

(1971) 10 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 852 of 1970

Rajinder Lal

APPELLANT

Vs

Om Parkash Madan

RESPONDENT

Date of Decision : 08-10-1971

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 29, 33
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 25, 90

Citation : AIR 1973 P&H 21

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Judgement

1. Civil writ Petition No. 30 of 1971 and Regular Second Appeals No 852, 853 and 854 of 1970 are being disposed of together as they arise out of an auction sale of three evacuee shops made in favour of Om Prakash Petitioner in the said civil writ, and respondent in the Regular Second Appeals. The said auction sale was subsequently cancelled by the Central Government in exercise of the powers of revision u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This Act would hereinafter be briefly referred to as "the Act" and unindicated references may be taken to be to the sections of or the rules framed under, the Act.

2. Smt. Shanti Devi respondent No.3 in the civil writ petition, and her husband Ved Prakash (since deceased) were displaced persons who had migrated to his side of the Indo-Pakistan border after the partition of the country in 1947. Ved Prakash was allotted evacuee shops Nos. 27, 28, 29 and 29-A on Railway Road, Nawanshahar in Jullundur District and these shops were ordered to be transferred to him by the Rehabilitation Authorities presumably under Rules 25, at the reserved price of Rs. 8,468/-His verified claim for compensation amounting to Rs. 3,546.47 was adjusted as a part of the price but a balance of Rs. 1,972/-was sought to be adjusted by associating one Ram Lal who was also described to have a verified claim for payment of compensations. There was, however, some dispute between the Rehabilitation Authorities and the claimant

Ram Lal with regard to this entitlement to the compensation amount and there was, therefore, some delay by the Rehabilitation Authorities in accepting the preferred adjustment by Shanthi Devi of the balance of Rs. 1,972/-by means of the association of the claim of Ram Lal. Ved Prakash had in the meanwhile dies and his widow Smt. Shanti Devi had been called upon to make up the deficiency of Rs. 1,972/-in the reserved price. Because of the dispute about Ram Lal's entitlement to the claim compensation, the delay in the adjustment of this balance had led to the cancellation of the transfer in favour of Smt. Shanti Devi, Ram Lal had being agitating separately with the Rehabilitation Authorities with regard to the unjustified objection to his entitlement to the claimed compensation and the case had ultimately been decided in his favour by the Rehabilitation Authorities. In the meanwhile, however, the transfer in favour of Smt. Shanti Devi had been cancelled on the ground that she had failed to arrange for the adjustment of the balance of Rs. 1,972/-in spite of a number of opportunities having been granted to her. After the cancellation of this transfer on reserved price in favour of the displaced person in occupation, the property was put up for auction on 27-10-1967 under Rule 90 and was knocked down to the highest Bidder Shri Om Prakash Civil Writ Petitioner, for a sum of Rs. 18,000/-. A sale certificate (Annexure "C" to the writ petition) was later issued in his favour on 12-7-1968. Smt. Shanti Devi had in the meanwhile been challenging the order of cancellation of the transfer in her favour by filing appeals and revision petitions but it was ultimately the Central Government that came to her rescue u/s 33 of the Act on 4-12-1970 vide the impugned order, Annexure "E". This was because Ram Lal had also by this time established his claim to the compensation amount which was being offered for adjustment against the balance of the reserved price due from Smt. Shanti Devi under the transfer of property made in favour of her husband under Rule 25. The following extract from the impugned order of Shri Rajni Kant exercising the delegated powers of the Central Government gives the reason for interference at that stage u/s 33 of the Act:--

