(1975) 07 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 519 of 1968

K.N. Kapoor APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-07-1975

Acts Referred:

Citation : AIR 1976 Delhi 31 : (1975) 2 ILR Delhi 708

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : Naunit Lal, V.P. Chaudhary and P.N. Talwar, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This Petition under Article 226/227 of the Constitution is to quash an order passed by Shri Rajni Kant, Officer with delegated powers of the Central Government under the Displaced Persons (Compensation & Rehabilitation) Act. 1954 (Act No. 44 of 1954) (hereinafter called as the Act), dated 4-6-1968, refusing to interfere u/s 33 of the Act with the order passed by the Settlement Commissioner Shri Sudarshan Aggarwal with delegated powers of Chief Settlement Commissioner dated 30-4-1968, taking suo mota proceedings for cancellation of sale of a bungalow in plot No. 26 N. H. Ill, Township, Faridabad as well as sale certificate dated 18-1-1963 issued in favor of the petitioner K. N. Kapoor. The facts which led to the filing of this petition may be briefly noticed.

(2) One Alam Chand, whose legal representatives arc respondents Nos. 4 to 7 in this petition, purchased the said property at a public auction held on 31-12-1957 wherein he was the highest bidder in the sum of Rs. 8050 whereupon he was issued a notice requiring him to pay balance of the bid price. In accordance with the rules, to which reference will be made later, he had to deposit. 10 per cent of the purchase money and in the event of his'' holding a verified claim (as Alam Chand did) he could execute a bond to that extent.

(3) Passing over the details of what happened at this stage it is sufficient to note

that Alam Chand did not deposit the sale amount as required by the rules because (as it turned out) he had withdrawn the entire amount of compensation due to him in the verified claim No. P/Gurgaon/215421/2421. A statement to this effect was made by Alam Chand himself in the application which he had made, on 1-2-1960 (vide p. 8-F of file No. B. 26/N.H./111). He had categorically admitted therein that he had realised the entire compensation on 18-1-1960 and that he may be informed about the orders concerning the whole of the amount to be deposited by him in cash. It may be noticed, even at this stage, he could not have had any difficulty in the matter of knowing for what amount he had bid; it was Rs. 8050; the 10 per cent earnest money, for which he had given the bond to be adjusted out of his compensation amount, was no longer available after he had withdrawn the entire amount of compensation due to him- As would appear from a later statement which Alam Chand made before the Assistant Settlement Officer on 29-4-1960 (vide p. 5-N of the same file) he had intimated that he received a sum of Rs. 1000 in cash and Rs. 1740 in the form of National Planning Savings Certificates. Having made this admission he had no option but to pay the entire sale price, including the 10 per cent which he was bound to pay initially- This position was, in fact, conceded by him when he made a request that he may be granted 20 days time for paying the said amount. It is also seen from the file from a note dated 24-5-1960 (despite that portion of the file being torn) that Alam Chand had not appeared until that date or made the deposit. It may be further noticed that Alam Chand died on 13-4-1961.

(4) It is not necessary at this stage, to be detained by the notices that were sent to Alam Chand both before and after his death in view of the .fact that Alam Chand had himself appeared, long after the acceptance of his bid by the Settlement Commissioner his earlier request to have the sale price adjusted out of his compensation amount could not have any validity after he had himself withdrawn the entire compensation; (it has not been stated before me that any further amount of compensation was due to him than what he had drawn).

(5) In these circumstances, the prime question, which will be dealt with in the course of this judgment as arising for consideration, would be whether Alam Chand had any claim against the property within the meaning of rule 90 sub-rule 14 of the Rules framed under the Act. If this question is to be answered against the petitioner then we could not be detained by anything that happened in the shape of the proceedings taken to (1) cancel the sale and (2) forfeit the 10 per cent of the earnest money which in fact, was not deposited in this case. As explained by Ismail, J. in Ram Chand v. Union of India (Civil Writ No. 482-D of 1964 decided on 8-9-1967(1) sub-rule 14 of rule 90 enumerates what he described as "two consequences" following upon failure to comply with the conditions postulated by the earlier sub-rules Ii to 13. Ismail, J. had set out all the three rules and had considered them. It may be necessary to read subrule 14 fully :

"14.If the auction purchaser does not deposit the balance of the purchase money within the period specified in sub-rule (11), or does not make an application for the payment of compensation within the period specified in sub-rule (12), or if the net compensation admissible to the auction purchaser and to his associate claimants, if any, is found to be less than the balance of the purchase money and the auction purchaser does not make up the deficiency as provided in sub-rule (13), the initial deposit made by the auction purchaser under sub-rule (8) shall be liable to forfeiture and he shall not have any claim to the property."

