

ALLAHABAD HIGH COURT

Manohar Lal

Vs.

Rent Control and Eviction Officer, Bareilly

Civil Misc. Writ No. 1594 of 1957

(J.K. Tandon, J.)

14.10.1958

ORDER

J.K. Tandon, J.

1. House No. 127-A(3) situate at Civil Lines Bareilly was admittedly evacuee property vested in the Custodian. The same was sold in October/November 1956 by public auction under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and one Vidhya Bhushan Chaudhry was declared the auction-purchaser. Although the auction took place about two years ago, the sale certificate in respect thereof has not been issued so far in favour of Vidhya Bhushan Chaudhry. This is the definite allegation of the petitioner and the Rent Controller, Bareilly, respondent, has not controverted it. According to the report of the house inspector dated 25th May 1957, Annexure B, no sale certificate in respect of this property in favor of Vidhya Bhushan Chaudhry had been made till then. For the purposes of this case we may, therefore, take it that a sale certificate has not been made in favor of the auction-purchaser as yet. After the auction Vidhya Bhushan took possession of the house and deposited his luggage etc. also in it. The petitioner, who is Manohar Lal, has alleged that Vidhya Bhushan, who owns a farm at Kaladongi in Haldwani, district Nainital, often lived in the house in question but also stayed at Kaladongi, the petitioner himself used to stay with his brother in another house in Bareilly city but after the latter was married they requested Vidhya Bhushan to permit them to shift into the house in question as licensee which Vidhya Bhushan permitted.

In this manner they claim to be living in the house not as tenants but as licensees without payment of any rent to Vidhya Bhushan in a portion only while the remainder of the building is in the occupation of Vidhya Bhushan. In June 1957, the Rent Controller served a notice upon Jeewan Dass the brother of the petitioner, and another notice purporting to be against Mohan Lal under Section 7-A(1) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 to show cause why they should not be evicted. They appeared in reply to the notice and opposed it but the Rent Controller by his order dated 12th July 1957 directed them to be evicted. It is alleged that

no allotment order in favor of any individual had till then been made by the Rent Controller, still he made the order under Sub-Section (2) of Section 7-A against the petitioner. By the present petition the petitioner is challenging the legality of the aforesaid order of the Rent Controller under Section 7-A(2) and has asked the same to be quashed

2. Two fold objections were urged at the hearing, firstly, that in the absence of any order of allotment of the accommodation by the Rent Controller in favour of any person he had no jurisdiction to proceed against the petitioner under Sub-Section (2) of Section 7-A, and, secondly, that the house in question had not ceased to be evacuee property as such the provisions of the U.P. (Temporary). Control of Rent and Eviction Act, 1947 were inapplicable to it, and the order of the Rent Controller was without jurisdiction.

3. It is unnecessary for disposing of this petition to examine the first objection by the petitioner, as the same can effectively be disposed of on the second ground alone. Admittedly, the house in question was evacuee property. It, however, was sold by public auction under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 which conferred powers on the managing officer, as defined in that Act, to transfer any property out of the compensation pool. This house, it is not disputed, was part of the compensation pool; as such the auction sale held in respect thereof was governed by the provisions of that section. This section says that subject to any rules that are made under the Act, the managing officer may sell any property in the compensation pool. Section 40 of the same Act conferred power on the Central Government to frame rules; accordingly the Displaced Persons (Compensation and Rehabilitation) Rules 1955 were promulgated on 21st May 1955 by that Government, Chapter 14 of these rules has prescribed the procedure for sale of property in the compensation pool. One of the modes prescribed is by auction which was followed in the case of the sale of this house. Rule 90 applies to sales by public auction. It requires that the sale shall be held by a private auctioneer after the proclamation of the intended sale has been published, on a date and time to be appointed for it. Sub-rule (8) provides that the person declared to be the highest bidder for the property at the public auction shall pay 10 per cent of the amount of his bid to the officer conducting the sale and that in default of such deposit the property shall be resold.

Sub-rule (10) provides that the bid shall be subject to the approval of the Settlement Commissioner and that the same shall not be approved until the expiry of seven days from the date of auction. Sub-rule (11) makes provision for communication of the approval of the Settlement Commissioner to the auction purchaser and further that the auction purchaser shall when his bid has been accepted, deposit the balance of the purchase money in the treasury. Sub-rule (12) enables the auction purchaser to have the balance of the price adjusted against compensation payable to him. Sub-rule (13) similarly provides that where the compensation payable is insufficient to pay up the balance of the price the excess price shall be paid in cash. Then comes sub-rule (14), which lays down that if the balance of the price is not paid as aforesaid the initial deposit made by the auction purchaser under sub-rule (8) shall be liable to forfeiture and he shall not have any claim to the property. Lastly, sub-rule (15) provides that

when the purchase price has been realized in full from the auction purchaser, the managing officer shall issue to him a sale certificate in the form specified in the appendix to the rules and a certified copy of the certificate shall be sent by the managing officer to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property is situate.

There is a proviso also in the sub-rule which authorizes the preparation of the sale certificate in favor of the auction purchaser alone notwithstanding that the price was adjusted against compensation payable to the auction purchaser and his associates. It shows that until the sale certificate is made the purchaser of the property can either be the auction purchaser, or he and some others also, whose compensation money has been adjusted towards payment of price.