"It cannot be lost sight that Smt. Shanti Devi has already paid more than Rs. 6,000/-out of Rs. 8,468/-the price assessed for the property. According to the terms of agreement for transfer, if the balance cost was not paid the entire instalments shall stand forfeited and thus the petitioner who is a widow will be loser to the extent of more than Rs. 6,000/-When the petitioner had associated the claim/compensation of Shri Ram Lal and it was ultimately found that the compensation was truly payable to him, then that compensation should have been adjusted towards the balance cost of the property transferred to Shri Ved Prakash. In not doing so, the Department itself is at fault and this widow who has been agitating that the compensation was payable to Shri Ram Lal. if after allowing adjustment of compensation of Shri Ram Lal any amount was still due from the petitioner and if in spite of notice she did not pay the same, then it may have been proper to cancel the agreement ad put the property to auction but when Shri Sudershan Agarwal on the same day allowed the appeal of Shri Ram

Lal directing the Department to pay him compensation, he in my opinion, should not have rejected on the same day the revision filed by Smt. Shanti Devi who based her case on the compensation payable to Shri Ram Lal. The acceptance of appeal of Shri Ram Lal knocked down the very basis on which the cancellation order was passed. In these circumstances, I think that the hurried auction of the property was not justified. On the one hand, the widow may be loser to the extent of more than Rs. 6,000/-if the agreement is cancelled for default of payment."

3. It may appear that Smt. Shanti Devi or her husband had inducted three persons into these shops and these tenants of Smt. Shanti Devi were in possession when Shri Om Prakash, Civil writ petitioner, secured the sale certificate from the Rehabilitation Authorities. Shri Om Prakash therefore, filed suits for possession of the shops against these persons in possession, namely, Rajinder Lal, Ram Sarup and surjit Singh. These tenants are respectively the appellants in R. S. A. Nos. 852 to 854 of 1970 and respondents Nos. 4 to 6 in the civil writ petition. As the names of these three tenants of Smt. Shanti Devi did not appear in the records of the Rehabilitation Authorities, they were not found entitled to the special protection from ejectment under the provisions of Section 29 of the Act. The suits filed by the auction purchaser Om Prakash were, therefore, decreed against these persons and appeals filed by these persons in actual possession had been dismissed. These persons had therefore, filed the regular second appeals in 1970. As the auction in favour of Om Prakash, on the basis of which he had filed the suits for possession has since been cancelled by the Rehabilitation Authorities by an order dated 4.12.1970 and this order of cancellation of the transfer has been called in question by Om Parkash in Civil Writ Petition No. 30 of 1971, it was directed by me on 14th May, 1971 that the three second appeals should be listed for hearing immediately after the decision of the writ petition. That is how these three appeals and the writ petition have come up together before me. The counsel for the parties agree that the decision of the second appeals would depend on the decision, one way or the other, of the writ petition. If the order of cancellation of the auction sale in favour of Om Parkash stands, there would be no question of his being in a position to throw out the persons in actual possession of the shops as tenants of the transferee under Rule 25.

4. The main reliance of Shri Wasu, the learned Counsel for the Writ Petitioner, is on a single Bench decision of this court in *Dewan Jhangi Ram v. Union of India* (1961)63 PLR 610 . It was held in that case that once an evacuee property is sold, it no longer forms part of the compensation pool and that no order cancelling the sale can be passed after the sale of the evacuee property has been effected, unless resort is had to Rule 92. This decision was based amongst other rulings, on a decision of the Rajasthan High Court in *Govind Ram Vs. Regional Settlement Commissioner Rajasthan, Jaipur and Others*, which was later on followed by a Full Bench of that High Court in *Partumal and Another Vs. Managing Officer and Others*, . Both these Rajasthan rulings were, however

