(2015) 07 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 396 of 2015 [O&M]

Sohan Lal APPELLANT

Vs

Financial Commissioner [Revenue], Punjab and Others RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 2[b], 20, 20[1][a], 33

Citation : (2016) 2 RCR(Civil) 68

Hon'ble Judges : Surya Kant, J;P.B. Bajanthri, J

Bench : Division Bench

Advocate : Sumeet Mahajan, Senior Advocate and Hitesh Ghai, for the Appellant; Aman Bahri, Additional AG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J—These two Letters Patent Appeal Nos. 396 and 653 of 2015 are directed against the order dated 09th January, 2015 whereby learned Single Judge has dismissed the writ petitions filed by two sets of appellants. This case has a chequered history. A brief reference to the facts is necessitated.

2. Plot No. 168 - an evacuee property situated in Jalandhar City was put to auction on 24th August, 1959. Respondent No. 2, who was statedly a displaced person, made the highest bid of Rs. 20000/- which was provisionally accepted. He deposited 1/5th of the amount. The balance amount was not, however, deposited on time, due to which the auction was cancelled.

3. Respondent No. 2 filed an appeal against cancellation of auction which was allowed by the Chief Settlement Commissioner on 30th March, 1968 directing him to make good the short-fall by 30th May, 1968.

4. Respondent No. 2 could not deposit the balance amount by that cut-off date, hence vide order dated 02nd October, 1968, decision to cancel the auction sale was upheld. He filed a revision petition which was dismissed by the Settlement

Commissioner on 02nd April, 1969. He thereafter filed a revision petition before the Central Government under Section 33 of the Displaced Persons [Compensation and Rehabilitation] Act, 1954 which was allowed conditionally by the Prescribed Authority vide order dated 06th February, 1970 [P-5] directing the second respondent to pay balance of the sale consideration in cash within 15 days from the date of passing of the order "failing which the petition shall stand dismissed".

5. Respondent No. 2 admittedly deposited the balance amount within the period granted by the Revisional Authority.

6. During the period when the above mentioned appeal/ revision petitions preferred by respondent No. 2 were pending before one or the other statutory forum, the subject plot was re-auctioned by the Department in January, 1969 in which the appellant [Sohan Lal] was the highest bidder and offered the price of Rs. 27025/-. The said auction, however, was not confirmed by the Competent Authority.

7. The appellant - Sohan Lal along with one Sunder Lal challenged the order of the Central Government dated 6th February, 1970 passed in favour of respondent No. 2 before this Court in a writ petition which was dismissed by learned Single Judge. Still aggrieved, they preferred LPA No. 63 of 1971 which was allowed by a Division Bench of this Court on 14th October, 1971 [P-7] whereby the order passed by Central Government [officer Mr. Rajni Kant] granting extension of time to respondent No. 2 for the deposit of balance of the purchase price was quashed and the auction dated 24th August, 1959 was set aside. Consequently, the subsequent auction made in favour of the appellant on 7th January, 1969 was upheld.

8. Respondent No. 2 challenged the judgment of this Court in Civil Appeal No. 2062 of 1972 before the Hon''ble Supreme Court and vide judgment dated 22nd September, 1986, the above stated appeal was allowed partly modifying the order of this Court. The matter was remitted to the Authority exercising the power of Central Government under Section 33 of the Act, to consider the petition filed by respondent No. 2 afresh and in accordance with law, after giving notice and affording opportunity of hearing to Sohan Lal and Sunder Lal - respondents.

9. The Hon''ble Supreme Court while deciding the appeal did not approve the view taken by this Court that the auction-sale held in favour of respondent No. 2 on 24th August, 1959 was illegal or void. The Apex Court further held that the order passed by Shri Rajni Kant exercising the powers of Central Government was within the ambit of Section 33 of the Act and the Officer did not review his earlier decision. Rather, it was a case of passing a pre-emptory order to test the bona-fide of respondent No. 2 who had expressed his willingness to deposit the balance amount if there be an opportunity to do so. Similarly, their Lordships held that the highest bidder at the subsequent auction, namely, the appellant did

not get any right or interest in the property as the auction was never approved. The Apex Court, however, held that even if the appellants had "no interest in the property", they have "sufficient interest in the matter" to contest the claim of respondent No. 2 under Section 33 of the Act, hence as noticed earlier, the matter was remanded to the Central Government to decide the same afresh after hearing them.

