

PETITIONER:
BEANT SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 18/11/1976

BENCH:
BEG, M. HAMEEDULLAH
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SINGH, JASWANT

CITATION:
1977 AIR 388 1977 SCR (2) 122
1977 SCC (1) 220

ACT:

Constitution of India, Article 226--High Court's rejection of findings of facts: by departmental authorities, when justified---Article 136, interference by Supreme Court, rule of practice.

HEADNOTE:

The property under dispute was put up for sale at two different auctions by the Managing Officer, Amritsar. The Rehabilitation authorities cancelled the bid of the first auction purchaser Smt. Rup Kaur, holding that she had failed to deposit the sale price in spite of issuing her a registered notice, and at the second auction the appellant's bid was accepted. In a petition filed under Art. 226, a Single Judge of the High Court found the findings of facts to be erroneous and the impugned order void, and granted a writ in favour of Smt. Rup Kaur. On appeal, the decision was upheld by a Division Bench of the High Court.

Dismissing the appeal the Court,

HELD: (1) The High Court does not sit as a court of appeal to substitute its own judgment for that of the authorities which are empowered to give their decisions, but apart from jurisdictional errors, the High Court may correct errors apparent on the face of the record. An error to be apparent must be one which does not take prolonged arguments to bring it to the surface. The Single Judge's conclusion that provisions of Rule 90 of the Displaced Persons Compensation and Rehabilitation Rules, 1955, had not been complied with, was not erroneous. [123C-D. 126E-F] S.L. Hegde & Ors. v. M.B. Tirumale [1960] (1) SCR 890, applied

Hiralal Kher v. The Chief Settlement Commissioner New Delhi [1961] P.L.R. 560, referred to.

(2) It is a settled rule of practice of this Court not to interfere with the exercise of discretionary powers of High Courts under Art. 226 of the Constitution merely because two views are possible upon the facts of a case. For interference by this Court, the question must involve at least a matter of public or general importance or the injustice suffered by an individual due to an error of law should be so gross as to touch the conscience of this Court in which case it would be deemed to be one of more than private

importance. [123E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 333 of 1969.

(Appeal by Special Leave from the Order dated the 22-8-1968 the Punjab and Haryana High Court in L.P.A. No. 427 of 1968).

B. Sen and H.K. Puri, for the appellant

S.K. Mehta, P.N. Puri and K.R.Nagaraja. for respondent No. 5.

The Judgment of the Court was delivered by--

BEG, J.--This appeal by special leave is directed against the judgement of a Division Bench of the High Court of Punjab & Haryana dismissing in litnine an appeal against a judgment and order of a

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learned single Judge of that Court by which a Writ Petition made to the High Court had been granted.

We have been taken through the very detailed judgment of the learned single Judge where all the relevant facts are considered in detail. The questions which have been raised before us are: firstly, whether the learned single judge was justified in considering the facts of the case and recording certain findings of fact without having even the 'advantage' of the record of the proceedings of the Deputy Chief Settlement Commissioner, and other officers who had given certain other findings in favour of the appellant; secondly, whether the learned single Judge's findings of fact are correct; and, thirdly, whether any such apparent error was disclosed in the proceedings of the authorities acting under the Refugees Rehabilitation and Settlement Act as to justify interference by the High Court. It was urged that a mistake apparent on the face of the record has to be one which does not necessitate delving deep into facts on record to discover it after a re-examination of questions of fact which ought to be left to the authorities empowered to give these findings. It is true that the High Court does not sit as a Court of appeal to substitute its own judgment for that of the authorities which are empowered to give their decisions in such cases. Apart from jurisdictional errors, the High Court may correct errors apparent on the face of the record. An error to be apparent must, according to a rough test laid down by this Court in S.L. Hedge & Ors. v. M.B. Tirumale(1), be one which does not take prolonged arguments to bring it to the surface. These propositions are quite well established.

It is, however, also a settled rule of practice of this Court not to interfere with the exercise of discretionary powers of High Courts under Article 226 of the Constitution merely because two views are possible upon the facts of a case. Furthermore, in order to induce this Court to interfere under Article 136 of the Constitution the the question must involve at least a matter of public or general importance or the injustice suffered by an individual due to an error of law should be so gross as to touch the conscience of this Court in which case it would be deemed to be one of more than private importance.

