

# SUPREME COURT OF INDIA

Bishan Paul

Vs.

Mothu Ram

C.A.No.181 of 1963

M. Hidayatullah and V. Ramaswami, JJ.)

24.03.1965

## JUDGEMENT

### **HIDAYATULLAH, J.:**

1. In this appeal by special leave the appellant is the tenant of the respondent and occupies a shop situated on the Grant Trunk Road, Ludhiana. The High Court of Punjab by the judgment under appeal dated April 10, 1961 dismissed a revision petition filed by the appellant against the order of the Appellate Authority confirming the order of eviction passed against the appellant by the Rent Controller, Ludhiana, under S.13 of the East Punjab Urban Rent Restriction Act, 1949.

2. The appellant entered into possession as tenant in 1944 and the monthly rent of the premises was Rs.12. The original landlord became an evacuee and as the property was composite, the District Competent Officer auctioned this property on May 19, 1956 and the highest bid was by the respondent. The bid was approved on October 3, 1956 and the sale certificate was issued to the auction-purchaser on December 4, 1956. On October 3, 1956 the appellant received a letter (Ex. R. 17) from the District Rent and Managing Officer, Ludhiana, informing him that as the sale was confirmed by the Competent Officer on October 3, 1956 he should pay the rent to the respondent from that date. The appellant alleged that he had tendered rent at Rs. 12 per month to the respondent who did not accept it but demanded Rs.20 per month. He further alleged that he had sent a money order for Rs. 12 and another for Rs. 24 which were refused by the respondent. The appellant deposited on July 16, 1958, Rs. 240 and Rs.144 on May 25, 1959 in the Court of Senior Sub-Judge, Ludhiana (vide Exs. R. 18 and R. 20). In this way the appellant deposited rent for 32 months from October 30, 1956, to June 30, 1959 at Rs. 12 per month. Meanwhile, on May 22, 1959 the respondent made an application to the Rent Controller, Ludhiana under S.13 of the Act for the eviction of the appellant. He stated in that application that the rent of the shop was Rs. 20 per month and it had not been paid from October 3, 1956. He also alleged that the appellant had made material alterations in the shop and put it to use other than that for which it was taken on rent.

3. The Controller by his order, dated April 12, 1960 held that the standard rent was Rs. 12 and not Rs. 20. He held the other grounds not proved but ordered the eviction because the appellant had deposited the second amount three days after the petition of the respondent had been filed for eviction and the total amount deposited was not equal to the full rent, costs and interest as required by the Act. The amount deposited was found to be short by Rs. 1-12-0. The tenant appealed and contended that the tenancy commenced on December 4, 1956 and not on October 3, 1956. He applied for amendment of his pleadings to plead the above fact relying upon a ruling if this Court

reported in *Bombay Salt and Chemical Industries v. I. J. Johnson*, AIR 1958 SC 289. He contended that if the commencement of the tenancy was taken to be the date on which the certificate was granted to the auction-purchaser the amount of rent deposited by him was in excess of the amount due from him and he had not forfeited the tenancy. The Appellate Authority did not accept the contention. It held that the appellant had paid Rs. 1.19 to the Custodian as rent for the first two days of October and had accepted the respondent as his Landlord from October 3, 1956 and begun to deposit rent from that date. He was held, therefore, to be estopped under S. 116 of the Indian Evidence Act from denying the title of the respondent between October 3 and December 4, 1956. The appellant asked for relief against forfeiture but it was rejected in view of the ruling of the Punjab High Court in *Debi v. Desa Ramji Lal*, 36 Pun LR 284 : (AIR 1954 Punj 231).

4. The tenant filed a Revision Petition in the High Court. It was dismissed by the order now under appeal. Only one question appears to have been raised in the High Court, namely, when did title pass to the auction-purchaser? The High Court dismissed the revision application holding that title passed to the auction purchaser on the confirmation of the sale and not when the sale certificate was issued to him. The High Court distinguished the ruling of this Court above referred to. In this appeal it is contended that the High Court was wrong in not following the above ruling which applied fully to this case. It is further submitted that the decision of the Punjab High Court in 56 Pun LR 284 : (AIR 1954 Punj 231), is erroneous and requires to be reversed.

