

MADHYA PRADESH HIGH COURT

Motandas

Vs.

Gopaldas Basarmal

Civil Revn. No. 316 of 1960, Decided on 10.2.1961, from order of Civil Judge, 2nd
Class, Ujjain
(S.B. Sen, J.)

06.05.1960. 10.2.1961

ORDER

S.B. Sen, J.

1. The findings which are not challenged in this revision are as follows. The house in suit is an evacuee property. It was purchased by the plaintiffs in auction held by the Custodian of Evacuee Property. The auction took place on 13-7-57 and the sale certificate was issued on 25-7-59. The defendant is a displaced person and is also entitled to the benefit of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954.

2. The point in dispute is whether the period of two years up to which the defendant is liable to remain in the house in question starts from the date of auction i.e. from 13-7-57 or from the date on which the sale certificate is issued i.e. on 25-7-59. The trial court has held that it starts from 25-7-59, hence this revision has been filed by the plaintiffs.

3. The applicant relied on section 65 of the C.P. Code which says that after the sale has become absolute the property is deemed to have vested in the purchaser on the date of auction. I do not think that analogy can be made applicable in this case. The suit was not according to the C.P. Code. It was under a particular Act and therefore the rules that have been framed under that Act should apply.

4. It is clear from section 20 that the transfer of any property under the Displaced Persons Compensation Act 1954, is subject to rules made under that Act. The auction

under that Act does not give any right to the auction purchaser until the bid is approved and the sale certificate is issued. The procedure has been laid down in Chapter 14 of the rules framed under the Act. There is no provision under this Act corresponding to section 65 of the C.P. Code. Moreover if we read carefully section 65 of the C.P. Code, it only means that the property shall be deemed to have vested in the purchaser from the time when the property is sold. This merely means, the auction purchaser will be entitled to the rights in the property and will be liable to the obligations as, from the date of sale.

5. But section 29 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 has made special provision for the protecting of displaced persons from ejectment. According to it the period of two years has to be calculated from the date of transfer. Section 65, C.P. Code does not say that the transfer takes place on the date of sale, though by a legal fiction the auction purchaser is deemed to be the owner from the date of auction. Therefore even assuming the analogy of section 65, C.P. Code applies, it does not mean that the property should be deemed to have been transferred on the date of sale. However according to me, section 65 does not apply at all in this case. In fact a deeming provision like this section has been made in the Civil Procedure Code only to give the auction-purchaser those rights which otherwise he should not have got. Therefore in the absence of any such provision like that of section 65, C.P. Code in the above mentioned Act, the transfer can only be held to be effective on the date when the transfer is complete.

6. In *Depty Lal v. Collector of Nilgiris*,¹ the observations are:

"There is a contract when the sale is confirmed but the transfer can only take place when the sale certificate is issued."

Similar is also the view of their Lordships of the Supreme Court in *Bombay Salt and Chemical Industries v. L.J. Johnson*² where their Lordships observed:

"The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction purchaser comes into existence. Then the provision as to the sale-certificate would indicate that only upon the issue of it a transfer of the property takes place."

7. The above observations therefore support my view that there is no transfer unless the sale certificate is issued. Section 29 of the Act provides:

"Such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer."

This means the displaced persons becomes a tenant immediately there is a transfer. The question of ejectment therefore can only arise after the transferee gets a right to eject. The further provisions of section 29 also will make the position absolutely clear. The privilege to special protection of two years which the evacuees (sic) (displaced persons?) are entitled may be lost on the following grounds:

- (a) that he has neither paid nor tendered the whole amount of arrears of rent due after the date of the transfer within one month of the date on which a notice of demand has been served on him by the transferee in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882)
- (b) that he has without obtaining the consent of the transferee in writing:
 - (i) Sublet or otherwise parted with the possession of the whole or any part of the property, or
 - (ii) used the property for a purpose other than the purpose for which he was using it immediately before the transfer;
- (c) that he has committed any act which is destructive of, or permanently injurious to the property.

Now all the three clauses (a), (b) and (c) indicate the violation of terms of tenancy. This means that the period of two years can be curtailed if the evacuee (sic) (displaced person?) commits the breaches mentioned in a, b and c and those breaches only indicate breach of tenancy conditions. Therefore it is clear that relationship of a tenant only starts from the date of transfer and if that is so, the period of two years can be counted from that date which is the date of issuing sale certificate. For reasons stated above the revision petition is dismissed. There is no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1959 Mad 460
2. AIR 1958 SC 289