

CASE NO.:
Appeal (civil) 642 of 2003

PETITIONER:
Hans Raj Banga

RESPONDENT:
Ram Chander Aggarwal

DATE OF JUDGMENT: 29/04/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

BHAN, J.

This appeal by grant of leave has been filed against the judgment and order dated 22.03.2002 passed by the High Court of Delhi at New Delhi in Regular First Appeal No.280 of 1982. By the impugned order the High Court has allowed the appeal and set aside the judgment and decree for possession of the suit property and damages passed by the Trial Court in favour of the plaintiff-appellant.

FACTS

Premises in dispute is an evacuee property i.e. shop No.114, New Qutab Market, New Delhi, a Government Built Property in terms of Rule 2(d) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 and forms part of the compensation pool within the meaning of Section 14 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short "the Act")

Bhagwan Das, father and predecessor-in-interest of the defendant-respondent who was not a displaced person filed C.W.P. No.458-D of 1958 in the Circuit Bench of the Punjab and Haryana High Court at Delhi seeking transfer of shop No.114, in his favour on the ground that the same was allotted to him with effect from 10.05.1956 by the Department and he has been regularly paying rent for the same and prayed that the same be transferred in his favour, instead of selling it in public auction to any other person. Shri M.S. Chadha, Settlement Commissioner, Ministry of Rehabilitation filed the counter affidavit on behalf of the Department and took the stand that the Qutab Market was constructed by the Ministry of Rehabilitation and the same forms part of the compensation pool within the meaning of Section 14 of the Act to be transferred on ownership basis to displaced persons only. It was also stated that these shops were offered as a temporary measures to squatters (Bhagwan Dass, predecessor-in-

interest of the respondent) as an alternative accommodation as they were occupying the land before the construction of the market but the same could not be transferred/sold to Shri Bhagwan Dass a squatter or to any other squatter who was not a displaced person. Similarly, certain other persons had also filed writ petitions. C.W.P. No.438-D of 1958 and other connected matters were disposed of by an order dated 21.09.1960 wherein it was agreed by the Department that if the Department decides to sell the shop in question by auction, whether public or private, or by calling tenders, the occupier of the shop will also be given equal opportunity to give his bid or tender, as the case may be, and the bid or tender of the occupier will be considered on merits along with other bidders or tenderers, if any.

An advertisement was issued on 28.12.1960 in the papers inviting tenders for the sale of the various shops located in different markets by tender. Appellant submitted his tender along with draft No.03260/2 dated 4.1.1961 for Rs.350/- drawn on Union Bank of India, Karol Bagh, New Delhi towards 5% earnest money. Appellant's tender being the highest was accepted and the remaining price was adjusted against the verified claim of the appellant as per Section 8 of the Act. Bhagwan Dass did not participate in the sale proceedings conducted consequent to the order dated 21.09.1960 passed by the High Court in C.W.P. No. 438-D of 1958. Sale certificate duly confirmed under the rules was issued in favour of the appellant in respect of shop No.114, New Qutab Road Market, New Delhi. Lease deed was also issued on 17.10.1963 and the same was registered on 22.02.1964 by the Sub. Registrar. By mistake in the lease deed the property was mentioned as 114, New Rajinder Nagar instead of 114, New Qutab Road which was corrected by a supplementary lease deed dated 28.02.1967. In the supplementary lease deed it was mentioned that the area sold to the appellant was shop No.114, New Qutab Road and not 114, New Rajinder Nagar which had been mentioned in the lease registered on 22.02.1964. One of the conditions of sale as per advertisement was that if any of the properties is under the occupation of the allottees or unauthorised occupants the purchaser will be entitled to received the rent from the tenants.

Bhagwan Dass died in the year 1962. Since neither Bhagwan Das, predecessor-in-interest of the respondent nor the respondent or any other legal heir of Bhagwan Dass had paid any rent from the inception of the tenancy, a demand notice was issued to the respondent under Section 21 of the Act for recovery of the rent for the period 8.8.1955 to 27.02.1961 i.e. till the date of sale of the shop to the

appellant.

