

Mangha Ram Vs. Noor Uddin

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Court : Allahabad

Decided On : Aug-11-1966

Reported in : AIR1968All33

Judge : S.S. Dhavan, J.

Acts : [Administration of Evacuee Property Act, 1950](#) - Sections 7 and 16; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 12, 13 and 18

Appeal No. : Second Appeal No. 3184 of 1963

Appellant : Mangha Ram

Respondent : Noor Uddin

Advocate for Def. : Syed Sadiq Ali, Adv.

Advocate for Pet/Ap. : B.D. Mandhyan and ;M.R. Adtani, Adv.

Disposition : Appeal allowed

Judgement :

S.S. Dhavan, J.

1. This is a defendant's second appeal from the decree of the Second Civil Judge, Agra confirming that of the First Additional Munsif Agra, decreeing the, plaintiff

respondent's suit for his ejectment and a recovery of Rs. 280 as damages from the appellant. The plaintiff respondent Noor Uddin alleged in his plaint that he is an owner of the house in dispute which is situate at Nala Pipal Mandi. Agra; that he let out the house to the defendant appellant on a rent of Rs. 20 per month; that the appellant falsely reported to the Custodian of Evacuee Property that the plaintiff had migrated to Pakistan with the result that the house was declared Evacuee Property and the custodian took charge of it; that when the plaintiff came to know of this fraud he took proceedings; and ultimately on 30-5-1958 the property was released under Section 16 of the Administration of the Evacuee Property Act; that when the plaintiff asked the defendant to pay rent to him the latter replied that he was paying rent to the custodian; that the plaintiff served on the appellant a notice of demand for rent and when the latter failed to pay rent served another notice terminating the tenancy and demanding possession of the house; that as the defendant did not vacate the house he filed this suit. The appellant contested the suit and denied that the plaintiff was the owner of the property. He also denied that the property was ever released in favour of the plaintiff and asserted that in fact it had been sold to him (defendant) by the Central Government. He contended that there was no relationship of landlord and tenant between the parties and the plaintiff was not entitled to ejectment. He also contended that the notice terminating the tenancy was invalid. A number of other pleas were raised which need not be considered as they were not pressed before me in this appeal.

2. The trial court held that the plaintiff respondent is the owner of the house which was declared Evacuee Property but subsequently released by the Central Government under Section 16 of the Administration of Evacuee Property Act. It further held that the defendant was admitted to the tenancy by the Custodian but, on the release of the property in favour of the plaintiff he became the tenant of the latter. He also held that the defendant had committed default for payment of rent and was therefore liable to ejectment. The trial court disbelieved the defendant's story that he had been never the tenant of the plaintiff and also rejected the plea that the notice terminating his tenancy was invalid, and decreed the suit. On appeal the learned Civil Judge confirmed the findings of the trial court and the decree for ejectment and arrears of rent. The appellant has come to this court in second appeal.

3. Only one point was urged in support of this appeal Mr. B D Mandhvan contended that the appellant could not have been ejected from the house in dispute as he had acquired rights under an agreement of purchase between himself and the Government of India. To appreciate this argument it is necessary to relate a few facts. It appears that the plaintiff-respondent Noor Uddin applied to the Central Government under Section 16 of the Administration of the Evacuee Property Act for the release of his property which had been declared to be evacuee property. The Central Government by its order dated the 3rd of April. 1958 directed that the property be restored to him. But it also appears from the record that this very property was put up for sale by public auction under the Displaced Persons (Compensation and Rehabilitation) Act of 1954. From the above proceedings it is obvious that the appellant purchased the house in dispute at this auction, and an agreement was executed between him and the President of India by which the former agreed to purchase and latter to sell this house for the price of Rs. 3436 The agreement states that out of the total sale price a sum of Rs. 270-50 nP had been adjusted against the compensation payable to the appellant and a sum of Rs. 1265 was payable in seven years' instalments The agreement stipulated that the ownership would be transferred only when the amount was realised in full.

4. Thus it appears from the record that while the Central Government restored the house in dispute to the plaintiff under Section 16 of the Administration of Evacuee Property Act on 3rd April. 1958 it subsequently entered into an agreement with the defendant for the sale of the same house to him for a sum of Rs 3436 and received a substantial part of the money in advance. The date of the agreement is subsequent to that of the order of restoration, but it is very likely that the public auction in which the defendant-appellant's bid was accepted was held before the order under Section 16 was passed.

5. The question before me is whether the defendant-appellant has any rights in the house under the agreement dated 26-5-1958 which will prevail against the rights of the plaintiff respondent under the order of the Central Government on 3-5-1958 restoring the house to him.

6. It is established that the plaintiff respondent was the owner of the house which was subsequently declared Evacuee Property. The respondent filed an application under Section 16 of the Administration of Evacuee Property Act which was allowed and the house restored to him But Sub-section (3) of Section 18 provides:

'Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:'

7. Thus the restoration of the house to the plaintiff respondent could not prejudice the rights, if any, of the defendant-appellant in the house and the appellant may enforce such rights against the plaintiff-respondent. The question is: has the appellant any rights in the house today?

