

# RAJASTHAN HIGH COURT

Pamandas and others

Vs.

Mst. Lachhmi Bai

Second Appeal No. 17 of 1962

(I.N. Modi, J.)

20.07.1962

## JUDGMENT

**I.N. Modi, J.**

1. This is a defendants-tenants' second appeal in a suit for ejectment.
2. The material facts leading up to this appeal may shortly be stated as follows. It is admitted that the suit house was declared evacuee property under the Administration of Evacuee Property Act, 1950. (Act No. 31 of 1950), and the defendant Lilaram (who having died is now represented by his heirs Pamandas and others, the present appellants) was admitted as a tenant therein by the Custodian. Thereafter the plaintiffs purchased the property in question at a departmental sale held by public auction on the 2nd June, 1955. They obtained a sale-certificate on the 14th August, 1958. It was mentioned in the sale-certificate that the dale would take effect from the 9th June, 1955. The plaintiffs gave the defendant a notice to quit on the 9th December, 1958. Thereafter they filed the present suit or ejectment on the 29th June, 1959. The plaintiffs brought their suit for ejectment on a number of grounds out of which it is only necessary to mention one for the purposes of this appeal, namely, that they were under a reasonable and *bona fide* necessity to occupy, the suit house.
3. The defendant resisted the suit. He denied that the plaintiffs had any reasonable and *bona fide* necessity to occupy the house. He further contended that the suit was not maintainable in law by virtue of a notification issued under Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954) hereinafter referred to as the Act of 1954) which gave huminity from ejectment for a period of two years from the date of transfer.

4. Both courts below have decided the two points mentioned above against the defendants. They have consequently come up in second appeal to this Court.

5. The principal point that emerges for decision in this appeal under the circumstances mentioned above is whether the defendants were entitled not to be ejected from the suit property for a period of two years from the date of the sale-certificate by virtue of the provisions contained in Section 29 of the Act of 1954. Learned counsel for the defendants appellants contends that this section does give his clients protection for two years from ejection from the date of the sale-certificate and strongly relies for his submission on the decision of their Lordships of the Supreme Court in *Bombay Salt and Chemical industries v. L. J. Johnson*,<sup>1</sup>

6. The facts in that case were shortly these. The appellants before the Supreme Court had obtained on lease certain salt pans for a certain period which was renewed from time to time and the last renewal was upto the 15th April, 1956. On the 31st March, 1956, this property was put up to auction and the highest bid was of respondents Nos. 4 and 5. Thereafter the appellants made an application to the Chief Settlement Commissioner on a number of grounds, one of which was that under Section 29 of the Act of 1954 the appellants having been in lawful possession of the property enjoyed the statutory immunity from eviction for a period of two years.

This application was dismissed and the sale in favor of respondents Nos. 4 and 5 was confirmed and possession of the salt pans was ordered to be given forthwith and the appellants were ejected accordingly. Then the appellants went in appeal to the Supreme Court from the order of the Chief Settlement Commissioner. It was in these circumstances that the question arose whether the appellants were entitled to any immunity from dispossession under section 29 of the Act of 1954, and the further question which was mooted before their Lordships was as to when the sale became complete under the Act and the Rules made there under. After discussing the effect of all the relevant provisions bearing on the matter, their Lordships concluded as follows :

"It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has

to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. 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."

Their Lordships further observed that no sale certificate had been issued in favor of the respondents nor did it appear that the balance of the purchase money had been paid by them, and that being so, they held that there was no transfer of the salt pans to respondents Nos. 4 and 5, and, therefore, the appellants could not possibly claim the benefit of section 29 of the Act of 1954. It was further contended before their Lordships that the sale-certificate would, in any event, be granted and that once it was granted, as the form of that certificate showed, the transfer would relate back to the date of the auction. Their Lordships repelled this argument by the following observation :

"It is enough to say in answer to this contention that assuming it to be right, a point which is by no means obvious and which we do not decide till it is granted no transfer with effect from any date whatsoever takes place and none has yet been granted."

