(1978) 07 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1990 of 1972

Bhoorsingh Palasingh APPELLANT

Vs

Kesumal Aratmal and Others RESPONDENT

Date of Decision : 17-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 17, 19, 19(1), 20(1), 24

Citation : AIR 1979 Bom 143 : (1979) 81 BOMLR 333

Hon'ble Judges : Sawant, J;Naik, J

Bench : Division Bench

Advocate : B.J. Mulchandani and B.B. Dhanwani, for the Appellant; N.H. Gurusahani and S.H. Gurusahani, for the Respondent

Judgement

Naik, J.—By this petition the petitioner challenges the order of respondent No, 5 dated June 2, 1972 whereby respondent No. 5 purported to set aside the conveyance or the sale deed in favour of the petitioner dated June 28, 1967 which was executed by respondent No. 4 vs. the Administrator and Managing Officer, Ulhasnagar. This petition can be disposed of on a very short point and that point is as to whether respondent No. 5, the Authorised Chief Settlement Commissioner appointed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act) has power or jurisdiction to cancel or set aside the sale deed. The question arises as under:--

2. The petitioner who is a displaced person having migrated to India and settled at Ulhasnagar occupied Room No. 1 in Barrack No. 705 at Ulhasnagar Camp No. 3, which was built by Government and formed part of the Compensation Pool under the Act.

3. On November 9, 1959 the petitioner entered into an agreement of sale with the Managing Officer on behalf of the President of India to purchase the said room. The price was settled at Rs.1872.25 which was payable by installments.

The price was settled by the Government of India on the basis of the area of the property. The said property consists of built portion and open plot situate to the north. The conveyance deed as per the agreement of sale was actually executed by the Managing Officer on June 26, 1967 on behalf of the President of India. In the conveyance deed, the area was mentioned as 50 sq. yds. as being the area which was sold and transferred to the petitioner. The area of 50 sq. yds. consisted of a built room and an open plot attached to it 35 sq. yds. and 15 sq. yds. respectively. It appears that the petitioner made an application to the Assistant Administrator and Managing Officer, for demarcating the said property. That Officer appointed a surveyor who after visiting the site made a report showing the open plot to the north and demarcated and delivered possession of the property to the petitioner. The petitioner was thereafter granted a demarcation letter dated Sept. 13, 1967 showing that 15 sq. yds. of open plot was to the north of the built portion and that was the property which was covered by the sale deed. Since the respondents Nos. 1 to 3 had their shops on the north of the said property and according to the petitioner they had started to construct permanent structures on the northern portion of the property on Jan. 26, 1967 and that act according to the petitioner was an act of trespassing on the part of respondents Nos. 1 to 3, the petitioner filed Civil Suit No. 82 of 1967 in the Court of the Civil Judge, J. D. Kalyan, against respondents Nos. 1 to 3 for possession and injunction and ad interim relief''s.

4. It appears that immediately alter the service of the summons, respondents Nos. 1 to 3 moved respondent No. 4 who in turn made a reference to respondent No. 5 for taking action u/s 24 of the Act. The reference was made by respondent No. 4 by contending that the inclusion of the open plot to the north of the built portion in the sale deed executed in favour of the petitioner was a mistake and the same should be rectified. Among other contentions it was contended for the petitioner that the conveyance deed which was executed in favour of the petitioner should not be set aside on flimsy grounds. The learned Authorised Chief Settlement Commissioner, respondent No. 5 herein, accepted the reference made by respondent No. 4 and set aside the conveyance by observing as under in his order dated June 2, 1972.

"It is not denied that adjoining room No. 1 on the western side, there is a big vacant plot which is easily available for being allotted to the Opponent. In that situation I cannot imagine even for a moment that the department had ever an intention to allot any portion of the land on the northern side to the Opponent. On that background I am unable to share the view of the learned Advocate Shri Muchandani for the Opponent that whatever may be the ultimate result since his client holds a" valid conveyance deed in his favour it should not be set aside; It it not possible to dismiss easily the plea of the department that the conveyance deed was issued under a mistake. I am of the clear view that there is a mistake and this authority must interfere to set things right-

Before parting with this case I must ob serve that it was possible for the

Department to avoid such errors on exercise of a little diligence. This may be noted for future guidance.

In the end, I allow this departmental reference. The allotment order which is the subject matter of this case is set aside. The price paid by the Opponent for this conveyance deed will be refunded to him."

