

Gurbax Singh S/o Chanda Singh

Vs

Financial Commissioner and another

Civil Appeal No.4718 of 1990

(S. Ranganathan, K. N. Saikia JJ)

21.09.1990

JUDGMENT

K. N. SAIKIA J

1. Special leave granted.

2. This appeal is from the Judgment and Order dated August 24, 1988 of the Punjab and Haryana High Court dismissing the appellant's writ petition for quashing the order of the Financial Commissioner Punjab dated 9-2-1988 declaring the second respondent to be eligible for allotment of the lands in dispute under Rule 34C of the Displaced Persons Compensation and Rehabilitation Rules 1955 (hereinafter referred to as 'the rules') framed under the Displaced Persons Compensation and Rehabilitation Act, 1954 (hereinafter referred to as 'the Act').

3. The land in dispute (hereinafter referred to as 'the land') bearing Khasra Nos. 17/8/1, 8/2 and 8/4 admeasuring 7 Kanals 4 Marlas in the Revenue Estate of Shahzada Nangal, Gurdaspur, was owned by one Vinod Kumar. The second respondent claimed to have been in its cultivating possession in the years 1953-54, 1956-57. In 1957-58 and 1958-59 he was recorded as a sub-lessee under one Budha Singh lessee on annual rent of Rs. 100/-. In 1958 the lease in favour of Budha Singh was cancelled with information to him by the Rehabilitation Department whereupon the second respondent's right as sub-lessee came to an end. Consequently the second respondent was no longer recorded as lessee or sub-lessee after 1958-59.

4. In 1961 the second respondent applied to the Settlement Authority for allotment Of the land under R. 34C of the rules claiming as a sub-lessee. His application was rejected by the Managing Officer vide his Order dated 25-11-1962 and the second respondent having not filed any appeal or revision therefrom the order became final and binding on him.

5. The Rehabilitation Authorities having decided to dispose of the land an open auction was conducted on 11-8-1967 and the appellant, a retired army Subedar and also a displaced person from West Pakistan, offered the highest bid of Rs. 9,500/- (Rupees nine thousand five hundred) which was accepted. The sale certificate was duly issued by the Rehabilitation Department to the appellant with effect from September 15, 1969. Without resorting to any appeal against the aforesaid Order dated 25-11-1962 refusing allotment of the land, the respondent made a second attempt for allotment under R. 34C of the rules by making another application which too was rejected by the Settlement Officer by order dated July 24, 1969 wherefrom the second respondent moved a revision

application before the Chief Settlement Commissioner who remanded the case by Order dated July 29, 1970 to the Managing Officer for fresh decision but the latter rejected that application also on 22-3-1973. The second respondent's appeal therefrom to the Settlement Commissioner was also rejected by Order dated 13-5-1973 as the second respondent could not prove his continuous cultivating possession as a sub-lessee under Budha Singh from 1-1-1956 till termination of the latter's lease.

6. The second respondent thereafter instituted a suit on August 22, 1973 in the Court of Subordinate Judge, Gurdaspur against Budha Singh for declaration of his continuous possession of the land. However, neither the appellant who purchased the land in auction nor the Rehabilitation Department which cancelled Budha Singh's lease was impleaded. Budha Singh having supported the case, a decree declaring the second respondent to have been in continuous possession was passed.

7. The second respondent this time filed a revision from the appellate order of the Settlement Commissioner dated 13-5-1973 before the Chief Settlement Commissioner who by his Order dated 5-11-1976 remanded the case to the Managing Officer for fresh decision. The Managing Officer vide his order dated 6-1-1978 this time allotted the land to the second respondent under R. 34C of the rules. The appellant's appeal therefrom to the Settlement Commissioner was dismissed vide order dated 6-6-1978 but his revision therefrom was allowed and the allotment order in favour of second respondent was quashed by the Chief Settlement Commissioner vide his Order dated 11 - 1 - 1979. The Chief Settlement Commissioner declared the appellant to be the auction-purchaser and therefore the true owner of the land. The second respondent's revision therefrom was also rejected by the Financial Commissioner on 23-10-1979. Thus all the authorities in the successive rounds found the facts against the second respondent.