The case before us is one of a competition between two auction purchasers of the same property put up for sale at two different auctions by the Managing Officer, Amritsar. The first was in favour of the respondent Smt. Rup Kaur, held on 20th August, 1959, and the second in favour of Beant Singh, the appellant, held on 10th May, 1961, on the

assumption that the first auction could be cancelled. The broad material facts, apparent from the original official record, which is now before us, are stated below.

At the auction sale on 20th August, 1959, held by the Managing Officer, Amritsar, Rup Kaur's bid of Rs. 32,000/-, being the highest, was accepted and this fact was communicated to her by a letter dated

(1) [1960] (1) S.C.R. 890.

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11th September, 1959, sent through her son and general attorney M.S. Grewal. This letter was in the following terms:

"Dear Sir/Madam,

I am to inform you that your bid for Rs. 32,000/(Rupees thirty two thousands only) in respect of property No. B-XII-18-S-14 (Portion I and III) Hide Market Amritsar has been accepted as per terms and conditions of the auction.

2. You have executed an indemnity bond in lieu of the earnest money due from you for adjustment against the compensation admissible on your verified claim(s). For this purpose please furnish if you have not already done at the time of auction the registration number of your compensation application, so as to reach this office within seven days of the issue of this letter. In case you intend to associate any other claimants with you in the purchase of the above mentioned property you should also submit affidavits of association duly completed by you and by each of your associates, as per specimen attached to this office within the period specified above.

3. The balance of the purchase money, if any, found due from you, after scrutiny of your compensation application and that of your associates will be communicated to you in due course.

faithfully,

Managing Officer,

Yours

Sd/-

District Rent &

Amri

tsar".

The above mentioned letter showed that the contesting respondent being a displaced person had executed an indemnity bond and had to furnish some information so that adjustment of the compensation due to her may be made against the amount which she had to deposit. What was that information? On the margin of the front page of this letter is a partially illegible writing running from top to bottom of the printed full-scap sheet on the original record. With some difficulty the following part only can be read: "You are required to submit the following documents regarding provisional possession within seven days from the receipt of this letter failing which your case will be " After "will be" nothing is found written. It is disputed between the parties whether this writing in hand of the margin existed on the letter received by Smt. Rup Kaur's attorney. However, even looking at the copy on the original record, the meaning is not at all intelligible. If it existed, it could only confuse and not enlighten the recipient as to what was to be done.

An order was then passed, on 8th March, 1961, which runs as follows:

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"ORDER,

Smt. Roop Kaur through her attorney Shri M.S. Grewal the auction purchaser of unit No. B.XIII-18-S-14 (Portion I and III) Hide Market Amritsar has failed to deposit the balance sale price amounting to Rs. 28,000/- in spite of issue of registered notice for 2-1-61. Her bid is, therefore, cancelled and earnest money forfeited. Settlement Officer Jullundur may be requested to deduct Rs. 3200/- as earnest money out of CA No. P/J/I0110. The applicant may be informed accordingly and property disposed of in the next sale programme.

Announced.

Dated 8-3-61.

Sd/-

Distt. Rent &

Managing Officer,

Am

ritsar".

This order does not state that parties were duly heard. It is disputed whether the notice mentioned in it, alleged to have been sent to Smt. Rup Kaur on 18-12-1960 asking her to appear on 2-1-1961, was received by the contesting respondent.' Even if the learned Single Judge's finding that it was not received at all by her were not correct, the time fixed for her appearance was too short. Furthermore, the allegation that she had been called upon, presumably by the letter dated 11-9-1959 to deposit Rs. 28,000/- was, on the face of it, untrue. Despite a report in her favour by the Regional Settlement Commissioner, who investigated the facts and reported to the Chief Settlement Commissioner, that she had not been properly served, justice was denied to her by the Chief Settlement Commissioner on 26-6-1963.

