

Surinder Singh

Vs

Central Government and Others

Civil Appeal No. 2062 of 1972

(M. P. Thakkar, K. N. Singh JJ)

26.09.1986

JUDGMENT

SINGH, J. –

1. This appeal is directed against the judgment of a Division Bench of Punjab & Haryana High Court setting aside order of a Single Judge and also the order made by the Central Government granting extension of time to the appellant to deposit purchase price in connection with the auction sale dated August 24, 1959 held in appellant's favour, and directing the Rehabilitation Department to take further proceedings regarding auction sale held in favour of the respondents.

2. Plot No. 168 situate in Jalandhar City, an evacuee property was included in the compensation pool under Section 14 of the Displaced Persons (Compensation and Rehabilitation Compensation) Act, 1954. This plot was put to auction sale on August 24, 1959. The appellant who was a displaced person made the highest bid of Rs. 20,000, it was provisionally accepted and he deposited 1/5th of the amount at the conclusion of the auction, but he failed to deposit the balance amount. The Managing Officer therefore cancelled the auction sale. On a revision petition filed by the appellant, the Chief Settlement Commissioner by his order dated March 30, 1968 set aside the order of the Managing Officer and allowed time to the appellant to deposit the balance of purchase price by May 30, 1968. The appellant again failed to deposit the amount within time, consequently Settlement Officer by his order dated October 2, 1968 cancelled the auction sale made in appellant's favour. Thereafter the property was put to auction sale on January 17, 1969. At that auction sale Sohan Lal and Sunder Lal, respondents who are also displaced persons made their highest bid for Rs. 27,025 and they deposited 20 per cent of the amount at the conclusion of the auction. Meanwhile the appellant preferred an appeal against the order dated October 2, 1968 cancelling the auction sale before the Assistant Settlement Officer, but the appeal was rejected on April 2, 1969. The appellant preferred a revision petition before the Chief Settlement Commissioner but that too was dismissed on August 13, 1969. Thereafter the appellant made a petition under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'the Act') before the Central Government. Shri Rajani Kant exercising the delegated powers of the Central Government set aside the order cancelling the auction sale held on August 24, 1959 and granted 15 days' time to the appellant for depositing for depositing the balance of the purchase price by his order dated February 6, 1970 with a condition that on failure to deposit the balance of the auction price the petition shall stand dismissed. The appellant again failed to deposit the amount within time, but on a request made by the appellant Shri Rajani Kant extended time till February 28, 1970 for depositing the remaining amount of purchase money. Admittedly the appellant deposited the remaining auction price by February 28, 1970. The respondents filed a writ petition under Article 226 of the Constitution of India before the Punjab & Haryana High Court challenging the order of Shri Rajani

Kant dated February 6, 1970 as well as his subsequent order extending time till February 28, 1970 and also for issue of a direction to the authorities to finalise the auction sale held in their favour on January 17, 1969. A learned Single Judge after hearing the parties dismissed the petition. On a letters patent appeal a Division Bench of the High Court allowed the appeal, set aside the order of the learned Single Judge dismissing the writ petition, and quashed the order of Shri Rajni Kant granting time to the appellant to deposit the balance amount of the sale price under Section 33 of the Act. The Division Bench directed the authorities to finalise the auction sale held in respondents' favour. Aggrieved the appellant has preferred this appeal on a certificate granted by the High Court.

3. The High Court held that sale of urban agricultural property which formed part of the compensation pool could be held only in accordance with the Rules framed under the Act as contemplated by Section 8 and Section 40. Since no rules had been framed for the disposal of the urban agricultural property, the Central Government could not lawfully provide for sale of the urban agricultural land by executive directions. Consequently auction sale held on August 24, 1959 was illegal. The High Court further held that Shri Rajni Kant exercising the powers under Section 33 of the Act had no jurisdiction to grant time to the appellant for making deposit or to further extend the time to enable him to deposit balance of auction price by February 28, 1970. Lastly the High Court held that Shri Rajni Kant had passed orders in violation of natural justice as no notice was issued to the respondents Sohan Lal and Sunder Lal and no opportunity of hearing was afforded to them.

