
(1970) 09 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 1463 of 1969

Summa Ram and Another	Vs	APPELLANT
Chain Singh and Others		RESPONDENT

Date of Decision : 15-09-1970

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 8

Citation : AIR 1971 P&H 259

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

Bench : Single Bench

Advocate : R.L. Batta, for the Appellant; S.S. Mahajan, for the Respondent

Judgement

1. Koru and Maru who have been described as cousin brothers were displaced persons from some village in district Sialkot which is now a part of West Pakistan. After their migration to this side of Indo-Pakistan border they were separately allotted some evacuee lands by the Rehabilitation authorities and sanads granting them permanent rights had been issued in their favour. Koru died soon after this allotment and Maru succeeded to the land allotted to him. In the meanwhile, there was consolidation of holdings in the village and the land in dispute is a part of the land that fell to Maru's share in the consolidation proceedings. Maru sold all his land in favour of Chain Singh, plaintiff-respondent NO. 1, in the years 1957 and 1959.

2. The Rehabilitation authorities came to know that the lands left by Koru and Maru in West Pakistan were under mortgage with possession with some Muslims. It was therefore felt that Koru and Maru were not entitled to all the land that had been allotted to them. Maru who was the surviving allottee was asked to pay the mortgage debt at a flat rate of Rs. 450/- per standard acre of the area allotted to him and the deceased and on this failure to comply the allotment of some of the area was cancelled. The evacuee lands retrieved by the Rehabilitation authorities by this cancellation of the allotments made in favour of Koru and Maru were then put up for sale at a public auction. Chain Singh himself purchased some area out

of the retrieved lands at this public auction held in 1961. The land in dispute was however purchased at the public auction conducted by the Rehabilitation authorities by the defendant-appellants, Summa Ram and Lachhman Singh.

3. Chain Singh, plaintiff-respondent No. 1, then filed this suit for the possession of the land in dispute which had been purchased by the defendant-appellants in the public auction. It was his case that the Rehabilitation authorities had no legal right to cancel the permanent allotments of evacuee lands made in favour of Koru and Maru and that they had lawfully purchased the entire land from Maru by virtue of the registered sale deeds executed in his favour in the years 1957 and 1959. The defendants, Summa Ram and Lachhman Singh were therefore described to have acquired no valid rights at the public auction. The suit was decreed by the trial Court in respect of the entire land except for an area of about 4 Marlas which was found not to have formed the subject-matter of the public auction in favour of Summa Rao, appellant No. 1. The trial Court had relied upon the Division Bench ruling in Shiv Dayal and Another Vs. Union of India (UOI) and Others, and had come to the findings, inter alia, that the order of cancellation of the suit land passed by the Rehabilitation authorities was illegal, ultra vires, without jurisdiction and void.

4. The auction-purchasers, Summa Ram and Lachhman Singh, had filed an appeal which has been dismissed by the Additional District Judge, Gurdaspur, on 1-8-1969. Before this appeal was decided, Section 8A had been inserted in the Displaced Persons (Compensation and Rehabilitation) Act, 1954 by the Amending Act No. 17 of 1968. The appellants relied on this section in support of their argument that the Rehabilitation authorities were fully justified in cancelling Maru on the ground that the lands left by Koru and Maru in West Pakistan were under mortgage, with Muslims and that the mortgage debt which had been determined to be payable by these allottees had not been paid by them to the Rehabilitation authorities. It was argued that the mortgage debt was recoverable by the Rehabilitation authorities as arrears of land revenue and that the cancellation of the allotments in favour of Koru and Maru could be taken as a step in that direction. A similar contention had been raised in the case of Budha Ram Vs. Behari Lal and Others, while dealing with this contention, Pandit, J., was pleased to observe as follows:-

"There is no merit in this contention. The provisions of S. 8A quoted above do not show that the Managing Officer had any power vested in him to cancel the allotment made in favour of the displaced person on account of non-payment by him of the mortgage money. All that the section laid down was that in a case where it was found that a displaced person had mortgaged his land to the Muslims in Pakistan and had come over to India and land had to be allotted to him, then a notice would be issued to him by the Settlement Commissioner for determining the principal sum for which the property was so mortgaged. After having ascertained that, such portion of that amount as bore the same proportion as the compensation payable to the displaced person in respect of that

