

SUPREME COURT OF INDIA

Lt. Governor of Delhi & Ors.

Vs.

Matwal Chand

C.A.No.3971 of 2006

(Ranjan Gogoi and Prafulla C.Pant,JJ.,)

04.09.2015

JUDGMENT

Ranjan Gogoi,J.,

1. The challenge in this appeal is to an order dated 15.04.2004 passed by the High Court of Delhi in two writ petitions raising identical questions of law on similar facts. The writ petitions filed by the respondent have been allowed and the acquisition proceedings under the Land Acquisition Act, 1894 (in short ‘the LA Act’) have been declared null and void. Aggrieved, the Delhi Administration has filed the instant appeal.

2. The core facts lie in a short compass and are as follows: The subject land, admittedly, was evacuee property. It was acquired under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short ‘the DPCR Act’). Thereafter the property was transferred to the compensation pool under Section 14 of the said Act. A decision was taken to transfer the subject property out of the compensation pool to displaced persons. In an auction held on 6.8.1958 the predecessors of the respondents (hereinafter referred to as the respondents) offered the highest bid which was accepted on 15.10.1958. After adjustment of the verified claims, the respondents were asked to deposit the balance price within 15 days which was so done. On 10.3.1959, the respondents were informed by the appellant that their bid has been accepted and provisional possession of the property is being handed over to them.

3. On 13.11.1959 a notification under Section 4 of the LA Act was issued proposing to acquire 34070 acres of land in several villages including Village Basai Darapur where the subject land was situated. The notification under Section 4 specifically excluded from the purview of the acquisition Government and evacuee land. After the Section 4 notification was issued and prior to the declaration under Section 6 made on 6.1.1969, the sale certificate was issued in respect of the subject land on 25.1.1962. The same which was registered on 21.2.1962 clearly recites that the respondents are declared as the purchasers of the property with effect from 25.1.1962.

4. After publication of the declaration under Section 6 on 6.1.1969, notices under Sections 9 and 10 of the LA Act were issued on 10.1.1979. The respondents filed their claim before the competent authority. Thereafter on 7.1.1981 the award in respect of the subject property was passed which came to be challenged in the writ petitions out of which this appeal has arisen.

5. By the impugned order the High Court on consideration of the rival contentions and the provisions of the DPCR Act and the facts set out above came to the conclusion that the subject land was evacuee property on the date of the notification issued under Section 4 of the LA Act and as the said notification had exempted evacuee land from the purview of acquisition, the proceedings for acquisition, including the award, were null and void.

6. Before us, Ms. Rachana Srivasatava learned counsel for the appellant has urged that the subject property, though evacuee property, ceased to be so upon acquisition of the same under Section 12 of the DPCR Act. It is urged that under Section 12(2) of the said Act, upon publication of the notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property stands extinguished and the evacuee property vests absolutely in the Central Government free from all encumbrances. Under sub-section (4) of Section 12 all such evacuee property acquired becomes a part of the compensation pool which vests in the Central Government under Section 14(2) of the DPCR Act. Pointing out the provisions of the Section 20 of the DPCR Act, it is urged that property included in the common pool may be sold, leased, allotted or otherwise transferred to a displaced person. It is therefore urged that upon the acquisition of the subject property under Section 12 of the DPCR Act the same had shed its character as evacuee property and by operation of the provisions of the Act the property stood vested in the Central Government. The exemption clause contained in the notification under Section 4 of the LA Act issued in the present case on 13.11.1959, in so far as evacuee property is concerned, therefore, has no application to the subject land.

7. It is further argued that though in the present case the sale certificate in respect of the property was issued on 25.1.1962 and the property therein was transferred to the respondents with effect from the said date, there is no inherent contradiction between the transfer of title in favour of the respondents on a subsequent date and the acquisition of the property or initiation of such process of acquisition on a prior date. In this regard placing reliance on a judgment of this Court in *Saraswati Devi (Dead) by LR vs. Delhi Development Authority & Ors¹*, it is contended that the bid offered by the respondent; the acceptance thereof and the delivery of provisional possession creates an encumbrance on the subject land which is amenable to a process of acquisition under the LA Act as held in *Saraswati Devi* (supra).