(6) It may be sufficient to merely summarise, in so far as it is material to the present case, the contents of sub-rules Ii to 13. Subrule 11 merely speaks of the auction purchaser being required to produce, within 15 days of the intimation of the acceptance of the bid, a treasury challan in respect of the balance of the money; this time may, however, be extended for a period not exceeding 15 days. Sub-rule 12 speaks of the procedure for adjusting the compensation payable to the auction purchaser in respect of a verified claim. It was in accordance with this provision that Alam Chand had sought for not only his 10 per cent earnest money being so adjusted but also the balance, to the extent he held a verified claim. Sub-rule 13 speaks of an intimation being sent to the auction purchaser calling upon him to deposit the balance in cash after adjusting the verified claim which according to both the sub-rules may be his own claim or by associating the claims of other persons with his in this regard. In the light of these three sub-rules if sub-rule 14 is read the idea will clearly emerge that if there is default in the matter of complying with any or all of the above provisions to the extent they applied the initial deposit made by the auction purchasers under sub-rule (8) (which has not been said as very material) "shall be liable to forfeiture" and he "shall not have any claim to the property". Ismail, J., with respect, rightly came to the conclusion that regarding these two-fold consequences contemplated by sub-rule 14 in the event of default by the purchaser, it is only the forfeiture of the 10 per cent earnest money which requires further action on the part of the official concerned, the sub-rule does not read : "shall be forfeited"; it only provides that it "shall be liable to forfeiture". Whatever this may be (on which aspect it is needless for me to pronounce any opinion) the question that falls for decision in this case is whether in the events that happened Alam Chand had any claim to the property. If he had none then there was no further need, legally speaking, to cancel any interest in the property or the auction sale itself. It is this important aspect which appears to have been missed while the impugned orders were passed. Reliance appears to have been made on certain notices, which need not be detailed here, being issued to the heirs of the deceased Alam Chand after his death as to why the auction sale should not be cancelled and 10 per cent be forfeited. Such action would have been necessary in the matter of forfeiting 10 per cent but. if Alam Chand did not have any claim to the property, then it was plainly wrong to talk of the need for cancelling the auction sale in his favor. It is worth repeating that compliance with the conditions imposed by sub-rules 11 to 13 alone could enable him his right as auction purchaser to fructify the purchase became a nullity when these conditions were not complied with.

Without even drawing an exact parallel between the Act, the CPC and the present rules, it may be useful to refer to the observations of Ghulam Hasan. J., while interpreting the relevant provisions of the CPC in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, :

" Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favor of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceeding as a complete nullity. The very fact that the court is bound to re-sell the property in the event of a default shoves that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law".

(7) The distinction that was sought to be drawn between the CPC . and the present rules is that acceptance of the bid by the Settlement Commissioner was necessary. But this distinction could be of no avail after Alam Chand''s bid was accepted on 14-4-1958. Even apart from the above authority it seems to me quite clear on principle, as already explained, that when the auction sale itself was subject to the conditions of certain amounts having to be deposited within the prescribed time or adjustments being made in the manner laid down then the auction purchaser had , claim to the property and, consequently, no question of having to cancel the sale could possibly arise.

(8) Though in a somewhat different context, the Supreme Court pointed out that the auction purchaser should have no claim to the property till the full price was paid Bishan Paul Vs. Mothu Ram, . Shri Talwar, learned counsel for the respondents rightly points out that the above discussion was in the context of the auction purchaser seeking to evict a tenant of the property; but on this ground the principle laid down in the above said decision cannot cease to have application because the Supreme Court had held that the payment of full price was the sine qua non for acquiring title to the property purchased at such an auction. This is a consequence of sub-rule 14. This question, in my view, has to be answered in favor of the petitioner. An understanding of the above legal position alone is sufficient to give the relief which the petitioner seeks in this petition.

