

(1980) 02 DEL CK 0045

In the Delhi High Court

Case No : Letter Patent Appeal No. 97 of 1974

Rajinder Singh

APPELLANT

Vs

Chakravarti, Malhotra and Others

RESPONDENT

Date of Decision : 13-02-1980

Acts Referred:

Citation : AIR 1981 Delhi 48 : (1980) 18 DLT 131

Hon'ble Judges : V.S. Deshpande, C.J.; Harish Chandra, J

Bench : Division Bench

Advocate : G.L. Sanghvi, A.N. Arora and P.N. Talwar, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) Two questions arise in this appeal for decision :

(1) Can it be said that an applicant has sustained substantial injury by reason of irregularity in the conduct of sale within the meaning of the proviso to Rule 92(3) of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (the Rules), if it is found that he was in fact not willing to make a bid for an amount higher than was fetched by the highest bid at the auction which was held;

(2) Whether the writ petitioners who were not parties to the sale proceedings have a locus standi to challenge an order confirming the sale which was held in those proceedings ?

(2) The premises which are a part of the compensation pool constituted u/s 14 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 are occupied by the petitioners (respondents herein) as also by the appellant before us. An auction sale of the premises was first held on 12-9-1966. In the proclamation of sale the premises were wrongly described as being situated in Faiz Ganj, while in fact they were situated in Faiz Road. On 11-9-1966 one Balbir Singh sent a telegram intending to have the auction sale postponed. Subsequently, Balbir Singh in his examination as an objector in the proceedings for setting aside the

sale deposed that he could not locate the site of the premises by the description given in the sale proclamation and, Therefore, was denied an opportunity to bid at the auction sale. Balbir Singh and three other persons applied for setting aside the sale. On 22-8-1967 Shri S.P. Sud, Assistant Settlement Commissioner held that the sale was vitiated by the wrong description of the property due to which the objectors had suffered "substantial injury" within the meaning of the proviso to Rule 92(3) of the Rules. No appeal was filed against this order which thus became final. On 7-9-1966, Civil Writ 743-D/1966 had been filed by the respondents against the Government praying that the property should not be auctioned but should be allotted to them as they were in occupation of the property and that the intended auction of the property should not be held on that ground. This writ petition was filed before the auction sale was held and naturally the question of the auction sale being liable to be set aside under Rule 92 did not arise in that writ petition. On 3-1-1969 after the auction sale was set aside by Shri Sud, the Government filed an affidavit in the said writ petition stating that the sale, holding of which was being objected to by the petitioners therein had been set aside and, Therefore, the writ petition had become infructuous. On 16-3-1970 a learned Single Judge of this court dismissed that writ petition as being infructuous. The appellant herein, Rajinder Singh, had also filed an affidavit on 15-7-1968 in the said writ petition stating that the sale having been set aside the writ petition was without any cause of action. On 11-5-1970 the appellant, Rajinder Singh, made an application to the Minister complaining that the highest bid given by him in the auction held on 12-9-1966 had been accepted and the sale should be confirmed. On 4-6-1970 Shri Sud passed another order apparently after the proceedings were revived due to the complaint made to the Minister stating that the bid of the appellant, Rajinder Singh, was rejected in view of the finding given by Shri Sud on 22-8-1967. On 20-6-1970 an appeal by the appellant against the order of Shri Sud, dated 4-6-1970 to the Chief Settlement Commissioner u/s 23 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 was filed. It was dismissed on 7-6-1971. On 17-11-1971 the Central Government acting u/s 33 of the Act revised both the orders of Shri Sud, dated 22-8-1967 and 4-6-1970 holding that the objectors who had sought to set aside the auction sale had not suffered any substantial injury and, Therefore, Shri Sud was wrong in setting aside the sale under the proviso to Rule 92(3) of the Rules. Writ petition No. 119 of 1972 was filed by the respondents herein on 3rd February, 1972 praying that the impugned order of the Central Government passed on 17-11-1971 confirming the sale in favor of the appellant, Rajinder Singh, be quashed.

(3) A learned single Judge of this court allowed the writ petition holding that the auction sale held on 12-9-1966 had been vitiated and substantial injury had been caused to the objectors in the sale proceedings within the meaning of the proviso to Rule 92(3). He also held that the respondents herein were entitled to file the writ petition challenging the impugned order of 17-11-1971.

