

(1996) 10 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 3174 of 1989

Ramesh Tulsidas Bhatia

APPELLANT

Vs

The Principal Secretary and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 33

Citation : (1997) 2 BomCR 662

Hon'ble Judges : S.S. Nijjar, J; N.D. Vyas, J

Bench : Division Bench

Advocate : N.H. Gursahani and S.P. Kanuga, for the Appellant; V.P. Malvankar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

N.D. Vyas, J.—By the present writ petition which is under Article 226 of the Constitution of India, the petitioner is challenging the validity and legality of the order dated 28th April 1989 passed by the 1st respondent cancelling the Conveyance Deed dated 20th May 1985 issued in favour of the petitioner.

2. The short question which requires consideration in the present petition is whether the State can, after conveying the plot of land in favour of a person, cancel the same by exercising power u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter referred to as "the said Act")

3. Briefly stated the facts giving rise to the present petition are as under :

The petitioner and his family are the victims of partition. They had to flee the area now known as Pakistan and were faced with the problem of settling down. Many displaced persons were sent to this State for rehabilitation. There were number of transit camps near Kalyan which were used previously for prisoners of war. These military barracks were being used as transit camp after the war ended. This area was located near Thane and was named as Ulhasnagar. The lands and barracks forming part in the said area were put into compensation pool

and were to be disposed of in the manner laid down in the Rules and notifications and policy decisions taken by the Central Government. The barracks at the disposal were not enough to accommodate all the families numbering almost 80,000 and consequently several of the displaced persons had to occupy the open lands and put up such structures as their financial position could permit. Such occupation was pursuant to the permission granted which are referred to in the minutes of the High level Committee presided over by the then Minister Shri D.R. Chavan. The petition contains the details of the decision arrived at such meetings. In response to several suggestions made on behalf of the displaced persons, it was ultimately inter alia decided that the displaced persons who had encroached upon road side plots for the shops would be given those plots and those who had encroached open plots, the encroached area would be transferred to such displaced persons on payment of price fixed by the Government. It was further decided that those displaced persons who had occupied the plots would be granted ownership rights at particular rates if they were not in possession of other plot at other places and at higher rate another plot elsewhere. Lastly it was decided that double the built up area would be granted to the persons. In pursuance of the said decision arrived at by the High Level Committee, the work with regard to transfer of ownership right to displaced persons who had occupied the plots or encroached upon areas began in 1968. The procedure which was followed was that the Managing Officer would pass the orders of transfers after receiving the recommendations from the Screening Committee appointed for the said purpose. It was decided that the Screening Committee's decision would be recommendatory and the Managing Officer being a competent officer would exercise statutory powers conferred upon him under the said Act. Between 1968 to 1971 more than 6000 cases of occupation of plots or encroachment of the areas were disposed of by transfer of lands to various displaced persons. However, in 1971 the Government of India took a decision that the remaining work of carrying out the obligation under various announcements made by the Central Government and remaining evacuee properties would be handed over to the State Government to be disposed of as per provisions of law. In a writ petition being Special Civil Application No. 1738 of 1971, the Government of Maharashtra reiterated the assurance held out by the Central Government and stated that the same would be carried out and all those displaced persons who had occupied the lands in respect of which commitments were made would be honoured and carried out. Even the previous decisions taken by the Screening Committee which were not implemented would be carried out and it would not affect the rights of the displaced persons. A resolution was published by the Government on 27th April, 1973 in pursuance of such an assurance. As a result of the above, several thousands of cases came to be disposed of. It is the petitioner's contention that despite this, in 1980 some of the officials on Screening Committee insisted on regularising area of land covered by structures only and recommended the same to Managing Officer to issue sale deed in respect of such areas only. Although according to the petitioner, the said view was erroneous and not supported by any Government decision, number of cases

were disposed of by the Committee. In this view of the matter, the Government issued policy decision that where displaced persons were in occupation of open land in and around such structures, then such open land should be given to the displaced persons. The Screening Committee again thereafter started regularising entire area shown in the survey sheets. As far as the petitioner is concerned, he has occupied plot of land which was surveyed by the Survey Cell pursuant to the High level Committee directions and was granted U. No. 56, Sheet No. 46, section 6(A). Camp No. 2. In respect of such occupation, the petitioner had raised structure thereon from time to time and utilised the said land for the purpose of vegetables and fruits. The entire area in occupation was fenced and thereafter compound wall was also put up. He was required to pay charges to the Central Government in respect of the area of 2100 Sq. yds. or thereabouts which the petitioner paid from 1961 upto 1979. Not only that the petitioner continued to pay further charges demanded by the Managing Officer. The entire land in occupation of the petitioner had been measured and dimensions of which noted in the Survey sheet. On 20th May, 1985 as a result of the petitioner satisfying the Scrutiny Committee and as a result of its recommendations to the Managing Officer, a Conveyance Deed was issued in favour of the petitioner on 20th May, 1985. It is the petitioner's grievance in the petition that after a lapse of several years, he was served with an order dated 20th March 1989 informing the petitioner that although as per the decision earlier arrived at he was issued a Conveyance Deed in respect of area admeasuring 1700 sq. yards, the same was illegal and was in violation of the orders of the Government in Urban Development, Public Health and Housing Department Circular dated 27th April 1973, and that the grant of Conveyance Deed of the said area was beyond the powers of the Assistant Administrator and Managing Officer as he had acceded his powers by granting the said Conveyance Deed. It was further stated in the said order that since the decision of the Scrutiny Committee was only to regularise the temporary shed and also to remove the wire fencing, the Assistant Administrator and Managing Officer, Ulhasnagar Camp No. 2 had exceeded his authority and, therefore, the Conveyance Deed dated 20th May, 1985 was cancelled. Being aggrieved by the said order the present petition is filed.

