(2009) 12 DEL CK 0362

In the Delhi High Court

Case No : LPA No. 693 of 2004

K.L. Anand (Decd.) thr. LRs. — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 12, 14, 16, 20, 40
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 20
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 57, 87
Evacuee Interest (Separation) Act, 1951 — Section 10, 2

Citation : (2009) 12 DEL CK 0362

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Sanjeev Sahay, for R-1 to 4 and Radhika Chandrashekhar, for R-5 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The challenge in the appeal is to the judgment and order dated 31.5.2004 passed by a learned Single Judge of this Court whereby WP(C) No. 859/1984 filed by late Dr. K.L. Anand, and after his death pursued by his legal heirs, has been dismissed.

2. The prayer in the writ petition was to quash the order dated 08.02.1984 passed by the Chief Settlement Commissioner and to issue a mandamus to the concerned authorities under the Displaced Persons (Compensation & Rehabilitation) Act 1954 to forthwith effect sale of 704 sq. yds. of land adjacent to property bearing No. 29, Village Satbari, Tehsil Mehrauli and hand over possession of the said land to the petitioner.

3. The learned Single Judge has painstakingly noted various orders which were passed from time to time by the various authorities under the Administration of Evacuees Act 1950, the Evacuee Interest (Separation) Act 1951 and the Displaced Persons (Compensation & Rehabilitation) Act 1954. During argument of

the appeal, it was conceded by Shri Sanjeev Anand, Advocate, who is one of the many legal heirs of the deceased appellant, that the narratives in the impugned judgment and order with reference to the factual matrix of the orders passed from time to time is correct and hence we would not be noting each and every order passed in the checkered history, spanning 50 years, of the litigation between the parties, save and except the relevant orders which are necessary to be noted to bring out the issue which arises for consideration in the appeal.

4. But, before that, we may summarize the legislative provisions applicable, for the reason they would help in noting the relevant facts.

5. The first applicable enactment is the Administration of Evacuee Property Act 1950 which was enacted with the object of managing properties left behind by people who migrated from the territories comprising India to Pakistan, when the country was partitioned. u/s 7 of the said Act, the properties left behind in India by those who migrated to Pakistan were referred to as "Evacuee Properties. and were vested in a Custodian for purposes of management. u/s 16 of the said Act, the Central Government was empowered to restore properties to the recorded owner if he claimed that the authority under the Act had wrongly determined the same to be an Evacuee Property.

6. The second relevant enactment to be noted is the Displaced Persons (Compensation & Rehabilitation) Act 1954 which regulated as to how persons migrating to the territories comprised in the dominion of India from territories falling in the dominion of Pakistan would be entitled to be paid compensation for properties left behind by them in areas falling in the territory of Pakistan or otherwise were to be rehabilitated. u/s 12 of the said Act, the Evacuee Properties could be utilized to form a compensation pool u/s 14 of the said Act, to be given to refugees, with reference to the value of the evacuee property and property left behind in Pakistan by the refugee. u/s 16 of the said Act, the Central Government was empowered to take measures for the custody, management and disposal of properties put in the compensation pool. A Managing Officer was empowered u/s 20 of the said Act to sell, allot or give on lease properties put in the compensation pool. u/s 40 of the Act the Central Government was empowered to make Rules and in exercise of the rule making power, the Displaced Persons (Compensation & Rehabilitation) Rules 1955 were framed. Under Rule 87 the Chief Settlement Commissioner was empowered to sell properties put in the compensation pool.

7. The third relevant enactment is the Evacuee Interest (Separation) Act 1951. This enactment was necessitated because it was found that certain properties jointly owned by Muslims required to be dealt with separately, inasmuch as one joint owner or some joint owners migrated to Pakistan and some remained in India. To the extent some joint owners migrated to Pakistan, their share in the joint property became an evacuee interest in the property and the remaining share remained as the joint interest of the joint owner who continued to stay back in India. These properties were called "Composite Properties.. To put it in a

nutshell, a composite property required determination of the evacuee and the non- evacuee share therein i.e. the share of the joint owner who migrated to Pakistan and the share of the joint owner who remained in India. Thereafter, this share had to be separated. The evacuee share had to be transferred in the compensation pool created under the Displaced Persons (Compensation & Rehabilitation) Act 1954 for the Managing Officer to deal with the same and the remainder to be given to the non-evacuee i.e. the joint owner who remained in India.