8. The second respondent then filed a writ petition challenging the Financial Commissioner's order dated 23-10-1979 and the High Court, contrary to all the aforesaid findings of fact, remanded the case by its order dated 7-1-83 to the Financial Commissioner for fresh decision in the light of the decree of the civil court dated 17-11-1973, which the High Court at the same time declared to have been a collusive one, obtained by second respondent in collusion with Budha Singh. The Financial Commissioner on remand by the High Court has now held vide Order dated 9-2-1988 that the second respondent is eligible for allotment of the land under R. 34C of the Rules and accordingly allotted the land in his favour quashing the auction sale made in favour of the appellant on 11-8-1967 holding that being a sub-lessee in continuous possession since 1-1-1956, the second respondent had a superior claim to allotment of the land and, therefore, the auction sale to the appellant was null and void. The appellant's writ petition challenging that Order having been dismissed in limine by the High Court vide impugned Judgment dated 24-8-1988, he appeals.

9. Rule 34C included in Chapter V of the Rules provides:

Allotment of agricultural lands of the value of Rs. 10,000/- or less.- Where any land to which this Chapter applies has been leased to a displaced person and such land consists of one or more khasras and is valued at Rs. 10,000/ - or less, the land shall be allotted to the lessee:

Provided that where any such land or any part thereof has been sub-leased to a displaced person and the sub-lessee has been in occupation of such land or part thereof continuously from the first January, 1956 such land or part thereof as the case may be, shall be allotted to such sub-lessee."

10. Mr. Rajeev Dhawan, the learned counsel for the appellant, submits, inter alia, that after Budha Singh's lease was cancelled in 1958, the second respondent's status as sublessee ceased and thereafter he was neither a sub-lessee nor did he pay any rent for the land and, in fact, he was a trespasser and not entitled to allotment under R. 34C of the Rules; that his first application was rightly rejected and he having never preferred any appeal or revision therefrom, the order became final and binding on him, and he was, therefore, not entitled to make the second application. After the land was already sold in auction to the appellant on 11-8-67, counsel submits, the land ceased to be evacuee property and the second respondent's second application was not maintainable, and the appellant was declared as auction-purchaser on 15-8-1969 and the sale certificate issued to him was with effect from 15-9-1969.

11. Mr.R.G.Bhagat, the learned counsel for the respondent, submits that the decision on his first application for allotment was not communicated to him till he made his second application for allotment and that as a sub-, lessee he had the right to apply for allotment and that his right has now been rightly recognised and the land allotted to him though his second application was also rejected on 24-7-1969.

12. It appears that though the land was sold in auction to the appellant under R. 34H on 11-8-1967, perhaps because of the pendency of the second application of the second respondent, the appellant was not declared as auction-purchaser during the pendency of that application and only after it was rejected on 24-7-1969, the appellant was declared purchaser on 15-8-1969. It also appears that after the second respondent's revision petition against the order rejecting his second application for allotment was remanded by the Chief Settlement Commissioner to the Managing Officer for fresh decision and the latter rejected that application also holding that the second respondent failed to prove his continuous possession of the disputed land as sub-lessee as required under R. 34C; and the appeal therefrom was also rejected on 13-5-1973, the certificate of sale was issued to the appellant on 23-6-1973 with effect from 15-9-1969. Thus, the matter should have finally ended at that stage.

13. The second respondent's suit against Budha Singh leading to the decree declaring that the second respondent was in continuous possession of the disputed land was, argues Mr. Dhawan, not maintainable and the decree was rightly held to have been collusive, but Mr. Bhagat submits that the High Court was wrong in holding so.

