Ham Dal Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-05-1973

Reported in : ILR1973Delhi823

Judge : S.N. Andley and; S.N. Shankar, JJ.

Acts : Displaced Persons (Compensation and Rehabilitation) Rules, 1955 - Rule 90; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 33

Appeal No. : Letter Patent Appeal No. 46 of 1970

Appellant : Ham Dal

Respondent : Union of India and ors.

Advocate for Pet/Ap. : B.B. Kishore,; Manoj Verma,; Tarlochan Singh,;

Judgement :

S.N. Shankar, J.

(1) This appeal under caluse 10 of the Letters Patent is directed against the judgment of the learned single Judge quashing the order dated January 15, 1964 passed by the Central Government in suo moto revision under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereafter called 'the Act'.

(2) House No. 91/105 situated in Katra Umar Khan, Taj Ganj, Agra (U.P.), which was an acquired evacuee property, was allotted to one Shrimati Vidya Wanti, daughter of the appellant. The allottee was not interested in the purchase of the house and it was put to auction on August 27, 1959. The appellant lived in the house along with her daughter. At the auction she gave the highest bid for Rs. 2425.00. As she herself was also a displaced person having verified claim, instead of making the deposit of 10 per cent of the bid amount in cash as required by sub-rule (8) of rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, hereafter called 'the Rules', she executed an indemnity bond in compliance with the proviso to the sub-rule. On September 8, 1959 the appellant's bid was accepted on the basis of this indemnity bond. Later, however, the Assistant Settlement Officer (Processing Branch) Reported that the balance money of the claim payable to the appellant was not sufficient to cover the requisite 10 per cent of the bid amount. By order dated February 24, 1960 the Assistant Settlement Commissioner, U.P., thereforee, cancelled the bid of the appellant and directed that the house be resold. It was accordingly auctioned for the second time on April 21, 1960. One Dewan Chand gave the highest bid of Rs. 2825.00 at this auction. In the meantime the Managing Officer informed the appellant of the order cancelling her bid. She filed an appeal. Shri Parshotam Sarup, Deputy Chief Settlement Commissioner, by order dated October 13, 1960 rejected this appeal on the ground that the copy of the order appealed from had not been filed along with the appeal as required by rule 103(2) of the Rules. It appears that the appellant applied for a review of this order but this application was also dismissed by Shri Parshotam Sarup by order dated January 17, 1961. The appellant, however, kept on agitating and making representations and eventually the matter was taken up by the Central Government in suo moto revision in exercise of powers under section 33 of the Act. Shri N. P. Dube, Joint Secretary to the Government of India, in exercise of powers vested in the Central Government, after hearing all the parties concerned, namely, the representative of the Department, counsel for the appellant and counsel for Dewan Chand, the contesting respondent in this appeal, found that as against the deposit of Rs. 2424.00 i.e. 10 per cent of the bid amount, the value of the unpaid claim of the appellant mentioned in the indemnity bond was only Rs. 236.00 so that there was

a difference of Rs. 6.00 only (to be exact it would be Rs. 64.00). He also found that there had been some confusion on the part of the Department in the matter of assessment of the appellant's claim. Whereas in August, 1957, he said, the Department had processed the appellant's claim for l/5th Pro rata share and on this basis paid her a sum of Rs. 944.00, later in January, 1958 the Settlement Officer (Judicial) held that her share was l/4th and not l/5th. This order, he observed, was again reviewed by the same officer on February 11, 1958 and the appellant was held to be entitled to l/5th share. In September, 1958 the Settlement Officer (Judicial) once again examined the matter and found that the appellant's share was l/4th. While doing so, according to Mr. Dube, the Settlement Officer also stated in his order that the appellant was, in addition, entitled to be paid the share of her two sons. In these circumstances he held that before cancelling the bid of the appellant, the proper thing for the Department to do was to have served a notice on her that she should make up the deficiency and as this was not done 'the Department had no business to cancel the first sale in favor of Shrimati Hardai (appellant herein)