mortgaged property, would be deducted from the compensation payable on account of the mortgaged property. In a case where compensation had already been paid to the displaced person without any such deduction having been made (which would be the position in several cases, because this Section 8A was introduced in the main Act only in 1968 but with retrospective effect), the displaced person was given the option to pay the amount due from him within three months of the date on which the said amount was determined. Where the displaced person had been given compensation by means of transfer of property to him out of the compensation pool, he was given the alternative either to (a) retain the property given to him and pay the amount due in cash" or (b) surrender a part of the property equivalent to the amount due; the authorities had been given the power to recover the said amount as arrears of land revenue. These provisions could not be constructed to mean that the authorities were entitled to cancel the allotment for the non-payment of the mortgaged money. No such power was given to the Managing Officer under this section. A definite procedure has been prescribed in this section which is to be followed by the authorities concerned and after complying with the same, they are authorised to recover the amount due from the displaced person as arrears of land revenue but only if he does not pay the same or surrender the property of the value equivalent to that amount. That recovery, of course, can be made by selling the property allotted or an other property or by any other mode mentioned in Section 67 of the Punjab Land Revenue Act, 1887. Nowhere has the Managing Officer been authorised to cancel the entire allotment made in lieu of the mortgaged land left by him in Pakistan for the non-payment of the mortgage money, as had been done in the instant case. It is pertinent to mention that in the present case, the procedure prescribed in S. 8A had not been followed, but according to certain executive instructions, Behari Lal had been asked to pay a flat rate of Rs. 450/- per standard acre in lieu of the mortgage money due from him to the Muslim mortgagees in Pakistan. On non-payment by Behari Lal on that amount, his entire allotment made to him in lieu of the mortgaged land, was cancelled and the same was then put to auction and it was purchased by Budha Ram, appellant. I would, therefore, hold that the decision of the courts below that the order of cancellation was ultra vires, illegal and without jurisdiction, was correct in law."

5. Following this ruling, the lower appellate Court had dismissed the appeal filed by the defendants, Summa Ram and Lachhman Singh.

6. These defendants have come up in second appeal. No valid reason has been given why the rulings in the cases of Shiv Dayal and Another Vs. Union of India (UOI) and Others, and Budha Ram Vs. Behari Lal and Others, should not be followed. It was half-heartedly argued by Shri Batta, the learned counsel for the appellants, that cancellation of the whole of the land would be void and illegal and that where the cancellation is only of a part, the ruling in Budha Ram Vs. Behari Lal and Others, would not apply. The observations of Pandit, J. in Budha Ram Vs. Behari Lal and Others, which are based on the provisions of Section 8A

of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, would be equally applicable whether the cancellation is of the whole of the land allotted or only of a part. The earlier part of the ruling may show that even in that case the cancellation was only of a part of the total land allotted to the displaced person Behari Lal.

7. Another contention raised by Shri Batta was that Chain Singh plaintiff had himself purchased at the public auction, conducted by the Rehabilitation authorities, a part of the land which had been retrieved by a cancellation of the original allotment in favour of Koru and Maru and the Chain Singh was now estopped from taking up the position that this cancellation of the original allotment to the displaced persons from West Pakistan was illegal. As a corollary, the plea was also taken up that appellants were bona fide purchasers for value without notice of the defect in title. The lower Appellate Court had not allowed this plea to be raised on the ground that the plea had not been taken in the written statement. There can be no estoppel against the statue and Chain Singh plaintiff is to shown to have been guilty of making any misrepresentation or of having induced any wrong beliefs in the minds of the appellants. He has himself been a victim of the wrong exercise f powers by the authorities and is to guilty of making any misrepresentations etc. The appellants were taking all the risk when purchasing th property at a public auction and they did not get anything better than the title that could have been passed to them by the State Government and the Union of India. As the Rehabilitation authorities had acted illegally in cancelling the original allotments, the appellants cannot claim to have acquired any valid title at the public auction.

8. Shri Batta then relies on *Sardar Jai Singh v. Wali Mohammad* AIR 1940 Lah 252, and argues that he should be allowed even at this stage of second appeal to agitate a point of law as it can be determined from the material already placed on record. The question how far a person is a bona fide purchaser for value without notice of defect in title is a mixed question of law and fact and the bona fides and want of notice cannot be established without giving the parties an opportunity of examining evidence on the factual aspects of the points in controversy. This ruling does not therefore help the appellants in any manner. Even otherwise, I find that Chain Singh plaintiff is not estopped from pointing out the illegalities or inherent lack of jurisdiction in the proceedings of he Revenue authorities.

9. The appeal has no force and is dismissed with costs.

10. Appeal dismissed.