(9) For the sake of completeness, however, I may refer to some of the facts which I have been able to gather from the above file which show that even independently, on the facts, the legal representatives of Alam Cand would not be entitled to the relief which they got under the impugned orders. It is seen from

the file above referred to (the compensation file bearing No. P/ Gurgaon/215421/2424 not being made available to me) that Alam Chand himself had filed an affidavit on 2-1-1958 (vide p. 4-F of the file) before the Settlement Officer stating about the property etc. that he had purchased mentioning therein that he had purchased a plot (this plot) at Faridabad for Rs. 8050 but not specifically set out the amounts payable from the compensation pool or that he had executed a bond for payment of 10 per cent deposit. After the acceptance of the bid of Alam Chand notice had been issued to him even on 14-4-1958 (p 6-F of the file) to deposit the balance within a time prescribed by the rule. But this notice does not appear to have been served. A similar notice was issued on 2/3-6-1958 asking him to deposit the balance and the Administrator, Faridabad Development Board was requested to serve the same on him personally (p. 7-F of the file). Subsequently, on 18-1-1960, Alam Chand realised the whole claim in cash and the certificates (vide note on p. 8-F of the file). This was followed by an application by Alam Chand in Urdu (already mentioned) that he had realised the whole of. the compensation amount on 18-1-1960. It also appears from the file that on 9-4-1960 Alam Chand was informed of the amount that he would have to deposit. He again appeared on 29-4-1960 (p. 2-N of the file) before the Assistant Settlement Officer and prayed for 20 days'' time: (reference to this has already been made. This was followed on 29-8-1960 by a notice (p. 13-F of the file) to Alam Chand to present himself and there was also yet another notice issued to him on 25-1-1961/ 2-2-1961 (p. 15-F of the file). These were the two notices which appear to have been sent to him before he had died on 13-4-1961. It is necessary to recall here that such notices were not necessary to merely cancel the sale; they were obviously sent to forfeit the 10 per cent.

(10) To complete the narration of facts it may be noticed that notices were sent subsequent to the death of Alam Chand also; the order cancelling the sale, forfeiting the deposit was made on 16-3-1962 (reference is to p. 6 of the note of the file).

(11) It is also necessary to notice at this stage that on 30-5-1962 the property had been re-auctioned and was purchased by the petitioner for Rs. 12,500. He deposited the security amount and the balance sale price within the time; after confirmation, the sale certificate was also issued to him. On 9-7-1964 the authorised Chief Settlement Commissioner set aside (p. 43-F) the order dated 16-3-1962 which had been passed cancelling the auction sale in favor of Alam Chand and ordering forfeiture in respect of 10 per cent the petitioner not being made a party to these proceedings.

(12) The various notes in the said file by the officers who had dealt with this matter even subsequently in order to consider the order dated 9-7-1964 refusing even taking steps suo motu and the reasons for and against this course make interesting reading it is not, however, necessary to refer to them. In the net result the petitioner''s auction was set aside on the ground that the auction sale in favor of Alam Chand could not be set aside without notice to his legal

representatives. I have said enough to point out that this view overlooks the consequence which have been forwarded by sub-rule 14 of rule 90.

(13) Shri P. N. Talwar made a very laboured attempt to sustain the impugned orders by urging that the various orders as required, by sub-rule 13 in particular, should have been passed and Alam Chand should have been required to make up the deficiency in the manner provided for under sub-rule 13 and that when these things were not done the consequences stipulated by sub-rule I of rule 90 could not follow. In other words, he urged that an express order setting aside the sale was a necessary legal act to terminate whatever interest Alam Chand had in the property but this argument appears to fly in the teeth of sub-rule 14 itself which says that when there is default in the matter of complying with the relevant conditions, Alam Chand had no claim to the property- There can be no doubt, in this case that there was default because on 29-4-1960 even after Alam Chand secured 20 days time to deposit the whole money he did not do so. Alam Chand had, Therefore, no claim to the property.

(14) In the result the impugned orders passed by Shri Sudarshan Aggarwal, (copy of which is annexure ''B'') and by Shri Rajni Kant (copy of which is annexure ''A'' to the Writ Petition) are both quashed it follows from this that the further orders, which were only consequential, by which the petitioner''s sale was set aside would also automatically fall to the ground and the sale of the petitioner would stand restored.

(15) In the view that only the heirs of Alam Chand are involved in this dispute I make no order as to costs. File No. B/26/NH. Ill, to which I have referred in the course of the judgment will not be returned to the department until the appeal period is over or an appeal, if filed, is disposed of.

