

(2007) 06 SHI CK 0038
In the High Court Of Himachal Pradesh

H.S. Anand and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:

Evidence Act, 1872 — Section 58

Citation : (2007) 2 ShimLC 275

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—The brief facts necessary for the adjudication of this petition are that the properties known as "Garden View" and "Newton Villa" situated at Lower Kaithu, Shimla were owned by one Capt. Malik Umarhayat Khan, who had purchased the same from its previous owner W.J.S. Britts by a registered sale deed dated 21.10.1913 and mutation to that effect was attested on 4th January, 1921. The properties became evacuee properties after partition and were vested with respondent No. 1 under the provisions of Administration of Evacuee Properties Act, 1951. The properties were put to auction by inviting sealed tenders . through the Regional Settlement Commissioner and the property "Garden View" was given evacuee property No. 220/4 comprised Khasra No. 141 measuring 4230 sq. yards. The predecessor-in-interest of the petitioners late Sardar Mool Singh being the general attorney of one Sh. Kesho Nath Khurana gave the highest bid with respect to the property known as "Garden View", the area of which as per auction notice was mentioned as 4230 sq. yards. It has further been averred in the petition that the bid given by Sardar Mool Singh being the highest was accepted by the Regional Settlement Commissioner on 25.9.1955. The sale was confirmed on 31.10.1955 and a regular sale certificate in favour of Sh. Kesho Nath Khurana was issued by Managing Officer (Sales), Ambala on 7.6.1963. Shri Kesho Nath Khurana was declared to be the purchaser of the property with effect from 7.6.1957. The area at the time of auction and in the tenders invited by the respondent No. 1 as per the averments made in the petition through Regional Settlement Commissioner was shown as 4230 sq.

yards, but the same was shown by way of boundaries in the sale certificate. Sh. Kesho Nath Khurana through Sardar Mool Singh, predecessor in interest of petitioners applied for the demarcation of area transferred in his favour to the concerned authorities and for putting him in possession of the area on the spot. Consequently the District Rent and Managing Officer, Ambala vide letter dated 21.8.1959 intimated Sh. Kesho Nath Khurana through his attorney Shri Mool Singh that the area transferred in his favour was 4230 sq. yards after effecting the demarcation by the District Rent and Managing Officer, Ambala and the same was reflected as such as per the Municipal records.

2. The predecessor in interest of the petitioner was informed by Naib Tehsildar on 8.7.1957 that the area as per the Municipal records was also 4230 sq. yards and he was entitled to the possession of the same. It is further averred in the petition that Sh. Tek Chand Chitkara had filed an appeal before the Chief Settlement Commissioner against the order of the Managing Officer (Sale), who found the predecessor in interest of the petitioners to be entitled to an area measuring 4230 sq. yards. The appeal was dismissed by the Chief Settlement Commissioner and the order of the Managing Officer (Sale) was upheld vide 24.2.1959. The predecessor in interest of the petitioner filed a suit for possession on the basis of order dated 24.2.1959 alleging that the same had become final and on the basis of the said order he was entitled to the possession of 1800 sq. yards of khasra No. 141 which after the settlement was given new khasra Nos. 267, 272, 273, 317, 395, 396 and 397. The suit of the predecessor in interest was resisted by the owner of the property known as "Lauriston", however, the respondents reiterated their stand that the area of the Garden View transferred in favour of the predecessor in interest of the petitioners was 4230 sq. yards as per the averments contained in the written statement. The suit was dismissed by the Court vide its judgment dated 16.9.1968 and the appeal preferred against the same was rejected by the appellate Court on 24.5.1969 and the Regular Second Appeal filed against the judgment of the appellate Court was also dismissed by this Court on 7.4.1980. The predecessor in interest of the petitioners Sh. Kesho Nath Khurana challenged the same before the Supreme Court and vide its judgment dated 10.4.1981 in Civil Appeal No. 1408/198, the Supreme Court remanded the case to this Court for re-deciding the same. The appeal was dismissed again on 14.8.1981 by this Court upholding the judgment and decree passed by the original Court dismissing the suit.

3. The petitioner has also averred in the petition that a Local Commissioner was appointed by this Court who submitted his report on 12.5.1979 and according to him the area of the "Garden View" was 4230 sq. yards.

4. He has also placed on record the copy of written statement filed by respondent No. 1 admitting that it had sold the "Garden View" estate comprising khasra No. 141 and there was no path through khasra Nos. 396 and 397 (Vide Annexure P-13). It is further averred in this petition that the owner of Lauriston Estate filed another suit against the respondents in which they were declared as

owners of Khasra Nos. 260 and 267 to 273 measuring 7335 sq. yards out of khasra Nos. 267 and 272 also form part of Garden View without impleading the present petitioners. The owners of the Lauriston Estate had been declared to be the owners of the same.