Appellant filed the suit for possession of Shop No. 114, New Qutab Road and recovery of damages for unauthorised use and occupation of the property against the respondent on 26th of July, 1973. The respondent filed the written statement on 3rd of May, 1978 which was later on amended on 31st of October, 1981 and resisted the suit on the ground that the appellant was not the owner of the property as the same could not be transferred to the appellant by way of sale. That the Joint Hindu firm M/s. Bhima Mal Dina Nath of which he was a member was the tenant in the premises since 8.8.1955 by virtue of Ext. D-1 letter of allotment and Ext. D-3 terms of tenancy. It was pleaded by him that the rent of the shop was Rs.19.80 and not Rs.40/- per month as demanded. In the alternative, it was pleaded that he was entitled to adjust the sum of Rs.4,186.83 paid by him as house tax.

After the filing of the suit, Shri B.P. Aggrawal, brother of the respondent and a legal heir of Late Bhagwan Singh filed an application before the Regional Settlement Commissioner for supply of documents relating to the tenancy of Bhagwan Das in respect of Shop No. 114. On 23rd of February, 1978, a petition under Section 24 of the Act was filed by the respondent along with other legal heirs of Bhagwan Das seeking quashing of the sale made in favour of the appellant with consequent relief of sale afresh in favour of the legal representatives of Bhagwan Das. It was alleged that the respondent came to know about the sale in favour of the appellant for the first time on 17th of February, 1978. This petition was dismissed by the Deputy Chief Settlement Commissioner exercising the powers of Chief Settlement Commissioner on 5.7.1978 thereby upholding sale and transfer of the shop in favour of the appellant. Aggrieved against this order, respondent filed a revision petition before the Central Government under Section 33 which was dismissed on 25th of November, 1978. Being aggrieved by the passing of these orders, respondent along with other heirs of Bhagwan Das filed CWP No. 396/1979 in the High Court of Delhi seeking quashing of the orders and the sale made in favour of the appellant with consequential relief of sale afresh in their favour. High Court dismissed the writ petition on 9.4.1979, aggrieved against which respondent filed SLP(C) No. 10765/1979 in which leave was granted and the same was registered as Civil Appeal No. 615/1982. The respondent got the C.A. No. 615/1982 dismissed as withdrawn and as a consequence thereof the sale made in favour of the appellant and the orders passed by the authorities and the High Court rejecting the respondent's challenge to the sale made in favour of the appellant

attained finality.

After the conclusion of these proceedings, the trial court in the suit filed by the appellant on 26th of July, 1973 which was re-numbered as Suit No. 781/1976 framed the following issues/additional issues:-

- "1. Whether plaintiff is the owner of the suit property?
2. Whether suit is properly valued for purposes of Court fee and jurisdiction? If not, what is the proper valuation?
3. Whether plaintiff is entitled to any damages? If no, at what rate; for what period and to what amount?
4. Whether the defendants of M/s. Bhima Mal Dina Nath, alleged Joint Hindu Family, is a tenant of the suit premises as alleged in the written statement, if so, to the what effects?
5. Whether the suit is time barred?
6. Whether the Civil Court has no jurisdiction to entertain the suit and decide the suit?
7. Relief.

Additional Issues

1. Whether the sale of the property in dispute in favour of the plaintiff by the Ministry of Rehabilitation is a nullity as alleged by the defendants in the amended written statement? OPD.
2. Whether a Civil Court has got no jurisdiction to go into the validity or otherwise of the sale?
3. Whether Union of India is a necessary party? If so, what is the effect of not joining it?"

Trial Court decided all the issues in favour of the appellant. Appellant was held to be the owner of the suit property. Suit was held to be property valued for the purpose of court fee and jurisdiction. Regarding Issue No. 3, it was held that the appellant was entitled to damages which were quantified at Rs.3,600/-. It was held under issue No. 4 that M/s. Bhima Mal Dina Nath, the alleged Joint Hindu family was not the tenant of the suit premises and in Issue No. 5, it was held

that the suit was within limitation. Regarding Issue No. 6, it was held that the Civil Court has the jurisdiction to entertain and decide the suit. Additional Issues 1 and 2 were not pressed by the respondent. Trial Court came to the conclusion that the documents relied upon by the respondents to establish tenancy were manipulated and even as per these documents it stood established that the respondents and their predecessors-in-interest had never paid any rent from the inception of the tenancy, as a result of which, a demand notice Ext. D-6 towards the arrears of rent was issued to the respondent for the period 8.8.1955 to 27.7.1961 i.e. till the date of sale of the suit property to the appellant. As the respondent had failed to pay the rent agreed upon, the tenancy created in his favour stood terminated. Trial Court also came to the conclusion that the respondent was not entitled to the benefit of Section 29 of the Act. It was held that since there was no relationship of landlord and tenant, the Civil Suit was maintainable. In view of the findings recorded, the Trial Court decreed the suit and the appellant was given a decree for possession of the suit property and damages in the sum of Rs.3,600/- for unauthorised use and occupation of the suit property by the respondent.

