

(1971) 07 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Second Appeal No"s. 137 and 138 of 1968

Budhi Singh

APPELLANT

Vs

Sewa Ram

RESPONDENT

Date of Decision : 14-07-1971

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 12, 4, 8(4)
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 19
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 59

Citation : AIR 1971 HP 29

Hon'ble Judges : M.H. Beg, C.J

Bench : Single Bench

Advocate : S. Malhotra and H.K. Bhardawaj, for the Appellant; Chhabil Dass and M.G. Chitkara, for the Respondent

Final Decision : Dismissed

Judgement

1. These are two defendant's second appeals directed against the judgment and decrees of the District Judge of Chamba, who disposed of two appeals by the same judgment as common questions of law and fact arose. The plaintiffs-respondents are transferees of the rights of the Central Government in evacuee property which had vested absolutely in the Central Government, free from all encumbrances, under the provisions of Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. They came to Court with a claim of absolute ownership of the plots of land in dispute based upon a permanent allotment to which the provisions of Rule 58 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, applied. This rule lays down:--

"Where any person is allotted agricultural land under these rules, he shall, subject to the provisions of any local or special law fixing the ceiling of or otherwise regulating agricultural holdings be granted vacant possession of such land."

They alleged that the defendants are trespassers and sued for possession. The

defendants pleaded that they had acquired tenancy rights in the land in dispute from the two evacuees, prior to 1947, and, thereafter, had continued as tenants of the Custodian of Evacuee Property. They also pleaded the bar of limitation against the plaintiffs, but they do not now deny the title of the plaintiffs acquired by virtue of a permanent allotment as mentioned above.

All that the defendants now contend is that they have acquired tenancy rights which they set up against the plaintiffs- Both the Courts below had rejected the claim of the defendants to tenancy rights and had decreed plaintiffs' suit.

2. Learned counsel for the defendants-appellants has relied strongly on the following finding of the lower appellate Court interpreting the settlement entries:--

"So it means that it was after 1947 that the defendants came in possession as tenants and not that they have been cultivating the land as tenants for the last 40 or 45 years, that is to say, prior to 1947."

This view of the lower appellate Court was expressed when it referred to what could transpire from the revenue records which proved that the claim of tenancy rights from the evacuees extending to a period of 40 to 45 years and prior to 1947 was, in any case, untrue. The lower appellate Court also came to the conclusion that rent receipts (Exs. D-7 and D-7/1) filed by the defendants were not genuine.

3. Learned counsel for the plaintiffs-respondents rightly urges that the finding relied upon is only an observation about what the settlement entries could indicate, but that the real position in law is that the defendants were no better than licensees. He relies on the provisions of Section 8, Sub-section (4) of the Administration of Evacuee Property Act, 1950:--

"Where, after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf." The contention is that this provision, read with the provisions of Section 4 of this Act, prevents the defendants from claiming any status higher than that of licensees. Section 4 of the Act of 1950 provides as follows:---

"4. (1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or evictions from, any property shall apply, or be deemed ever to have applied, to evacuee property."

4. Learned counsel for the defendants-appellants has relied upon an observation

in *Munshi Ram v. Delhi Administration* AIR 1968 SC 702 at p. 704 where, after citing the provisions of Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954, their Lordships observed:--

"The above provisions apply only to properties which are under the control of the managing officers or managing corporations. They do not apply to properties which have ceased to be evacuee properties."

Section 19, referred to above, reads as follows:--

"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 person, whether such allotment or lease was granted before or after the commencement of this Act.

(2) Where any person,--

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under Sub-section (1), or

(b) is otherwise in unauthorised possession of any evacuee property or any other immovable property forming part of the compensation pool, he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorised by such officer or corporation.

(3) If any person fails to surrender possession of any property on demand made under Sub-section (2), the managing officer or managing corporation may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary.

(4) Where a managing officer or a managing corporation is satisfied that any person, whether by way of allotment or lease, is, or has at any time been, in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled, under the law under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that person, the managing officer or the managing corporation may, having regard to such principles of assessment of rent as may be specified in this behalf by the Central Government, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed for the period for which the property remains or has remained in his possession:

Provided that no such order shall be made without giving to the person

concerned a reasonable opportunity of being heard.

(5) Where any person is, or has at any time been, in unauthorised possession of any evacuee property acquired under this Act, the managing officer or the managing corporation may, having regard to such principles of assessment of damages as may be specified in this behalf by the Central Government, assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard."

5. Learned counsel for the defendants-appellants concedes that the Custodian of the Evacuee Property had similar powers to vary or cancel leases or allotments so long as these are in respect of evacuee property. Section 12 of the Act of 1950, reads as follows:--

"12. (1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act:

Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee-

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him; or

(c) has failed to pay rent in accordance with the terms of the lease.