5. In this petition it is further stated that Sh. Kesho Nath Khurana had paid the consideration for an area 4230 sq. yards purchased in an open auction for Rs. 20,000/- from the Government of India, Ministry of Rehabilitation comprised khasra Nos. 317, 267, 272, 273, 395, 396 and 397 (old khasra No. 141) and deed of transfer was executed in his favour on 7.6.1963 duly registered in the office of Sub Registrar, Shimla on 10.6.1963 and was entitled to area measuring 4230 sq. yards, however, he was only in possession of 1080 sq. yards. It has also been averred in the petition that the property was mutated in favour of the petitioners on the basis of the relinquishment deed and after the death of Mohinder Kaur, her share in the property has also been inherited by the petitioners. The petitioners had submitted that they had made a representation to the respondents on 5.7.2002 but the same has not been replied to till date.

6. This petition was admitted by the on 30th October, 2003 and no reply(s) were filed by the respondents and their right to file was closed by the order of this Court on 26.4.2007 at the time of hearing.

7. Mr. G.C. Gupta, Senior Advocate along with Mr. Mohinder Gautam, Advocate had strenuously argued that the respondents were bound to make the deficiency good in the area transferred in favour of the predecessor in interest of the petitioners on the basis of bid dated 25.9.1955.

8. The facts which emerge from the pleadings are that the property (Garden View) was put to auction by the Chief Settlement Commissioner, Jalandhar on behalf of respondent No. 1 on 25.9.1955. The predecessor in interest of the petitioners gave the highest bid of Rs. 20,000/- and this was confirmed in his favour on 31.10.1955. A memorandum was issued by the District Rent and Managing Officer, Ambala dated 20.6.1957 intimated the tenant in occupation of the building to attorn in favour of Sh. K.N. Khurana and pay rent of the same to him (Annexure P-2). It is evident from the contents of Annexure P-4 dated 8.7.1957 that according to Municipal the area of Garden view transferred to the petitioners was 4230 sq. yards. The regular sale certificate was issued in favour of Sh. Kesho Nath Khurana by Managing Officer (Sales), Ambala on 7.6.1963 and Sh. Kesho Nath Khurana was declared to be the purchaser of the property with effect from 7.6.1957. A corrigendum was issued by the Managing Officer (Sales), Ambala on 22.9.1964 where the area of the property in question was declared to be 4230 sq. yards. It was further directed that the corrigendum should form part of the sale certificate issued in favour of Sh. Kesho Nath Khurana. In a suit filed by Sh. Tek Chand Chitkara for declaration, the defendant No. 2 i.e. Regional Settlement Commissioner for and on behalf of Union of India had stated in paragraphs 8 and 9 of the written statement as under:

7&9. That the contents of para 8 of the plaint are wrong and denied. The auction was held in September, 1955 in which Garden View was sold to defendant No. 1 along with the lands under khasra Nos. 317, 396 and 397 (present). It is not admitted that the same could not be sold by the authorities, sold Garden View Estate comprised in then khasra No. 141 comprising of an area of 4230 sq. yds. There did not exist the alleged public path.

9. This Court is of the opinion that the predecessor in interest of the petitioners had given the highest bid on 25.9.1955 pursuant to which the sale was confirmed on 31.10.1955 and a regular sale certificate was issued in favour of Sh. Kesho Nath Khurana on 7.6.1963 for the then khasra No. 141 measuring 4230 sq, yards.

10. The question which requires consideration by this Court is: Whether the admission made by the respondent No. 1 in the written statement vide Annexure P-13 can be relied upon by the petitioners in this petition? The answer is in affirmative in view of the recent pronouncement of law by the Hon"ble Supreme Court in Thimmappa Rai v. Ramanna Rai and Ors. 2007 (7) Scale 19. Their Lordships of the Apex Court have held as under:

An admission made by a party to the suit in an earlier proceedings is admissible as against him. Such an admission being a relevant fact, the Courts below in our opinion were entitled to take notice thereof for arriving at a decision relying on or on the basis thereof together with other materials brought on records by the parties. Once a party to the suit makes an admission, the same can be taken in aid, for determination of the issue having regard to the provisions of Section 58 of the Indian Evidence Act.

11. In view of this position of law, the petitioner is entitled to get total area of 4230 sq. yards as admitted in Annexure P-13 on the basis of open bid dated 25.9.1955, the sale of which was confirmed on 31.10.1955 and the regular sale certificate was issued in favour of the predecessor-in-interest of the petitioners on 7.6.1963.

12. Accordingly this writ petition is disposed of in view of the observations made herein above and the respondents are directed to consider the case of the petitioners for making the deficiency good on the basis of the bid given by the predecessor-in-interest of the petitioners on 25.9.1955 and sale certificate dated 7.6.1963, and as per the admission contained in paragraphs 8 and 9 of the written statement, i.e. Annexure P-13 within a period of 6 weeks from the date of receipt of certified copy of this judgment.

There shall be no order as to costs.