

(2010) 08 DEL CK 0272

Delhi High Court

Case No: Writ Petition (C) 3632 of 2002 and CM No. 6256 of 2002

Maksood

APPELLANT

Vs

The Commissioner/Secretary,
Land and Building Department
and Others

RESPONDENT

Date of Decision: Aug. 30, 2010

Acts Referred:

- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 20(1), 24, 33

Citation: (2010) 119 DRJ 279

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: V.B. Andley, Rajender Mathur and Priyanka Sharma, for the Appellant; Suneet Nagpal, for LRs" of R-5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

The challenge in this petition is to the impugned order dated 6th March 2002 passed by the Commissioner/Secretary, Land & Building Department, Government of National Capital Territory of Delhi ("GNCTD") allowing a revision petition being case No. 2/US-33/89/L&B filed by the predecessor-in-interest of Respondent No. 6, Shri Ali Hassan, u/s 33 of Displaced Persons (Compensation & Rehabilitation) Act ("DPCR Act"). The said petition was directed against an order dated 23rd March 1987 passed by the Authorized Chief Settlement Commissioner in case No. 36-R/Authorised GSC/Delhi/85 (MKK).

2. The Petitioner herein filed the above petition before the Authorized Chief Settlement Commissioner stating that her husband late Shri Mohd. Mahmud resident of XI 1930 (New) corresponding XI/2568 (old), Kucha Chellan, Gali Rajan,

Darya Ganj, New Delhi (hereinafter "the property in question") had during his lifetime being bonafide pursuing the case for transfer of the property in question in his favour in accordance with the provisions of the DPCR Act and the instructions issued from time to time thereunder.

3. The Petitioner's late husband filed an application on 15th March 1966 seeking the said relief. This was followed by further reminders on 5th April 1966 and 19th April 1966. After his death in August 1966 the Petitioner filed another application on 27th December 1966 seeking transfer of the property in question in her name. Apart from pointing out that it was situated in a predominantly Muslim area, the Petitioner relied on instruction dated 17th December 1966 issued by the Office of the Chief Settlement Commissioner regarding disposal of properties in predominantly Muslim areas in Delhi.

4. The Petitioner states that she kept pursuing her case for transfer of the property in question in her name and sent representations to the Regional as well as the Chief Settlement Commissioner on 10th June, 4th February, 10th March, 5th April and 10th June, 1967 but without any success. In the meanwhile, she was paying rent to the authorities for the property in question from time to time. A demand was also raised as late as 1st December 1975 for payment of rent. The Petitioner stated that an inspection of the evacuee property record ("EPR") and the acquired property record (APR) revealed that a sale of the property in question was made to one Sh. Mehmood Ali which was subsequently cancelled. A communication dated 13th September 1985 was received by her from the Managing Officer, in reply to her representation dated 14th June 1985, stating that her request for transfer of the property in question in her name could not be acceded to as the property in question had already been transferred to Shri Ali Hassan S/o Shri Noor Hassan, the predecessor-in-interest of Respondent No. 6. According to this communication, the transfer had taken place in favour of Respondent No. 6 on 17th July 1967 and the sale certificate was issued on 28th July 1967.

5. On receipt of the above communication, the Petitioner filed the above revision petition before the Chief Settlement Commissioner seeking the relief of setting aside the sale of the property in question in favour of Shri Ali Hassan. The specific contention was that the sale could not have taken place behind the back of the Petitioner when her numerous representations requesting for transfer of the property in her favour were still pending with the Respondents. It was pointed out that there was no provisional possession of a symbolic nature given to Shri Ali Hassan pursuant to the alleged sale. On the other hand, the Petitioner continued in possession and was paying rent for the property in question. She specifically contended that the sale in favour of Shri Ali Hassan was vitiated by "fraud mis-representation and connivance" and "attracted the jurisdiction of this Court to invoke the provisions of Section 24 of the DPCR Act."

6. It was further contended by the Petitioner that the alleged sale had taken place much after the instructions dated 17th December 1966 and was in violation of those instructions which had the statutory force of law. It was further submitted that the absence of the records of the sale lent credence to the suspicion that Shri Ali Hassan had procured the transfer of the property in question in his favour through misrepresentation and fraud. The Petitioner asserted that she had a statutory right of transfer of the property in question strictly in terms of the provisions of DPCR and the Rules framed thereunder.