5. It may be stated at once that there is no proof on record that the standard rent was tendered by money order by the appellant. The only money order receipts are Exs. R. 27 and R. 28 but they show tender of rent respectively for two months from January 24, 1957 and for four months from April to July, 1959. These receipts neither cover the period from October 3, 1956 nor from December 4, 1956. Thus the only questions are (a) whether the deposits made by the appellant are adequate under S. 13 or not and (b) if not, whether there should be any relief against forfeiture.

6. The property belonged to the compensation pool and was transferred under the provisions of S. 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954). The procedure for sale of property in the compensation pool is laid down in Chapter XIV of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The Chapter is self-contained and deals with the mode of sale of property; persons who may bid at sales; persons not eligible to purchase; the procedure for sale of property by auction; and the procedure for setting aside the sale. Unfortunately, the Rules do not indicate clearly the point of time from which the title of the auction purchaser is to commence as is done by S. 65 of the Code of Civil Procedure. Neither side claims to apply the provisions of the Transfer of Property Act and the case was argued on the basis of the Rules to determine the time from which title can be said to commence. Before we consider the argument and also refer to certain rulings in which these Rules have been considered, we may set out the material rules here :

"90. Procedure for sale of property by public auction –

\* \* \* \*

\* \* \* \*

(3) Notice of the intended sale shall be given at least fifteen days before the proposed sale, the description of the property to be sold, its location and boundaries where possible, the terms and conditions of the sale and any other particulars which the Settlement Commissioner or other officer

considers material. One copy of the notice shall be affixed on a conspicuous part of the property to be sold. It shall be within the discretion of the Settlement Commissioner or other officer to advertise the sale in newspapers and in such other manner as he may deem fit.

\* \* \* \*

(5) Every auction of a property under these rules shall be subject to a reserve price fixed in respect of the property, but such reserve price may not be disclosed.

\* \* \* \*

\* \* \* \*

8. The person declared to be the highest bidder for the property at the public auction shall pay in cash or by a cheque drawn on a scheduled bank and endorsed "good for payment up to six months" or in such other form as may be required by the Settlement Commissioner, immediately on the fall of the hammer a deposit not exceeding 10 per cent of the amount of his bid to the officer conducting the sale and in default of such deposit, the property may be resold.

9. The initial deposit shall be refunded if the net compensation exceeds the purchase price.

10. The bid in respect of which the initial deposit has been accepted shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose;

Provided that no bid shall, be approved until after the expiry of a period of seven days from the date of the auction.

11. Intimation of the approval of a bid or its rejection shall be given to the highest bidder (hereinafter referred to as the auction purchaser) by registered post acknowledgment due and the auction purchaser shall where the bid has been accepted be required within fifteen days of the issue of such intimation to send by registered post or to produce before the Settlement Commissioner or any other officer appointed by him for the purpose, a treasury challan in respect of the deposit of [the balance of the purchase money.

\* \* \* \*

\* \* \* \*

14. If the auction purchaser does not deposit the balance of the purchase money within the period specified in sub-r. (11) ..... he shall not have any claim to the property.

15. When the purchase price has been realised in full from the auction purchaser, the Managing Officer shall issue to him a sale certificate in the form specified in Appendix XXII or XXIII, as the case may be. A certified copy of the sale certificate shall be sent by him to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property to which the certificate relates is situated. If the auction purchaser is a displaced person and has associated with himself any other displaced person having a verified claim whose net compensation is to be adjusted in whole or in part against the purchase price, the sale certificate shall be made out jointly in the name of all such persons :

Provided that if it is agreed in writing by all concerned that the sale certificate may be made out in the name of the auction purchaser the sale certificate may be made out in the name of auction purchaser.

\* \* \* \*

\* \* \* \*

92. Procedure for setting aside a sale.

\* \* \* \*

2. Every application for setting aside a sale under this rule shall be made –

(a) where the sale is made by public auction within seven days from the date of the acceptance of the bid;

\* \* \* \*

We may also reproduce here the certificate which was granted to the respondent on December 4, 1956.