4. Mr. Gursahani, the learned Counsel appearing for the petitioner submitted that once a conveyance had been executed in favour of a person, there were no powers under the said Act to cancel such a conveyance. It was his submission that once the property was vested in a person, he cannot be divested of the same by exercising powers u/s 33 of the said Act as has been purportedly done. It was his further submission that section 33 of the said Act provided a residuary power with the Central Government to call for record of any proceeding under the said Act and to pass such order in relation thereto as in its opinion the circumstances of the case would require. Mr. Malvankar on the other hand submitted that the land in question although conveyed in favour of the petitioner was required for public purpose and that therefore the order cannot be faulted.

5. In order to appreciate the above submissions, it would be advantageous to reproduce section 33 of the said Act which is as follows :

"33. Certain residuary powers of Central Government. The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder."

The above provision, does not require much of elucidation as it is couched in simple language. All it has done is to empower the Central Government in the form of a residuary power. It empowers the Central Government at any time to call for any record and proceedings under the Act and pass any order in relation thereto as is required to be passed. It is obvious from the said provision that it is applicable to a proceeding under the Act and that too it is a residuary power given to the Central Government. Meaning thereby that if there is no specific provisions anywhere in the Act to meet with certain situation, the provisions of section 33 are to be resorted to. The underlying principle however, being that the same would relate only to any proceeding under the said Act. As far as the conveyance in favour of the petitioner is concerned, in our opinion, it cannot be equated with any proceeding. Moreover, once vesting of the property takes place in favour of a person by way of conveyance, the same cannot be set aside in the manner in which it is sought to be done. It is settled law that the conveyance vests the person with title over the said land and the same can be displaced only by following due process of law and not by coming to a conclusion that it was in violation of a particular provision as is sought to be done in the case before us. Mr. Gursahani is right in relying on the decision of a Division Bench of this Court in the matter of Bhoorsingh Palasingh Vs. Kesumal Aratmal and Others, wherein the Division Bench had an occasion to deal with the provisions of section 24 of the said Act which provides that the Chief Settlement Commissioner may at any time call for the record of any proceeding under the Act in which a Settlement Officer, an Assistant Settlement Officer, etc. has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit. We are aware of the fact that the provision in question which is involved in the case before us is section 33 and not section 24. But in our opinion, both the provisions are aimed at meeting with similar situations. In the case of section 24 power is given to the Chief Settlement Commissioner to review an order passed which in his opinion is not legal or proper. As far as section 33 is concerned, the Central Government is again vested with a similar power in respect of any proceeding under the Act to correct any illegality which might have occurred. The Division Bench in the case of Bhoorsingh Palasingh (supra) inter alia held that section 24 of the said Act did not empower the Chief Settlement Commissioner to decide about the validity or otherwise of the property conveyed by the sale deed inasmuch as the transfer of property by a sale deed effected by the Managing Officer or the Managing Corporation cannot by any stretch of imagination be construed or interpreted to

mean an order passed by such authority. The Division Bench in that case was concerned with the cancellation of a conveyance by the Chief Settlement Commissioner exercising power under the provisions of section 24 of the said Act. It was Mr. Gursahani's submission that the said authority applied with equal force in respect of purported exercise of powers by the 1st respondent u/s 33 of the said Act.

6. We see considerable merit in Mr. Gursahani's submission. None of the respondents have even bothered to file any affidavit. However, Mr. Malvankar appearing for respondent No. 4, except submitting that the land in question was required for public purposes, no further material by way of either any document or otherwise was produced before us nor he has been able to even inform the Court as to for what public purpose the said land was required. In our opinion, the respondents after passing the impugned order are not interested in defending the same. We are of the opinion that although power has been purportedly exercised u/s 33 of the Act, the same is done for ulterior motives. Reading the so-called reasons mentioned therein it is obvious that the same are given for the sake of trotting out some excuse to cancel the conveyance once granted. We are of the opinion that section 33 does not vest the Authorities with powers to cancel a conveyance once granted. The residuary power given to the Central Government u/s 33 of the said Act is to be exercised in a fit case as a last resort if needed in any special case however in relation to a proceeding. We are supported in our view by a Division Bench of this Court. By an unreported decision delivered on 6th November 1992 in Writ Petition No. 4681 of 1985 the Division Bench dealing with an identical question answered it in an identical manner. The Division Bench was dealing with an order passed by Secretary (Relief and Rehabilitation), Revenue and Forests Department of State of Maharashtra. The said order was passed u/s 33 of the Act whereby order of regularisation was reviewed and set aside.

7. Even assuming that power u/s 33 of the Act was correctly invoked, Mr. Gursahani is right in his submission that the impugned order was passed without giving any opportunity much less reasonable opportunity of being heard. Admittedly no show cause notice was issued. Admittedly again no hearing was given. Affording of reasonable opportunity of being heard is sine qua non to passing of a valid order. Cancellation of conveyance undoubtedly resulted in civil consequence. Least the authority could have done was to issue a show cause notice and to have heard the petitioner. In our opinion, requirement of affording of reasonable opportunity of being heard should be read into section 33 of the Act. In this view of the matter as the impugned order was passed in breach of principles of natural justice, the same is a nullity.

8. We do not wish to say anything further in the matter, except that for the reasons mentioned above, the impugned order cannot stand the scrutiny of the Court and is required to be quashed and is quashed.

9. Writ Petition is made absolute in terms of prayer (a). Rule thus made absolute.

No order as to costs.