4. The first question which falls for consideration is as to whether in the absence of the rules the Central Government had authority in law to provide for disposal of urban agricultural land by auction sale. In order to appreciate the problem it is necessary to refer to the relevant provisions of the Act and the rules. The Act was enacted by the Parliament to provide for the payment of compensation and rehabilitation of the displaced persons and to provide for matters connected therewith. A large number of persons had been displaced on account of the civil disturbances which occurred due to partition of the country in 1947. The Act provides for payment of compensation to the "displaced persons" as defined by Section 2(b) of the Act. Section 4 provides for makings of an application by displaced persons for payment of compensation. Section 8 lays down that a displaced person shall be paid compensation as determined under Section 7 "subject to any rules that may be made under this Act" in any one of the forms, namely :

(a) in cash;

(b) in Government bond;

(c) by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him;

(d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him;

(e) by transfer of shares or debentures in any company or corporation;

(f) in such other form as may be prescribed.

5. Section 14 constitutes compensation pool which consists of evacuee property including urban and rural agricultural land. Section 16 confers power on the Central Government to take such measures as it considers necessary or expedient for the custody, management and "disposal" of the

compensation pool in order that it may be effectively utilised in accordance with the provisions of the Act. Section 20 provides that subject to any rules that may be made under the Act the Managing Officer or Managing Corporation may transfer any property by sale or by lease to a displaced person or by allotment or in any other manner as may be prescribed. Section 40 confers power on the Central Government to frame rules to carry out the purpose of the Act. Sub-section (2) specifies the matters in respect of which rules may provide for payment of compensation. Clause (j) provides for framing of rules laying down procedure for transfer of property out of the compensation pool and the manner of realisation of the sale proceeds or the adjustment of the value of the property transferred against the amount of compensation. The Central Government in exercise of its powers under the Act framed rules known as the "Displaced Persons (Compensation and Rehabilitation) Rules, 1955. These rules were notified on May 21, 1955. The rules did not contain any express provision for the disposal of urban agricultural land property by sale. Since the Central Government had not framed rules regulating the disposal by sale or otherwise of urban agricultural land forming part of the compensation pool, it issued press notes and memorandum in 1957 and 1958 containing executive directions laying down principles and procedure for the transfer of urban agricultural land to displaced persons. According to these directions the evacuee urban agricultural land was to be disposed of in the same manner as other urban evacuee property. These directions accordingly authorised disposal of the urban agricultural property by auction sale in case the value of the property was more than Rs. 10,000. The auction sale of the plot in dispute on August 24, 1959 was held in accordance with the aforesaid directions issued by the Central Government.

6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 to 40 of the Act and since no rules had been framed by the Central Government with regards to the disposal of the urban agricultural property forming a part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in *Bishan Singh v. Central Government*. [(1961) 63 Punj LR 75]. The Division Bench in *Bishan* case [(1961) 63 Punj LR 75] took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. In *T. Cajee v. U. Formanik Siem* [(1961) 1 SCR 750 : AIR 1961 SC 276] the Supreme Court reversed the order of the High Court whereby the order of District Council removing Siem, was quashed by the High Court on the ground that the District Council had not framed any rules for the exercise of its power as contemplated by para 3(1)(g) of 6th Schedule to the Constitution. The High Court had taken the view that until a law as contemplated by para 3(1)(g) was made there could be no question of exercise of power of appointment of a Chief or Siem or removal either. Setting aside the order of the High Court, a Constitution Bench of this Court

held that the administration of the district including the appointment or removal of Siem could not come to a stop till regulations under para 3(1)(g) were framed. The view taken by the High Court that there could be no appointment or removal by the District council without framing of the regulation was set aside. Similar view was taken by this Court in B.N. Nagarajan v. State of Mysore [(1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 Lab LJ 698] and Mysore State Road Transport Corpn. v. Gopinath [(1968) 1 SCR 767 : AIR 1968 SC 464 : (1968) 2 Lab LJ 144]. In U.P. State Electricity Board v. City Board, Mussoorie [(1985) 2 SCR 815 : (1985) 2 SCC 16 : AIR 1985 SC 883] validity of fixation of Grid Tariff was under challenge. Section 46 of the Electricity (Supply) Act, 1948 provide that tariff known as the Grid Tariff shall be fixed from time to time in accordance with any regulations made in the behalf. Section 79 of the Act conferred power on the Electricity Board to frame regulations. The contentions that Grid Tariff as contemplated by Section 46 of the Electricity (Supply) Act could not be fixed in the absence of any regulations laying down for fixations of tariff, and the notification fixing tariff in the absence of such Regulations was illegal, was rejected and this Court observed : (SCC pp. 20-21, para 7)

It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff.