(4) It is in the background of the above facts that the two questions set out at

the beginning of this order have to be considered. Question No. 1:

(5) It is elementary that the principle of audi alterem partem requires that an opportunity should be given to a person before an order which would affect his interest is passed in a proceeding in which he is interested. A sale proclamation invites all persons interested in buying the property to bid at the auction. The misdescription of the property, if shown to have misled any of the intending bidders, can be regarded as an irregularity in holding the sale causing a substantial injury to the intending bidder if he could not locate the property due to the misdescription. But this conclusion is subject to an important qualification. The intending bidder must really intend to bid. That is to say he should be willing and able to bid. Otherwise it cannot be said that a substantial injury is caused to him by his being denied the opportunity of bidding at the auction sale. Out of the four objectors who applied for setting aside the auction sale held on 12-9-1966 only one, namely, Balbir Singh, stated that he was prevented from locating the property by being misled by the description. Shri Sud on this evidence came to the conclusion that the sale was vitiated and substantial injury was caused to the objectors. He perhaps at that time bona fide believed that the objectors really wanted to bid and that the price that they would be willing to pay would be more than Rs. 53,000 which was the price which had been offered by the appellant, Rajinder Singh as the highest bidder at the auction sale held on 12-9-1966. Subsequently, the objectors in fact offered to pay Rs. 70,000 for the premises and Shri Sud invited them to deposit 20% of that amount, so that he may be able to accept their bid as being a bid higher than the bid given by the appellant, Rajinder Singh. But, Shri Sud records in proceeding held on 4-6-1970 that the objectors did not come forth to deposit 20% of the offer of the higher bid which had been made by them. The question is what inference can be drawn from this conduct of the objectors ?

(6) Assuming that the objectors or rather Balbir Singh were not misled at all but were actually present at the auction, they could not then complain of being denied of an opportunity to bid. But if they were not willing to pay a price higher than Rs. 53,000 then even if they had the opportunity to bid, the bid of the appellant, Rajinder Singh, being the highest would have been accepted. The objectors could not then complain that they had been denied an opportunity to bid at the auction. In our view before Shri Sud could come to the conclusion that substantial injury had been sustained by the objectors due to the misdescription of the property, it was necessary for him to ascertain if the objectors were willing to bid effectively. If, for instance, the objectors would have said that they were willing to pay, but their bid would not extend to Rs. 53,000 or beyond, then Shri Sud would not have been able to come to the conclusion that they had suffered any substantial injury. The concept of substantial injury in the proviso to Rule 92 (3) necessarily implies that the objectors were willing and able to make a bid higher than the bid of the appellant, Rajinder Singh, which had been accepted at the auction. It is only then that it could be said that had they been allowed to bid they would have been able to buy the property and then only they could say that

substantial injury was suffered by them by not being allowed to buy the property. On the other band, if they were unable to say that they would be willing to pay the price of Rs. 53,000 or more, then no question of any injury being suffered by them would arise, as by the ordinary rule governing the auction sale, the property would have gone to Rajinder Singh as the highest bidder, even if the opportunity to bid at the auction had been given to and enjoyed by the objectors. It is on this view that the Central Government u/s 33 held that no substantial injury had been suffered by the objectors and the sale could not be set aside under Rule 92(3) unless the requirement of the proviso thereto was satisfied. In judicial review under Article 226 of the Constitution against the said impugned order the petitioner-respondents had to show that the view taken by the Central Government was so unreasonable as to require interference by us. We do not think the respondents have succeeded in doing so.

