compromise dated 24.1.1987 on 19.5.1987 and the Revision Petition No. 33 (16) 87 filed by the Respondent No. 3 was dismissed as not pressed on 24.11.1987. This order of the Financial Commissioner became final.

On 14.9.1987 Tehsildar, Sales, Hissar, Haryana auctioned the property in dispute. The auction purchaser was one Dharamvir son of Arjan Dev Arya. Ultimately, Dharam Vir withdrew the earnest money deposited by him and auction stood nullified.

The claim of the appellant had been rejected by the Settlement Commissioner in the year 1970. Because of the change in circumstances inasmuch as the property above Rs. 15,000/- also became allotable the appellant as well as Respondent no. 3 filed applications for allotment of the property in question. These applications were rejected by the Deputy Chief Settlement Commissioner exercising the power of the Chief Settlement Commissioner vide order dated 24.3.1977 on the ground that their claim applications could not be considered as they stood rejected earlier upto the Chief Settlement Commissioner. Order passed by the Deputy Settlement Commissioner date 24.3.1977 stood superseded by the later order of the Financial Commissioner passed in exercise of its power under Section 33 of the Act.

Appellant thereafter filed the present suit for declaration that the appellant was the owner in possession of the property in dispute to the extent it was allotted to him. Suit was dismissed on the ground that there was no proof of the deposit of the amount due towards the claim. This order of the trial court was upheld in appeal as well as in the second appeal by the High Court. There is no dispute that the appellant had verified claim of Rs. 6,000/-. Value of the house in question had been assessed at Rs. 5,844/-. The appellant had produced the receipt showing the deposit of Rs. 2,973/- which has not been disputed. In view of this fact, the findings recorded by the trial court, cannot be sustained and accordingly the same are set aside. Apart from appellant and the respondent No. 3 no other person has claimed this property.

During the course of argument counsel for the appellant who is appearing for Respondent No. 3 as well stated that he is prepared to pay any additional amount to put an end to the controversy between the parties. He offered to make a payment of Rs. 1 lakh on behalf of the appellant and a suitable amount as may be determined by the Court on behalf of the Respondent No. 3. We directed the counsel appearing for the State of Haryana to get the property demarcated as per possession of the appellant and Respondent No. 3 and he was also asked to assess the market price of the property as it exists today. In pursuance to the said directions Balwant Singh, Naib Tehsildar (Sales) Hissar has filed an affidavit along with a site plan (Annexure A). As per this affidavit the property claimed by the appellant is bounded by the points ABCD and it measures 400 Sq. Yards and is valued at Rs. 4,92,600/- including the structure standing thereon. Property claimed by Om Prakash (Respondent No.3) is bounded by the points BCEF and it measures 320 Sq. Yards. The value of the same has been assessed at Rs. 3,22,900/- including the structure standing thereon. It has also been stated that some other persons are in possession of the property.

Counsel for the appellant, who appears for respondent No.3 as well,

has filed an affidavit stating therein that the persons other than the appellant and the respondent No. 3 who are in possession of part of the property are their licensees. They have given an undertaking to indemnify the State Government against any claim/rights of any person in possession of any part of the portion bounded by the points ABCD and BCEF in the map as Annexure 'A'. They have left to the Court to assess the value to put an end to the dispute.

The property in dispute is an evacuee property. Claims of the appellant and respondent No.3 have not been satisfied inspite of the deposit/adjustment of the entire amount due from them. There are no other claimants to the property. Keeping in view the above noted facts and the fact that the parties are at litigation for the last more than 50 years, in the interest of justice and in order to put an end to the litigation we deem it appropriate to dispose of the present appeal in the following terms:

- 1) Appellant Raj Kumar shall deposit a sum of Rs. 1,50,000/- over and above to what has already been deposited by him on or before 31.9.2004;
- 2) Respondent No. 3 shall deposit a sum of Rs. 1,25,000/- over and above to what has already been deposited by him on or before 31.9.2004;
- 3) On deposit of the said amount the part of the property marked as ABCD in Annexure A i.e. 400 Sq. Yards in House No. 3 situate in Block No. 13, Mohalla Kasabad, Hissar, Haryana and the other portion marked as BCEF in Annexure A measuring 320 Sq. Yards shall vest in the appellant and the Respondent No. 3 respectively;
- 4) Appellant and Respondent No. 3 shall indemnify the State Government against any claim/rights of any person in possession of any part of the portion bounded by the points ABCD and BCEF respectively; and
- 5) On deposit of the amount the Tehsildar (Sales) Hissar, or any other officer authorised to do so, shall within a period of one month issue the requisite sale certificates in favour of the appellant as well as Respondent No. 3.

The appeal is disposed of in terms of the above orders. There will be no order as to costs.