7. As noted earlier Sections 8 and 20 of the Act provides for payment of compensation to displaced persons in any of the forms as specified including by sale to the displaced persons of any property money against the compensation pool and setting off the purchase money against the compensation payable to him. Section 16 confers power on the Central Government to take measures which it may consider necessary for the custody, management and disposal of the compensation pool property. The Central Government had therefore ample powers to take steps for disposal of pool property by auction sale and for that purpose it had authority to issue administrative directions. Section 40(2)(j) provides for framing of rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. Neither Sections 8, 16, 20 nor Section 40 lays down that payment of compensation by sale of the pool property to a displaced person shall not to be done unless rules are framed. These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotments of pool property to them in accordance with rules, if any. Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. If the legislative intent was that until and unless rules were framed power conferred on the authority under Section 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensations by sale of pool property. In the absence of any such provisions the framing of rules, could not be a condition precedent for the exercise of power.

8. The Central Government had ample jurisdiction to issue administrative directions regulating the payment of compensation to the displaced persons by sale of the urban agricultural property. The view taken by the High Court in Bishan Singh case [(1961) 63 Punj LR 75] is not sustainable. The

High Court was therefore in error in holding that the auction sale held in appellant's favour on August 24, 1959 was illegal and void.

9. The second question relates to the validity of the order of Shri Rajni Kant the officer to whom power under Section 33 was delegated, extending time to enable the appellant to deposit the auction sale money. Shri Rajni Kant by his order dated February 6, 1970 exercising the delegated powers of the Central Government under section 33 of the Act set aside the order cancelling the auction sale held in August 1959 and permitted the appellant to deposit the balance of the purchase money within fifteen days from the date of the order with a default clause that on his failure his petition would stand dismissed. In accordance with that order appellant was entitled to deposit the money till February 21, 1970. It appears that on appellant's request the office prepared a challan which was valid up to February 20, 1970. The appellant went to the State Bank on February 20, 1970 to make the deposit but due to rush he could not make the deposit. On his application Shri Rajni Kant extended the time permitting the deposit by February 28, 1970 as a result of which a fresh challan was prepared which was valid up to February 28, 1970 and within the period appellant deposited the balance purchase money. The subsequent order of Shri Rajni Kant was challenged by the respondents and the High Court has quashed that order, although that order was not before the High Court as none of the parties filed the same. The respondents who had challenged the order of Shri Rajni Kant should have filed a copy of the order. In the absence of the order under challenge the High Court could not quash the same. Normally whenever an order of government or some authority is impugned before the High Court under Article 226 of the Constitution, the copy of the order must be produced before it. In the absence of the impugned order it would not be possible to ascertain the reasons which may have impelled the authority to pass the order. It is therefore improper to quash an order which is not produced before the High Court in a proceeding under Article 226 of the Constitution. The order of the High Court be set aside for this reason, but we think it necessary to consider the merits also.

10. Section 33 reads as under :

Certain residuary powers of Central Government. - The Central Government may at any time call for the record of any proceedings under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder.

11. The power conferred upon the Central Government under this provisions is a residuary power in nature as the title of the section itself indicates. By enacting this section Parliament has conferred wide powers on the Central Government to call for the record of any case and to pass any order which it may think fit in the circumstances of the case. The only limitation on exercise of this power is that the Central Government shall not pass any order which may be inconsistent with any of the provisions of the Act and the rules made thereunder. Therefore the Central Government or the delegated authority has power to set aside any order of the subordinate authorities, or to issue directions which it may consider necessary on the facts of a case subject to the aforesaid rider. This power is intended to be used to do justice and to mitigate hardship to a party untroubled by technicalities. Shri Rajni Kant while exercising powers of the Central Government under Section 33 of the Act had ample jurisdiction to set aside the orders of the subordinate authorities cancelling the auction held on August 24, 1959 and to permit the appellant to deposit the balance amount of the purchase money and he further had jurisdiction to extend the time initially granted by him. Extension of time to enable the appellant to deposit the money did not amount to review of the