10. In deference to the directions issued by the Hon''ble Supreme Court, the Financial Commissioner [Revenue], Punjab being the Competent Authority heard the parties and vide order dated 01st September, 1997 [P-12] reiterated the earlier decision dated 06th February, 1970 whereby time was granted to respondent No. 2 to make deficiency good in the sale consideration.

11. The Financial Commissioner''s order reveals that the only contention raised by the appellants was that a great hardship would be caused to them if the re-auction held in January, 1969 was not approved. That arguments was repelled by the Financial Commissioner observing that the Department held the re-auction in a haste knowing fully well that the appeal and revision filed by respondent No. 2 were still under consideration.

12. The order passed by the Financial Commissioner [Revenue], Punjab was challenged by appellants through two writ petitions which have been dismissed by the learned Single Judge vide a common order under appeal.

13. We have heard Mr. Sumeet Mahajan, Senior Advocate with Mr. Hitesh Ghai, and Mr. K.B. Raheja, Advocate on behalf of the appellants and Mr. Ashwani Chopra, Senior Advocate with Mr. Harminder Singh, on behalf of respondent No. 2 as well as learned State Counsel.

14. Reiterating most of the contentions which were raised before the learned Single Judge, it is argued that respondent No. 2 was not a ''displaced person'' within the meaning of Section 2[b] of the 1954 Act as he has not been residing in India after being displaced from West Pakistan in the year 1947. It was urged that the 2nd respondent was settled in Canada. On this premise, the appellants urge that the very auction of the subject property in favour of respondent No. 2 was illegal and contrary to the scheme of the Act.

15. As against it, his learned counsel points out that the appellant - Sohan Lal is a displaced person for which the Regional Settlement Commissioner issued the certificate dated 14th July, 1954 [P-2]. It is claimed that subsequent auction of the subject plot in favour of appellant - Sohan Lal is fully justified as he was already in possession thereof and a finding to this effect was returned by the Civil Court vide judgment dated 22nd April, 1997 in an Injunction suit [A-1].

16. Learned counsel for the appellants referred to Rule 90[11] and [14] of the Displaced Persons [Compensation and Rehabilitation] Rules, 1955 to urge that the 2nd respondent was required to deposit the auction amount within a period of 15 days of the receipt of the acceptance of auction and he having failed to do

so, the auction in his favour was rightly cancelled. Sub-Rule [14] is relied upon to contend that if the auction purchaser does not deposit the balance of purchase money and fails to make good the deficiency within the prescribed period, the initial deposit made by such auction purchaser is liable to be forfeited and he can have no claim over the property. It is also contended by learned Senior Counsel that the residuary powers under Section 33 of the Act are required to be exercised by Central Government keeping in view the circumstances of a case and consistent with the provisions contained in the Act. He urges that since Mr. Rajni Kant - authorised representative of the Central Government while passing the order dated 06th February, 1970 [P-5] acted contrary to Rule 90[11] and [14] of the 1955 Rules, the purported exercise of power under Section 33 was totally in conflict with the policy of the Act. It is also their contention that the Financial Commissioner [Revenue] has misconstrued the judgment of the Hon''ble Supreme Court and has mechanically decided the case by giving ceremonial opportunity of hearing to the appellants. It is pointed out that the Financial Commissioner [Revenue] upheld the order dated 6th February, 1970, even though the said order was no longer in existence and was impliedly disapproved by the Apex Court while remitting the case.

17. Learned counsel placed reliance upon the decision in Kapur Singh Mistri Vs. Financial Commissioner & Revenue Secretary to Government of Punjab & Ors. 1995[Sup2] SCC, 635 to canvass that the second auction in favour of the ''displaced person'' who was found in possession of the disputed property is fully justified and ought to have precedence over any other mode of disposal of that property.

18. The State Counsel as well as Mr. Chopra, Senior Counsel representing the private respondent, on the other hand, maintain that the order passed by learned Single Judge does not warrant any interference by this Court.