14. Mr. Dhawan's submission that the sale in favour of the appellant culminating in issue of the sale certificate in his favour had the effect of taking away the land from the pool of evacuee properties and thereafter so long that was not cancelled according to law, it was not open for the rehabilitation authorities to deal with the same appears to be sound.

15. Rule 34H of the Rules reads:-

"34H. Manner of disposal of land not allotted.- Any land to which this Chapter applies which is not allotted under this Chapter shall be disposed of in the manner provided in Chapter XIV."

16. Chapter XIV of the Rules prescribes the procedure for sale of property in the compensation pool. Rule 90 prescribes the procedure for sale of property by public auction. Sub-rule (1 5) of R. 90 provides for issue of sale certificate and for sending a certified copy of the sale certificate by the Managing Officer 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. Rule 92 prescribes the

procedure for setting aside the sale.

17. In *Bishan Paul v. Mothu Ram*, reported in AIR 1965 SC 1994, it has been held that Rules 90 and 92 show that there are distinct stages in the auction sale of property in the compensation pool, namely, (1) the fall of the hammer and the declaration of the highest bid, (2) the approval of the highest bid by the Settlement Commissioner or Officer appointed by him, (3) payment of the full price after this approval, (4) grant of certificate, and (5) registration of the certificate. That is the intention behind the rules. The new form of the sale certificate requires a mention that the purchaser had been declared the purchaser of the said property with effect from the certificate's date. The title, however, would not be in abeyance till the certificate was issued but would be based on the confirmation of the 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, and title must be deemed to have passed and the certificate must relate back to the date when the sale became absolute. The appellant, therefore, must be held to have obtained title to the land on the date of confirmation of the sale. That is why the sale certificate in the instant case was expressly stated to be with effect from 15-9-1969.

18. Rule 92 provides:

"92. Procedure for setting aside a sale.(1) Where a person desires that the sale of any property made under Rule 90 or 91 should be set aside because of any alleged irregularity or fraud in the conduct of the sale (including in the case of a sale by public auction in the notice of the sale) he may make an application to that effect to the Settlement Commissioner or any officer, authorised by him in this behalf to approve the acceptance of the bid or tender, as the case may be.

(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;

(b) where the sale is made by inviting tenders, within seven days from the date when the tenders were opened.

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Under sub-rule (4), notwithstanding anything contained in R. 92, the Settlement Commissioner may, of his own motion, set aside any sale under this Chapter if he is satisfied that any material irregularity or fraud which has resulted in a substantial injury to any person has been committed in the conduct of the sale. In the instant case we have not been shown any application for setting aside of the auction sale and the sale certificate in favour of the appellant made according to rules. Nor have we been shown that the Settlement Commissioner of his own motion had set aside the sale being satisfied that any material irregularity or fraud which had resulted in a substantial injury to any person had been committed in the conduct of the sale.

19. Section 14 of the Act provides for constitution of the compensation pool. Section 15 of the Act exempts the property in compensation pool from processes of Courts. Section 20 of the Act empowers the Managing Officer or managing corporation to transfer any property within the

compensation pool(a) by sale of such property to a displaced person or any association of displaced person whether incorporated or not, or to any other person, whether the property sold by public auction or otherwise. Under sub-section (2) of that section every Managing Officer or managing corporation selling any immovable property by public auction under sub-section (1) shall be deemed to be a Revenue Officer within the meaning of sub-section (4) of S. 89 of the Indian Registration Act, 1908. Under S. 27 of the Act save as otherwise expressly provided in the Act every order made by any officer or authority under the Act, including a Managing Corporation, shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding. The jurisdiction of the Civil Court was therefore barred in the matter of the sale. It is true that where the special tribunal or authority acts ultra vires or illegally, the Civil Court has by virtue of S. 9 of the Civil Procedure Code power to interfere and set matters right. As was laid down by the Judicial Committee of the Privy Council in *Secretary of State v. Mask and Co.*, AIR 1940 PC 105, if the provisions of the Statute have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Courts have jurisdiction to examine those cases. This rule was reiterated by the Supreme Court in *State of Kerala v. M/s. N. Ramaswami Iyer and Sons*, AIR 1966 SC 1738. In the instant case the second respondent's civil suit against Budha Singh for declaration of possession was not against any order passed by any officer under the Act. That decree, even if it was not declared collusive could not have collaterally affected the auction sale order.