"This is to certify that Shri Mothu Ram Son of Shri Jharu Mal Aggarwal by caste resident of Ludhiana is the purchaser at a sale by public auction held on the 19th day of May, 1956 (confirmed on 3rd October, 1956) in pursuance of the powers conferred upon me under S. 10 of the Evacuee Interest (Separate) Act, 1951 (LXIV of 1951) and the Rule made thereunder.

Given under my hand and the seal of my office this 4th day of December, 1956.

\* \* \* \*

\* \* \* \*

Signature

Sd/-

District Competent Officer,

Ludhiana 11/12."

7. "Before we consider the two questions which arise in this case we may clear a doubt which was raised at the hearing. It is now evident from Ex. E filed by the appellant himself with his petition for urging additional grounds (C. M. P. No. 2421) that the sale was for Rs. 94,500 and the purchase price was paid as follows :

21-5-1956 .. Rs. 9,450

4-8-1956 .. Rs. 56,700

This shows that the total purchase price was paid long before October 3, 1956 when the highest bid was approved. The certificate could have been given at any time after August 4, 1956.

8. The rules which we have earlier reproduced show that the auction is held on a date fixed and is subject to a reserve price which is confidential. The officer conducting the sale declares at the fall of hammer who is the highest bidder. The highest bid is subject to the approval of the Settlement Commissioner or an officer appointed by him. A period of seven days must elapse before the bid is approved and there is also a limitation of seven days from the acceptance of the bid for making an application to set aside the sale. If the bid is approved and if no application meanwhile for setting aside the sale is made, the highest bidder is recognised as the auction purchaser and he is required to produce a treasury challan in respect of the balance of the purchase money within a period of fifteen days (which period may be extended without limit of time) before the Settlement Commissioner or the Officer appointed by him. When the full purchase price is paid a Certificate issues in Form No. XXII and is sent to the Sub-Registrar for registration. If the balance of the price is not paid, the amount of advance in deposit is forfeited and the auction purchaser has no claim to the property.

9. The passing of title thus presupposes the payment of price in full And the question is at what stage this takes place. Obviously, there are several distinct stages in the sale of property. These are : (a) the fall of the hammer and the declaration of the highest bid; (b) the approval of the highest bid by the Settlement Commissioner or officer appointed by him; (c) payment of the full price after approval of the highest bid; (d) grant of certificate; and (e) registration of the certificate.

10. The first and last in this series, namely, the fall of the hammer and the registration of the certificate are not critical dates for this purpose and they have not been suggested as the starting point of title. It is also clear that till payment of full price title is in abeyance for the rules themselves say that if the price is not paid the auction purchaser has no claim to the property. Under S.65 of the Code of Civil Procedure, title is deemed to commence from the date of auction and not when the sale becomes absolute. Sale becomes absolute under the Code after the period of thirty days, during which sale may be asked to be set aside, has passed. When that time has passed and no application to set aside the sale has been made the sale becomes absolute (O. 21, R. 92) and a certificate then issues (O. 21, R. 94). Under the corresponding section of the Code of 1882 (S. 316) the certificate was required to bear the date of the confirmation of sale and title vested from the date. The amendment of the Code in 1908 now antedates title, by a fiction, to the date of the auction.

11. This fiction cannot apply here for the simple reason that no such provision is made in the rules. It is, therefore; contended for the appellant that the approval of the bid does not confer title because the balance of the price has still to be paid and the property must continue to be evacuee property till the certificate issues. This line of reasoning was accepted in *Manoharlal v. Rent Control and Eviction Officer, Bareilly*, AIR 1959 All 388, *Motandas v. Gopaldas*, AIR 1962 Madh Pra 307, *Pamandas v. Mst. Lachhmi Bai*, AIR 1963 Raj 35, *Deptylal v. Collector of Nilgiris*, AIR 1959 Mad 160, and in two unreported cases of Punjab High Court *Ranjit Singh v. Anup Singh*, (C. R. No. 524 of 1959 (Punj)) and *Hiralal Khanna v. Gurcharan* (C. R. No. 461 of 1960 (Punj.)) referred to in *Jaimal Singh v. Smt. Gini Devi*, 66 Punj (R 99 : (AIR 1964 Punj 99)). The last mentioned case has dissented from the earlier view of that Court and has approved of *Harkishan Lal v. Bansilal*, 64 Pun

LR 55, Harbans Singh v. Sohan Singh, 64 Pun LR 834, and Mohar Singh v. Moolchand, 65 Pun LR 253. In the former group of rulings support is derived from decision of this Court in AIR 1958 SC 289, whereas the latter group distinguishes that case holding that no such point was decided in it.

