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(1983) 07 DEL CK 0017

In the Delhi High Court

Case No : Letter Patent Appeal No. 130 of 1973

Manak Singh and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 08-07-1983

Acts Referred:

Citation : (1983) 24 DLT 227 : (1984) 6 DRJ 288

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : P.N. Talwar, Rekha Sharma and B.S.C. Singh, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) In this Letters Patent Appeal the challenge is to the correctness of the judgment of the learned single Judge of this Court who had dismissed the appellants'' writ petition and had upheld the order of the Appellate Officer passed under the Evacuee Interest (Separation) Act, 1951.

(2) The dispute in this case relates to three Thallas i.e. open platforms, in front of shops situated in Katra Allaha Dia, Delhi. Appellants Nos. I to 9 are purchasers of the interests of the non-evacuee co-sharers (appellant Nos. 10 to 14) in the shops behind the Thallas in dispute. Some of the co-sharers of the said shops were evacuees and by an adjudication order dated 22nd August, 1962 the share of the non-evacuee claimants was determined at 19/40th and of the evacuee in the Custodian at 21/40.

(3) The interest of the evacuee and the non-evacuee co-sharers had to be separated. Section 10 of the said Act prescribes the procedure for separating the said interest. It, inter alia, provides for the transfer of the property to the claimant or its sale and distribution of the sale proceeds between the different sharers. Detailed mode of separating the interest is provided by Rule 11-B. The relevant portion of the said Rule reads as follows :-

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"11-B.Mode of separation of interest of evacuee :-

(A).....

(B)Where the evacuee''s share is valued at Rs. 50,000.00 or less in the case of an industrial undertaking, or Rs. 15,000.00 or less in the case of any other immovable property excluding agricultural lands in the Union Territory of Delhi and suburban lands in all States and Union Territories to which clause (a) above applies; and also excluding agricultural lands in rural area to which clause (c) below will apply :-

(I)If the evacuee share is less than half, sell that share to non-evacuee co-sharer at the price assessed by the Competent Officer and the non-evacuee shall be entitled to pay the entire price of such evacuee share, either in cash or by associating claimants or partly in cash and partly by associating claimants;

(II)If the evacuee share is half or more than half, sell the property at the assessed price to the sitting allottee, if a displaced person, and if he is not interested, offer it to the non-evacuee co-sharer who shall be entitled to pay the entire price of such evacuee share either in cash or by associating claimants or partly in cash and partly by associating claimants;

(III)If neither the non-evacuee co-sharer nor the displaced allottee is interested in purchasing the property, sell it by auction and distribute the sale proceeds in accordance with the shares determined by the Competent Officer."

It is an admitted case of the parties that the interest of the evacuees in the property being more than one half, the provisions of clause (ii) of the said sub-rule apply to the present case. According to this clause the property may be sold to the sitting allottee at the assessed price and if he is not interested then it may be offered to the non-evacuee co-sharer. If neither of them is interested then the said property is required to be sold by auction and the proceeds thereof to be distributed amongst the persons entitled to receive the same.

(4) On 10th April, 1964 the Appellants Nos. I to 9 stated before the Competent Officer that each of the Thallas was worth Rs. 8000.00 and, as per the statement of one of the claimants recorded by the Competent Officer, "the claimants are not interested in any of the Thallas and the same be put to sale". This statement made by Shri Mohd. Naqi, one of the claimants, was read over and admitted as correct by the others. After recording the said statement the Competent Officer, in his order, noted that the Custodian regarding the valuation of the Thallas. The Competent Officer fixed the value of each Thallas at Rs. 8000.00 provisionally and directed that all the three Thallas be put to sale . The Custodian, however, was asked to let the Competent Officer know the estimated value by the next date of hearing.

(5) On 10th July, 1964 the case again came up for hearing before the Competent Officer. By that time the valuation report had been received. As per the said report the three Thallas were valued at Rs. ll,700.00 , Rs. 10,200.00 and Rs.

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11.100.00 respectively. In the Older dated 10th July, 1964 the Competent Officer recorded as follows :-

"THE claimants are not present. They have already made a statement that these properties be put to sale. Hence the assessed value mentioned above are accepted. Thallas be referred for sale immediately if not already referred."

It is obvious, Therefore, that after the receipt of the valuation report no further option was given to the non-evacuee claimants to purchase the Thallas in dispute.

(6) In pursuance to the aforesaid order the Thallas were advertised for sale for 30th September, 1964. Prior to the auction taking place, on. 24th September, 1964, the Appellants Nos. I to 9 filed an application before the Competent Officer for transfer of the Thallas to them as per Rulell-B. It appears that an organization known as Gandhi Cloth Market Association also filed an application to the Competent Officer expressing its objection to the transfer of the Thallas to the said applicants.

(7) By an order passed by the Competent Officer the application of the Gandhi Cloth Market Association was rejected. The Competent Officer, however, by his order dated 4th January, 1965, held that he was not prepared to take a narrow or hypertechnical view of the previous proposals of the no evacuee co-sharers of taking the land in dispute. He accordingly allowed their application and ordered the transfer of the Thallas to them on the value which had been fixed.

(8) The said Cloth Market Association filed a revision before the Appellate Officer against the decision of the Competent Officer. The Custodian of Evacuee Property also filed an appeal against the aforesaid order dated 4th January, 1965. By order dated 26th February, 1965 the revision petition of the Gandhi Cloth Market Association was rejected as being not maintainable. The appeal filed by the Custodian of Evacuee Property was, however, accepted. The Appellate Officer held that the non-evacuee co-sharers were bound by the previous refusal and the option exercised once could not be re exercised .. He further rejected the contention of the appellants I to 9 that an offer ought to have been made to them after the property in question had been finally valued by the Custodian.