20. Mr. Dhawan is, therefore, right in his submission that the appellant, a displaced person, having bona fide purchased the land in public auction for Rs. 9,500/- and having paid that amount with the sincere hope of his rehabilitation, has been subjected to expensive protracted litigation for the last 22 years during which he has earned nothing out of the land while the second respondent had, until the impugned orders, been enjoying the usufruct of the land and this is because of the State not honouring its own final commitment made in the sale certificate in favour of the appellant.

21. Mr. Bhagat answers that the second respondent was in possession in 1956, and till the cancellation of Budha Singh's lease in 1958, and thereafter. He was admittedly a sub-lessee of Budha Singh till 1958 and then was a sub-tenant holding over on the date he applied for allotment in 1961. The decision rejecting his first application having not been communicated to him he made his second application which was also wrongly rejected by the Chief Settlement Officer; and the Financial Commissioner ultimately on remand from the High Court, on the basis of the second respondent's possession of the land, rightly set aside the order of the Chief Settlement Commissioner dated 11-1-1979 and allotted the land to the second respondent declaring him to be sub-lessee for the period after 1958 setting aside the sale made by the Rehabilitation Department made in favour of the appellant and that the High Court by the impugned order dated 24-8-88 rightly dismissed the appellant's writ application in limine. Mr. Bhagat also persuades us to consider that the second respondent, also a displaced person, had been demanding justice for the last 22 years and has finally succeeded in obtaining the allotment and he ought not to be deprived of the same. Sri Dhawan attacks the order of the Financial Commissioner on the ground that he had no material before him other than what was there before his predecessor on 23-10-1979, except the judgment in the civil suit, which for obvious reasons, cannot be taken into account. Mr. Dhawan emphasises that, it having been repeatedly held earlier that continuous cultivating possession of the second respondent was not proved, there was no basis for the Financial Commissioner in his order dated 9-2-1988 to have observed that "a favourable presumption regarding continuity of his possession during the intervening period that is from kharif 1961 to rabi 1964 ought to have been drawn and benefit of doubt given" to the second respondent, in spite of the absence of Girdawari for the year 1961-62 and 1962-63 and mutilations in the entries of Girdawari for 1963-64. In a sense, he is no

doubt correct but the previous order of 23-10-1979 having been set aside by the High Court, it was open to the Financial Commissioner to consider the matter afresh. Doing so, he has found that since the possession of the second respondent from 1953 to 1961 and again in 1964-65 and 1965-66 was borne out from the records, the absence of the records for 1961-62 and 1962-63 and their illegibility due to mutilation for 1963-64 and 1964-65 should not be held against him and that his continuous possession since 1962 can be presumed entitling him to an allotment under S. 34C. This was a conclusion on facts, which the High Court has declined to interfere with.

22. Thus, we have a peculiar position in this case. While Mr. Dhawan is right in saying that the appellant, as a bona fide purchaser of the land for value at public auction, should be put in the same position in which he would have been had his auction purchase as evidenced by the Sale Certificate been effective from the date of purchase, Mr. Bhagat appears to be justified in saying that it would not be just and proper to deprive the second respondent who was inducted by Budha Singh as a sub-lessee and who has continued in possession of the land till date, of the fruits of his protracted litigation culminating in allotment of the land to him. The difficulty in the present case has arisen because the State confirmed the sale in favour of the appellant in 1969 and issued a sale certificate to him in 1973 without waiting for the final outcome of the second respondent's revision application to the Chief Settlement Commissioner and further proceedings consequent thereon. The odd situation, creating equities in favour of both the parties, that has thus resulted in the present case is due to no fault of the appellant or the second respondent. It could have been avoided if the State had held over the auction until the second respondent's application had been finally disposed of or had held the auction subject to the result of the application. It is true that the second respondent could have taken steps to challenge the auction in favour of the appellant but, perhaps misguidedly, he was concentrating on getting an allotment under S. 34C for which he cannot be wholly blamed. Whatever that may be, the final position is that both parties have had to suffer and indulge in lengthy litigation.

