

Kesho Nath Khurana

Vs

Union of India and Others

Civil Appeal No. 1408 of 1981

(P. N. Bhagwati, A. Varadarajan JJ)

10.04.1981

JUDGMENT

BHAGWATI, J. –

1. It appears from the record that the single Judge before whom Second Appeal 63 of 1969 came up for hearing referred the following question of law for the opinion of the Division Bench :

Whether the order dated January 21, 1963 made by the Chief Settlement Commissioner was final and binding in the present appeal, and if so, what is its effect upon the point in controversy in the present appeal ?

It was this question which was referred by the single Judge to the Division Bench and the Division Bench disposed it of by its judgment dated April 7, 1980. The Division Bench held that the order dated January 21, 1963 made by the Chief Settlement Commissioner was not final and binding in the civil proceeding and it did not exclude the jurisdiction of the civil court to decide whether there was any encroachment by the respondent on the property conveyed to the appellant under the sale certificate dated June 7, 1963 read with the corrigendum dated September 22, 1964 issued by the District Rent and Managing Officer, Simla, pursuant to the auction sale held on September 25, 1955. Now it is obvious that since only the aforesaid question of law was referred by the single Judge to the Division Bench, the Division Bench should have sent the matter back to the single Judge after deciding the question of law referred to them. But instead the Division Bench proceeded to dispose of the second appeal on merits and dismissed it with costs. We think that the Division Bench was in error in following this procedure. The Division Bench ought to have sent the appeal back to the single Judge with the answer rendered by them to the question referred by the single Judge and left it to the single Judge to dispose of the second appeal according to law.

2. We accordingly allow the appeal, set aside the order passed by the Division Bench dismissing the second appeal with costs and direct that the second appeal shall be disposed of by the single Judge of the High Court in accordance with law without being influenced by any observations made by the Division Bench on merits but on the basis that the order dated January 21, 1963 made by the Chief Settlement Commissioner was not final and binding on the parties. The single Judge will consider whether having regard to the boundaries and the area specified in the sale certificate dated June 7, 1963 read with the corrigendum dated September 22, 1964, any portion of the property conveyed to the appellant was illegally in the possession of the respondents. There will be no order as to costs of the appeal.

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