(3) The learned single Judge dealing with the writ held that Shri Dubey could not have exercised powers of the Central Government under section 33 to pass the impugned order as the matter had already been dealt with and emined by the Central Government through its Joint Secretary, Shri Shiveswarkar as is borne out by Annexures 1' and 'J' dated January 20, 1962 and March 12, 1962 respectively whereby the representation of the appellant had been rejected 'by necessary implication'. He further held that the order of Shri Dubey was also otherwise vitiated in as much as after the finding that there was a short deposit of Rs. 6/8.00 there was not warrant in law for the view that the Department should have served a notice on the appellant to make up the deficiency.

(4) Shri Brijbans Kishore, counsel for the appellant, contends that Shri Shiveswarkar had at no time entertained or decided any proceedings in exercise of powers under section 33 of the Act and that Shri Dubey was fully entitled and had the jurisdiction to pass the impugned order under section 33 of the Act. The submission appears to be correct. Annexures 'I' and 'J' dated January 20, 1962 and March 12, 1962 are not copies of any orders passed by Shri Shiveswarkar.

Annexure 'I' is a letter dated January 20, 1962 from the Chief Settlement Commissioner to the Managing Officer enclosing a copy of an affidavit of the appellant which had been sent to the Minister of Rehabilitation by Shri Achal Singh, M.P. This letter required the Managing Officer to send a detailed report in regard to the case specially with reference to the points mentioned in the letter. Further action for disposal of the property, the letter said, may be stayed pending further instructions. Annexure 'J' is also a letter dated March 12, 1962 from the Chief Settlement Commissioner to the Managing Officer stating that the stay order issued vide letter dated January 20, 1962 (Annexure 'I') had been vacated by the Chief Settlement Commissioner and that the case may be processed further. Both these letters are signed by Shri S. R. Kapur, stated to be the Private Secretary to Shri Shiveswarkar, as 'for CSC'. The background of these letters, as observed by the learned single Judge, is that the appellant. approached Shri Achal Singh, M.P. who in turn wrote to Shri Dharamvir, then Secretary to the Ministry of Rehabilitation, on her behalf. The Secretary forwarded the papers to Shri Shiveswarkar who, through his Private Secretary Shri S. R. Kapur, asked for the report and stayed further proceedings by Annexure 'I' but thereafter revoked this direction of stay by letter annexure 'J'. The learned single Judge has observed that after the reply of the Managinng Officer to Annexure 'I' was received by Shri Shiveswarkar he must have been satisfied that the representation of the appellant was without substance and accordingly sent the intimation to the Managing Officer revoking stay by Annexure 'J'. These two letters, are before, 'by implication' showed that the matter was examined by Shri Shiveswarkar and decided against the appellant; and this he did in exercise of powers under section 33 of the Act because he was also a Joint Secretary to the Government of India. The Department is not interested in the matter and has not appeared to contest this appeal. Under orders of this Court however passed on C. M. 1523/73, filed by the appellant, the departmental file was brought in Court at the time of hearing of the appeal. No effort was made to show that there existed any order of Shri Shiveswarkar on the file. We find, on the contrary, as stated earlier, that both the letters Annexures 'I' and 'J' were issued from the office of the Chief Settlement Commissioner and were signed by Shri S. R. Kapur 'for CSC'. At the stage when these letters were sent, the orders against which the appellant was aggrieved, were the orders dated October 13, 1960 and January 17, 1961 passed by Shri Parshotam Sarup, Deputy Chief Settlement Commissioner. Shri Shiveswarkar as Chief Settlement Commissioner could not have exercised the power of Superintendence under section 33 over the orders of the Deputy Chief Settlement Commissioner. The assumption, thereforee, that Shri Shiveswarkar considered the case of the appellant under section 33 is not sustainable. It is further to be noticed that the impugned order was passed by Shri Dubey after hearing the parties including Dewan Chand. There is no indication in the order that this plea of fact was raised before him and his jurisdiction to decide the matter under section 33 was challenged by Dewan Chand. On the contrary, the opening part of the order of Shri Dubey states :

'THIS is a suo moto revision under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 of the order dated 13th September, 1960 and 17th January, 1961 passed by the Authorised Chief Settlement Commissioner Shri Parshotam Sarup in the case of sale of House No. 91/105, Katra Umar Khan, Taj Ganj, Agra.'