7. The Settlement Commissioner, who was delegated the powers of the Chief Settlement Commissioner, passed an order on 22nd March 1997. Agreeing with the submissions of the Petitioner, inter alia, after considering the statements of Shri Ali Hassan (the predecessor in interest of Respondent No. 6 herein) and Shri Ismail Khan (the predecessor in interest of Respondent No. 5 herein), the Settlement Commissioner came to the following conclusions:

- (i) A sale had been taken place in favour of Shri Ali Hassan. However, the matter did not end there.
- (ii) By the time the sale certificate was issued in favour of Shri Ali Hassan the instructions dated 17th December 1966 had come into force and governed the disposal of the properties in a predominately Muslim area.
- (iii) The case of the Petitioner ought to have been processed in terms of the aforementioned instructions particularly when the property in question was situated in a predominately Muslim area. The Department had clearly committed an error in finalizing the sale of the property in favour of Shri Ali Hassan by not taking a judicial cognizance of the instructions including the one issued on 17th December 1966.
- (iv) There was sufficient documentation to show that the Petitioner had been making representations for transfer of the property in her favour and also to show that she had been paying rents of a portion of the property till 1970, i.e., much after the date of issuance of the sale certificate in favour of Shri Ali Hassan.
- (v) There was no limitation provided for proceedings u/s 24 of the DPCR Act.

8. Consequently the Settlement Commissioner set aside the sale of the property in question in favour of Shri Ali Hassan.

9. Aggrieved by the above decision, Shri Ali Hassan filed a revision petition before the Commissioner/Secretary u/s 33 of the DPCR in which the impugned order was passed. Reversing the decision of the Settlement Commissioner, by the impugned order dated 6th March 2002 the Commissioner and Secretary held that the instructions dated 17th December 1966 were within the scope of Section 20(1) of the DPCR Act. It was further held that the said instructions pertained to "remaining undisposed of properties," and in view of the fact that property in question had been put to auction on 7th April 1966, it no longer formed part of the

"compensation pool". In other words, the moment a property was put to auction, the jurisdiction of the Managing Officer ceased. Consequently, it was concluded that the departmental instruction dated 17th December 1966 did not apply to the sale in question. Reliance was placed by the Settlement Commissioner on the decision of the Punjab and Haryana High Court in *Lila Krishan v. Union of India* (1970)72 PLR 719 and of this Court in *Mohd. Yusuf v. Union of India* (1970) 72 PLR 240.

10. This Court heard the submissions of Mr. V.B. Andley, learned Senior Counsel appearing for the Petitioner and Mr. Suneet Nagpal, learned Counsel appearing for LRs of Respondent No. 5 who has supported the case of the Petitioner. None appeared on behalf of the Respondent Nos. 1 to 4 and Respondent No. 6.

11. It was submitted by Mr. Andley that a fundamental error was committed by the Commissioner in overlooking the fact that the departmental instruction dated 17th December 1966 had the force of law and was relatable to Section 20(1)(a) read with Section 20(1)(e) of the DPCR Act.

12. Secondly, he pointed out that the reliance placed in the impugned order upon the decisions in *Lila Krishan* and *Mohd. Yusuf* cases was misplaced as both these cases were distinguishable on facts. Unlike the case of *Mohd. Yusuf* there was no parting with the possession of the property in question in favour of Shri Ali Hassan. In fact, in the instant case the Petitioner continued to remain in possession of the property in question. He pointed out that the actual sale of the property would be the determining factor for the applicability of the departmental instruction dated 17th December 1966. He placed reliance on the judgment of the Supreme Court in *Bimal Kumar Dasgupta Vs. Smt. Radha Mukherjee*, to urge that a change in the law which took place during the pendency of appeal had to govern the rights of the parties and could not be ignored.

13. The above submissions have been considered. The relevant statutory provisions may be noticed first. Section 20(1) of the DPCR Act read as under:

- (1) Subject to any rules that may be made under this Act, the managing officer or managing corporation may transfer any property out of the compensation pool-
 - (a) by sale of such property to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person, whether the property is sold by public auction or otherwise;
 - (b) by lease of any such property to a displaced person or an association of displaced persons, whether incorporated or not, or to any other person;
 - (c) by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other person, on such valuation as the Settlement Commissioner may determine;

(d) in the case of a share of an evacuee in a company, by transfer of such share to a displaced person1[or any association of displaced persons, whether incorporated or not, or to any other person] notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) or in the memorandum or articles of association of such company;

(e) in such other manner as may be prescribed.

14. The instructions dated 17th December 1966 issued by the Chief Settlement Commissioner were in the nature of prescribing the norms under which properties in predominantly Muslim areas were to be disposed of. They were supplementary to the statutory provisions. In the absence of any specific rules prescribed for that purpose, the instructions dated 17th December 1966 had the force of law.