19. Having heard learned counsel for the parties, we are unable to agree with the contentions raised on behalf of the appellants. Adverting to the first plea, namely, that respondent No. 2 was not a ''displaced person'', we find from the record that the status of that respondent as a ''displaced person'' was never questioned by the appellants or the State Authorities at any point of time especially while accepting his appeal on 30th March, 1968 or while passing the orders dated 13th August, 1969 and 6th February, 1970 [P-4 and P-5] respectively. The status of respondent No. 2 as a ''displaced person'' was not disputed even before this Court in the first round of litigation. On a plain reading of the judgment dated 26th September, 1986 of the Hon''ble Supreme Court, it stands crystalised that status of respondent No. 2 as a ''displaced person'' was duly recognised in the very second paragraph of the judgment. Since the parties have been litigating acknowledging the each other''s status as ''displaced persons'', it is too late for the appellants to raise such a disputed question of fact before the writ Court. Learned Single Judge has, thus, rightly declined to consider the said objection.

20. That apart, it is not a case of allotment of property in favour of a ''displaced person''. Contrarily, it is a case of open auction sale and according to Section 20 of 1954 Act, the property out of the compensation pool could be sold "to a displaced person or any association of displaced persons....... or to any other person whether the property is sold by public auction or otherwise". Admittedly, the public auction was held in which respondent No. 2 was the highest bidder. Hence, the question whether he was a ''displaced person'' or not, does not have any material bearing as he was the highest bidder in a public auction held in terms of Section 20[1][a] of the Act.

21. The reliance placed by the appellants on Rule 90[11] or [14] does not advance their case. The first proviso to sub-rule [11] expressly empowers the Settlement Commissioner or the authorised officer to extend the period to deposit the balance amount to a limited extent for the reasons to be recorded in writing. The second proviso thereto further empowers the Chief Settlement Commissioner to extend such period "without any limit of time".

22. In the instant case, the 2nd respondent was granted time to make good the deficiency by 30th May, 1968. He could not do so, hence his appeal was dismissed on 2nd October, 1968. The Central Government in exercise of its residuary powers under Section 33 of the Act, granted him 15 days'' time from the date of passing of order dated 6th February, 1970, failing which his revision petition was to stand dismissed. He admittedly deposited the balance amount within that extended period. The recourse adopted by the authorities or the discretion exercised by them, thus, in no way is derogatory to the spirit and object of Rule 90[11] and [14] read with Section 33 of the Act.

23. The appellants'' contention that one of them was found in possession of the subject property as a ''displaced person'' and, therefore, he had a preferential right for its allotment, must be rejected for more than two reasons. Firstly, the civil Court decree relied upon by them no where holds that Sohan Lal - the subsequent successful bidder was found in its possession. Secondly, the nature of property, as referred to in every document, is a plot and not a constructed premises. Thirdly, Sohan Lal appellant also draws his interest in the property on the basis of public auction held in January, 1969 which was never approved. Further, no allotment ever made in his favour as a ''displaced person''. For this very reason, reliance placed by the appellants on the Supreme Court decision in Kapur Singh Mistri''s case [supra] must fail. In the instant case, neither the appellants are found in possession nor the property was ever allotted to any one of them as a ''displaced person''.

24. The fact of the matter is that appellant - Sohan Lal participated in the second auction held in January, 1969, though at that time appeal/revision petition preferred by respondent No. 2 were pending consideration before the Statutory Authorities. The Department, for the reasons best known to it, showed great hurry and put the property to auction even without waiting for the outcome of the pending lis. The said auction was never confirmed and no right, thus, ever

accrued in favour of the appellant - Sohan Lal.

25. One can not over-look the fact that most of the appellants'' contentions have already been turned down by the Hon''ble Supreme Court in its judgment dated 26th September, 1986 and they can not be permitted to re-open the whole case.

26. The only plea that prevailed with the Apex Court was that the appellants had sufficient interest in the matter to contest the claim of respondent No. 2 under Section 33 of the Act. Consequently, the case was remanded to the Competent Authority for re- adjudication after hearing the parties. Such an exercise has since been undertaken by the Financial Commissioner [Revenue]. Obviously, the only issue that could arise for consideration before the Financial Commissioner was whether erstwhile authorities were justified to extend the period for deposit of the balance sale consideration by respondent No. 2 or whether the appellant - Sohan Lal had acquired any enforceable right being the highest bidder in the subsequent auction held in January, 1969? The question re: status of respondent No. 2 being a displaced person was neither reopened nor was required to be gone into by the Financial Commissioner. Since both these questions have been elaborately examined by the Financial Commissioner, who answered the same against the appellants, we are of the considered view that the learned Single Judge has rightly declined to interfere with the same.

27. Dismissed.