(5) We have no reason to disregard this positive statement in this order. In these facts, we are unable to subscribe to the view that Annexure 'I' and 'J' 'by necessary implication' show that the Central Government had already exercised its mind over the matter under section 33 and Shri Dubey, thereforee, had no jurisdiction to pass the impugned order.

(6) Coming now to the merits of the order of Shri Dubey, we are of the view that Shri Dubey was perfectly justified in arriving at the conclusion that the bid of the appellant could not be cancelled, after the same had once been accepted, without notice to her and the further conclusion that the Department could not have put the house to re-sale.

(7) SUB-RULE (8) of rule 90 provides that the person declared to be the highest bidder for the property at the public auction shall pay in cash or by a cheque in terms stated in the rule, immediately on the fall of hammer, a deposit not exceeding 10 per cent of the bid amount but proviso to the sub-rule as it then stood makes an exception in case of a displaced person having verified claim. It

provides that where compensation in respect of his claim exceeds the amount of the deposit required under this sub-rule, he may, instead of making a deposit, execute an indemnity bond in the form specified in Appendix XXI-A. Sub-rule (10) of rule 90 then lays down that the bid in respect of which the initial deposit has been accepted or in respect of which an indemnity bond has been executed shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose. Proviso to this sub-rule prescribes that no bid shall be approved until after the expiry of a period of seven days from the date of the auction. According to sub-rule (11) intimation of the approval of the bid or its rejection 'shall' be given to the highest bidder by registered post acknowledgement due. After the acceptance of the bid and its communication in terms of the sub-rules a right accrues to the bidder to be entitled to deposit-in fact according to the sub-rule he is bound to deposit-the balance of the purchase money of the property auctioned and to send by registered post acknowledgement due, or to produce before the Settlement Commissioner or any other officer appointed by him for the purpose, a treasury challan in respect of the deposit of the balance of the purchase money-(see sub-rule 11). The acceptance of the bid thus brings about a change in the respective status of the parties i.e. the auction purchaser and the Department auctioning the property. Prior to acceptance the highest bidder is merely one of the bidders in the auction who has given the highest bid but after his bid is accepted and he is informed of the same further rights accrue to him. In the eye of law a binding contract comes into existence between the Department and the person whose bid is accepted. This view is supported by the observations of the Supreme Court in M/s. Bombay Salt and Chemical Industries v. L. J. Johnson and others : AIR 1958 SC289 . On page 292 of the report, Sarkar, J. speaking for the Court said :-

'IT would further appear that even the approval by the Settlement Commissioner does not amount to a transfer of property for the purchases has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auctionpurchaser comes into existence.'

(8) It is admitted in the instant case that the bid of the appellant was accepted on September 8, 1959. A valid and binding contract by the Department to sell the house to her, thereforee, came into existence between the parties on this date. If the Department wanted to rescind or cancel this contract for any reason, principles of natural justice required that the appellant should have been allowed an opportunity to show cause against the proposed recision or cancellation. This is the view on which Shri Dubey proceeded when he said the proper action that the Department should have taken, if the appellant had not deposited the 10 per cent of the bid money, was to serve a notice on her to this effect. Shri Dubey was also influenced by the fact that there was some confusion on the part of the Department in the matter of assessment of the appellant's claims and that too needed elucidation. The confusion was undoubtedly there which, if Shri Dubey exercising powers under section 33 thought merited elucidation, could justify the direction for notice; but quite apart from that, having regard to the aspect that we have dealt with above, namely, that a binding contract had come into existence between the appellant and the Department, no just exception can be taken before the writ court to the view that Shri Dubey took that in the facts of this case notice to the appellant was necessary.