It will thus be seen that the case before the Supreme Court was not a case in which a sale-certificate had at an been granted to the auction purchasers, and it is this vital factor which distinguishes that case from the one which is before me. Learned counsel for the appellants, however, places emphatic reliance on that part of their Lordships judgment where, they say that "it is only upon the issue of a sale-certificate that a transfer of property takes place" and bases upon it his further argument that the sale for the first time conies into existence on the date of the certificate and not before and the two years' period according to him, must be counted from the date of the certificate.

7. I have given my most careful and anxious consideration to the submission made by learned counsel and have not felt persuaded to accept it. As I read the judgment, of their Lordships of the Supreme Court, it undoubtedly lays down that no transfer can take place in law until a sale certificate has been granted under sub-rule (15) of Rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules of 1955) but they entirely left undecided the further question which arises in the present case. This rule may well be quoted here :

"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 Appendix XXII or XXIII, as the case may be. A certified copy of the sale certificate shall be sent by him 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. If the auction purchaser is a displaced person and has associated with himself any other displaced person having a verified claim whose net compensation is to be adjusted in whole or in part against the purchase price, the sale certificate shall be made out jointly in the name of all such persons :

Provided that if it is agreed in writing by all concerned that the sale certificate may be made out in the name of the auction purchaser the sale certificate may be made out in the name of auction purchaser."

Appendix XXII gives the form of a certificate which is relevant for our purpose. This is as follows :

"CERTIFICATE OF SALE  
(FREE-HOLD PROPERTIES).  
(Rule 90 (15))

This is to certify that..... has been declared the purchaser at a sale by public auction held in pursuance of the powers conferred upon me under section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) on the day of 195 of the property described in the Schedule.

Given under my hand and the seal of my office, this  
Day of 195 .

Schedule

Signature ... ..

Name ... ..

Designation to the  
Officer....."

It deserves to be noticed that this form contemplates that an auction purchaser be declared the purchaser of the property sold to him "with effect from a certain date". It was obviously in accordance with this form that the respondents were declared the purchasers of the property in suit with effect from the 9th June, 1955, although, as mentioned therein, the sale took place on the 2nd June, 1955, and the sale certificate itself was granted on the 14th August, 1958. The contention of learned counsel for the appellants is that irrespective of the fact that the respondents were declared to be the purchasers of the suit property with effect from the 9th June, 1955, under the sale-certificate, the transfer of the same in their favor should be held in law to have been made on and from the 14th August, 1958, as it was on that date that there was a completed sale in their favor; and that the mention of any other date in the sale certificate as the date of sale should be held to be immaterial in so far as the defendants appellants were concerned with the applicability of the immunity allowed to them under section 29. It is also contended that the mention of a specific date as being the date of sale in the sale-certificate different from the date of the issue of the sale-certificate would be contrary to the provisions of section 29.

8. Now taking up the last mentioned point first, I am unable to accept the submission of learned counsel as correct. The reason is that section 29 does not specify any particular date to be the date from which a transfer should be held to take effect and all that it says is that where the property to which its provisions are attracted is transferred to a person under the provisions of the Act, "then a displaced person to whom the provisions of section 29 may be applicable shall 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. Then comes the proviso with which we are particularly concerned in this case, and leaving aside its immaterial portion, it lays down that notwithstanding anything contained in any such terms and conditions, no such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in this connection. Rule 90 of the Rules of 1955 made under the Act then lays down the procedure for the sale of the

property by public auction and sub-rule (15) thereof, which I have already quoted above, provides in so far as it is material for our present purpose that where the auction purchaser has paid the purchase price in full, a sale certificate shall be issued to him in the form specified in Appendix XXII. I have also given the form XXII above.