12. It may be pointed out that a modified certificate is now issued. The new form of the certificate is reproduced in extenso in Jaimal Singh's case, 66 Pun LR 99, at p,103 : (AIR 1964 Punj 99 at p. 101). It requires a mention that the purchaser "has been declared the purchaser of the said property with effect from ..... day of.....19 ". This leaves no room for any doubt, though it does show that a date other than the date of the certificate may now be filled in the blanks. The reason appears to be this that the balance of the purchase price may not be paid before the approval of the highest bid but much later and it may be necessary to put in the date of payment rather than the date of approval of the bid. It is, however, possible to conceive of a case where the full price may be tendered before confirmation (as in this case) or the compensation may exceed the full price and it may be necessary to refund even the advance, which is to be paid when the highest bid is declared. In that case the date of confirmation or even of the auction could be the date to be mentioned in the certificate. Be that as it may, it is clear that the form used here is not the new form though the form actually used mentions all the three dates; the date of auction, the date of approval of the bid, and the date of certificate. It may be recalled that the whole of the purchase price was already paid before the approval of the final bid.

13. In Pamandas's case, AIR 1963 Raj 35 a distinction was made between certificates which mentioned the date of the commencement of title and which did not, and it was stated that where the certificate mentioned a date title must be deemed to commence on that date and not from the date of the certificate. The date of the commencement of the title is of course important in view of the provisions of S. 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, because the tenant is deemed to be a tenant of the transferee from that date and there is a protection to the tenant from ejection for two years. Most of the cases above-mentioned were required to consider the question from the angle whether there was a transfer of property and, if so, when. Before we express any opinion on those cases we may consider the ruling of this Court in Bombay Salt and Chemical Industries case, AIR 1958 SC 289.

14. Certain salt pans in wadala Bombay, known as Salamati Salt Factory, were evacuee property and formed part of the compensation pool. After certain proceedings, into which it is not necessary to go, these salt pans were sold on March 31, 1956 and two persons offered a bid of Rs. 4,40,000. The Bombay Salt and Chemical Industries which held a lease till April 15, 1956, had bid Rs. 4,39,000 and off April 11, 1956 they made an application to the Chief Settlement Commissioner, as persons protected under S. 29 of the Displaced Persons (Compensation and Rehabilitation) Act, for protection for 2 years and for allotment of the property to them as the price was below Rs. 50,000. On April 20, 1956 (the lease having expired) this petition was dismissed. On April 25, 1956 they were evicted and the two purchasers were placed in possession. The appeal in this Court was filed against the order of the Chief Settlement Commissioner, dated April 20, 1956.

15. The question to consider was whether there was a transfer to the purchasers on March 31, 1956. It was claimed on behalf of the Bombay Salt and Chemical Industries that these purchasers became owners as soon as the purchasers were declared the highest bidders. They were thus said to be transferees within S. 29 against whom protection could be claimed. This Court did not agree that the proposition was applicable in their case. Sarkar, J. who delivered the judgement of the Court, examined the Rules, which we have substantially reproduced above, and pointed out that the auction was held subject to stated conditions. Condition No. 7 was that on payment of the full price the

ownership would be transferred and a sale certificate would issue. It was observed by the learned Judge.

"..... It is for the appellants to show that the property had been transferred. They have not stated that the sale certificate was issued, nor that the balance of the purchase money had been paid. In those circumstances, it must be held that there has as yet been no transfer of the salt pans to respondents Nos. 4 and 5. The appellants cannot, therefore, claim the benefit of S. 29 and ask that they should not be evicted. Mr. Purshottam Trikamdas contended that the sale certificate will in any event be granted and that once it is granted, as the form of this certificate shows, the transfer will relate back to the date of the auction. It is enough to say in answer to this contention that assuming it to be right, a point which is by no means obvious and which we do not decide, till it is granted no transfer with effect from any date whatsoever takes place and none has yet been granted."

