

(1999) 11 SC CK 0098

In the Supreme Court Of India

Case No : Civil Appeal No. 4376 Of 1986

Roop Lal (Dead) through Lrs.

APPELLANT

Vs

Financial Commissioner, Haryana and Others

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Citation : (2000) ACJ 469 : (1999) 10 JT 461 : (2000) 10 SCC 523

Hon'ble Judges : N. Santosh Hedge, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N.KIRPAL, J.-Property No. 734/1 situated at Panipat was allotted to one Shri Balwant Singh and Company on 1-5-1947 at a rent of Rs 1.69 per month.

2. The said property was used for running a fuel depot. It is not in dispute that M/s Balwant Singh and Company was a partnership firm of which one Comrade Balwant Singh and the appellant were the two partners. It appears that they were also occupying Property No. 734-A jointly. On 8-5-1956 they separated. Property No. 734-A came to the share of Comrade Balwant Singh and the property in question in this case being No. 734/1 continued to be enjoyed by the appellant.

3. On 1-1-1968 the appellant made an application to the Regional Settlement Commissioner, Jullundhur for the transfer of the said property to him. After a report was obtained by the Managing Officer (Transfer) by his order dated 19-6-1968 he declined to transfer the said property to the petitioner on payment of its reserved price. It was held that the property could be transferred to the appellant only on market value. Being aggrieved the appellant filed an appeal before the authorised Settlement Commissioner but without success. Thereafter a revision was filed before the Chief Settlement Commissioner, Jullundhur.

4. By the order dated 13-2-1969, the Chief Settlement Commissioner recorded a finding that the appellant had produced receipts issued by the Rehabilitation

Department which showed the payment of rent up to that date. According to him the receipts for the period prior to 1956 showed that the rent had been paid jointly by the appellant Comrade and the appellant while the receipts issued thereafter showed that the rent was paid by the appellant alone. From this the Chief Settlement Commissioner found that there was no shadow of doubt that the property in question had been allotted jointly to Roop Lal and Balwant Singh and that Balwant Singh had left the property in the year 1956 and thereafter the property solely remained in the possession of the appellant as an allottee. He also held that the appellant had constructed three rooms on the said plot of land at his own costs and he was running a fuel depot. In view of this finding he allowed the revision petition and directed the Managing Officer (Transfer) to transfer the property in question to the appellant at its reserved price which was assessed in the year 1956.

5. Pursuant to the said order of the Chief Settlement Commissioner on 1-3-1969 a deed of conveyance deed was executed by the President of India as a vendor in favour of the appellant. The price which was assessed, was paid by the appellant and as a result thereof and with the execution of the sale deed the appellant became the absolute owner of the said property.

6. The trouble for the appellant arose when a letter dated 26-3-1973 was written by the Under-Secretary, Government of Haryana to the Commissioner for Revenue and Secretary to the Government of Haryana, Rehabilitation Department, to the effect that though the transfer had taken place and conveyance deed executed but the Government of India had on 22-12-1969 issued instructions that in all cases where transfer had taken place after April 1968, the same should be sent to the Regional Settlement Commissioner for his orders. It was stated in this letter that the transfer of the property in favour of the appellant should be renewed (sic reviewed) under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short "the Act"). Thereafter reference was made under Section 33 of the Act and the Financial Commissioner vide his order dated 3-5-1976 came to the conclusion that the appellant had not got his possession regularised till 1968 even though he may have been in occupation of the property since long. It was further held by him that property could not be considered allottable because it was the appellant who had put up three rooms at a later stage and therefore he was not entitled to claim transfer of the property at the reserved price. The order of the Chief Settlement Commissioner was accordingly set aside.

7. The appellant then filed a writ petition before the High Court but the same was dismissed by the Single Judge. The Division Bench dismissed the letters patent appeal in limine. Hence this appeal by special leave.

8. The order of the Chief Settlement Commissioner dated 13-2-1969 clearly stated that the evidence which had been produced showed that the property in question had been jointly allotted to Roop Lal and Balwant Singh. After Balwant Singh had left, the appellant continued to remain in sole occupation of the same

as an allottee. This aspect is not even referred to in the reference which was made on 26-3-1973 under Section 33 of the Act. As is evident from this document the reference was made not because the facts of the case revealed that reference was called but it was made because the Government of India had issued instructions that in all cases where transfer had taken place after April 1968 the cases should be sent to the Regional Settlement Commissioner for his orders. Even if proceedings under Section 33 could be initiated, but in the circumstances of the present case, we find that there is not even a prima facie view taken in this reference to the effect that the appellant was held to be a joint allottee and then the sole allottee. If the appellant was the joint allottee, who thereafter continued to remain there for long and who had paid the rent to the Department it cannot be said that the order of the Chief Settlement Commissioner directing the transfer of property in the appellant's name on payment of the reserved price was such as would require the revision and the said order, after a lapse of considerable time, by the Financial Commissioner passing orders under Section 33 of the Act. In this connection it is important to note that after the conveyance deed was executed in favour of the appellant the appellant got the plan sanctioned from the Municipal Committee, Panipat on 4-4-1969 (sic) and thereafter is stated to have raised a building on the said plot. This is a circumstance which has been completely ignored by the respondent authorities because once the allotment has been made and thereafter conveyance deed executed the facts would not justify the exercise of powers under Section 33 of the Act.

9. In our view, therefore, for the aforesaid reasons the orders of the High Court are set aside and the order of the Financial Commissioner dated 3-5-1976 is quashed and that of the Chief Settlement Commissioner restored. The appeal is allowed. No costs.