(7) Mr. Talwar for the respondents has strongly argued that the order passed by the Central Government u/s 33 was not passed in a case which reached the Central Government in accordance with the procedure laid down under the Act and the Rules for the holding of sale and for setting aside the same. He rightly points out that the auction sale, dated 12-9-1966 was set aside by Shri Sud on 22-8-1967 and that the order became final written it was not appealed against. For that reason we may also agree with the learned counsel that Shri Sud had no jurisdiction to pass the order dated 4-6-1970 stating that the bid of Rajinder Singh was rejected. For, this was the necessary implication of the order dated 22-8-1967. It would follow, Therefore, that the appeal to the Chief Settlement Commissioner filed on 20-6-1970 and dismissed on 7-6-1971 was also an appeal against an order (4-6-1970) which itself was in violation of the procedure of sale and setting aside the sale under the Rules. The learned counsel, however, has not been able to show how the Central Government did not have the power suo motu u/s 33 of the Act to revise the orders passed by Shri Sud on 22-8-1967 and 4-6-1970. In the writ petition no ground has been taken that the order of the Central Government was without jurisdiction because of the delay involved in revising the orders of Shri Sud. The power of the Central Government u/s 33 can be exercised suo motu and at any time. In construing similar expression in section 24 under the same Act, a Full Bench of this court held in *Union of India v. M/s Navin Bharat*, 1972 Dlt 229, that the words "at any time" would not tolerate any period of limitation so long as the order was passed within a reasonable time and for justifiable reasons. The ratio of that decision is applicable to the exercise of the revisional powers by the Central Government u/s 33 in this case.

(8) Mr. Talwar has further argued that on 9-12-1970 the Government had made an offer to the respondents and the appellant to buy the property jointly by a private sale. The respondents accepted the offer and were willing to buy the property, but the appellant did not accept the offer. This offer was made before the Central Government confirmed the sale in favor of the appellant, Rajinder Singh on 17-11-1971. In view of that quasi-judicial decision of the Central Government u/s 33 of the Act, the executive Government became disabled from

acting upon the acceptance of their offer by the respondents. The decision, dated 17-11-1971 u/s 33 was binding on the Government vis-a-vis the appellant, Rajinder Singh. The property could not, Therefore, be sold to the parties to the present appeal by the Central Government. A second auction of this very property was held of which the highest bid was Rs. 1,10,000. This auction also could not lead to the sale of the property because of the order of 17-11-1971 confirming the sale in favor of the appellant. Further, the highest bidder in the second auction, one Raja Ram, has not challenged the order confirming the sale in favor of the appellant. For the above reasons, our answer to the first question posed above is that the respondents have not shown that the order of the Central Government, dated 17-11-1971, was either erroneous in law or so unreasonable as to call for interference under Article 226 of the Constitution. Question No. 2

(9) There is an additional reason why the writ petition has to fail and the appeal has to be allowed. The confirmation of the sale in favor of the appellant was in proceedings to which the present respondents were not parties. The efforts to set aside the sale originally held in favor of the appellant, Rajinder Singh, and subsequently set aside and still later again reconfirmed were proceedings between Rajinder Singh and the other objectors. It is those objectors who could complain against the order dated 17-11-1971. They have not done so. Mr. Talwar wondered if the proceedings of holding auction sale were proceedings in rem inasmuch as all the public were invited to bid at the auction. If they were in rem then, according to him, the respondents were entitled to complain against the impugned order. We do not think that there is any question of the auction proceedings being in rem merely because all the members of the public were free to bid at the auction. The proceedings of the auction are between the Government as the seller and the bidders at the auction as the intending purchasers. The rest of the world which has not offered any bid at the auction are excluded and the auction thus became a proceeding between two sets of parties and they were not proceedings in rem. Another ground which was sought to be used for giving a locus standi to the respondents was that a previous writ petition filed by the respondents was dismissed as infructuous because at that stage the sale in favor of the appellant, Rajinder Singh, had been set aside. That writ petition was based on the ground that the respondents being occupants of the premises were entitled to have the premises allotted to them and it is for that reason that the respondents prayed that the premises should not be disposed of by a public auction sale. In that petition there could not be urged any ground to invalidate the auction sale for the simple reason that the said petition was filed before the auction sale was held. It is true that it was held to have become infructuous because the auction sale was set aside. We are not sure, however, if the respondents were well advised in accepting that decision. For, the respondents could have contended that the setting aside of the auction sale did not make the writ petition infructuous because the respondents had some kind of right to be conveyed the property by virtue of the respondents being in

occupation of the premises. The respondents could have sought (if so advised) some kind of declaratory relief that the Government was not entitled to sell the property by auction unless and until the property was first offered to the respondents for a private purchase and that it could be sold only if the respondents were not willing to buy it at the price at which it was offered to them by the Government. On this view, the dismissal of that writ petition on the ground that it had become infructuous also does not give any right to the respondents to challenge the sale confirmed on 17-11-1971.

(10) For the above reasons, the appeal is allowed and the judgment of the learned single Judge is set aside. No order as to costs.