15. The said instructions dated 17th December 1966 read as under:

No. 37(11) Comp & Prop/66

Government of India

Ministry of Labour, Employment &

Rehabilitation

(Department of Rehabilitation)

Office of the Chief Settlement Commissioner

Jaisalmer House, New Delhi

Dated the 17 December, 1966

Subject: Disposal of properties in the predominantly Muslim area of Delhi.

Sir,

I am directed to say that the question of disposal of acquired evacuee properties in the predominantly Muslim areas of Delhi has been examined and it has been decided that the remaining undisposed of properties situated in the predominantly Muslim areas of Delhi be sold by negotiation at the market price to the sitting Muslim occupants irrespective of their value. It has further been decided that where a property is in occupation of an individual occupant, the price may be recovered in cash, alongwith upto date arrears of rent in two equal half yearly installments. In cases where a property is in occupation of more than one person, it has been decided that the same should be sold jointly to the occupants, if any one of the occupants of the property desanct (sic "decent") wish to purchase the property, it has been decided that the same may be transferred jointly to the remaining occupants. In case the occupants do not wish to purchase the property the same may be offered to the nominee of the Jamiat-Ulmai-Hind. In the case of sale of property jointly to the occupants, the price may be recovered in cash within one

month of the date of offer alongwith up-to-date arrears of rent. It is requested that action in regard to all undisposed of properties in the predominantly Muslim arrears (sic "area") of Delhi may pleased to completed by 31.12.66 and a compliance report sent to this office by 5.1.67.

Yours faithfully,

sd/-

Assistant Settlement Officer,

for Chief Settlement Commissioner

16. The above instructions were reiterated with some modifications by the Chief Settlement Commissioner by a further communication dated 4/5th October 1967.

17. The instruction dated 17th December 1966 required that undisposed of properties in predominantly Muslim areas of Delhi should be first sold by negotiation at the market price "to the sitting Muslim occupants." This step therefore had to necessarily be followed before resorting to the method of sale of such property to a displaced person by public auction or otherwise.

18. This Court is unable to concur with the view expressed by the Commissioner that the Department's instruction dated 17th December 1966 either did not have the force of law or could not override the provisions of law. The correct way of understanding the instructions dated 17th December 1966 is that they were supplemental to the statutory provisions and had the force of law. If the method of disposal of the property as suggested by the instructions dated 17th December 1966 did not work out for any reason, it would be open to the Department to resort to the sale of the property by public auction.

19. In the present case, the departmental instructions dated 17th December 1966 were admittedly followed. Despite the numerous representations made by the Petitioner seeking transfer of the properties in her favour, those representations were ignored. In terms of the departmental instructions dated 17th December 1966, then the Department would have had to negotiate the market price at which the Petitioner was prepared to purchase the property in question. That stage, however, was never reached.

20. The next question to be considered is interpretation that ought to be placed on the instructions dated 17th December 1966. It has been held in the impugned order that since the said instructions only pertained to "remaining undisposed of properties" and since the property in question was put to auction on 7th April 1966, it was no longer in the "compensation pool." Consequently, it was held that the said instruction dated 17th December 1966 did not apply to the property in question.

21. In the considered view of this Court, the above conclusion is erroneous. The observation of the learned Single Judge of the Punjab & Haryana High Court in Lila

Krishan v. Union of India that the moment a property is put to auction it goes out of the compensation pool, had to be understood in the context of the facts of the said case. There a sale certificate had been issued by the time the case of the claimant was considered. It was in the said context that it was observed that: "The property ceases to be evacuee property and goes out of the compensation pool when it is sold and the title is conferred on the purchaser by the issue of a sale certificate." The above statement of the law is unambiguous and has been overlooked by the Settlement Commissioner in the instant case.

22. Likewise, the judgment of the learned Single Judge of this Court in Mohd Yusuf was in the context of the property having been purchased by Respondent No. 2 in that case. There the purchasers had been put in provisional possession. In the present case, the sale certificate in favour of the predecessor-in-interest of Respondent No. 6 was issued on 28th July 1967, long after the instructions dated 17th December 1966. Secondly, the auction purchaser was never put in possession of the property in question. Consequently, the conclusion arrived at by the Commissioner in the impugned order that the instruction dated 17th December 1966 did not apply to the property in question, is unsustainable in law.

23. For the aforementioned reasons, this Court sets aside the order dated 6th March 2002 passed by the Commissioner and restores the order dated 27th March 1987 of the Settlement Commissioner.

24. The writ petition is accordingly allowed with no orders as to costs.