

CASE NO.:
Appeal (civil) 3756 of 1991

PETITIONER:
LAKHPAT RAI JUNEJA

Vs.

RESPONDENT:
UNION OF INDIA & ORS. .

DATE OF JUDGMENT: 23/02/2000

BENCH:
S.S.Ahamad, Y.K.Sabharwal

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J
J U D G M E N T

Sabharwal, J.

The dispute relates to a fairly big property situate at Palwal, District Faridabad. It comprises of a big sarai and a dozen adjoining shops on the ground floor besides flat on the first floor and open land. It is an evacuee property acquired by competent authority under Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short 'the Act'). Apart from the appellant, there are other persons also who claim to be in possession of part of the property. In April 1969, the Chief Settlement Commissioner directed the sale and transfer of the property in favour of the appellant for a sale consideration of about Rs.17,000/-. In May 1969, the sale deed was executed and registered in favour of the appellant. Soon thereafter, a petition under Section 33 of the Act was filed before the Central Government by 11 persons challenging the transfer and sale in favour of the appellant pursuant to the order of the Chief Settlement Commissioner. The petition though initially filed before the Central Government was later transferred for disposal to the Commissioner and Secretary to the Government of Haryana, Rehabilitation Department, who was exercising powers of the Central Government under Section 33 of the Act. The property was transferred in favour of the appellant treating it to be an indivisible single property.

Section 34 of the Act, inter alia, stipulates that the Central Government may direct that any of its power be also exercised by such officer or authority as may be specified in the notification. By a notification dated 17th April, 1970, the Government of India, in exercise of powers conferred by sub-section 1 of Section 34 of the Act directed that powers exercisable by it under sub-section 4 of Section 24, 28 and Section 33 of the Act shall be exercisable also

by the Secretary to the Government of Haryana, Rehabilitation Department, in respect of proceedings pertaining to acquired evacuee properties and lands situate within the State of Haryana.

By an Order dated 8th March, 1973, the Secretary to the Government of Haryana in exercise of powers under Section 33 of the Act cancelled the order of Chief Settlement Commissioner of April, 1969 directing transfer and sale of the property to the appellant at about Rs.17,000/- and consequently, sale and conveyance deed issued in favour of the appellant in May, 1969 was also set aside. The said order inter alia notices that the examination of whatever record was made available throws a good deal of light on the sordid affair of transfer. The order also notices that despite various letters and reminders, attempts were made to withhold the record and requisite files. It further notices that the entire mischief of transfer of property for about Rs.17,000/- occurred because of misleading report by the Regional Settlement Commissioner. The record showed that the property had been valued in December 1967 at about Rs.54,000/- and earlier in October, 1967, the market value had been assessed at about Rs.75,000/-. In this view, the order concludes that it was clear that despite existence of evaluation assessment by competent officers of much higher market value which must have been suppressed due to ulterior motives, the Regional Settlement Commissioner obtained a convenient low evaluation report with a view to favour someone and misguide the Chief Settlement Commissioner and thus misled him into passing of order approving sale for about Rs.17,000/-. It has also been noticed that worse than the suppression of the correct market value was the fact of suppression of the pendency of applications of others who were claiming right of transfer of the property and were also protesting about the efforts being made to transfer the property surreptitiously to the appellant. A fear had been expressed by others that without taking into consideration their rights based on occupation etc., the property was being sought to be transferred to one person in utter disregard of their rights of occupation. The conclusion reached was that property was ordered to be transferred at gross under valuation and also by overlooking the claim of others. Ever since the passing of this order, the appellant has undertaken in last about three decades protracted litigation which we would presently notice.

The order dated 8th March, 1973 was first challenged by the appellant by filing a writ petition in the High Court of Punjab and Haryana. That writ petition was dismissed on 10th August, 1973 by passing the following order :-

"Dismissed, as Mr. Basu wishes to file a review application before the authority."

The review petition filed by the appellant was dismissed by Shri D.D. Sharma on 21st November, 1973 being untenable.

