

(1960) 11 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 94-D of 1959

Girdhari Lal Bulaki Ram and Another

APPELLANT

Vs

L.J. Johnson and Others

RESPONDENT

Date of Decision : 15-11-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 90

Citation : AIR 1961 P&H 464

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : Hardyal Hardy and D.L. Malhotra, for the Appellant; Jindra Lal, Daljit Singh and R.S. Narula, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—This is a Petition of Writ on behalf of two petitioners, Girdhari Lal and Sardari Lal, praying for an appropriate writ directing that respondent No. 1, Shri L. J. Johnson, Joint Secretary, Ministry of Rehabilitation, Government of India, New Delhi, should be prohibited from dividing the properties horizontally as directed by him in his order elated the 9th of August, 1958. There is also a further prayer that respondent No. 2 should he ordered to accept the respective bids of the petitioners with regard to the properties in question.

2. The brief facts of this case are that there is a large building in Municipal ward No. XIV, Mohalla Chimni Mill, Bara Hindu Rao, Delhi, comprising of eight units hearing house-tax No. 8184 to 8196. This building has been declared an evacuee property under the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954, and the Central Government has acquired it and thereby it has become the part of the compensation pool within the terms of Section 12 of the Act.

On 23rd of January, 1956, three persons -- Radha Kishau and Attar Singh

respondents and another person Ascharj Lal filed applications before the Assistant Settlement Commissioner Contending that they were persons in occupation of certain units. Radha Kishan claimed to be in occupation of property No. 8193 and Attar Singh claimed to be in occupation of property No. 8194. Ascharj Lal, who is not a party in these proceedings, was in occupation of property No. 8186.

The contention of these three applicants was that the property was allowable within Rule 22 of 1961 Punj. D.F./30.

the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and the respective portions in the occupation of each applicant should be allotted to him and not sold. These objections are said to have been dismissed. The Property was held to be not allottable and on 3rd of March, 1956, a proclamation for the sale of the property in one lot was made by the Government. On 28th of May, 1956, some units, comprising the building, were auctioned.

The property which was subsequently auctioned was made into three separate lots. The first lot comprised of property Nos. 8186 and 8188 on the ground floor and No. 8187 on the first floor. This property was knocked down in favour of Girdhari Lal, petitioner. He was a displaced person and was in occupation of property No. 8191. His bid for the aforementioned three Properties was for Rs. 22100/-, which was the highest.

The second lot was Purchased at the auction for Rs. 19250/- by the other petitioner, Sardari Lal, and had comprised of property Nos. 8189 and 8191 On the ground floor and 8190 on the first floor. He was in actual occupation of property No. 8189 and was a displaced person. With the third lot, which was purchased by one Dewan Chand, we are not concerned in these proceedings.

3. Rule 90 of the Statutory Rules lays down the detailed procedure for sale of property by public auction and it is not contended by the learned counsel for the petitioners that this procedure had not been followed. Radha Kishan and Attar Singh filed objections to the auction but their objections were rejected. On 14th of June, 1956, the Regional Settlement Commissioner communicated his acceptance of the bid in accordance with Rule 90 (ii) to the petitioners by a registered post. On 11th and 12th of July, 1956, the petitioners deposited the requisite sale price in the form of compensation due to them under verified claims in pursuance of Rule 90, Sub-rule (12).

4. Three separate appeals were filed before the Chief Settlement Commissioner by Radha Kishan, Attar Singh and Ascharj Lal respectively and were disposed of by the Deputy Chief Settlement Commissioner, Shri I. N. Chib, on 16th of January, 1958. The appeals were dismissed. These three unsuccessful appellants filed a petition to the Government u/s 33 of the Act and without having implicated the present petitioner an ex parte order was passed in their favour on 19th of March, 1958, by respondent No. 1.

The purport of the order was that a horizontal division should be permitted in this case and, therefore, auction was ordered to be set aside and the house was to be allotted after horizontal division had been effected. When the present petitioners learnt of the ex Parte order having been passed to their prejudice they submitted an application dated the 2nd of June, 1958, to the Central Government u/s 33 and desired that the order, which had been passed behind their back and to their prejudice on 19th of March, 1958, should be set aside.

The Petitioners were heard by respondent No. 1 and by his order dated the 9th of August, 1958, made u/s 33 of the Act, he held that in this case horizontal division could be easily effected and he set aside the auction and directed that the house should be allotted after horizontal division had been made as indicated by him. This order has been impugned in this writ petition.

5. The argument advanced by Shri Hardayal Hardy, learned counsel for the petitioners, is that after a binding contract had resulted between the Government and his clients when the auction was approved, the transaction could not be assailed subsequently despite the provision of Section 33. This provision runs as under :-

"The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this act or the rules made thereunder,"

6. The contention of Shri Hardy is that after an auction is approved of by the authorities and the consideration for the sale has been received it is open to the auction purchasers to transfer the property. He contended that it could never have been within the contemplation of the framers of the statute that such a transaction should be interfered with under powers conferred u/s 33 upon the Central Government as that would lead to breach of contract on the part of the Government.

7. The language of Section 33, reproduced above, 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 transactions, I agree with the learned counsel for the petitioners that reopening of a transaction subsequently may lead to great complications.

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 of the type we have here. An argument based upon hardship or injustice is not sufficient to overcome the effect of the expressed language of the statute. The order passed by respondent No. 1 cannot, therefore, be struck off on the ground that it was beyond the scope of the powers u/s 33.

8. It was next argued that respondent No. 1 was in error in thinking that the building was fit for horizontal division. This is a question of fact arising in a particular case and in the exercise of its jurisdiction under Article 226 or 227 of the Constitution this Court is not competent to review a finding based exclusively on the particular facts of the case. It is not for this Court to opine whether the building is fit for horizontal division as claimed by respondent No. 1 or not.

Reference in this connection to Rule 22 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is, in my view, of no avail to the petitioners. Sub-rule (1) deals with three classes of acquired evacuee property which shall "ordinarily" be allotted. Sub-rule (2) provides that a portion of a building of an acquired evacuee property which has no independent access shall not, unless Central Government otherwise directs be allottable. Rule 22 is worded in a language which gives considerable amount of discretion and is mandatory.

The words "ordinarily" in Sub-rule (1) and "unless Central Government otherwise directs" in Sub-rule (2) admit of considerable flexibility. There is nothing to suggest that different parts of the building, into which it has been apportioned, do not allow independent access. Moreover it was a matter within the exclusive jurisdiction of the authorities under the Act and is not open for examination by this Court. The impugned order cannot, therefore, be successfully questioned on the ground that either it was without jurisdiction or that Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, did not empower the Central Government for interfering with auction sales. I find the petition without merit and it is, therefore, dismissed. In the circumstances of the case there will, however, be no order as to costs.