earlier order dated February 6, 1970. In our opinion the High Court has committed error in holdings that extension of time amounted to review of the orders dated March 6, 1970 (sic February 6, 1970). The default clause in the initial order dated February 2, 1970 was intended to ensure compliance of the order. It did not mean that on expiry of the stipulated period Shri Rajni Kant had no power to extend the period or to pass another order. The purpose and object of such orders was considered by this Court in Mahanth Ram Das v. Ganga Das [(1961) 3 SCR 763 : AIR 1961 SC 882, 883] where the High Court, had granted time to the appellant for payment of deficit court-fee with a condition that in default the appeal shall stand dismissed. The appellant made an application for extension of time but the High Court rejected the application on the ground that grant of time would amount to review of earlier order. This Court while setting aside the High Court's order, observed :

Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a court from taking note of events and circumstances which happens within the time fixed.

12. This Court further held that the court was not powerless to deal with events which may have taken place subsequently and the court has power to mould its practice to meet a situation. In the instant case, the Central Government has very wide powers and it could mould its practice in order to mitigate hardship which may be caused to a party in the circumstances of a case and for that purpose it may grant or extend time as it may consider fit in the circumstances of a case having regard to subsequent events. Such orders do not amount to review. Shri Rajni Kant had no doubt passed a peremptory order but nonetheless he had jurisdiction to take into account subsequent events and to enlarge time granted to the appellant for making the deposit as that order was not inconsistent with any provision of the Act or Rules. In our opinion the High Court committed an error in holding that by granting time Shri Rajni Kant had reviewed his earlier order.

13. The High Court had further held that Shri Rajni Kant had acted in violation of principles of natural justice in passing orders in appellant's favour as no notice or opportunity of hearing was offered to respondents Sohanlal and Sunder Lal. There is no dispute that after cancellation of the auction sale held in appellant's favour, the property in dispute was again put to auction sale on January 17, 1969 and at that auction sale Sohanlal and Sunder Lal respondents were the highest bidder. Their bid was provisionally accepted and in pursuance thereof they deposited 1/5th of the auction sale amount. If the Central Government or any other authority exercising power under Section 33 of the Act were to set aside the order cancelling the auction sale held in appellant's favour and if he was permitted to deposit the remaining amount of the purchase money the property would be transferred to him and in that events Sohan Lal and Sunder Lal who had also made the highest bid and made the initial deposit would suffer prejudice as they would not be entitled to the property in dispute. In these circumstances the respondents were interested in supporting the order of cancellation of the auction sale made in appellant's favour and they had sufficient interest in proceedings taken under Section 33 of the Act. We therefore agree with the High Court that in all fairness, respondents should have been afforded opportunity of hearing while exercising power under Section 33 of the Act.

14. Learned counsel for the appellant urged that the respondents being the highest bidders at the subsequent auction sale had no right in the property and as such they were not entitled to any opportunity of hearing before the Central Government. He placed reliance on a decision of this Court in Bombay Salt and Chemical Industries v. Johnson [AIR 1958 SC 289]. We have considered the said decision, wherein this Court has taken the view that the highest bidder at an auction sale

does not get any right or interest in the property till the auction sale is approved, confirmed and the sale deed is executed in his favour. The respondents even though they were the highest bidders at the subsequent auction sale do not have any right or interest in the 'property' in dispute. The question is however not whether they have any 'rights or interest' in the property but whether they would be prejudicially affected. They would certainly be affected, adversely if the appellant get relief in proceedings under Section 33 of the Act in respect of the said property. Respondents have been in possession of the property since long and furthermore on the basis of their highest bid made at the subsequent sale they have sufficient interest in the matter to contest the appellant's petition made under Section 33 of the Act. We are therefore in agreement with the High Court that respondents should have been afforded opportunity of hearing before any order on the appellant's petition was passed. Since no such opportunity was afforded, the High Court was justified in quashing the orders of Shri Rajni Kant. We accordingly uphold the High Court's order to that extent.

15. We therefore allow the appeal partly and modify the order of the High Court to the extent indicated hereinabove. The Central Government or the authority exercising its power under Section 33 of the Act is direct to consider the appellant's petition afresh in accordance with law after giving notice and affording opportunity of hearing to Sohan Lal and Sunder Lal, respondents. In the circumstances of the case there will be no order as to costs.

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