dissented from by a majority of the judges constituting full Bench of our Court in Smt. Balwant Kaur v. Chief Settlement Commr., (Lands) Jullundur AIR 1964 P&H 33(FB). The majority view of the Full Bench in Smt. Balwant Kaur's case was approved of by the Hon'ble Judges of the Supreme Court in Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, . Under the circumstances the Single Bench decision of this court in Dewan Jhangi Ram's Case (1961)63 P&HLR 610 which has been relied upon by Shri Wasu, is no longer good law. A contrary view had in fact been taken by another Single Bench of this court in Girdhari Lal Bulaki Ram and Another Vs. L.J. Johnson and Others, wherein it was held that the extensive powers conferred upon the Central Government by Section 33 are not restricted by the fact that the bid had been accepted and a communication as to its acceptance had been issued in favour of the auction purchaser. The Hon'ble Judge who had given the ruling in Jhangi Ram's case (1961)63 PLR 610 was a member of the Full Bench in Smt. Balwant Kaur's case. AIR 1964 P&H 33(FB) and he had himself subscribed to the majority view which was different from the view taken by him in Jhangi Ram's case (1961)63 PLR 610. The majority view in the Full Bench decision in Smt. Balwant Kaur's case AIR 1964 P&H 33 (FB) having been affirmed by the Supreme Court in Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, Shri Wasu's reliance on Jhangi Ram's case may appear to be futile. Shri Wasu had submitted that the residuary powers of revision of the Central Government u/s 33 were to be sparingly exercised in special circumstances only but he has not cited any ruling in support that submission. It has, on the other hand been held in Girdhari Lal Bulaki Ram and Another Vs. L.J. Johnson and Others, and in Ram Rattan Kapur v. Union of India AIR P&H 387 and a number of other rulings, that the Central Government exercises plenary powers of revision u/s 33 of the Act. While dealing with the argument that a sanad had been granted and that the title acquired under that sanad could not be cancelled, it was observed by the Hon'ble Judges of Supreme Court in Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, as follows:--

"The next point that was urged that the appellants had been granted sanads on January 12, 1956 and that their sanads could not be cancelled and the title acquired thereunder displaced except in accordance with the terms of the sanads. x x x x

On this point there are two decisions to which our attention was invited-the first is a decision of the High Court of Rajasthan in Partumal and Another Vs. Managing Officer and Others, being a decision of a Full Bench of that Court.

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"Subsequent to this decision a case arose before the High Court of Punjab ILR (1964) P&H 36 : AIR 1964 P&H 33 and a Full Bench of that Court by a majority dissented from this view and held that where an order making an allotment was set aside the title which was obtained on the basis of the continuance of that order also fell with it. We are clearly of the opinion that the judgment of the

Punjab High Court is correct. The relevant provisions of the Act and the Rules have been set out in the decision of the Punjab High Court and we do not consider it necessary to refer to them in any detail. It is sufficient to say that they do not contain any provision which militates against the position which is consistent with principle and logic. It is manifest that a sanad can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside it would follow, and the conclusion is inescapable that the grant cannot survive because in order that grant should be valid it should have been effected by competent of that order is effectively put an end to it would be impossible to maintain unless there was any express provision in the Act or in the rules that the grant still stands. It was not suggested that there was any provision in the Act or in the rules which deprives the order settling aside an order of allotment of this effect. We do not, therefore, consider that there is any substance in the second point urged by learned counsel."

5. Even otherwise, it may appear that the sale certificate was issued in favour of Om Parkash in defiance of a stay order granted by the Assistant Settlement Commissioner on 2.11.1967. There is nothing on record to suggest that this stay order was without jurisdiction or was not in operation on the date on which the sale certificate was obtained by Om Parkash. The transfer of a case for administrative reasons would not have the effect of vacating the stay order. Wrong reports appearing on the statements of bids that the stay order had been vacated may suggest that there was material irregularity in the conduct of the sale and the issue of the sale certificate in violation of a stay order. The Central Government exercise wider powers of revision u/s 33 than the Chief Settlement Commissioner may appear to be exercising u/s 24 of the Act. The Central Government has given cogent reasons in the impugned order for securing to Smt. Shanti Devi the absolute right to get transfer of the property on a reserved price under Rule 25 and for disagreeing with the subordinate authorities for denying her that right on wholly untenable grounds.

6. I accordingly dismiss the civil writ petition filed by Om Parkash. The three second appeals filed separately by Rajinder Lal, Ram Sarup and Surjit Singh are accepted and the suits filed against them by Om Parkash also stand dismissed. As all this litigation arose out of the irregular issue of a sale certificate by the Union of India, the parties are left to bear their own costs throughout.

7. Order accordingly.