
(1971) 01 DEL CK 0002
In the Delhi High Court
Case No : Civil Writ No. 428-D of 1961

Anant Ram Manocha

APPELLANT

Vs

S. Prasad and Others

RESPONDENT

Date of Decision : 15-01-1971

Acts Referred:

Citation : AIR 1971 Delhi 305

Hon'ble Judges : Prakash Narain, J

Bench : Single Bench

Advocate : H.R. Sawhney and C.V. Francis, for the Appellant; B.B. Kishore, for Manoj Verma and J.P. Gupta, for the Respondent

Judgement

1. This petition under Article 226 of the Constitution of India is directed against an order dated 17-7-1961 passed by Shri S. Prasad, Deputy Secretary to the Government of India, in the Ministry of Rehabilitation, New Delhi on a suo motu revision by the Central Government under the provisions of Section 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter referred to as the Compensation Act) by which an order dated 30-5-1959 passed by the Deputy Chief Settlement Commissioner in respect of industrial concern No.XII/9205-7 (new) located in premises bearing No. 10325-39 (old) was passed. Briefly stated the facts of the case are that these premises comprised of a double storeyed building situated in Nawab Gunj, Delhi and had been abandoned by one Choudhary Mohd. Din who had migrated to Pakistan sometime in the year 1947. In the premises was located a factory known as "Locks, Tinsplate and Tin Toys" on the ground floor while the first floor of the property was being used as residence by the evacuee owner and his employees. The petitioner had occupied this property and had been occupying this property and had been allotted the evacuee property on a caretaker basis. The said evacuee property was then acquired under the Compensation Act and its value being less than Rs. 50,000/- it fell into the category of allotable property within the meaning of Rule 22 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955

(hereinafter called the Rules). The petitioner who was in occupation of this property submitted an application for payment of compensation in accordance with the provisions of the Compensation Act for property left by him in Pakistan and applied that his property be given to him by way of compensation. The Managing Officer is stated to have offered this property to the petitioner on the reserve price of Rs. 37,697/- and it is claimed that the petitioner accepted this offer. Accordingly, as required by the Compensation Act an agreement to sell dated 11-2-1959 was entered into between the President of India and the petitioner by which the former agreed to sell the said property to the petitioner on a price of Rs. 37,697/- to be paid in accordance with and on the terms mentioned in the said agreement. The sale-deed however, was not issued. It is alleged by the petitioner that prior to the execution of the agreement dated 11-2-1959 Shri K.S. Kane, the Additional Settlement Commissioner had passed an order that the property in question was not an allotable property. Against that order the petitioner had preferred an appeal and the Deputy Chief Settlement Commissioner had by his order dated 30-5-1958 held that the property was an allotable property. The order passed by the Additional Settlement Commissioner was accordingly, set aside and it was held that the premises were to be allotted to the petitioner against the assessed value which at that time was Rs. 37,696/-. It was after passing of this order and the execution of the agreement to sell dated 11-2-1959 that the Central Government u/s 33 of the Compensation Act suo motu sought to revise the order of the Deputy Chief Settlement Commissioner.

2. The notice originally sent to the petitioner of the hearing of this suo motu revision was set aside by the Central Government and it was directed that a fresh notice be issued setting out all the points on which the Central Government wanted to revise the earlier order of allotment to the petitioner. Accordingly, a notice dated 19-5-1961 (copy Annexure 19 to the petition) was issued to the petitioner in which it was clearly stated that the Central Government had come to know that the assessed value of the property has been fixed wrongly and improperly and that the value should have been Rs. 48,615/-. The petitioner was asked to show cause why the value should not be revised. The mode of payment and the installments fixed by the earlier order and the agreement of sale were also sought to be revised. The petitioner preferred his objections dated 5-5-1961 in which he, inter alia, pleaded as under : -

"That the Department has no jurisdiction to alter the price unilaterally, the dispute, if any at this stage, can only be settled, if at all, by the Municipal Courts and not by the Central Government acting u/s 33 of Act. The proceedings are, Therefore, without jurisdiction. That at the time of agreement with the petitioner the property in question had been evaluated as under : -