9. Reading all these provisions harmoniously, I have no hesitation in holding that there would be nothing illegal in a sale certificate making the provision that the sale in a particular case was to come into effect from a certain date and declaring the auction purchaser to be the owner of the property with effect from- that date. Even at the risk of some repetition, I should like to point out that I see nothing in section 29 or in the judgment of their Lordships of the Supreme Court to which I have made detailed reference above, which would stand in the way of that being done. If I might analyse the position in a somewhat different manner, it seems to me that two classes of cases may arise: (1) where no sale certificate has been granted at all and (2) where a sale certificate has been granted. In the first class of case, no transfer would come into existence, and we have the high authority of the Supreme Court in support of that proposition and in such a case the question of the applicability of section 29 cannot arise, so far as the second class of cases is concerned, this class may be further divided into two sub-divisions (a) where the sale-certificate does not specifically mention any date of transfer and does not declare the auction-purchaser to be the owner from such date and (b) where the sale-certificate does make such a mention.

10. Now in the first category of cases under this sub-division, that is, where the sale-certificate does not mention any specific date from which the auction purchaser is declared to be the owner of the property purchased by him, it seems to me that it would be the date of the certificate which would be the effective date of transfer. But in the other category of cases, where the sale-Certificate does declare the auction-purchaser to be the transferee of the property with effect from a particular date as was done in this case, that may well be the effective date of transfer, and I can see no valid reason why the transfer should necessarily be considered as not having been brought about from that date and that he should be considered to have become purchaser only from the date of the sale-certificate. As I have stated above, there seems to me to be nothing in section 29 of the Act of 1954 or the Rules made there under which would nullify such a declaration. Besides, the acceptance of the view contended for by the appellants would amount to this that the court would be making a new contract between the parties concerned. That in my considered opinion it can have no warrant

to do.

11. I may also mention at this place that having regard to the elaborate procedure which has been prescribed for the sale of property by public auction under rule 90 of the Rules relating to sales, a good deal of time is bound to elapse between the date of the auction or full payment of the purchase money by the auction purchaser and his eventual declaration as a purchaser, and if under such circumstances, the form which is sanctioned by the Rules contemplates that the auction purchaser may be declared as such with effect from a date prior to the issue of the sale certificate, I can see nothing which may be intrinsically wrong or unjust in such a procedure.

12. From the foregoing discussion, the conclusion to which I have come, in the circumstances of the present case, is that the date of transfer of the suit property in favor of the respondents must be, on the whole, taken to be the date mentioned in the sale certificate itself, and it is this date also which should be the date of transfer for the purposes of section 29 of the Act, and the defendants appellants would be entitled to an immunity from ejection for a period of two years from that date and not the date of the sale-certificate and they have already had this and more. I hold accordingly.

13. The only other point which was argued by learned counsel was that the finding of the courts below on the question of personal necessity could no longer be sustained, as after the present appeal was filed, one of the respondents has had certain other accommodation allotted to him by the Managing Officer under the Act of 1954, and the other respondent is not likely to require the suit premises for her own residence, as her husband has been transferred to another place. I am afraid, this submission has no force either. The proper way to decide a contention of this kind would, in my opinion, be to see whether the plaintiffs stood in *bona fide* and reasonable necessity to occupy the suit premises at the date of the suit, or, at the most, while the matter was being investigated in the trial court; but it would be scarcely right for this Court in deciding this appeal to take into consideration the circumstances which have admittedly arisen after the present second appeal was filed in this Court. Even apart from that, if the plaintiff has alternative accommodation which he can occupy, it must be left to him to choose which accommodation he wants, and it is not for the defendant to dictate to him which he shall choose and which he shall not; because if that were to be allowed, the result would be that the plaintiff would be dominated nay defeated by every tenant of his by his own terms.

14. In the result this appeal fails; and is hereby dismissed; but having regard to all the circumstances of the case, I would leave the parties to bear their own costs in this Court. Leave to appeal is asked for; but I would refuse it in all the circumstances of the case. The defendants appellants are allowed three months' time from today to vacate the suit premises.

Appeal dismissed.

Cases Referred.

1. AIR 1958 SC 289