Aggrieved against the judgment and decree passed by the Trial Court, respondent filed Regular First Appeal in the High Court of Delhi at New Delhi which was numbered as RFA No. 250/1982. High Court accepted the appeal and set aside the judgment and decree passed by the Trial Court. It came to the conclusion that as per compromise arrived at in CWP No. 438-D/1958 filed by Bhagwan Das, the Department could sell the property only by way of public auction and not by any other mode. Since in the present case, the sale was made in favour of the appellant by inviting tenders the same was not valid. The High Court further held that the Trial Court fell in error in giving undue weight to the unexhibited documents marked as 'PX' and 'PY'. That Ext. 'PX' pertained to Shop No. 114, New Rajinder Nagar and not to a shop in New Qutab Road. The supplementary lease Deed executed in the nature of corrigendum, substituted the words "114, New Qutab Road" in place of 114, New Rajinder Nagar, was rejected as these documents were not put to Mr. S.B. Lal, PW 4, a Clerk of the Office of the Rehabilitation Department and DW 6 when they appeared in the witness Box. The High Court also came to the conclusion that the property was not an evacuee property. It was further held that Section 29 of the Act was not applicable to the facts of the present case and that the respondent was a tenant of the suit property.

Learned counsel for the parties have been

heard at length. With their help we have gone through the findings recorded by the High Court as well as the Trial Court and the evidence on record.

The High Court has erred in holding that as per orders passed by the High Court in the Writ Petition No. 438-D/1958 filed by Bhagwan Das, the property could be sold only by way of public auction and not by any other mode. The High Court on 21st of September, 1960 on a concession made by the Department of Rehabilitation passed the order in CWP 438-D of 1958 in the following terms:-

"A compromise has been arrived at between the petitioner and respondents in this case to the effect that if the Government decides to sell the shop in question by auction, whether public or private, or by calling tenders, the petitioner will also be given equal opportunity to give his bid or tender, as the case may be, and that the bid or tender of the petitioner will be considered on merits along with other bidders or tenderers, if any."

It is clear from the reading of the order that the Department had the option to sell the suit property either by auction, public or private, or by calling the tenders. In the present case, the Department sold the property by inviting tenders. An advertisement was issued in the newspapers inviting tenders, in response to which the appellant filed his tender which was accepted being the highest. Bhagwan Das did not file a tender in response to the advertisement. The finding recorded by the High Court is factually incorrect. The High Court has erred in holding that the sale was bad in law having been made in contravention of the order passed by the High Court in CWP No. 438-D/1958. The Department had the option to sell the property either by auction, public or private or by calling the tenders. It was left to the Department to choose either of the two modes and the Department sold the property by inviting the tenders as per the undertaking given by it to the High Court. The sale has been made as per order passed by the High Court by inviting tenders, the same is valid and the finding recorded by the High Court to the contrary cannot be sustained being factually incorrect.

The bid by way of tender given by the appellant being the highest was accepted. He paid the entire sale consideration. The sale was confirmed in his favour and the Sale

Certificate was issued. Since the property was sold on leasehold basis, the lease Deed was executed on 17th October, 1963 which was registered on 22nd February, 1964. The appellant became the owner of the property, the moment full price of the property was paid and the title of the property passed on to him from the day of the confirmation of the sale and the issuance of sale certificate. The High Court, in our view, erred in holding that the issue of ownership was not concluded in the earlier proceedings instituted by the respondents before the Rehabilitation Authorities, the Writ Petition in the High Court and the Appeal in this Court. It also erred in holding that only the question of validity of sale was involved in the earlier proceedings and not of ownership. It failed to appreciate that the valid sale confers both the title and the ownership rights in the purchaser. After the rejection to the challenge to the sale Deed up to this Court, the appellant became the owner of the property in dispute and it cannot be said that even though the sale has been upheld the appellant did not become the owner of the property. The view taken by the High Court is against the law laid down by this Court in *Bishan Paul Vs. Mothu Ram*, AIR 1965 SC 1994 and also against the fundamental principle of jurisprudence as it is an established fact that a valid sale confirmed by the authorities confers title as well as ownership rights in the purchaser. Valid sale of property and ownership are inseparable and the moment the price is paid and sale is confirmed the purchaser becomes the owner. In *Bishan Paul's case (supra)*, it was held:-