The order further concluded by observing:--

"If the Opponent co-operates, it is recommended that the administrator who is also Settlement Commissioner of Ulhasnagar Township will take suitable steps to allot the maximum available portion of the land from the western side to him on necessary consideration so that he could be compensated adequately."

5. It is the propriety and correctness of the said order, which is challenged by the petitioner before us.

6. After Mr. Mulchandani the learned Advocate for the petitioner took us through the facts of the case and the impugned order in question and the relevant provisions of the Act, we called upon Mr. Gursahani learned Advocate for respondents Nos. 1 to 3 to show to us how on the facts and circumstances of the case, respondent No. 5 could set a side the sale deed on the ground that it is mistaken or otherwise. In view of the fact that no return is filed in reply to the petition, we must proceed on the assumption which is not. disputed before us that on Nov. 9, 1959, the then Managing Officer on behalf of the President of India agreed to sell a particular property being Room No.1 in Barrack No. 705 at Ulhasnagar Camp No. 3 for Rupees 1872-25 P. as per the agreement and that the consideration was payable by installments. We have then the ultra versed and admitted fact that the petitioner was actually, granted conveyance deed dated June 26, 1967 which was duly executed by the Managing Officer on behalf of the President of India and that conveyance deed mentions an area of 50 sq. yds. including the built portion. The further fact as we have stated is that the petitioner had moved respondent No.4 for demarcating the property. A surveyor was appointed at the instance of respondent No. 4 and lie actually demarcated about 15 sq. yds. of open land to the north as the portion covered by the sale deed dated June 26, 1967. Since respondents Nos. 1 to 3 were in possession of that portion, the petitioner filed a suit and that suit is still pending. On receipt of summons in that suit, respondents Nos. 1 to 3 approached respondent No. 4 and at their instance, respondent No. 4 having made a reference to respondent No. 5, respondent No. 5 having assumed that he had jurisdiction to set right the mistake in the sale deed and having accepted the contention on behalf of respondent No. 4 that the northern portion of the open plot was mistakenly mentioned in the sale deed, set aside the conveyance for the reasons already referred to. .

7. Now, if respondent No.5 has power to set aside the sale deed on the ground that it was a mistake or that the property was not intended to be conveyed by the Managing Officer, then certainly since we are not sitting as a Court of Appeal,

but we are called upon to exercise our extraordinary jurisdiction under Arts. 226 and 227 of the Constitution, we could not interfere With that order. But then a scrutiny of the provisions of the Act has led us to the conclusion that respondent No. 5 has no power to set aside or interfere with the sale deed and therefore when he assumed that he had that power and set aside the sale deed in favour of the petitioner, he had clearly exercised his jurisdiction which is not vested in him by law.

8. It is necessary to refer to certain sections which have been relied upon. S 17 of the Act deals with the functions and duties of the Managing Officers and Managing Corporations. It provides inter alia that all Managing Officers or Managing Corporations shall perform such functions as may be assigned to them by or under this Act under the general superintendence and control of the Chief Settlement Commissioner." Section 20(1) of the Act in so far as it is material for our purpose deals with the power of the Managing Officer or Managing Corporation to transfer property out of the compensation pool. It is to this effect:--

"20 (1) Subject to any rules that may be made under this Act, the Managing Officer or Managing Corporation may transfer apy property out of the compensation pool--

(a) by sale of such property to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person, whether the property is sold by public auction or otherwise;

(b) by lease of any such properly to a displaced person or an association of displaced persons, whether incorporated or not, or to any other person;

(c) by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other person, on such valuation as the Settlement Commissioner may determine;

(d) in the case of a share of an evacuee in a company, by transfer of such share to a displaced person, or any association of displaced persons, whether incorporated or not, or to any other person, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 or in the memorandum of articles of association of such company;

(e) in such other manner as may be prescribed,"

9. Section 19(1) deals with the power of the Managing Officer or Managing Corporation to cancel leases or allotment of any property acquired under the Act. Section 19(1) in so far as it is material reads as under:--

"19 (1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the Managing Officer or Managing Corporation may cancel any allotment or terminate any lease or amend the terms, of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a per-son, whether such allotment or lease was granted before or after the commencement of this Act."