Machinery Rs. 7,697/- Land Rs. 9,090/- Building Rs. 20,910/- ----- Rs. 37,697/- -----

Subsequent enhancement of the value of the neighbouring property cannot have

the effect of altering the land price payable by the Respondent. The value of the land has been increased from Rs. 15/- per sq.yd. to Rs. 30/- per sq. yard as a result of the alleged inspection made by the Technical Adviser in 1959, without notice and at the back of the Respondent. The Technical Adviser is alleged to be of the opinion that the land under the property in question has been assessed on the low side taking into consideration the value of the other properties namely XII/9187-89 and XII/9168-74. The values of the other properties have been assessed in 1959 and it cannot be made a subject of comparison to the value assessed in about 1954, the price of lands are bound to rise with the lapse of time.

3. The petitioner was duly heard by Mr. S. Prashad, Deputy Secretary who, after setting out the circumstances in which the suo motu revision had been taken up by the Central Government, held that the valuation of the property had been rightly fixed at Rs.48,615/- and the petitioner should pay that amount. I have been taken through the order of Mr. S. Pershad dated 17-7-1961 and the learned counsel for the petitioner has urged that his complaint is that this order proceeds on the assumption that the authorities under the Compensation Act could revise the valuation as an executive act without reference to the petitioner and that the petitioner had no right to complain, against the revision of the valuation. Mr. H.R. Sahney, the learned counsel for the petitioner, urges that this is contrary to the principles of natural justice inasmuch as the valuation originally fixed could not be revised without the petitioner being afforded an opportunity to contest the revaluation to show to the authorities concerned that the assessed value of the property as originally fixed was the correct valuation and not the proposed revised valuation fixed by the department. Mr. B.B. Kishore, the learned counsel for the respondents, has urged that all that the petitioner is entitled to ask is to get a hearing and inasmuch as he had been given a hearing the decision of the Central Government cannot be assailed even if it be incorrect. I would have been inclined to agree with the contention raised by the learned counsel for the respondents but he has been unable to show me anywhere from the order that the objections Nos. 6 and 7 preferred by the petitioner and which I have reproduced above have at any place been dealt with by Mr. S. Prasad in his impugned order. Indeed, there is no manner of doubt that Mr. S. Prasad has proceeded on the assumption that in the proceedings of revaluation the petitioner had no right to claim that he should be associated with the same. In my view once the agreement to sell had been executed between the parties and an order had been passed allotting the said property to the petitioner on the assessed price of Rupees 37,697/- the valuation of the property could not be changed by executive action and the department and the authorities concerned were bound to associate the petitioner in any proceedings of revaluation affording him a reasonable opportunity to put forth his contention as to what the value of the property should be and whether the same should be revised to the figure of Rs. 48,615/-. Indeed, a Bench of the Punjab High Court in Balwant Singh and Others Vs. Deputy Chief Settlement Commissioner and Others, , held

while dealing with Rule 34-B of the said Rules of 1955 that the proceedings under Rule 34-B are quasi judicial in nature and not administrative. It was further held that even if the proceedings of valuation were not quasi-judicial in nature it was necessary to give an opportunity to the person whose statutory rights in the property are likely to be affected by the decisions in those proceedings. I am in respectful agreement with the observations of their Lordships and hold that the proceedings of revaluation undertaken in the present case were proceedings which required the petitioner to be associated with the same and he should have been given an opportunity to put forth his case as his statutory right to get allotment of the property in question on the original valuation was likely to be affected by the decisions in those proceedings. Mr. B.B. Kishore, the learned counsel for the respondents has relied on a Single Bench decision of the Punjab High Court in Girdhari Lal Bulaki Ram and Another Vs. L.J. Johnson and Others, and has urged that as was held in that case the language of Section 33 leaves no doubt as to the plenary nature of the powers conferred upon the Central Government. If it was the "intention of the framers of the statute that finality should be given to the auction sales which have been approved, it could have been expressly so drafted or Section 33 could have been worded in a manner so as to save such transaction.