8. Reliance has also been placed on a judgment of this Court in *Delhi Administration & Ors. Vs. Madan Lal Nangia & Ors²*. to contend that the evacuee property vests in the Custodian for the purposes contemplated by the Administration of Evacuee Property Act, 1950 and in the Central Government only after the notification of acquisition under Section 12 of the DPCR Act is issued but not prior thereto.

9. On the other hand learned counsel appearing on behalf of the respondents has contended that the acquisition of evacuee property by the Central Government under Section 12 of the DPCR Act and the transfer of such land to the compensation pool under Section 14 does not divest the status of the subject land as evacuee property. Pointing out the provisions of the two enactments i.e. the DPCR Act and the Administration of Evacuee Property Act, it is contended that while the object and purpose of the latter Act is the administration of evacuee property by the custodian in accordance with the provisions thereof, acquisition of such property for inclusion in the common pool for allotment of such land to displaced persons is contemplated under the DPCR Act. The transfer of evacuee land to the common pool by issuance of a notification under Section 12 of the DPCR Act does not change the character of the land which continues to remain evacuee property. Hence it is contended that the subject land is covered by the exemption clause of the Section 4 notification dated 13.11.1959. It is also urged that if by virtue of Section 12 of the DPCR Act the property is vested in the Central Government it cannot be understood how the Central Government could have initiated the process of acquisition of its own property under the provisions of the LA Act.

10. Learned counsel has further argued that in the present case in terms of the expressed stipulation in the sale certificate dated 25.1.1962 to the said effect, the property stood transferred in the name of the respondents with effect from the said date and not from any anterior date including the date of payment of the full amount due. This is notwithstanding the fact that under Rule 90 of the Rules of 1955 for sale of properties forming part of the compensation pool, the sale certificate only formalises the transfer which is effective from the date of payment of the full price. Relying on the clear terms embodied in the sale certificate issued in the present case it is argued that the subject land continued to vest in the Central Government until 25.1.1962 and hence could not have been acquired by the notification dated 13.11.1959 under Section 4 of the LA Act, the said date being anterior to the date of transfer of title in favour of the respondents.

11. Two questions as set out below, in our considered view, arise for determination in the present case.

“(i) Whether the land, after issuance of notification under Section 12 of the DPCR Act, ceased to be evacuee property so as to be excluded from the purview of the notification issued under Section 4 of the LA Act?”

(ii) If the subject land vested in the Central Government upon publication of the notification under Section 12 of the DPCR Act and thereby ceased to be evacuee land, could such land vested in the Central Government be acquired under the provisions of the LA Act?”

12. A reading of the provisions of the Administration of Evacuee Property Act, 1950 would go to show that the said Act (since repealed with effect from 5.9.2005) had been enacted for the administration of evacuee property and for matters connected therewith. While it will not be necessary to set out the definition of “evacuee” and “evacuee property” as defined in the said Act regard must be had to the provisions of Section 6 which contemplated appointment

by the Central Government by means of a notification in the official gazette, a Custodian for any State for discharge of duties under the Act. Section 7 empowers the Custodian to declare any property as an evacuee property after issuance of appropriate notice in the manner prescribed and after holding an inquiry in the matter. Under Section 8 any property declared as evacuee property under Section 7 is deemed to have vested in the Custodian. Possession of all such properties is to be taken over by the Custodian under Section 9 of the Act. Section 10 deals with the powers and duties of the Custodian and may be usefully extracted herein below.