10. A perusal of Section 20(1) of the Act would show that the power to transfer by sale is different from the power to transfer by allotment. Section 20(1)(a) empowers the Managing Officer or the Managing Corporation to transfer any property by sale, whether the property is sold by public auction or otherwise. Section 20(1)(b) deals with the power of the Managing Officer or the Managing Corporation to lease such property and Section 20(1)(c) deals with the power of the Managing Officer or the Managing Corporation to transfer by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other person, on such valuation as the Settlement Commissioner may determine. In other words, Section 20(1) of the Act makes a clear distinction between the power of transfer by sale and the power of allotment, whereas the sale could be effected in favour of the persons mentioned in Section 20(1)(a) whether the property is sold by public auction or otherwise by the Managing Officer or the Managing Corporation without reference to any higher authority, the allotment u/s 20(1)(c) can, be made by the Managing Officer or the Managing Corporation only on such valuation as the Settlement Commissioner may determine. In other words, S. 20(1) of the Act clearly contemplates that the power to transfer by sale is distinct and different from the power of the Managing Officer or the Managing Corporation to transfer by allotment. Section 19(1) which i.e set out above authorises the Managing Officer or the Managing Corporation only to cancel any allotment or terminate any lease or to amend the terms of any lease or allotment under which any evacuee property acquired under the Act is held or occupied by any person. In other words, the power of cancellation or termination is conferred on the Managing Officer or the Managing Corporation only in respect of an allotment made by them u/s 20(1)(c) or the cancellation of lease made u/s 20(1)(b) of the Act So also the power of varying the terms of only the lease or allotment is conferred on the Managing Officer or the Managing Corporation u/s 19(1) of the Act. To other words, Section 20(1) gives the power to the Managing Officer or the Managing Corporation to transfer the property. Section 19(1) deals with the power of the Managing Officer or the Managing Corporation only to cancel or vary the terms of the allotment or lease and therefore by its very nature it does not deal with the power of such Managing Officer or the Managing Corporation to cancel or vary the terms of transfer by sale inasmuch as, transactions of transfer by sale stand on a different footing than transfer by way of lease or allotment.

11. Now we proceed to Section 24 of the Act which deals with the power of revision of the Chief Settlement Commissioner. It is to this effect:--

"24 (1) ''The Chief Settlement Commissioner may at any time call for the record of any proceeding - under this Act hi which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an additional

Settlement Commissioner, a Settlement Commissioner, a Managing Officer or a Managing Corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under Sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then, notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, canceling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person, shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under Sub-section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

A perusal of Section 24(1) would show that the Chief Settlement Commissioner is vested with the usual powers of revision concerning only the orders passed by the Managing Officer or the Managing Corporation. That section does not empower the Chief Settlement Commissioner to decide about the validity or otherwise of the property conveyed by the sale deed inasmuch as the transfer of property by a sale deed effected by the Managing Officer or the Managing Corporation cannot by any stretch of imagination be construed or interpreted to mean an order pass- ed by such authority; Therefore Section 24(1) is not attracted. Sub-section (2) of Section 24 deals with any order for payment of compensation to a displaced person or any lease or allotment granted to such a person having been obtained by means of fraud, false representation or concealment of any material fact It is only under such circumstances that under the said Sub-section, the Chief Settlement Commissioner could pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, canceling the lease or allotment granted to him. Having regard to the scope of that provision which does not at all deal with a transfer of sale being brought about by means of fraud, false representation or concealment of any material fact, it would appear that that Sub-section also has no application to the case of a transfer of property by sale u/s 20 (1) (a) of the Act Sub-section {3} of Section 24 only speaks of natural justice inasmuch as no adverse order can be passed without giving notice to the person concerned and Sub-section (4) of Section 24 comes in only when an order is passed by the Chief Settlement Commissioner in exercise of the powers vested in him u/s 24 (1) and (2) of the Act. Therefore when as in this case, the Chief Settlement Commissioner entertained the plea of the department that the description of the property in the sale deed executed in favour of the petitioner is mistaken and by accepting that plea, proceeds to pass an order canceling the conveyance and directing refund of the consideration it would clearly appear that he was not at all acting u/s 24 of the Act. There is no other provision of law in the Act in question which could authorise the Chief Settlement Commissioner to entertain the plea about the property being mistakenly described in the sale deed executed by the Managing Officer or the Managing Corporation.

