

(1973) 04 DEL CK 0001

In the Delhi High Court

Case No : Letters Patent Appeal No. 66 of 1968

Arjan Dass

APPELLANT

Vs

L.J. Johnson and Another

RESPONDENT

Date of Decision : 03-04-1973

Acts Referred:

Citation : (1973) ILR Delhi 563 : (1973) RLR 390

Hon'ble Judges : T.V.R. Tatachari, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : S.S. Chadha and P.N. Seth, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) These four L.P. As by Malik Bhola Nath (L.P.A. No. 64/68), Arjan Dass (L.P.A. 66/68), Wassu Ram (L.P.A. 74/68) and Smt. Bago (L.P.A. 79/68) arise out of dismissal of the writ petitions by a common judgment of the learned single judge (Deshpande J.) dated 30th July, 1968. This judgment will dispose of all the four L.P.As.

(2) There is acquired evacuee property under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) bearing No. 373/69-71 and 72-74 Ward No. Vii, Gali Sarsawali, Naya Bans, Delhi. This property was directed to be sold by public auction by the Rehabilitation authorities. Khushi Ram, Bhola Nath and Smt. Bago, appellants, and others filed appeals u/s 33 of the Act against the auction and the Chief Settlement Commissioner by his order dated 5/20th July, 1956, decided that the properties have been made allotable under the Rules. The value of the property, as per report of the Technical Adviser, of Unit A bearing No. 69 to 71 was fixed at Rs. 9799.00 and that of property No. 72 to 74 at Rs. 9945.00. Both of them being valued at less than Rs. 10,000.00 each were allotable within the meaning of Rule 22 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Rules). The said properties were occupied as follows :-

Unit A 69 occupied by Wassu Ram, ground floor. 71 occupied by Chetan Das, ground floor. 70 occupied by Khushi Ram, first floor. 70 (other half) occupied by Lachman Dass, first floor. Unit B 72 occupied by Bhola Nath, ground floor. 74 occupied by Smt. Bago, ground floor. 73 occupied by Arjan Dass, ground floor. 73 (other half) occupied by Ram Chander, first floor.

(3) The matter of allotment came up before the Managing Officer who by his order dated 11-4-1958 held that in Unit A Wassu Ram was entitled to the allotment of No. 69 and 70"; while Lachman Das who was also a claimant was entitled to allotment for the other portions namely 701 (first floor), as well as to No. 71 (ground floor) occupied by Chetan Das.

(4) As regards Unit B 72 to 74 the Managing officer by his order of the same date i.e. 11-4-1958 held that Bhola Nath was entitled to allotment of property No. 72 and 731 and Smt. Bago was entitled to the allotment of the other 73"- and 74. Bhola Nath appellant, however, filed an appeal before the Additional Settlement Commissioner, New Delhi claiming that he was entitled to the whole of 72 to 74, but his appeal was dismissed by the Additional Settlement Commissioner by order dated 30-7-1958. Bhola Nath was apparently unsatisfied and went further in revision before the Deputy Chief Settlement Commissioner, Mr. Gajendra Singh but the same was dismissed vide order dated 3-11-1958, While holding that the entire property is capable of horizontal as well as vertical division. It will be seen that the two other occupants in the properties 72 to 74 were Arjan Dass who was occupying half of 73 (first floor) and Ram Chander who was occupying the other half of 73 also on the first floor. Mr. Gajendra Singh took the view that as the half portion which was occupied by Ram Chander was in unauthorised occupation the same could be disposed of by auction. The other half of 73 occupied by Arjan Das may also be disposed of by auction unless he agrees to take over this property himself. The result of this order was that property 74 was held to be divisible in four portions and Bhola Nath and Smt. Bago were entitled only to the portion occupied by them. Wassu Ram however, filed an appeal against the order of the Settlement Commissioner claiming that the whole of the property i.e. 69 to 71 should be allotted as one property. This was, however, dismissed by the Additional Settlement Commissioner by his order dated 30-7-1958. Against the order of the Additional Settlement Commissioner dated 30-7-1958, Wassu Ram went up in revision which was disposed of by Mr. Gajendra Singh who by his order dated 3-11-1958 held that for the reasons given by him in the connected revision petition of Bhola Nath, the property was clearly divisible. Before Mr. Gajendra Singh, Chetan Das had objected that he was occupying the ground floor of the premises and the same could not be allotted to Lachman Das without notice to him. This plea was disposed of by Mr. Gajendra Singh with the observation that as Chetan Das has not filed any revision, the matter could not be decided in these proceedings. He, however, observed that if he had not been given any notice of the divisibility of the portion of the property separately. Bhola Nath and Wassu Ram filed further revision petitions u/s 33 of the Act claiming that the portion of 72 to 74 and portion 69 to 71 were not capable of division and