The reopening of a transaction subsequently may lead to great complication. But this is not a ground for holding that the extensive powers conferred upon the Government by Section 33 were deemed to have been restricted or not made applicable to the auction sales after their approval. An argument based upon hardship or justice is not sufficient to overcome the effect of the expressed language of the statute..... Whether in an auction sale of the evacuee property a building is fit for horizontal division is a question of fact arising in a particular case and in the exercise of its jurisdiction under Art. 226 or 227 of the Constitution the High Court is not competent to review a finding based exclusively on the particular facts of the case".

4-5. In my view the rule laid down in this decision is not attracted to the facts of the present case at all and indeed has no relevance whatsoever. In Girdhari Lal Bulaki Ram and Another Vs. L.J. Johnson and Others, the question involved was about the horizontal division of the property which had been auctioned. The bids were accepted by the Regional Settlement Commissioner and the auction purchasers had deposited the amount. Appeals were filed against the order accepting the bids but were dismissed. Thereupon a petition u/s 33 of the Compensation Act was preferred to the Central Government and after hearing the parties an order was passed. It was in this context that the question arose whether the Central Government could revise the orders dismissing the appeals by virtue of the powers conferred upon it by Section 33 of the Compensation Act. It was rightly held that the Central Government had the power to revise the order. The question about the horizontal division mooted was held not to be one which could be agitated and the question of property being divisible or not was a matter for the department to decide. In this case no vested rights of the parties

were to be affected by the departmental order about division of property and so the rule is not attracted. The revaluation in the present case has not been shown to have been done after notice to the petitioner nor has he had any opportunity to put forth his contentions before the revaluation which was going to affect his vested rights to get transfer of the property both according to the rules and in terms of the agreement of sale entered into between the President of India and the petitioner. Indeed as is apparent from the impugned order of Shri S. Prasad, in February, 1969 it came to the notice of the Valuation Department that some of the properties including the industrial concern in dispute has been undervalued. The Chief Settlement Commissioner, Therefore, gave an administrative direction to his Technical Adviser to revise the values of the undervalued property and intimated the revised value to the Regional Settlement Commissioner on 19-9-1959 with the request that the revised valuation may be recovered from the transferee before a conveyance deed was issued in his favor. It was after this that the petitioner was called upon to pay the revised value and his objections to his being not given an opportunity were overruled obviously on the basis that has had no right to be associated with those proceedings. This was clearly illegal both in terms of the rules and on the principles of natural justice. I, Therefore, quash the impugned order passed by Shri S. Prasad on 17-7-1961.

6. The petitioner has also prayed that a direction be issued to the respondents to transfer the property in question in terms of the agreement of sale dated 11-2-1959. In other words by issue of a high prerogative writ he wants to specifically enforce the contract contained in the agreement dated 11-2-1959. This is not the purpose of the writ jurisdiction of the High Court under Article 226 of the Constitution. The transfer of property is to be made in accordance with the provisions of the Compensation Act and both the parties and the authorities under that Act have their respective rights, duties and obligations. The Central Government certainly has a right to suo motu revise any order passed in proceedings under the Act. Section 33 of the Compensation Act confers residuary powers on the Central Government to ensure that all proceedings and actions taken under the provisions of the Compensation Act are in conformity with the provisions of the statute and the rules framed there under. These powers, however, have to be exercised in accordance with the provisions of law and the rules of natural justice. I am, Therefore, not inclined to issue any writ directing the respondents to transfer the property on the price mentioned in the agreement dated 11-2-1959 inasmuch as the power to revise the value or to correct any mistake cannot be denied to the Central Government.

7. The result is that I issue a writ quashing the impugned order dated 17-7-1961 passed by Shri S. Prasad leaving both the Central Government and the authorities under Compensation Act on the one hand and the petitioner on the other to pursue the respective remedies that are available to them to finalise the allotment and transfer of the property in question to the person entitled to its transfer under the law. In the circumstances I also make no orders as to costs.

8. Petition allowed.