12, Mr. Gursahani however tried to urge jointly that the order impugned indicates that there was an allotment of the property. As we have pointed out though in another different context, the expression ''allotment'' has been used in the order, the main basis of the order is that respondent No. 5 was approached by respondent No. 4 on the allegation that the property was mistakenly described in the conveyance deed and the said learned authority having discussed the factual aspect about the availability of the property has concluded that he was clearly of the view that there was a mistake and that he must therefore interfere and set things right. The demarcation made by the Surveyor at the instance of respondent No. 4 on a move by the petitioner being subsequent to the sale deed in favour of the petitioner, that order of demarcation cannot be said to be an order of allotment although it is referred to as such in the petition and the order impugned.

13. Mr. Gursahani drew our attention to the decision of the Supreme Court in Om Prakash and Others Vs. Union of India (UOI) and Others, In that case the facts were these:--

On the basis of an oral verification some land was allotted to a person and subsequently the Section Officer-cum-Managing Officer, relying on Fard Taqsim and Khasra Cirdawari, discovered that an area of some acres was in excess of what the allottee was entitled to. The section Officer-cum-Managing Officer therefore cancelled the allotment to the extent of the excess. The Appellate authority in appeal against that order referred the matter to the Chief Settlement Commissioner who acting u/s 24 cancelled the order of allotment to the extent of the excess. He also relied on the Fard Taqsim and Khasra Girdawari. On these facts the Supreme Court held that "the oral verification was subject to correction, variation and cancellation if revenue records justified such a course. The Fard Taqsim was an important revenue record and the Section Officer-cum-Managing Officer as well as the Chief Settlement Commissioner were right in placing reliance on the Fard Taqsim and Khasra Girdawari. Both of them had jurisdiction to cancel the allotment under Ss. 19 and 24 respectively." Now, this authority would be of no assistance to Mr. Gursahani for the simple reason that that was a case of an allotment and as we have pointed out, Section 19(1) of the Act clearly confers authority on the Managing Officer or the Managing Corporation to cancel any allotment or to amend the same and when such order was passed in exercise of the power u/s 19 of the Act, that order could be clearly revised by the Chief Settlement Commissioner in exercise of his power u/s 24 (1) of the Act. That case therefore was not a case of a transfer by sale.

14. The next decision relied upon by Mr. Gursahani is reported in Bara Singh Vs. Joginder Singh and Others, by Bhandari, C. J. and Dulat J., the extract of which is given at page 210 of the Displaced Persons (Compensation and Rehabilitation) Act, 1951 edited by Dina Nath Nijhawans. In that case it was observed that Section 19 gives wide powers to a Managing Officer appointed under the Act to cancel or terminate allotment of property made by the Custodian to a displaced person. It was further observed that the power of the Chief Settlement Commissioner is defined by Section 24. He can act in every case where a subordinate authority has failed or omitted to make a proper order. In any case, it is observed: "where a Managing Officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error, and similarly, where a Managing Officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse and annul the transfer." It would appear that what is observed therein is as pointed out by us, the Managing Officer bus power to cancel the allotment u/s 19 and that u/s 24 the Chief Settlement Commissioner has power to alter or review the orders passed by such Officers. It is only in case of allotment which ought to have been cancelled by the Managing Officer that the Chief Settlement Commissioner can exercise his powers to correct that error in revision. That was a case of a challenge made to the order of allotment itself and the observations in that case must be read in the context in which they were made. In the instant case there is absolutely no allotment order passed in respect of the property in favour of the petitioner, and on the other hand what is done is to agree to transfer the property to the petitioner, first by the agreement of sale and subsequently to sell the same by a regular deed of sale. Since such a transaction of sale cannot be annulled or modified by the Managing Officer or the Chief Settlement Commissioner, it would follow that the Chief Settlement Commissioner cannot interfere with such transactions In exercise of his alleged powers u/s 24 of the Act.

15. In the result, the order passed by respondent No. 5 in purported exercise of his powers u/s 24 of the Act is clearly without jurisdiction and must be quashed and we accordingly quash the same.

16. Before parting with this case, we would also like to make it clear that we should not he taken to have expressed any opinion about the merits of the property covered by the sale deed which is executed in favour of the petitioner

much less about the title which is purported to be conveyed by the sale deed. The rule is therefore made absolute accordingly without order as to costs.

17. Ordered accordingly.