"It seems to us that the matter must be considered on general principles. In this case the highest bid was of the respondent and he paid the full price before the sale in his favour was confirmed. The sale certificate, though issued later, mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate reproduced in *Jailmal's case*, 66 Pun LR 99: (AIR 1964 Punj 99). No doubt till the price is paid in full there is

no claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him. There may conceivably be a great deal of time spent before the certificate is granted. In this case the tenant was told to attorn from October 3, 1956 because nothing remained to be done except the ministerial acts of issuing the certificate and getting it registered. Therefore, so far as title was concerned, it must be deemed to have passed and the certificate must relate back to the date when the sale became absolute."

The High Court also erred in holding that the property was not an evacuee property. High Court recorded this finding in one line by observing, "It was not an evacuee property". No reasons have been recorded for coming to this finding. No issue was framed in the suit on this point. Property was being treated and dealt with as evacuee property throughout. Respondent in the earlier proceeding did not take the stand that the property was not the evacuee property, on the contrary he treated the property to be a part of "compensation pool" which is evident from the fact that the respondent filed the revision petition under Sections 24 and 33 of the Act by treating the property to be an evacuee property. The Department in CWP No. 458-D/1958 filed by the Bhagwan Das, predecessor-in-interest of the respondent had taken a firm stand that the property formed part of the "compensation pool" within the meaning of Section 14 of Displaced Persons (Compensation and Rehabilitation) Act, 1954. The finding recorded by the High Court is bereft of any reasons whatsoever, against the record and the findings recorded in the earlier round of litigation. The same deserves to be set aside.

High Court erred in not appreciating that the matter with regard to the validity of the sale in favour of the appellant had been decided between the parties in the earlier proceedings and the decision attained finality up to this Court. The respondent could not be permitted to canvass against this issue again in the present suit. The grounds of challenge to the ownership of the respondent in the present case is the same which was taken by

him in the earlier proceedings under Sections 24 and 33 of the Act and the Writ Petition and the Appeal in this Court. Since the decision had already been rendered in favour of the appellant on the point, the respondent was estopped in the law from challenging the sale made in favour of the appellant and his ownership on the same grounds in the present case.

An allottee of the custodian is not the tenant of the custodian. This is clear from the definition of the word "allotment" in Section 2(a) of The Administration of Evacuee Property Act, 1950. This definition is in the following terms:-

"S.2(a): "allotment" means the grant by a person duly authorized in this behalf of a right of use of occupation of any immovable evacuee property to any other person, but does not include a grant by way of lease;"

It is clear from this definition that the allottee is not a lessee but is merely a licensee of the Department. On the disposal of the property under The Displaced Persons (Compensation and Rehabilitation) Act, by auction or otherwise, the allottee of the custodian or the occupier of the premises becomes the tenant of the transferee. Section 29 which is a special provision enacted to give protection from ejection to the class of persons or class of property to be notified under clause (2) of Section 29. Under section 29 a deeming provision is introduced whereby such allottee becomes tenant of the transferee which was held by it immediately before the transfer. Section 29 reads as under:-

" S. 29 (1) Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under sub-section (2), which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer :

Provided that notwithstanding

anything contained in any such terms and conditions, no such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in respect of that class of property, except on any of the following grounds, namely:-

(a) that he has neither paid nor tendered the whole amount of arrears of rent due after the date of the transfer within one month of the date on which a notice of demand has been served on him by the transferee in the manner provided in Section 106 of the Transfer of Property Act, 1882;

(b) that he has, without obtaining the consent of the transferee in writing-

(i) sublet or otherwise parted with the possession of the whole or any part of the property, or

(ii) used the property for a purpose other than the purpose for which he was using it immediately before the transfer;

(c) that he has committed any act which is destructive of, or permanently injurious to, the property.

(2) The Central Government may, from time to time by notification in the Official Gazette, specify the class of persons to whom, and the class of immovable property in the compensation pool, other than agricultural land, in respect of which, the provisions of this section shall apply and in issuing any such notification the Central Government shall have regard to the following matters, that is to say, -

(a) the length of the period for which any such persons may have been in lawful possession of the property;

(b) the difficulty of obtaining alternative accommodation;

(c) the availability of any other suitable residential accommodation for the use of the transferee; and

(d) such other matters as may be prescribed."