8. Under the agreement of purchase dated 28-5-1958 the President of India incurred an obligation to sell this property to the defendant The agreement implies that the President had a good title to the house which could be transferred to the appellant This title was presumably acquired by the Central Government by means of a notification which must have been issued under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 because' without such a notification the property could not have been put up for sale by public auction Section 12 provides:

'If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under Sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall

on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in Sub-section (1) in respect of--

(a) All evacuee property generally; or

(b) Any class of evacuee property; or

(c) all evacuee property situated in a specified area; or

(d) any particular evacuee property.

(4) All evacuee property acquired under this section shall form part of the compensation pool.'

Section 20 empowers the authority concerned to sell any property which is a part of the compensation pool. It provides:

'Section 20:--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.'

The combined effect of Sections 12 and 20 may be summarised thus: The Central Government was empowered to issue a notification acquiring any evacuee property. After the issue of such notification, the title of the evacuee and all his rights and interest whatsoever were extinguished and the property vested absolutely in the Central Government free from all encumbrances. After this, the Government had the power to dispose of the property by sale.

9. Applying these provisions to the facts of the present case, it is beyond doubt that a notification under Section 12 must have been issued by the Central Government acquiring the house in dispute. It follows that the title of the plaintiff-

respondent and all his rights and interest in the house were extinguished and the property vested absolutely in the Central Government. Subsequently the Government made an agreement with the defendant-appellant for the sale of this house to him and received nearly 2/3rd of the consideration in advance.

10. The question is after the title, rights and interest of the plaintiff-respondent in the house had been extinguished and the property had vested absolutely in the Central Government and after the Government had agreed to sell the house to the defendant appellant and received a part of the sale consideration, can the title of the plaintiff respondent be revived or resurrected? In other words, the plaintiff-respondent could become the owner of the property as a result of the order of restoration passed under Section 16 after his title had been extinguished and he had ceased to be the owner because of the notification issued under the Act of 1954. It must be noted that the Administration of Evacuee Property Act was passed in 1950 whereas the Displaced Persons (Compensation and Rehabilitation) Act providing for the extinguishment of the evacuees' title was passed in 1954. I have to decide whether a power of restoration under Section 16 of the former Act can be exercised after the Government had invoked its power under Section 12 of the latter Act and issued a notification which had the effect of extinguishing the title of the evacuee and vesting the property absolutely in the Government. There is no provision in the Act of 1954 providing for the restoration of property to the former evacuee after his title has been extinguished by the issue of a notification under Section 12 of that Act. It must be noted that under the Administration of Evacuee Property Act the title of the evacuee in the property declared to be evacuee property was not extinguished by that Act. The declaration that the property was evacuee property merely meant that it was placed under the charge and management of the Custodian, who became its statutory manager. Therefore, what was restored to the evacuee under an order passed under Section 16 was not his title, which was never extinguished, but his right to resume possession and control of his property. Then came the Act of 1954. A notification under Section 12 of this Act had the effect of extinguishing the very title of the Evacuee in the property and vesting it absolutely in the Government. In the present case, such a notification must have been issued (this was conceded by counsel for the respondent) and consequently the title of the plaintiff-respondent in the house

extinguished. Can the Government, after issuing a notification under Section 12 of the Act of 1954 and putting up the property for sale by public auction and accepting the bid of the highest bidder, exercise its power of restoration under Section 16 of the Act of 1950 and restore the property to the evacuee. This is the question which has to be decided in this case .

11. In my opinion the Central Government has no power to restore the property to the evacuee after it has issued a notification under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954.

12. The language of Section 16 makes this clear. Sub-section (2) of this section is important. It provides:

'On receipt of an application under Sub-section (1), the Central Government or the authorised person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an inquiry into the claim to be held in such manner as may be prescribed shall--

(a) if satisfied--

(i) That the conditions prescribed by rules made in this behalf have been satisfied;

(ii) that the evacuee property is the property of the applicant; and

(iii) that it is just or proper that the evacuee property should be restored to him; make an order restoring the property to the applicant,'

13. It is not necessary to quote the rest of the Sub-section. This sub-section lays down three conditions precedent for the exercise of the power of restoration, one of which is that the Central Government must be satisfied 'that the evacuee property is the property of the applicant.' But after the issue of a notification under the Act of 1964, the property vests absolutely in the Central Government and the right title and interest of the evacuee in the evacuee property is extinguished. Therefore it is not possible for the Central Government to hold that it is the property of the applicant. It is noteworthy that the words 'that the evacuee property is the property of the evacuee' were included by the amending Act of 1956--that is,

after the passing of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. If it had been intended that the power of restoration was to be exercised even in respect of evacuee property which had vested absolutely in the Central Government and in which the title of the evacuee had been extinguished, the words would have been 'that the evacuee property is or was, the property of the applicant.' But the past tense was not used which means that the Central Government must be satisfied that 'at the time of its restoration the property is the property of the applicant' It follows that if the title of the evacuee has been extinguished and the property has already vested absolutely in the Custodian, the condition precedent under Sub-section cannot be complied with, and the property cannot be restored (Portion underlined in judgment is put in ' ' herein. Ed.)