“10 - Powers and duties of the Custodian generally-

(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub- section (1), the Custodian may, for any of the purposes aforesaid,--

(a) carry on the business of the evacuee;

(b) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorize the manager to exercise any of the powers of the Custodian under this section;

(c) enter, or authorize any other person to enter, any land or premises to inspect any evacuee property;

(d) take all such measures as may be necessary to keep any evacuee property in good repair;

(e) complete any building which has vested in him and which requires to be completed;

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(i) take such action as may be necessary for the recovery of any debt due to the evacuee;

(j) institute, defend or continue any legal proceeding in any Civil or Revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

(l) in any case where the evacuee property which has vested in the Custodian consists of a share or shares in a company, exercise, notwithstanding anything to the contrary contained in the 3 Indian Companies Act, 1913 (7 of 1913), or in the articles of association of the company, the same rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the Indian Companies Act, 1913 , or the articles of association of the company or in any other matter as the evacuee shareholder himself could have done had he been present, although the name of the Custodian does not appear in the register of members of the company;

(ll) in any case where the evacuee property which has vested in the Custodian consists of fifty- one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (7 of 1913), or in the articles of association of the company: Provided that the Custodian shall not take charge of such management of the company except with the previous approval of the Central Government;

(m) incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority ;

(n) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession;

(o) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto: Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General;

(p) acquire any non- evacuee interest in evacuee property, whether by way of purchase or otherwise: Provided that no such acquisition shall be made except with the previous approval of the Custodian- General;

(q) delegate, by general or special order, all or any of his functions under this Act to such officers or persons as he thinks fit.”

13. On the other hand, the DPCR Act has been enacted, inter alia, for the purpose of making payment of compensation and rehabilitation grants to displaced persons. Section 12 contained in Chapter III of the DPCR Act confers power in the Central Government to acquire evacuee property for rehabilitation of displaced persons. The provisions of Sections

12, 14 and 20 which are relevant have already been noticed and will not require any further mention. The effect and interplay between the two enactments have been noticed in *Delhi Administration & Ors. vs. Madan Lal Nangia & Ors.* (supra) wherein it has been held that under the Administration of Evacuee Property Act, 1950, the evacuee property vests in the Custodian for purposes of administration of such property in accordance with the provisions of the Act and at that stage the property does not vest in the Central Government. However, after the issuance of the notification under Section 12 of the DPCR Act the property vests in the Central Government. This is, in fact, abundantly clear from the provisions of Section 12(2) of the DPCR Act which clearly provides that on publication of a notification under sub-section (1) of Section 12 “the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.” Under sub-section (4) of Section 12 all such evacuee property acquired forms part of the compensation pool which under Section 14 vests in the Central Government “free from all encumbrances and shall be utilised in accordance with the provisions of this Act and the rules made thereunder”. The vesting of the property in the Custodian under the Administration of Evacuee Property Act (Section 8) and in the Central Government (after issuance of Section 12 notification under the DPCR Act) are two distinct and different phases which are contemplated to be brought into effect by specific acts and conscious decisions as contemplated by the provisions of the two enactments. The clear language of Section 8 of Administration of Evacuee Property Act and Sections 12(2) & (4) and 14 of the DPCR Act makes it abundantly clear that the transition from the vesting of the evacuee property in the Custodian to the Central Government is a distinct and identifiable process under the law. The acquisition of the land under Section 12 of the DPCR Act brings the evacuee property into a common pool which is to be utilised in accordance with the provisions of the Act. Specifically, once the property is included in the common pool and vests in the Central Government, under Section 16 of the DPCR Act, the Central Government may take such measures as it considers necessary or expedient for the custody, management and disposal of such property including transfer of the property out of the compensation pool to a displaced person. In the face of the clear provisions of the two enactments and the respective schemes contemplated thereunder, it is difficult to hold that the evacuee property continues to retain such status after issuance of the notification under Section 12 of the DPCR Act. In fact the above view would find resonance in an old vintage decision in *Major Gopal Singh and Others vs. Custodian, Evacuee Property, Punjab and Others* though rendered in a somewhat different context. The relevant details thereof in para 9 may be extracted below.