8. In respect of composite properties, the competent officer under the Evacuee Interest (Separation) Act 1951 was to hold an inquiry and determine the evacuee and non- evacuee interest therein. Separation of the evacuee and non- evacuee interest had to be as per Section 10 of the Act, contents whereof, we feel, need to be noted. Section 10 of the Evacuee Interest (Separation) Act 1951 reads as under:

Separation of the interests of evacuees from those of claimants in composite property. - Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,-

(a) in the case of claim of a co-sharer or partner, -

(i) direct the Custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a Civil Court having jurisdiction over such property and deliver possession of the property to the Custodian and the claimant may withdraw the amount in deposit in the Civil Court; or

(ii) transfer the property of the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property, or

(iii) sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property; or

(iv) partition the property according to shares of the evacuee and the claimant and deliver possession of the shares allotted to the evacuee and the claimant to the Custodian and the claimant respectively;

... ...

9. Relevant would it be to note that to separate the share of the evacuee and non-evacuee in a composite property, three modes of separation are contemplated. Firstly, if possible, to partition the property with reference to the respective share and to give physical possession of the property upon partition to

the non-evacuee and the custodian respectively, so that the custodian could then proceed to deal with the evacuee share in the property. Secondly, to value the property and in respect of the respective share, give an option to the non-evacuee owner to purchase the evacuee interest or vice versa and lastly to sell the property and distribute the sale proceeds between the Custodian of evacuee properties and the non-evacuee joint owner of the property. In a nutshell, sale was envisaged of a property contingent upon it being a composite property.

10. Neither Act envisages the sale of a property which is not a composite property or an evacuee property.

11. The factual matrix may now be noted. In village Satbari, Tehsil Mehrauli there existed a building constructed on 879 sq. yds. land. The building was constructed on 175 sq. yds. of land and the remaining 704 sq. yds. was unbuilt. The date of the order being unknown, the entire property ad-measuring 879 sq. yds. together with the building constructed thereon was declared as an evacuee property and vested in the Custodian of Evacuee Properties for management. One Abdul Majid, the predecessor-in-interest of respondents No. 5 to 8 filed objections stating that the entire property belonged to him and he having remained in India, the property could not be declared an evacuee property and vested in the Custodian.

12. Vide order dated 17.1.1958 (at some places referred to as dated 7.1.1958; the order not being filed in the pleadings of the parties) the competent authority under the Administration of Evacuee Properties Act 1950 passed an order that 175 sq. yds. land and the building constructed thereon out of the total land ad-measuring 879 sq. yds. was not an evacuee property. Land ad-measuring 175 sq. yds. and the building constructed thereon was held to be the exclusive property of Abdul Majid. The remainder was held to be the property of Abdul Hamid, brother of Abdul Majid.

13. Whether or not Abdul Majid further challenged the order dated 17.1.1958 is not clear. But, it may be noted that qua the issue pertaining to 175 sq. yds. land and the building constructed thereon the issue of Abdul Majid being the exclusive owner thereof attained finality.

14. Unfortunately, a corrective entry was not made in the records pertaining to evacuee properties after order dated 17.1.1958 was passed and the entire property ad-measuring 879 sq. yds. was continued to be shown as evacuee property and the Custodian of Evacuee Properties put up the property for auction. Late Dr. K.L. Anand submitted the highest bid for the property in sum of Rs. 5,350/-. One thing is clear: that the entire land ad-measuring 879 sq. yds. plus the building constructed thereon was put to auction, ignoring that 175 sq. yds. land and the building constructed thereon could neither be treated as an Evacuee Property or a Composite Property and hence the custodian could not have sold the same.

15. The bid of late Dr. K.L. Anand was accepted and the sale was confirmed vide

order dated 5.3.1965. He deposited the necessary amount.

16. A series of orders came to be passed by various authorities on applications filed either by Dr. K.L. Anand or Abdul Majid. The same have been succinctly narrated by the learned Single Judge and we eschew reference to the same save and except to note that on 8.2.1984, the Chief Settlement Commissioner passed an order that at site the land actually measured 799 sq. yds. and not 879 sq. yds. out of which a building was constructed on 182 sq. yds. land and not 175 sq. yds. The balance land available was 617 sq. yds. It was further held that the 617 sq. yds. land comprised two distinct portions ad-measuring 261 sq. yds. and 356 sq. yds. The Chief Settlement Commissioner recorded in the order that with reference to the records produced before him, no plausible explanation was forthcoming on record as to how come at site the available land was 799 sq. yds. but was treated by the authorities as ad-measuring 879 sq. yds. The Chief Settlement Commissioner passed the order on the basis of actual measurement at site.

17. By the time order dated 8.2.1984 was passed Abdul Majid had died and his son Farid-ud-din i.e. respondent No. 5 was prosecuting the proceedings on behalf of the heirs of Abdul Majid. He gave a concession that 75 sq. yds. land may be given to Dr. K.L. Anand.

18. It is apparent that the sale of the entire land and the building constructed thereon was invalid for the reason, way back in the year 1958, 175 sq. yds. land and the building constructed thereon was held to be the property of Abdul Majid and if at all Dr. K.L. Anand could litigate, it was with respect to the remaining land. At best he could have claimed a proportionate reduction in the price offered by him pertaining to the land which could actually be sold. But, a policy decision framed by the Central Government intervened.