14. This conclusion is confirmed by the fact that the Act of 1964 contains no provision for the restoration of the property under Section 16 of the Administration of Evacuee Property Act after the title of the evacuee has been extinguished by a notification Issued under Section 12 of the Act of 1954 Section 20A of the latter Act provides:

'Where any evacuee or his heir is entitled to the restoration of any evacuee property on an application made by him in this behalf under Section 16 of the Administration of Evacuee Property Act, 1950 (hereinafter in this section referred to as the Evacuee Property Act), and the Central Government is of opinion that it is not expedient or practicable to restore the whole or any part of such property to the applicant by reason of the property or part thereof being in occupation of a displaced person or otherwise, then, notwithstanding anything contained in the Evacuee Property Act and this Act, it shall be lawful for the Central Government--

(a) to transfer to the applicant in lieu of the evacuee property or any part thereof, any immovable property in the compensation pool or any part thereof, being in the opinion of the Central Government as nearly as may be of the same value as the evacuee property or as the case may be any part thereof, or

(b) to pay to the applicant such amount in cash from the compensation pool in lieu of the evacuee property or part thereof, as the Central Government having regard to the value of the evacuee property or part thereof, may, in the circumstances

deem fit

Explanation--

The provisions of this sub section shall apply, whether or not, a certificate for the restoration of the evacuee property has been issued to the applicant under Sub-section (1) of Section 16 of the Evacuee Property Act, as in force immediately before the commencement of the Administration of Evacuee Property (Amendment) Act, 1956, if the evacuee property has not in fact been restored to the applicant.

(2) Where in pursuance of Sub-section (1) any evacuee or his heir has been granted any immovable property from the compensation pool or has been paid any amount in cash from the compensation pool, his application under Section 16 of the Evacuee Property Act for the restoration of the evacuee property shall be deemed to have been disposed of and his right title and interest in such evacuee property shall be deemed to have been extinguished but such extinguishment shall not affect the power of the Central Government to acquire the evacuee property under Section 12 of this Act.'

The opening words of this section are significant. They are 'where any evacuee or his heir is entitled to the restoration of any evacuee property.' These words mean that the evacuee has already become entitled to the restoration of the evacuee property before his title is extinguished and the property vests absolutely in the Central Govt. If it had been intended to provide for restoration of the property even after the title of the evacuee is extinguished the words would have been 'where any evacuee or his heir' is or becomes entitled' The words 'is entitled' mean that the evacuee is already entitled to the restoration of the property at the time when the notification extinguishing his title is issued Section 20A of the Act of 1954 provides that even in such a case -- that is when the evacuee has already become entitled to restoration -- the Central Government may not restore the property to him but give him some other property from the compensation pool in lieu of his former property or give him compensation The language of the explanation at the end of the section also makes it clear that if the property has not in fact been restored to the applicant, the Central Government may lawfully give him some

other property or give him compensation. But the language of S 16 of the Administration of Evacuee Property Act and of Section 12. Displaced Persons (Compensation and Rehabilitation) Act and the entire scheme of the latter Act makes it clear that after the title of the evacuee has been extinguished by a notification issued under Section 12, the power of restoration cannot be exercised. The only relief available to him is compensation under Section 18 of the Compensation and Rehabilitation Act.

15. This view is in accord with common sense, equity, and justice. It would be very unfair if the Central Government after acquiring any evacuee property under Section 12 and selling it by public auction under Section 20 and receiving consideration from the purchaser retains the power to restore the same property to the evacuee. It is significant that neither the Act of 1954 nor the rules made under it provide for a situation where the property may be restored after it has been acquired by the Central Government and sold by public auction.

16. In this case the house in dispute was sold by public auction. The agreement of purchase with the appellant is dated 26th May, 1958. But it is common knowledge that it takes several months after the issue of a notification under Section 12 to hold a public auction. Therefore the notification under Section 12 of the Act of 1954 acquiring the house, must have been issued long before the date of agreement, and in any case before 3rd April, 1958 when the order of restoration was passed. The appellant was informed of this so-called restoration by a letter dated 19.10.1959. In these circumstances the Central Government had no power to restore the property to the plaintiff and the order of restoration is void. I hold that the appellant is in occupation of the house in dispute by virtue of the agreement of purchase dated 26th May, 1958. Consequently the plaintiff/respondent whose title had been extinguished cannot eject him. His remedy if any is against the Central Government.

17. I allow this appeal, set aside the decree of the court below, and dismiss the plaintiff/respondent's suit. In the peculiar circumstances the parties shall bear their own costs throughout.