

(1985) 10 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 641 of 1973

Parkash Chander Manchanda and Others

APPELLANT

Vs

N.V. Sundra Raman and Others

RESPONDENT

Date of Decision : 09-10-1985

Acts Referred:

Citation : (1986) 30 DLT 217

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Advocate : K.K. Chaudhry and R.K. Makhija, for the Appellant;

Judgement

Yogeshwar Dayal, J.

(1) This writ petition under Article 226 of the Constitution has been filed by Shri Prakash Chander Manchanda. his wife and his daughter against the order of the Authorised Chief Settlement Commissioner dated 14th December, 1971 and the order of the Central Government dated 11th December, 1972.

(2) In the writ petition, the petitioner has chosen to add his sister Smt. Chander Kanta as respondent No. 8 and his mother Smt. Basant Kumari as respondent No 9. I am laying so because two ladies were not parties to the proceedings before the Authorities who adjudicated upon the matter. Similarly petitioner's wife and daughter who are petitioners 2 and 3, were again not parties before any of the adjudicating Authority.

(3) The facts of the case in brief are that a quarter No. 22-A, Block J, Lajpat Nagar. New Delhi was allotted to Miss Janki Manchanda (respondent No 7) vide allotment order dated 13th October. 1953.

(4) On 23rd October, 1953, Janki Manchanda sent an application to Deputy Minister Rehabilitation. Delhi in which she requested for allotment of two roomed quarter because the tenement already allotted to her was not sufficient for the family which consisted of six adult members. In this application she supplied the

details of the family as included her father, mother, brother, brother's wife, sister and self.

(5) Her request for allotment of two roomed tenement was accepted and allotment order dated 2nd February, 1954 allotting her quarter No. 17-AB, Block Ii, Lajpat Nagar, New Delhi, was issued to her. (Annexure Ii to the writ petition). This allotment order was only in favor of Janki Manchanda and she alone was made responsible for payment of rent.

(6) The Authorities decided to transfer this two roomed quarter in favor of Janki Manchanda in view of the powers u/s 20. Sub- Section (6) of the Displaced persons (Compensation & Rehabilitation) Act, 1954. For paying the entire price. Janki Manchanda associated a claim of her father to the extent of Rs. 3894.69 and the claims of three other persons besides paying amount partly in cash. She also tendered "No objection letters" from her associates other than her father to the effect that they have no objection if the conveyance deed is issued in her exclusive name and the father, however, whose claim Janki Manchanda tendered for adjustment towards price did not give any such "No Objection letter" and the conveyance deed was accordingly issued in the joint name of Janki Manchanda and her father Sh. Dewan Chand Manchanda showing the proportionate share of each in the property.

(7) Before the issue of Conveyance deed, present petitioner. Mr. Parkash Chander Manchanda made an application to the Regional Settlement Commissioner, New Delhi in which he requested for the issuance of Conveyance Deed in the joint name of the family on the plea that the claim filed for the properties in favor of his father Sh Dewan Chand pertained to the Joint Hindu Family and further Smt. Janki Manchanda was a benami purchaser put forth by the family as a matter of convenience. Shri Parkash Chander also. filed an appeal before the Authorised Settlement Commissioner which was, however, rejected vide order dated 12th November, 1966. There after, Parkash Chander filed another appeal taking different grounds which was also dismissed by the Authorised Settlement Commissioner vide order dated 14th September, 1960. Thereafter, Parkash Chander filed a revision petition before the Chief Settlement Commissioner which was also dismissed on 31st July, 1970. Against this order of Chief Settlement Commissioner, petitioner, Parkash Chander filed a petition u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter referred to as the "Act") who set aside the order of the court below and remanded the case for decision to the Authorised Settlement Commissioner.

(8) The Authorised Settlement Commissioner on remand vide order dated 8th September. 1971 held that Shri Parkash Chander Manchanda was also entitled for transfer of the property.

(9) Against this order of the Authorised Settlement Commissioner (Sh. S.N. Behl) dated 8th September, 1971, Smt. Janki Manchanda filed a petition which came up for hearing before Sh. S.R. Kapoor, Authorised Chief Settlement

Commissioner. Authorised Chief Settlement Commissioner vide order dated 14th December, 1971 set aside the order of Authorised Settlement Commissioner dated 8th September, 1971. A copy of the order of Sh. S.R. Kapoor has been filed with the petition was Annexure IX. In this order Sh. S.R. Kapoor held :

"THAT Miss Janki Manchanda had been in the first instance allotted Qr. No. 22-A, Block J, Lajpat Nagar, New Delhi. Subsequently she had vide her application dated 23-10-53 requested for the allotment of 2 roomed quarter because the accommodation already allotted to her was not sufficient for the family. Thereafter she had been allotted the present quarter No. 17-AB, Block Ii, Lajpat Nagar, New Delhi."

He also found as a fact that there is no material what sever on the record that present petitioner Parkash Chander paid any amount towards the cost of the property. Sh. Kapoor found that entire price was paid by Janki Manchanda and her father Sh. Dewan Chand Manchanda. Sh. Kapoor, Therefore, held:

"I have, Therefore, no hesitation in rejecting the plea that any amount whatsoever was paid by the respondent Shri Parkash Chander Manchanda either towards the cost of the tenement or towards its improvement."