19. On 27.7.1982 the Department of Rehabilitation framed guidelines, relevant portions whereof read as under:

Subject: Disposal of evacuee rural properties in various villages in Delhi.

Sir,

I am directed to say that at present there are 174 evacuee rural properties (houses/plots) lying undisposed of in various villages in Delhi. Of these, 3 properties are under litigation in the Civil Courts and 30 properties may be required for allotment under Rule 57 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The remaining 141 properties are available for immediate disposal.

2. It has been decided to disposed of the available evacuee properties on the terms and conditions indicated below:

(i) The properties will be transferred to the sitting occupants at the existing market price to be determined on the basis of the sale date obtained through the

Revenue Authorities.

... ...

3. In so far as the vacant plots or the occupied plots which cannot be disposed of to the sitting occupants in the manner indicated above are concerned, these shall be disposed off by auction in accordance with the relevant provisions of Displaced Persons (Compensation and Rehabilitation) Rules, 1955. For proper conduct of the auctions, there should be adequate publicity and adequate dissemination of conditions of auction etc.

20. Since the family members of late Abdul Majid were occupying the entire property, the Chief Settlement Commissioner, noting the consent of respondent No. 5 on behalf of entire family members directed that 76 sq. yds. land could be given to Dr. K.L. Anand @Rs.125/- per sq. yd. and the remaining land would be transferred to the family of Abdul Majid @Rs.125/- per sq. yd. Needless to state, the decision of the Chief Settlement Commissioner was based on the policy decision dated 27.7.1982 as per which the sitting occupants became entitled for transfer of Evacuee Properties at the existing market rates to be determined by the authorities and that the market rate determined was Rs. 125/- per sq. yd.

21. The learned Single Judge has negated the challenge to the order dated 8.2.1984 with the following reasoning:

26. In order to appreciate whether the petitioner had any claim in the property or not, the question which has to be considered is whether there was a valid auction held in respect of the property in question in which the petitioner was the successful bidder. This issue in turn is inter-linked with the question as to the reason for the said auction. The property in question was auctioned as a composite property on account of there being both evacuee and non-evacuee interests in the property. The various proceedings held by the competent authorities, however, found that the house in question over 175 sq. yds. (or later on found to be 182 sq. yds.) had only the interest of Shri Abdul Majid and there was no interest whatsoever of his brother Shri Abdul Hamid, who had migrated. On the other hand, it was also held by the order dated 18.01.1972 of the Deputy Custodian General that in so far as the open land is concerned, Shri Abdul Majid had not interest in the same. Thus, this area of open land was totally an evacuee property. The area was, however, found to be slightly less on physical verification as noted in the order dated 08.02.1994 and comprised of 617 sq. yds. Thus, there were separate portions of the land where one portion was held to be evacuee property and the other was held to be non-evacuee property. The question of application of the Separation Act arises only when there is inter-twined interest of both evacuees and other persons and the property is a composite property as defined u/s 2(d) of the Separation Act. In view of these adjudications, it cannot be said that open area of the land was constructed area of the land were inter-twined since the interest of Shri Abdul Majid was confined to the constructed area while the interest of Shri Abdul Majid was confined to the

constructed area while the interest of the person who migrated was in the open hand. Thus, there were segregated areas of evacuee and non-evacuee property.

27. In terms of the order passed under the Separation Act on 16.04.1966, the portion of 175 sq. yds. Was held to be exclusively non-evacuee property. Whether the portion of 704 sq. yds. was evacuee or non-evacuee was an issue remanded to be considered by the Competent Officer. The review petition of the petitioner in respect of this order was dismissed on 04.06.1966 and there was admittedly no further challenge to this by the petitioner. The result of this is that the area of 176 sq. yds. has been held to be exclusively non-evacuee property. This itself would show that the total property auctioned was not a composite property as defined u/s 2(d) of the Separation Act.

28. The only question to be considered by the Competent Officer on remand was whether the area of 704 sq. yds. was evacuee or non-evacuee property. The property was held by the Competent Officer to be non-evacuee property alone by the order dated 27.09.1971. However, in terms of the order dated 18.01.1972, this area has been held to be only evacuee property. It is the petitioner who thereafter moved to the Chief Settlement Commissioner and, in fact, raised this issue whereby it was held to be an evacuee property in terms of the impugned order. However, the fact that it was held to be exclusively evacuee property does not help the petitioner because in case it is not a composite property, there would have been no occasion for the auction on that account. The evacuee property would have vested with the Custodian u/s 8 of the Evacuee Act. In such a case, no validity could be attached to the auction in which the petitioner was successful auction purchaser, though the petitioner was not at fault for what happened. However, that cannot make the transaction legal. In terms of the impugned order dated 08.02.1984, this aspect has been considered.