The learned single Judge had examined the facts and pointed out other obvious illegalities at earlier stages showing that provisions of Rules 90 and 92 and 105 of the Displaced Persons Compensation & Rehabilitation Rules 1955 were not complied with in cancelling the sale. According to Rup Kaur, who filed some application on 9th May, 1961, when she learnt what had happened, she had also filed an appeal against the order of 8th March, 1961, and made a request for extension of time for payment of the balance of the purchase money, but, on 14th June, 1961, the following order was passed by the Assistant Settlement Commissioner on her appeal:

"This is an appeal against the order of Distt. Rent & Managing Officer Amritsar dated 8-3-61 whereby he cancelled the appellants bid and forfeited the earnest money on account of his failure to deposit the balance price of property No. B. XIII-18-S-14 (Portion I & III) Hide Market Amritsar purchased by him at the open auction within the specified time. For all intents and purposes this appeal is for extension of time to deposit the balance purchase price.

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Extension of time is an administrative matter for which no judicial action is called for. Dismissed. Inform the appellant accordingly".

The learned Single Judge pointed out that the above mentioned order of the Appellate authority was also void for contravening the provisions of Rule 105 as interpreted by a Full Bench of the High Court of Punjab in *Hira Lal Kher v. The Chief Settlement Commissioner, New Delhi*(1), so that it was the duty of the Settlement Commissioner, to fix a date for hearing and to inform the 'appellant' it was not discharged. Apparently, the appeal was decided without informing the contesting respondent Smt. Rup Kaur when her appeal would be heard. Rule 105, which was thus contravened, provides:

"105. Provisions of Order XLI of the Code of Civil procedure apply to appeals and revisions. Except as otherwise expressly provided in the Act or in these rules, the procedure laid down in order XLI of the Code of Civil Procedure 1908 (Act V of 1908) shall, so far as may be applicable, apply to the hearing and disposal of appeals and revisions and the Act".

Furthermore, extension of time was not just an "administrative matter". The question whether Rup Kaur had made out a case for it or not should have been quasi-judicially considered and decided. Indeed, if provisions of the Civil Procedure Code were applied to these appeals and extension of time was only a relief sought, the discretion to grant it or refuse it had to be judicially and judiciously exercised. The order was made on an apparently wrong assumption.

The learned single Judge had restored the position to what it was when the letter dated 11th September, 1959, was received by M.S. Grewal, the son and general attorney of Rup Kaur, and had directed the Managing Officer to proceed in accordance with Law. After having heard Learned Counsel for both sides at some length, we are not satisfied that any injustice has been done to the appellant who will, no doubt, get back whatever money he may have deposited. We think, that, in the circumstances of the case, it could not be said that the learned single Judge's conclusion, that provisions of Rule 90 had not been complied with in dealing with the case of Rup Kaur, who had suffered injustice, was erroneous. The learned Judge had stated his conclusion as follows:

"A mere reading of the above-quoted provision shows that one of the conditions precedent entitling the Rehabilitation Authorities to cancel the sale and to forfeit the initial deposit is the service on the auction purchaser of a notice specified in sub-rule (11), sub-rule (12) or sub-rule (13) of rule. 90. The petitioner admittedly complied with the requirement of the notice under sub-rule (12) of rule 90 (Annexure "F") and no notice in terms of the requirements of subrule (13) of rule 90 was ever admittedly issued to or

(1) (1961) P.L.R. 560.

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served on the petitioner. In these circumstances, the Rehabilitation Authorities has no jurisdiction whatsoever for cancelling the sale in favour of the petitioner on account of alleged non-payment of the balance of the purchase price and for forfeiting the initial deposit made by her. In this view of the matter, the impugned orders cancelling the sale in favour of the

petitioner and forfeiting her initial deposit are wholly without jurisdiction and cannot possibly be sustained. Errors of law in the orders of the Chief Settlement Commissioner and the order Rehabilitation Authorities are apparent on their face inasmuch as the said orders have been passed in absolute ignorance of the statutory provisions referred to above".

We, therefore, see no reason to interfere with the view taken by the High Court. Consequently, we dismiss this appeal. But, in the circumstances of the case, the parties will bear their own costs.

M.R.
missed.
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Appeal dis-