(1968) 11 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 1411 of 1968

Budha Ram		APPELLANT
	Vs	
Behari Lal and Others		RESPONDENT

Date of Decision: Nov. 7, 1968

Acts Referred:

- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 8A , 8A(1)
- Limitation Act, 1908 - Article 14, 142, 144
- Limitation Act, 1963 - Article 100, 64, 65
- Punjab Land Revenue Act, 1887 - Section 67

Citation: (1970) 1 ILR (P&H) 379

Hon'ble Judges: P.C. Pdndit, J

Bench: Single Bench

Advocate: R. Sachar, for the Appellant; S.C. Goyal and C.L. Ghai, for the Respondent

Final Decision: Dismissed

Judgement

P.C. Pdndit, J.
This order will dispose of two connected Regular Second Appeals Nos. 832 and 1411 of 1968 in which the same point of law is involved. It was conceded by the counsel for the parties that the decision in R.S.A. 1411 of 1968 will govern the other case as well. I would, therefore, refer to the facts of R.S.A. 1411 of 1968 only.

2. Behari Lal, Respondent No. 1, was a displaced person from West Pakistan where he owned agricultural land. On partition of the country, when he came to India, he was allotted land in village Isapur, district Gurdaspur, Some area of his land in Pakistan stood mortgaged with muslim residents there. Under departmental instructions issued by the Central Government, the Managing Officer (Redemption) Jullundur started taking proceedings against him for the realisation of the mortgage debt due to the Muslims of Pakistan and on non-payment of the same by him, he ordered the cancellation of 5

Standard Acres and 5■ Units out of the land allotted to him. This was done on 14th of September, 1962. On 25th of September, 1962, the cancelled area was sold by open auction by the Rehabilitation Department and purchased by Budha Ram, Appellant. The sale was confirmed in his favour on 24th of October, 1962. On 15th of February, 1966, Budha Ram sold a part of that land in favour of Sher, Respondent No. 4. On 14th of June, 1967, Behari Lal brought a suit for possession of 46 Kanals, 2 Marlas of land, which was equivalent to 5 Standard Acres and 5■ Units, against Budha Ram, Union of India, Punjab State and Sher on the ground that the authorities concerned could not legally cancel the allotment of the area allotted to him in lieu of the land mortgaged with the Muslims of Pakistan on non-payment of the mortgage debt and dispose of the same by auction. That order of the Managing Officer was without jurisdiction and bad in law, by which he was not bound. The possession of the auction-purchaser and his transferee was, therefore, contrary to law.

3. The suit was contested by Budha Ram, auction purchaser, alone on a number of pleas which gave rise to the following issues:

(1) Whether the allotment of the land in dispute was cancelled for non-payment of the mortgage money due to muslim residents in Pakistan?

2. Whether the order of cancellation is ultra vires, illegal, without jurisdiction?

3. Is the suit within limitation?

4. Whether Defendant No. 3 has effected improvements on the land in dispute? If so, its value and is effect?

The Trial Judge came to the conclusion that the allotment of the land in dispute was cancelled for the non-payment of the mortgage money due to the Muslim residents in Pakistan and the said order of cancellation was ultra vires and without jurisdiction. It was also held that the suit was within limitation, inasmuch as it was brought within a period of 12 years from 14th of September, 1962 on which date the allotment in respect of the land in dispute was cancelled. Under issue No. 4, the finding was that Budha Ram had not led any evidence to show that he had made any improvements on the land in question. In view of these findings, the Plaintiff''s suit was decreed.

4. Against that decision, Budha Ram went in appeal before the learned Additional District Judge, Gurdaspur, who dismissed the same after affirming the findings of the trial Court on all the issues. Against that decision, the present second appeal has been filed by Budha Ram.

5. The main question for decision is whether the Managing Officer had any jurisdiction to cancel the allotment of Behari Lal for the non-payment of the mortgage money due by him to the Muslim residents of Pakistan in whose favour he had mortgaged his land there. Both the courts below had decided this point in favour of Behari Lal on the basis of a

Bench decision of this Court in Shiv Dayal and Anr. v. Union of India and Ors. ILR (1963) 2 P&H 163 : 1964 P.L.R. 770, where it was held by A.N. Grover and Gurdev Singh, JJ.--

That the displaced persons who had mortgaged their lands with Muslim residents in West Pakistan, were entitled to allotment of land in lieu of land left by them. Neither the Chief Settlement Commissioner nor the Managing Officer has any authority to demand from the allottees the payment of the mortgage debt owing by them to the Muslims residing in Pakistan. Accordingly the Chief Settlement Commissioner cannot cancel the proprietary rights on the failure of the allottees to pay the mortgage money due to the Muslim residents of Pakistan with whom their lands were mortgaged.