(9) It was successfully argued before the learned single Judge that as no such notice was provided under the Act or the Rules the Department was under no duty to issue the same. We are unable to accept this argument. Under section 33 of the Act the Central Government may 'at any time call for the record of any proceeding under this Act and may pass such order in relation there to as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made there under'. This power necessarily includes the power to pass appropriate order directing the subordinate authority to comply with principles of natural justice. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made-(see A. K. Kraipak and others v. Union of India and others : [1970]1SCR457) . If Shri Dubey, thereforee, considered, and in our view rightly, that notice to the appellant was necessary he had the power under section 33 to direct its issuance before cancelling the appellant's bid. The absence of a specific provision in the Act or the

Rules for such a notice is of no consequence.

(10) Bawa Shivcharan Singh, appearing for the respondent urged, and the learned single Judge had also held, that the compensation payable in respect of the claim of the appellant was short by Rs. 6/4.00 and as such the mandatory provision of sub-rule (8) of rule 90 had not been complied with the result that the house had necessarily to be re-auctioned. Firstly, this is not so because sub-rule (8) of rule 90 does not provide that in default of deposit the property auctioned must be sold but states that it 'may' be re-sold, and secondly, because this argument loses sight of the fact that in this case in spite of the short deposit, even if there was any, the Chief Settlement Commissioner had accepted the bid of the appellant on September 8, 1959. The acceptance of the bid had brought about a change in the legal status of the appellant as already stated by us. Instead of being only a highest bidder, she had acquired the status of a person in whose favor came into existence in the eye of law a binding contract by the Department to sell the house. This contract could not be unilaterally cancelled by the Department with notice.

(11) Bawa Shivcharan Singh referred to the provisions of rule 84 of Order Xxi of the Code of Civil Procedure and urged that auction by the Department under rule 90 stood on the same footing as a sale by the Civil Court in execution of a decree. According to decisions under rule 84 of Order Xxi of the Code of Civil Procedure in Manilal Mohanlal Shah and others v. Sardar Sayad Ahmed Sayed Mahamad and another : [1955]1SCR108 , Mudragada Surayanarayanamurti v. Southern Agencies, Rajahmundry and another : AIR 1962 AP271 , Mst. Magi and others v. Babulal and others , Nand Lal v. Mt. Siddiquan and others : AIR1957 All558 and Shri Bhan v. Jit Singh and another A.I.R. 1956 Pepsu 77 the learned counsel said that on the failure of the auction purchaser to make the initial deposit prescribed under the rule the sale was void, so that the property had to be re-sold. The same position, he said, should obtain in case of auctions under the Act. This submission cannot be accepted. Sale in execution of a decree under Order Xxi, o our mind, is wholly different from sale of property from the compensation pool under the Act. While rule 84 of Order 21 prescribes that on default of the initial deposit the property attached 'shall forthwith be re-sold', sub-rule (8) of rule 90 says that 'in default of such deposit the property may be re-sold'. There is further no provision

in the Civil Procedure Code analogous to the proviso to sub-rule (8) of rule 90 providing for execution of an indemnity bond by the auction purchaser instead of making a deposit. There is also no provision in Order 21 of the Code analogous to sub-rule (10) of rule 90 providing for the approval of the bid by the Settlement Commissioner or an officer appointed by him for the purpose which, as held by the Supreme Court, in M/s. Bombay Salt and Chemical Industries v. L. J. Johnson and others (supra), operates to bring about a binding contract for sale of the property between the Department and the auction purchaser. Reference to Order 21, rule 84 and cases decided under this rule are, thereforee, not relevant to the point in issue.

(12) For all these reasons, we are unable to agree with the learned single Judge that Shri Dubey acted contrary to the provisions of subrule (8) of rule 90 of his order was vitiated.

(13) We, thereforee, accept this appeal with costs, set aside the order of the learned single Judge and direct the writ petition to be dismissed. Counsel's fee Rs. 200.00.