" It has been rightly pointed out in some of the subsequent cases that the question when title passes (a question which arises directly here) was not decided in that case. If it had been established in that case that the price was paid in full before confirmation of sale, it is possible the decision would have been the other way, in view of the provisions of the Seventh condition governing the sale. The case failed because there was no such proof and no certificate had been issued. The ruling is thus of no help in the present case.

16. 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 Jaimal'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 tenant himself paid rent for 2 days to the Custodian and deposited rent for the use of the new landlord from October 3, 1956. His defence originally was that he had tendered the rent from October 3, 1956 and even sent it by money order but the landlord refused to receive it, He thus acknowledged the new landlord and attorned to him from October 3, 1956. It was only when the decision in the Bombay Salt and Chemical Industries case, AIR 1958 SC 289, was given that he changed his stand. That case, however, did not decide the precise point on which he rested his new defence. The rulings on which he relies also erroneously accepted the decision of this Court in the Bombay Salt and Chemical Industries' case, AIR 1958 SC 289, to have decided the point when title commences. As has been rightly pointed out in Jaimal's case, 66 Pun LR 99 (AIR 1964 Punj 99), the point was at large. In our judgment, the landlord in the present case could maintain the proceedings for ejection. We agree generally with the observations of Tekchand, J. in Roshanlal Goswami v. Gobind Ram, 65 Pun LR 852 : (AIR 1963 Punj 532), that the landlord's right to bring a suit for ejection need not necessarily depend on the issuance of the certificate. In this case the landlord had paid the full price, his bid was approved and he had received a certificate mentioning the date of

confirmation. In our judgment, he obtained title on the date of confirmation of the sale and could demand rent from that date as indeed he was informed and he himself understood to be the true state of affairs.

17. It remains to consider whether there ought to have been relief from forfeiture in this case. Here the difficulty in the way of the appellant is insuperable. Section 13 of the East Punjab Urban Rent Restriction Act provides inter alia :

"13. Eviction of tenants.

(1) \* \* \* \*

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied.

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable :

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

(ii) \* \* \* \*

(iii) \* \* \* \*

the Controller 'may' make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he 'shall' make an order rejecting the application.

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in aggregate.

(underlined (here in ') by us)

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18. It is contended that the section confers a discretion on the Controller which is indicated by the word "may" and by way of contrast the word "shall" used in the latter part of the same section is referred to. There is much force in this contention but the question is not res integra. This section was interpreted by this Court in Waryam Singh v. Amarnath, 1954 SCR 565 : (AIR 1954 SC 215). In that case the tenant had admittedly not paid rent as required by S. 13(2) of the East Punjab Urban Rent Restriction Act as applied to Himachal Pradesh. The Rent Controller and the District Judge, on

appeal, did not order eviction. The Judicial Commissioner was moved under Arts. 226 and 227 of the Constitution and he held that "in view of the admitted failure to pay rent as provided by the rent deed or at the first hearing of the Court under the proviso to S.13 (2) (i) the Courts below had acted arbitrarily in refusing to make an order for ejection against the tenants". The Judicial Commissioner, therefore, set aside the orders of the Courts below and ordered ejection. This Court observed :

"As rightly pointed out by the Judicial Commissioner in the case before us the lower Courts in refusing to make an order for ejection acted arbitrarily. The lower Courts realised the legal position but in effect declined to do what was by S. 13 (2) (i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so."

The decision is binding on us and as pointed out by Kapur, J. (as he then was) in 56 Pun LR 284: (AIR 1954 Punj 231), the ruling of this Court makes it incumbent on the Rent Controller to order eviction. In this view of the matter there is no relief possible to the appellant.

19. The appeal must, therefore, fail. It is dismissed but we make no order about costs. The appellant is granted three months from the date of this judgment to hand over possession.

Appeal dismissed.

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