29. The second question, which would arise, would be as to whether respondent No. 5 could have any right to the property, though this land could not be granted to the petitioner. In this behalf, the power has been exercised under Rule 87 of the said Rules by the Chief Settlement Commissioner. Undoubtedly, the powers are wide and not confined to the manner of sale by public auction or by inviting tenders alone. In this behalf, it may be noticed that Section 20 of the Displaced Persons Act itself provides the power to transfer property in the manner prescribed, but subject to any rules to be made under the said Act. There is no doubt that the object is to make available the land to displaced persons since that is the very basis for enactment of the said Act. The property which has come into the compensation pool is such evacuee property and the object of the compensation pool is specified in Section 14 of the said Act itself .Undoubtedly, respondent No. 5 is not an evacuee.

30. It however, appears that there were certain difficulties expressed in such matters, which resulted in the office order being passed on 27.07.1982. The office order provides that in respect of the evacuee rural properties, which is so in the present case, the properties are to be transferred to the sitting occupants

at the existing market price to be determined on the basis of sale data. I am unable to accept the plea of L.R. No. 2 of the original petitioner that this policy decision can relate to only evacuee properties with which the Department did not know what to do. In fact, para 3 of the said letter provides that where such plots cannot be disposed of to the sitting occupants, they shall be disposed of by auction in accordance with the said Rules. The power in terms of the impugned order has, thus, been exercised in pursuance to this policy decision. The policy decision has not been questioned but only it applicability. In any case, as noted above, a view to the contrary could hardly help the petitioner in the given case.

31. In terms of the impugned order, the Chief Settlement Commissioner has balanced the equities and while even granting the land to respondent No. 5, who during his life time was occupying the land and now his legal heirs, considered it appropriate to grant an area of 76 sq. yds. to the petitioner. This was on account of two facts - (i) the petitioner had paid the amount in pursuance to the successful bid in the auction; and (ii) it is petitioner who agitated the matter and was responsible for restoration of the evacuee land.

22. The submissions urged before us in appeal were the same as were urged before the learned Single Judge. It was urged by the appellants that the bid having been confirmed in the favour of late Dr. K.L. Anand and he having paid the sale price, the necessary sale deed was required to be executed in his favour by the Custodian or a sale certificate required to be issued in his name and that he was entitled to be put into possession of the entire land.

23. It is settled law that sale by a person who is not the owner of a property is a nullity and even a bona fide purchaser for valuable consideration cannot claim a title against the lawful owner of the property. It is trite that no person can transfer a title better than his and no person can transfer title in a property if he has none.

24. With the order dated 17.1.1958 passed in favour of Abdul Majid attaining finality much before bids were invited by the Custodian for sale of the entire property in the year 1962, the question of 175 sq. yds. land (at actual measurement at site found to be 182 sq. yds.) upon which a building was constructed being sold did not arise since neither the Custodian of Evacuee Properties nor the Managing Officer of Composite Properties was authorized to sell said land and the building constructed thereon. Needless to state, the sine qua non for either the Custodian of Evacuee Properties exercising jurisdiction over a property or the Managing Officer exercising jurisdiction over a Composite Property is either the property being an Evacuee Property or a Composite Property.

25. Thus, the learned Single Judge has correctly held that the very act of inviting bids for the entire property and thereafter confirming the same is an illegal act and cannot abrogate the right of Abdul Majid.

26. The only question which survived was: whether the bid could be confirmed

pro rata.

27. The various orders passed in the continuous litigating between the parties do not show that late Dr. K.L. Anand ever pleaded that he was ready to accept the remainder of the property with his bid reduced pro rata. Probably, he did not do so for the reason the property put to auction comprised of a build up portion and open land and it was difficult to split the bid amount vis-a-vis the built up property and the vacant land. Thus, the Chief Settlement Commissioner was fully justified in bringing an end to the controversy with reference to the policy decision dated 27.7.1982.

28. We note that in the writ petition no challenge has been raised to the policy decision dated 27.7.1982.

29. Noting that with reference to the money deposited by Dr. K.L. Anand when his bid was accepted and the concession of respondent No. 5 that 76 sq. yds. land may be transferred to Dr. K.L. Anand, with reference to the fact that in the year 1984 the land was priced at Rs. 125/- per sq. yd., noting that Dr. K.L. Anand''s money was lying deposited since the year 1965 when the bid was confirmed, the learned Single Judge has directed that 76 sq. yds. land would be given possession of to the legal heirs of late Dr. K.L. Anand.

30. It is apparent that the learned Single Judge has done whatever little equity could be done in favour of the appellants.

31. We find no merit in the appeal which is dismissed.

32. No costs.