Learned Counsel for the Appellant submitted that after the decision of this case Section 8-A was added to the Displaced Persons (Compensation and Rehabilitation Act, 1954 (hereinafter called the Act) by virtue of the Displaced Persons (Compensation and Rehabilitation) Amendment Act, 1968 (Act No. 17 of 1968), which came into force on 3rd of April, 1968. According to that Amendment Act, Section 8-A was introduced with retrospective effect and it was said that the said section would be deemed always to have been inserted in the Act. Section 8-A reads as under:

Where any compensation is payable to any displaced person in lieu of property abandoned by him in West Pakistan which on the date of his migration from West Pakistan was subject to a mortgage in favour of a person who is not resident in India, the Settlement Commissioner shall, after giving a reasonable notice to the displaced person, determine the principal sum for which the property was so mortgaged and such portion of the principal sum so determined as bears the same proportion as the compensation payable to the displaced person bears to the value of the verified claim of the displaced person in respect of that mortgaged property shall be deductible from the compensation payable in respect of the mortgaged property:

Provided that where compensation has been paid to any displaced person without such deduction having been made, the displaced person shall pay to the Central Government the amount of such deduction within three months of the determination thereof or such longer period as may be prescribed:

Provided further that where compensation has been paid to any displaced person by sale or any other mode of transfer to him of any property from the compensation pool, the displaced person may, within the aforesaid period of three months or, as the case may be, within the aforesaid prescribed period:

(a) either retain the property on his paying in cash the aforesaid amount; or

(b) surrender a portion of that property of a value equivalent to the amount of such deduction, such value being determined by the Settlement Commissioner in the prescribed manner.

2. If any displaced person fails to pay any amount which is liable to be deducted from his compensation under Sub-section (1), or fails to surrender the property of the value equivalent to such amount, such amount may be recovered in the same manner as an arrear of land revenue.

On the basis of this section, it was contended by the learned Counsel that the order of cancellation of allotment was validly made by the authorities concerned and the courts below were in error in holding to the contrary. His submission was that since Section 8-A had authorised the recovery of the mortgage debt as arrears of land revenue, that meant that, the allotted land could be sold by public auction under the provisions of Section 67 of the Punjab Land Revenue Act, 1887. This was the effect of what has been done in the instant case, because the authorities had sold the land by public auction after cancelling Behari Lal''s allotment on account of his not paying the mortgage debt due to the Muslims of Pakistan This provision further showed that the power of cancellation of the allotment was impliedly vested in the Managing Officer

6. There is no merit in this contention. The provisions of Section 8-A 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 bore to the value of the verified claim of 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 positions in several cases, because this Section 8-A 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 from him. If the displaced person failed either to pay the amount due in cash or surrender the property of the value equivalent to that amount, 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 nonpayment of the mortgage 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 any 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 Section 8-A 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 of 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.

7. The next point that requires determination is whether the suit filed by Behari Lal was within limitation or not. It was. contended by the learned Counsel for the Appellant that Behari Lal should have brought the suit under Article 14 of the Indian Limitation Act, 1908, which was equivalent to Article 100 of the Limitation Act, 1963, within one year of the order of cancellation made against him by the Managing Officer.

8. There is no merit in this contention as well. I have already-held above that the order of cancellation passed by the Managing Officer against Behari Lal was without jurisdiction and void. That being so, it was not necessary for him to file a suit for getting that order set aside. The same, being without jurisdiction, could have been simply ignored by him and the provisions of Article 14 of the Limitation Act would not apply. It is undisputed that if an order of an officer was illegal or ultra vires, it did not require to be set aside and Article 14 of the Limitation Act had no application. See in this connection inter alia the decision of Bishan Narain, J. in Sadhu Singh Vs. Chanda Singh and Others, . In the present case, Behari Lal had brought the suit for possession on the basis of his title and also his previous possession. It would, therefore, be covered by the provisions of Article 142 and 144 of the Indian Limitation Act, 1908, equivalent to Articles 64 and 65 of the Limitation Act, 1963. The suit, having been brought within 12 years from 14th September, 1962, was well within limitation.

9. It may be mentioned that the learned Counsel for the Appellant also submitted that the Plaintiffs'' suit should not be decreed, because under the provisions of Section 8-A referred to above, he had still to pay the mortgage amount, which would be determined by the Settlement Commissioner. That may or may not be so, but the Appellant has nothing to do with that matter, which is to be settled by the Government with Behari Lal.

10. No other point was raised.

11. The result is that this appeal fails and is dismissed. In the circumstances this case, however, I will leave the parties to bear their own costs throughout.