(10) Then the Authorised Chief Settlement Commissioner posed a question to himself, whether Parkash Chander has any right to the property because his name had been shown as one of the members of the family by his luster while she applied for two roomed tenement. After posing this question, the Authorised Chief Settlement Commissioner answered it in the following words :

"Jay also mention that Miss Janki Manchanda besides mentioning her brother's name bad also mentioned the names of her father, mother, sister and her sister-in-law. Ordinarily none of these members can be categorised as members of her family. They could be the members of the family of the father but no stretch of imagination they could become members of her family. Possibly she was earning girl in the family and was supporting her relatives, who were living with her and she was perfectly justified when she wrote to the Government that as she bad more than five members to accommodate she should be allotted two roomed tenement. This, however, does not mean that all those who were accommodated by her could become entitled for the transfer of the tenement even without payment & single paise towards the costs of the property."

(11) Thus, finding that Parkash Chander Manchanda petitioner bad not paid towards the price of the property, revision petition of Janki Manchanda was accepted and order of Authorised Settlement Commissioner dated 8th September, 1971 was set aside and it was held :

"THAT the Conveyance/Leasc Deeds issued jointly In the names of Miss Janki Manchanda and her father Shri Dewan Chand have been correctly issued."

(12) Against this order of the Authorised Chief Settlement Commissioner dated 14th December, 1971. the petitioner alone filed a petition before the Central

Government u/s 33 of the aforesaid Act. This revision before the Central Government u/s 33 of the Act came to be dealt with by Sh. N.V. Sundara Raman, Joint Secretary to the Government of India, Ministry of Labour & Rehabilitation (Department of Rehabilitation) New Delhi. The Central Government vide order dated 11th December, 1972 dismissed the revision petition of the petitioner and confirmed all the findings of fact recorded by Sh. S.R. Kapoor, Authorised Chief Settlement Commissioner.

(13) Before Sh. S.R. Kapoor, Authorised Chief Settlement Commissioner as well as Central Government and before me reliance was placed by learned counsel appearing on behalf of the petitioner on a judgment of this Court in Cwp No. 258-D of 1961. *Sh. Bhim Son Sahwney v. Union of India and others* decided by S.N. Shanker, J. on 23rd February, 1970. That was a case where the dispute arose between two brothers. The property had been allotted to the elder brother. But the property was occupied by both the brothers in half and half share. Finding of fact recorded was that it was in possession of the brothers in half and half share. Another finding of fact recorded was that the allotment card of the property was in the name of both the brothers. In these circumstances, in that case the Central Government and the Authority working under the aforesaid Act held that the initial allotment of the property was for the benefit of joint family which consisted of both the brothers. Therefore, the brother in whose name allotment letter alone had been issued had challenged by way of writ petition the order of the Central Government which had directed transfer of property in name of both the brothers. Here the finding of fact recorded by the Authorities is that the allotment made to Smt. Janki Manchanda was made solely in her name. She was the sole tenant not only of the first allotment but also of second allotment in dispute. The finding also is that the petitioner has no interest whatsoever in the property except that Janki Manchanda while applying for allotment of house had mentioned the names of her mother, father including the petitioner. Even the father in the entire proceedings never claimed that the allotment was given to daughter for the benefit of entire family. In fact, father had been opposing her brother, the petitioner herein. In these circumstances, the decision of S.N. Shankar, J. whether upheld by superior Court makes no difference. It is no precedent for this case for simple reason because a finding of fact recorded by the court on fact is that the allotment was only in the name of Smt. Janki Manchanda. The decision of S.N. Shanker, J. is based on its own facts and is not precedent for deciding the present case. It is really amazing for a boy who was still un-employed when the disputed property was allotted to his sister in the presence of his father, had the check to fight with his sister for last practically 20 years. He should have been grateful to his sister for maintaining him when he was un-employed and she even undertook the burden of looking after the family.

(14) The second submission made by learned counsel for the petitioner is that the claims of his father which were verified against the ancestral property were utilised towards the adjustment of the price and even the claims of her mother were utilised. It will be noticed that the property had been ordered to be

transferred to Smt. Janki Manchanda on payment of price and under the rules framed under Displaced Persons (Compensation & Rehabilitation) Act, 1955, such a purchaser can pay the price either in cash or by adjustment of claims, verified in her own name or of her associates. In Delhi, it is very common and was very common for such a purchaser to purchase these verified claims from the market and then submit them for satisfying the price of the property. Janki Manchanda associated the claims of other three independent persons and also obtained letter from them that they would not claim sale certificate in their names. She also associated the claim of her father but the father insisted on his name appearing in the Conveyance deed which may be executed in favor of the purchaser. Father did not give any "No Objection certificate" to her daughter. The courts of fact do not find that this claim association was in relation to any ancestral property of the father or any claim of association of any member of the family. It really makes no difference. Mother is not the petitioner before me. I am surprised why for the first time mother has been made a party In the absence of any findings that the claims which the sister associated of her father related to ancestral property, petitioner can get no relief. Even if for the sake of argument it be assumed that the verified claims in the name of father related to ancestral property, the ancestral property is being represented by Karta, namely, the father. Father's name is clearly therein the Conveyance deed.

(15) I may not be taken as given the finding that claims of the father related to ancestral property. In fact, there was no such material. I am merely noticing the arguments. There is, thus, no merit whatsoever in the writ petition which is dismissed with costs which Me assessed at Rs. 1,000.00