23. Under the above circumstances we feel that while this Court is to administer justice according to law there may be scope for doing justice and equity between the parties. In such a situation we remember what the institutes of Justinian, *De Justitia Et Jure*, in 'Liber Primus' Tit. I said: "Justitia est constans et perpetua voluntas jus suum cuique tribuend". "Justice is the constant and perpetual wish to render every one his due. Jurisprudencia est divinarum atque humanarum rerum notitia, justi atque injusti scientia". Jurisprudence is the knowledge of the things divine and human; the science of the just and the unjust. The divine is that which right reason commends. The human is also in the contents of the law. As Max Rumelin said, in the *Struggle to govern Law*, "Justice is rivaled by equity." The dilemma that equity is to be better than justice and yet not quite opposed to justice, but rather a kind of justice has troubled us. Gustav Radbruch clarifies the mutual relation between two kinds of justice, namely, commutative and distributive. We may call "just" either the application or observance of law, or that law itself. "The former kind of justice, especially the justice of the Judge true to the law," according to him, "might better be called righteousness." Here "we are concerned not with justice which is measured by positive law, but rather with that by which positive law is measured." Justice in this sense means equality. Aristotle's doctrine of justice of equality is called by him commutative justice which requires at least two persons while distributive justice requires at least three. Relative equality in treating different persons while granting relief according to need, or reward and punishment according to merit and guilt is the essence of distributive justice. While in commutative justice the two persons confront each other as co-equals, three or more persons are necessary in distributive justice in which one, who imposes burdens upon or grants advantages to the others, is superior to them. "Therefore, it presupposes an act of distributive justice which has granted to those concerned, equality of rights, equal capacity to act,

equal status". (The Legal Philosophies of Lask, Radbruch and Dabin- p. 74). According to Radbruch, "distributive justice is the prototype of justice. In it we have found the idea of justice, towards which the concept of law must be oriented." Law offers and protects the conditions necessary for the life of man and his perfection. In the words of Cardozo, "What we are seeking is not merely the justice that one receives when his rights and status are determined by the law as it is; what we are seeking is a justice to which law in its making should conform." The sense of justice will be stable when it is firmly guided by the 'pragma' of objective and subjective interests.

24. In the instant case the Financial Commissioner is party. What we find in the instant case is that the Rehabilitation authorities acting under the Act and the Rules decided the competing claims of the appellant as well as the second. respondent as to the land. If the Rehabilitation authorities can provide an equal extent of land with equal benefits to both the parties justice may appear to be done but that being uncertain, the availability of land being limited, this Court can only look towards equity for solution.

25. Considering the facts of the instant lease including the extent of the land and the purposes of the Act and the Rules, and the reality that the land must have become scarce and much more valuable now than in 1967, we feel that the ends of justice on the facts of the present case require that the impugned Orders be set aside and the land be caused to be divided by the Financial Commissioner into two equal halves and one half be given possession of to the appellant by dint of his auction purchase and the other half be allotted and given possession of to the second' respondent under R. 34C of the rules. We order accordingly. We direct the Financial Commissioner or the Chief Settlement Commissioner, after notice to the appellant and the second respondent, to divide the land forthwith into two equal halves and deliver possession of the appellant's moiety to him. They should carry out the above directions within three months from the date of receipt of this order. The parties shall co-operate in carrying out of the directions and we hope that they will be able to live in peace thereafter. The appeal is disposed of accordingly Under the facts and the circumstances of the case, we make no order as to costs. A copy of the Judgment may be forwarded forthwith to the Financial Commissioner.

Order accordingly.

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