4. Before I went on to discuss the effect of the above provisions reference might further be made to sub-rule (4) of Rule 92 which authorized the Settlement Commissioner in very wide terms to set aside any sale held under Chapter 14 of the Rules. This power can in the absence of any time limit mentioned in the sub-rule be exercised at any time before the sale certificate is made.

5. The question which has now to be seen is whether the property in the house passed in favor of Vidhya Bhushan Chaudhry on the acceptance of his bid in respect of it, or does the property continue to be evacuee property because no sale certificate has yet been made. Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 does not make any direct provision on this question. Rule 91 of the Rules framed under that Act likewise has not provided when the title in the property shall pass in favor of the auction purchaser. Its scheme, on the other hand, is that the highest bidder is declared the purchaser after the sale has been approved by the Settlement Commissioner but there is nothing in the provision relating to the approving of the final bid either to show that the Legislature intended that the approved purchaser will become the owner of the property from that date. In fact, it is after the highest bid has been approved by the Settlement Commissioner that the purchaser has to deposit the balance of the price. Under sub-rule (14), if the balance of the price is not deposited in accordance with the relative provision, the initial deposit made by the auction-purchaser under sub-rule (8) is liable to be forfeited while the auction purchaser can have no claim to the property. This shows that in spite of the fact that the bid has been approved by the Settlement Commissioner the same does not become final in the sense that the auction purchaser becomes the owner of the property. He has the larger claim on that account than that he can deposit the balance of the price and ask the property to be transferred to him. Sub-rule (4) of rule 92 gives power to the Settlement Commissioner to set aside any sale on the ground of any irregularity or fraud committed in the conduct of tile sale, anything in Chapter 14, in which rule 90 exists, notwithstanding. This further shows that the sale does not become complete until the sale certificate, which has to be made under sub-rule (15), is issued. It is the issue of this document by the managing officer which puts the final seal to the transaction and results in the sale of the property to the auction-purchaser. Until this is done the property continues to be evacuee property and whatever rights the auction purchaser may have he cannot claim to be its owner.

6. From the above provisions it is clear that the issue of the sale certificate by the managing officer is necessary before the purchaser can claim to be owner of the property. In the instant case a sale certificate has not been issued to Vidhya Bhushan Chaudhary. The result is that the property continues to be evacuee property despite the highest bid by Vidhya Bhushan and its approval by the Settlement Commissioner.

Even the fact that Vidhya Bhushan has entered into occupation of the house on the strength of the highest bid offered by him will not alter the legal position as to the ownership of the house which in view of what has been said above continues to be evacuee property in the absence of a sale certificate provided by sub-rule (15) of rule 90 of the Rules.

7. The Administration of Evacuee Property Act, 1950 has in Section 4, Sub-Section (2), expressly provided that nothing in any law controlling the rents of or eviction from any property shall apply or be deemed ever to have applied to evacuee property. Again Sub-Section (1) of the same section, provides that the provisions of the Evacuee Property Act and the Rules and orders made there under shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any other instrument having effect by virtue of any such law. Section 10 of the same Act gives wide powers to the custodian in the matter of securing, administering, preserving and managing any evacuee property. It is not disputed that the Custodian has the power to grant Teases also of evacuee property. Thus in view of Section 4 of that Act and the powers of the Custodian contained in Section 10 the provisions of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 do not apply to evacuee property. The Rent Controller, who derives his power under the U.P. (Temporary) Control of Rent and Eviction Act, 1947, cannot for the same reason deal with evacuee property under the provisions of that Act.

8. The learned Standing Counsel has, however, urged that the petitioner conceded before the Rent Controller that Vidhya Bhushan Choudhry was the owner of the house in dispute and having done so it was not open to him now to challenge the order of the Rent Controller on the ground, as he has done, that Vidhya Bhushan had not become the owner of the house which continued to be evacuee property. The petitioner has not admitted this all legation on the contrary, has stated that he at no time admitted that Vidhya Bhushan had become the owner of the house. He simply pointed out before the Rent Controller that he was the auction purchaser by which was meant that the property had been knocked down in his favour. Unfortunately, the written objection filed by the petitioner before the Rent Controller is not before this court, but his above contention finds support from the report of the house inspector dated 23rd May 1957, Annexure-B. According to it the absence of a sale certificate was pointedly stressed by the petitioner even then. The following quotation

"I do not know the law of Evacuee property but it is a fact that the accommodation has been let out by Shri Chawdhry and not by the Asst. Custodian. In my opinion when the possession has been handed over by the Asst. Custodian to the purchaser the accommodation has ceased to be an evacuee property and as such, the provisions of

Control of Rent and Eviction Act are applicable to it"

also showed that the petitioner raised the issue of ownership also. In view of the above material it cannot be said that the case now urged by the petitioner was not taken before the Rent Controller or that the petitioner has taken a ground which he never relied upon earlier. I do not, therefore, see much substance in the objection raised by the learned Standing Counsel.

9. In view of the finding that the house in question continued to be evacuee property and was, as such, not governed by the provisions of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, the impugned order is without jurisdiction. The petition is accordingly allowed and the order of the Rent Controller dated 12th July 1957 and the notice under Section 7-A(2) of even date are quashed. The petitioner will get his costs from the respondent.

Petition allowed.