the whole of the property should be transferred to them respectively. These revision petitions were disposed of by Mr. Johnson by his order dated 2-5-1959. He, however, took the view that as half of the portion of first floor No. 73 was occupied by Ram Chander who was unauthorised occupant and the other half of first floor was occupied by Arjan Das who did not want the transfer of the property the same should be sold because in his own word, it is a settled policy of the Government that unless all the portions of a property which are declared divisible can be allotted to the occupants the property should be sold." He also took the view that it was quite impracticable to suggest that the first floor could be auctioned separately. By the same order and for the same reason he disposed of the revision filed by Wassu Ram. He, Therefore, set aside the order of the Deputy Chief Settlement Commissioner and ordered the sale of the property.

(5) Aggrieved against this the appellants filed the writ petitions but the same have been dismissed. The learned judge has taken the view that as the word "ordinarily" is used in Rule 22 of the Rules the Government has discretion in the matter of allotment and that in spite of Rule 30 the Government was not bound in every case to make an allotment even if the conditions of Rule 22(1) were satisfied and has relied on *Girdhari Lal Bulaki Ram and Another Vs. L.J. Johnson and Others*, and *S. Balwant Singh and others v. Union of India and others* AIR 1964 P&H 138. In our view both the authorities are clearly distinguishable and do not apply to the facts of the present case. In *Girdhari Lal*'s case all that was held was that 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 cannot be urged in proceedings under Articles 226 and 227 of the Constitutions. Similarly in *S. Balwant Singh*'s case it was not disputed that if the shop was treated as a part of bigger building and not an independent unit the value of the building is more than 10,000.00 and as such it was not allottable property. What had been contended was that for determining the value of the property only portion occupied by the allottee should be taken in account. This argument was rejected and in our opinion rightly, because the portion occupied by the allottee could only be transferred to him after the property has been held to be divisible. In the present case the finding of Mr. Gajendra Singh is clear that the property is capable of division horizontally and vertically and the property is thus allottable. The question arises whether in spite of the findings that the property is divisible and Rules 22 and 30 apply, the respondent-department can still refuse to transfer the property against the Rules to the occupants.

(6) Rule 30 so far as it is relevant reads as under :- If more persons than one holding verified claims are in occupation of any acquired evacuee property, which is an allottable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired exacuee property which is allottable as may be available: Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of

net compensation payable to him. Explanation 1. The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims."

(7) In the present case in Unit A (69 to 71) all the portions were occupied by Wassu Ram, Lachman Das and Chetan Das; all of whom are desirous of having the portions transferred to themselves. In Unit B (72-74) excepting half the portion of 73 in occupation of Ram Chander which is said to be unauthorised the other occupants are desirous of having the property transferred to themselves. It is also not disputed that Wassu Ram in Unit A and Bhola Nath in Unit B also hold verified claim within the meaning of Rule 30.

(8) It has been held in Pt. Dev Raj V. The Union of India and others 1973 P.L.R. 270 as under:-

".....THATa displaced person has a vested right not only to have the compensation payable to him ascertained but also to have his claim satisfied in the manner prescribed by the Rules. Rule 30 prescribes one of the manners of such satisfaction and thus it cannot but be considered to confer a right upon a displaced person to get the property transferred to him if he has claimed it and satisfies all the requirements of that rule."