(9) Aggrieved by the aforesaid decision, the appellants filed writ petition under Article 226 of the Constitution in this Court. By judgment dated 24th May, 1973 a single Judge of this Court dismissed the petition. The present Letters Patent Appeal has been filed against the aforesaid decision.

(10) The short question which arises for consideration in this case is whether the Competent Officer was obliged to make an offer to the appellants after the property had been finally valued, notwithstanding the fact that prior to the receipt of the valuation report the claimants had categorically stated that according to them the value of the Thallas was Rs. 8000.00 each and they were not interested in any of them. Tin''s is the only point which has been argued by Shri Talwar before us. According to the learned counsel this Court has held in the

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case of Bal Kishen Das and Others Vs. Sewa Nand and Others, and in Sharafat Khan v. Union of India and others, L.P.A. No. 76 of 1975 decided by this Court on 16th November, 1982 that on a correct interpretation of the relevant provisions of the law the claimants have to be offered the property after the valuation had been arrived at. According to the learned counsel, on the receipt of the valuation report, in the present case, the Competent Officer did not make any offer of the said property to the claimants.

(11) There can be no doubt, and indeed it is well settled as far as this Court is concerned, that according to Rule ll-B(ii) after the valuation has been arrived at the claimants have to be made an offer to buy the evacuee share and it was only in the event of their refusing to do so that the same can be sold. Ordinarily the occasion for the claimants to consider whether they would be interested in purchasing the evacuee share or not at the assessed value would arise only after value has been finally settled. In the present case, however, the claimants themselves valued each Thalla at Rs. 8000.00 . They categorically stated before the Competent Officer that they were not interested in the said Thallas. They further stated that the same may be sold. The Thallas were finally valued at a figure higher than Rs. 8000.00 . As the claimants had expressed their disinclination to purchase the same, when according to them each was worth only Rs. 8000/''-, the Competent Officer, in our opinion, was right in thinking that there was no question of giving the claimants another opportunity under Rule 11-B as they had previously stated that they were not interested in the said Thallas. No fault can be found in the decision of the Competent Officer in ordering the sale of the Thallas and in not offering them to the claimants. If the valuation of the Custodian had been at a figure less than Rs. 8000.00 then, possibly, the Competent Officer would have been obliged to give another opportunity to the claimants to purchase the said Thallas. Where, however, as in the present case, even on the estimated value of Rs. 8000.00 the claimants had expressed their disinclination to purchase the property in question, the Competent Officer was right in proceeding with the sale of the property. Neither in Bal Kishen Das''s case nor in Sharafat Khan''s case (supra) had the claimants categorically stated, before the valuation of the property had been arrived at, that they were not interested in purchasing the property in question in those cases. It was in those circumstances, where the claimants had not expressed any opinion, one way or the other, for the purchase of the property in question, that this Court held that on the valuation of the property being arrived at, it was incumbent upon the Competent Officers to offer the same to the claimants in accordance with Rule 11-B.

(12) The claimants, no doubt, had a right to see that the properly in question is disposed of in terms of Rule ll-B. The claimants had a right, in accordance with the provisions of the said rule, to the transfer of the property to them at the fixed value. The claimants, however, by their statement dated 10th April, 1964, consciously and deliberately waived their right. In unequivocal terms they informed the Competent Officer that they were not interested in any of the

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Thallas and that the same may be put to sale. The claimants thus clearly waived their right to have the property valued by the Custodian and to exercise their right to purchase the same. In view of the disinclination of the claimants to purchase the said property the only course which was open to the Competent Officer was to put the property to sale. This is precisely what he did. Having themselves asked the Competent Officer to so sell the property, the claimants, under no circumstances, can approach this Court under Article 226 of the Constitution and ask for a discretionary relief by the issuance of a writ of mandamus or certiorari

(13) Before parting, we may usefully refer to another decision of this Court, which supports the view which we have taken, in L.P.A. No. 63 of 1975 (Smt. Feroza Begum and others v. Appellate Officer and others), decided on 26th May, 1978. In that case without making an offer to the claimants for sale of the property, after it had been valued, the property in question was put to auction. The non-evacuee claimant took part in the auction. It was contended by the said claimant that the bid at the auction was too low and that the property should be put to auction again. It was held by this Court that under Rule 11-Bit was the interest of the non-evacuee claimant which had to be taken into consideration. On the facts of that case the Court held that the non-evacuee claimant was interested in buying the property in auction and was not interested in the transfer of the property at the assessed value and, as such, even if the property was not offered for transfer after the valuation had been arrived at, there was no infirmity in the action of the Authorities. In the present case also, as already noted, by their statement dated 10th April, 1964 the non-evacuee claimants made it clear that they were not interested in the property in question. At that time they knew that final valuation of the property had not been fixed. Their statement clearly indicates that they were not prepared to wait for the valuation to be finally arrived at and they desired that the property be sold. Rule 11-B which gives them an option to have the property transferred at a fixed value was for their benefit. It was open to them to give up the right which was so conferred. This they did so, and they cannot now be permitted to contend that the action of the Competent Officer in not making an offer to them under Rule II-B has violated their rights under the said provision.

(14) For the aforesaid reasons we do not find any infirmity in the judgment of the learned single Judge. The appeal is accordingly dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

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