“9. Section 12 of the 1954 Act empowers the Central Government to acquire evacuee property for rehabilitation of displaced persons by publishing in the official gazette a notification to the effect that it has decided to acquire such evacuee property in pursuance of this provision. Sub-section 2 of s.12 of the Act provides that on the publication of the notification under sub-s. 1 the right, title or interest of any evacuee in the property specified in the notification shall immediately stand extinguished and that property shall vest absolutely in the Central Government free from all encumbrances. The power of the Custodian under the Administration of Evacuee

Property Act, 1950, to allot any property to a person or to cancel an allotment existing in favour of a person rests on the fact that the property vests in him. But the consequence of the publication of the notification by the Central Government under s. 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act with respect to any property or a class of property would be to divest the Custodian completely of his right in the property flowing from s.8 of the Administration of Evacuee Property Act, 1950, and vest that property in the Central Government. He would, therefore, not be competent to deal with the property in any manner in the absence of any provision in either of these two enactments permitting him to do so. No provision was, however, pointed out to us in either of these Acts whereunder despite the vesting of the property in the Central Government the Custodian was empowered to deal with it. Sub-s. 4 of s. 12 of the 1954 Act provides that all evacuee property acquired under that section shall form part of the compensation pool. Under s. 16(1) of this Act the Central Government is empowered to take such measures as it considers necessary or expedient for the custody, management and disposal of the compensation pool. Sub-s. 2 of s. 16 empowers the Central Government to appoint such officers as it deems fit or to constitute such authority or corporation as it deems fit for the purpose of managing and disposing of the properties forming part of the compensation pool. Section 19 of the Act provides that notwithstanding anything contained in any contract or any other law for the time being in force but subject to the rules that may be made under the Act the managing officer or managing corporation may cancel any allotment etc., under which any evacuee property acquired under the Act is held or occupied by a person whether such allotment or lease was granted before or after the commencement of the Act. This provision thus confers the power to deal with evacuee property acquired under the Act only on a managing officer appointed or managing corporation constituted under the Act and makes no mention whatsoever of the Custodian appointed under the Administration of Evacuee Property Act. No doubt, under s.10 of the Administration of Evacuee Property Act the Custodian is empowered to manage evacuee property and in exercise of his power he will be competent to allot such property to any person or to cancel an allotment or lease made in favour of a person. Apart from the fact that subsequent to the issue of the notification under s. 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act, the property would cease to be evacuee property, the aforesaid powers of the Custodian would be in conflict with those conferred by s.19 of the 1954 Act on a managing officer or a managing corporation constituted under that Act.”

14. In view of the above it has to be held that the subject land ceased to be evacuee property after publication of the notification of acquisition under Section 12 of the DPCR Act. Consequently the exemption clause in the notification issued under Section 4 exempting from its purview evacuee land will have no application to the present case.

15. This will bring us to the second question that has been formulated for an answer in the present appeal. In *Saraswati Devi (supra)* on an exhaustive consideration of the issue with regard to the effect of delivery of provisional possession, which in the present case was handed over to the respondents on approval of the highest bid, it was held that such

provisional possession gives the auction purchaser possessory rights as distinguished from proprietary rights in the auctioned property. The above proposition culled out in a judgment of the Punjab High Court in *Roshan Lal Goswami vs. Gobind Raj* was approved by this Court to further hold that such proprietary rights occasioned by the delivery of provisional possession creates an encumbrance on the property which can be the subject of acquisition under the LA Act. In the present case also the facts being identical, we have to hold that an encumbrance had been created in the subject property, which, as held in *Saraswati Devi (supra)*, could be acquired under the LA Act although the ownership in the land vested in the Central Government. In this regard we must also take note of the manner in which the earlier decision of this Court in *Sharda Devi vs. State of Bihar* has been understood in *Saraswati Devi (supra)*, namely, it is only such land in respect of which the entirety of the rights vests in the State and on which land there are no private rights or encumbrances which would be outside the purview of the LA Act.

16. In view of the above discussions we arrive at the conclusion that the judgment and order of the High Court under challenge in the present appeal is not sustainable in law. We, therefore, set aside the same and allow this appeal.

ORDER

17. This application seeks directions that the subject land acquisition proceedings are deemed to have lapsed under Section 24(2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

18. In view of the issues raised and the consistent orders of this Court on similar applications, we leave it open to the respondents to approach the appropriate forum, if they are so advised, to initiate appropriate proceedings under Section 24 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Any such approach, if made, shall be within eight weeks from today.

19. The I.A. stands disposed of in the above terms.

Judgment Referred.

¹(2013) 3 SCC 0571

²(2003)10 SCC 0321