Under sub-Section (1) of Section 29, a person in lawful possession of any immovable property notwithstanding anything contained in any other law and without prejudice to any other right which he may have in the property by a deemed fiction becomes the tenant of the person to whom the property is transferred on the same terms and conditions as to the payment of rent or otherwise on which the property was held by him immediately before the transfer. Protection granted under Section 29(1) is not absolute and as per proviso is limited for a period of two years. Even during the period of two years such a person could be evicted if the grounds mentioned in clauses (a), (b) and (c) to Section 29(1) came into operation. Question as to whether an allottee becomes a tenant, or not, will depend on the question whether the same falls within the purview of Section 29 of the Act. Section 29(2) of the Act provides that the Central Government may from time to time by a notification in the Official Gazette specify the class of persons to whom, and the class of immovable property in the compensation pool, other than agricultural land, in respect of which, the provisions of this Section shall apply and that the Central Government shall, while issuing such notification, keep in mind the matters mentioned in clauses (a), (b), (c) and (d) of sub-Section (2).

In exercise of the powers given under Section 29(2), the Central Government issued a notification SRO 2219. Under this notification, provisions of Section 29 had been made applicable to the following classes of persons:-

"1. Every person, against whom no arrears of rent in respect of the property in his lawful possession are outstanding at the date of transfer of property.

2. Every person, against whom any arrears of rent in respect of the property in his lawful possession are outstanding at the date of the transfer of the property, but who has paid up such arrears within sixty days of such date.

3. Every displaced person having a verified claim against whom any arrears of rent in respect of the property in his lawful possession

are outstanding at the date of the transfer of the property, but such arrears of rent do not exceed the amount of compensation payable to him.

4. Every displaced person having a verified claim against whom arrears of rent in respect of the property in his lawful possession exceeding the amount of compensation payable to him are outstanding at the date of transfer of the property, but who after adjustment of the compensation against such arrears pays up the balance of the arrears within sixty days of the date of such adjustment."

Bhagwan Das admittedly was not a displaced person and, therefore, not covered under categories 3 and 4 of the notification. He would also not fall under categories 1 and 2 as admittedly he did not pay the arrears of rent due within 60 days of the transfer. This is clear from the fact that Department had issued demand notice Ext. D-6 much after the transfer of the property, in the year 1970, to the respondents to pay the arrears of rent from 8.8.1955 i.e. from the inception of the tenancy till its sale in favour of the appellant on 27.7.1961.

Learned counsel for the respondent then contended that the respondent or his predecessor-in-interest did not either have the notice or the knowledge of the transfer of the property in favour of the appellant and, therefore, the period of 60 days should be counted from the date of acquiring the knowledge of this fact by the respondent in the year 1978. This contention cannot be accepted because of the clear provision of the notification which requires payment of the arrears within 60 days of the date of transfer. Bhagwan Das, predecessor-in-interest, of the respondent knew that the property is likely to be sold and because of this, he filed the Writ Petition(C) No. 438-D of 1958 seeking a mandamus directing the Department to permit him to participate in the sale of suit property being the occupant/tenant of the same. The writ petition was allowed and Bhagwan Dass was permitted to participate in the sale of the suit property which was to be held either by open auction or by inviting tenders. The Department had issued advertisement in different newspapers inviting tenders. Bhagwan Dass did not respond to the advertisement and submit his tender. Assertion made by the respondent that the Bhagwan Dass did not come to know about the advertisement

inviting tenders for the sale of the property or that he did not come to know about the sale of the property in favour of the appellant cannot be accepted. Knowledge of this fact would be personal to Bhagwan Dass and there is nothing on record to show that Bhagwan Dass did not come to know about the sale of the suit property in favour of the appellant. Bhagwan Dass died in the year 1962. On 27.7.1961 the payment was required to be made within 60 days from the date of sale, i.e., upto 27.09.1961. Since Bhagwan Dass did not fulfil the condition of payment of rent within 60 days from the date of the sale he did not become the tenant of the appellant. Respondent being the successor-in-interest of Bhagwan Dass would acquire/inherit whatever Bhagwan Dass possessed. As Bhagwan Dass did not become the tenant of the appellant the respondent being the successor-in-interest of Bhagwan Dass would also not become the tenant of the appellant.

For the reasons stated above, the appeal is accepted. The judgment and decree passed by the High Court is set aside and that of the trial Court is restored. There will be no order as to costs.