A second writ petition was filed in the High Court of Punjab and Haryana challenging the orders dated 8th March, 1973 and 21st November, 1973. The said writ petition (CWP No.881 of 1974) was dismissed by a learned single Judge of the said court on 10th September, 1982 inter alia holding

that the appellant did not seek permission nor any such permission was granted in terms of order 23 Rule 1 of the Code of Civil Procedure to file another petition against the same order of the authority. The appellant ought to have obtained permission of the Court when the earlier writ petition was dismissed on the statement of the counsel for the appellant that he wanted to file a review petition before the authority. Even on merits, it was found by learned single judge that the authority had given good reasons for setting aside the order of the Chief Settlement Commissioner dated 19th April, 1969 allowing the transfer of the property as one unit in favour of the appellant. In this view, the court held that even on merits, the appellant could not impugn the order dated 8th March, 1973.

Now, on or about 5th November, 1982, a suit for declaration and permanent injunction was filed pleading that the orders dated 8th March, 1973 and 21st November, 1973 passed by Shri D.D. Sharma are null, void and without jurisdiction and not binding on the plaintiff. A decree of declaration was sought that and the plaintiff is the owner of the suit property besides seeking consequential relief of permanent injunction. The suit was dismissed by the learned subordinate Judge on 11th June, 1987. The first appeal was dismissed by Addl. District Judge, Faridabad on 31st July, 1987 and second appeal by the High Court on 4th March, 1992. It was inter alia held that in view of the dismissal of Writ Petition No. 881 of 1974, the suit had been rightly dismissed. The judgment of the High Court dismissing the second appeal of the appellant is under challenge before us.

The first contention urged by Shri Sachar, learned counsel for the appellant is that Shri D.D. Sharma, Secretary, Government of Haryana, had no jurisdiction to set aside the order of the Chief Settlement Commissioner and the consequential conveyance deed in favour of the appellant. The order of cancellation passed by Shri Sharma was on a petition filed under Section 33 of the Act by 11 persons. The said petition had been initially filed before Central Government but was transferred to be dealt by the Secretary to Government of Haryana, Rehabilitation Department after the powers had been delegated in terms of notification dated 17th April, 1970. The contention of Shri Sachar, however, is that the delegation was not in respect of all powers exercisable under Section 33 of the Act. The delegation, learned counsel contends, was only in respect of proceedings pertaining to acquired evacuee properties and land situate in the State of Haryana. It is not in dispute that the property is situate in the State of Haryana but the contention of learned counsel is that the proceedings before Shri Sharma were not in respect of acquired evacuee property. The property in question ceased to be acquired evacuee property after the execution of the conveyance deed in favour of the appellant, is the contention of Shri Sachar. We are unable to accept the construction sought to be placed by learned counsel on the notification dated 17th April, 1970. Reference in the notification to proceedings pertaining to acquired evacuee properties and land, it is evident from a plain reading, includes the proceedings to challenge the orders directing the transfer of an acquired property. Shri Sharma was exercising powers of the Central Government under Section 33 of the Act while considering the petition which ultimately led to the passing of the order dated 8th March, 1973. Shri Sachar placed strong reliance on decision of this court in Gurbax Singh V. Financial

Commissioner and Anr. ([1991] Suppl. 1 SCC 167), in particular, to the observations made in paras 12 to 14 of the judgment that the sale in favour of the appellant culminating in issue of the sale certificate in his favour has the effect of taking away the land from the pool of evacuee properties. The said observations cannot be seen in isolation. In fact, the decision relied upon is against the view point sought to be stressed for the appellant. Para 14 of the judgment says that the rehabilitation authorities could deal with the matter of cancellation of sale according to law. That is what has exactly happened in the present case. The order of the Chief Settlement Commissioner and consequential conveyance deed have been cancelled in proceedings under Section 33 of the Act. If the contention urged on behalf of the appellant is to be accepted, it would mean that once the sale deed is executed, the Central Government would be divested of its statutory power under Section 33 of the Act despite illegality of the order. Section 33 vests in Central Government wide residuary power to call for the record of any proceedings under the Act and pass such order in relation thereto as in its opinion the circumstances and the case may require and as is not inconsistent with any of the provisions of the Act or rules made thereunder. The acceptance of the contention of learned counsel would make the provision nugatory.

We are also unable to accept the alternative contention that directions be issued to rehabilitation authorities to transfer the property jointly with other persons who may be found entitled thereto at the market value of the year 1969 or at best of 1973 in view of the fact that the appellant has been in possession of the property for nearly half a century. In view of the conduct of the appellant in the manner in which he tried to get the property transferred in his favour, we do not find any equities in his favour so as to issue the directions sought for. We find no infirmity in the judgment of the High Court. The appeal is accordingly dismissed with costs.