(9) In that view the Government would be under a statutory obligation to transfer the property occupied by Wassu Ram in Unit A and Bhola Nath who holds a verified claim in Unit B. Even with regard to the authorised allottees who do not hold the verified claims, it has been held by Harisingh Anand Vs. Union of India and Others, that, the plain meaning the Rule 30 read with Explanation I is that if a property is in the occupation of two persons one of whom holds a verified claim and the other has no such claim and the property can be suitably partitioned the settlement Commissioner shall partition the property and transfer to each such person the portion in his occupation."

(10) Thus all the occupants excepting Ram Chander (on assumption that he was unauthorised occupant) would have a right to get the property in their respective occupation transferred to them within the meaning of Rule 30. Mr. Johnson did not set aside the finding about the divisibility of the property given by Mr. Gajendra Singh. With regard to the observations that Arjan Das was not willing to have the portion occupied by him transferred to him, Mr. Chadha who appears for Arjan Das has pointed out that immediately after the decision of Gajendra Singh dated 3-11-1968 where he had given the option to Arjan Das to agree to take over this property, Arjan Das had filed an application dated 27-11-1958 (which has been filed as annexure "D" to this writ petition) indicating unequivocally that he is accepting the decision of the Deputy Chief Settlement Commissioner to the extent that he was inclined to have the transfer on permanent basis. It is obvious that Mr. Gajendra Singh left open the option to Arjan Das to agree to get the property transferred to himself. Mr. Johnson was

not, Therefore, correct in assuming that Arjan Das was refusing to have the property transferred to himself. Mr. Chadha has also stated unequivocally before us that his client was quite willing to accept the transfer of the portion 73" occupied by him. The position, Therefore, is that in Unit A (69 to 71) all the occupants who are authorised allottees are willing to have their respective portions transferred to them. With regard to Unit B (72 to 74) all the authorised occupants are willing to have their portions transferred to them. In this the only portion that is 73" on the first floor, which is said to be in unauthorised occupation of Ram Chander cannot be allotted and may have to be sold by auction. Thus out of eight occupants seven occupants are entitled under the Rules to get the property transferred to them. Is there any justification in law to deny to these seven occupants their rights under the law simply because one of the portions is said to be under the occupation of unauthorised occupant and may have to be sold? Mr. Johnson, Joint Secretary to the Government of India has stated that it is the settled policy of the Government that unless all the portions of a property which are declared divisible can be allotted to the occupants the property should be sold. Apart from the statement made in the order no material has been placed on record to show the source and the validity of this policy. Allotability of the property is governed by the statutory rules and it is difficult to accept the position that there can be an administrative policy overriding the statutory rights. It is axiomatic to say that no administrative instructions can over-ride the statutory rules.

(11) Union of India was issued notice before the learned single judge as well as in the L.P.A.s., but no one has appeared on their behalf in spite of the service. We have, Therefore, no material to bold that there is any valid statutory rules which provide that unless all the portions of a property which are declared divisible can be allotted to the occupants, the property should be sold. It also does not stand to reason that if out of so many allottees one of the allottee refuses to have the property transferred to him, the rights of others should be negated on that score. There is neither any principle nor any rule in support of such a stand. The whole purpose of finding whether the property is really divisible is to treat each unit as separate unit, and to transfer the said portion to the allottee so as to give relief to the maximum number of displaced persons. Once the property is held to be divisible the right of each person with regard to his portion is an independent one and cannot be held to be depending on the exercising of option by the others. The matter is the same as if the properties were independent properties. We, Therefore, do not see how it was permissible for Mr. Johnson to refuse to transfer the properties to the appellants as the Rules undoubtedly give them the right to have the same transferred.

(12) The result is that we would set aside the judgment of the learned single judge as well as the order of Mr. Johnson, As consequence, the order of Mr. Gajendra Singh, dated 3-11-1958 will hold the field. The Department will proceed to act in accordance with law and in accordance with the directions given by Mr. Gajendra Singh. We may also notice that counsel for Ram Chander had

stated that subsequently the department has started taking the rent from him and has possibly regularised his occupation. There is no writ petition and no appeal by him and we are, Therefore, not in a position to say anything one way or the other about it. The matter has now to be disposed of by the department and it is open to Ram Chander, if so advised, to take up the matter with the department concerned.

(13) The appeal is, Therefore, allowed as indicated above. As there is no appearance for the Union of India and the Department there will be no order as to costs.