Explanation:--In this sub-section, "lease" includes a lease granted by the Custodian and "agreement" includes an agreement entered into by the Custodian.

(2) Where by reason of any action taken under Sub-section (1), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession of any property on demand under Sub-section (2), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force eject such person and take possession of such property in the manner provided in Section 9."

6. It is, however, pointed out that the rights in the land in question had actually vested in the Central Government u/s 12, Sub-section (2) of the Act 44 of 1954,

which provides:--

"On the publication of a notification under Sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances."

It is also provided there:--

"Sub-section (3). It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in Sub-section (1) in respect of-

- (a) all evacuee property generally; or
- (b) any class of evacuee property; or
- (c) all evacuee property situated in a specified area; or
- (d) any particular evacuee property.

(4) All evacuee property acquired under this section shall form part of the compensation pool."

7. It is, therefore, clear that the land in dispute was part of the compensation pool when rights in it were transferred to the plaintiffs-respondents. The question which arises in the case, therefore, is whether the plaintiffs could take advantage of the provisions of either the Act 44 of 1954 or the Act 31 of 1950.

8. The character of rights to property in the compensation pool is clear from a perusal of Sections 12 and 19 of the Act 44 of 1954 which have been set out above. Undoubtedly, before the property came into compensation pool, it was governed by the provisions of Ss. 4 and 8 and 12 of the Act 31 of 1950. In my opinion, the Courts below have not erred in holding that the effect of the Act 31 of 1950 was to override the provisions of local or State laws as held in *Abdul Sattar v. Custodian, Evacuee Property* AIR 1958 AP 317. The result was that so long as the property remained vested in the Custodian the rights of the occupant could not ripen into any rights higher than those of a bare licensee who had to quit on demand by whoever had the right of ownership.

9. The position would have been different if the case of the defendants-appellants had fallen within the purview of the proviso to S. 12, Sub-section (1) of the Act 31 of 1950, or in other words, a lease had been granted to the defendants before the 14th day of August, 1947. The findings of the Courts below dispelled the case set up by the defendants-appellants that leases had been granted to them before the 14th day of August, 1947. Even if a lease had been granted to the defendants-appellants before or after the land became part of the compensation pool, there may have been some force in the contention that, without a cancellation of the lease, the defendants could not be evicted.

But, the defendants not having either set up or proved such a case, cannot take advantage of the loose observation of the lower appellate Court relied upon by them.

10. The findings of the Courts below make it clear that the land in dispute vested in the Custodian of Evacuee Property, and, thereafter, vested in the Central Government, before any rights from the evacuees themselves could have arisen in favour of the defendants-appellants. The only right to remain in possession which the defendants-appellants could claim, on proved facts, would either flow from the Custodian Evacuee Property, or, after that, from the managing officer or the managing corporation. The powers and rights of the managing officer ceased after the allotment of the land to the defendants-appellants. Therefore, the contention seems to be correct that the possession of the defendants-appellants became illegal when the land was allotted to the plaintiffs-respondents, even if it be assumed that they had some permissive right flowing either from the Custodian, Evacuee Property, or the managing officer of the property under Act 44 of 1954. To such allotted land, the provisions of Rule 59 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 were applicable. It is not shown how that permissive right ripened into a tenancy right. No rent receipt from either the Custodian of Evacuee Property or the Managing Officer could be produced by the defendants.

11. It has been contended by Mr. Malhotra, appearing on behalf of the defendants-appellants, that whatever powers of eviction Rule 58, mentioned above, or the provisions of Act 44 of 1954 gave were available to the managing officer, and could only be exercised by the managing officer and not by the transferee. This contention seems unexceptionable. There is, however, a distinction between the exercise of powers under the Act or the rules framed under Act 44 of 1954 and the ordinary civil rights and claims put forward by persons claiming to be owners. If the ownership rights vested in the plaintiff-respondents, as they have been shown to have vested, the defendants could only resist that claim by showing a better right to remain in possession. The defendants have been unable to prove rights higher than those of possible licensees. The bare licensee has no interest in land and his license would be deemed to be revoked by the owner of land even by filing a suit for his ejectment. The possession of defendants-appellants became illegal when the plaintiffs objected to it. The plaintiffs are not exercising any statutory right of cancellation of any lease or of ejectment vested in either the Custodian or the managing officer. They are claiming the rights of an owner to evict a bare licensee to whose continued occupation the owner has objected. The defendants also took up the plea of limitation, but failed to establish it in both Courts below.

12. I, therefore, hold that the Courts below had rightly decreed the eviction of the defendants-appellants. Both these second appeals are dismissed with costs. Stay orders are discharged.