

Before K. Kannan, J.

KALA SINGH AND OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 9961-A of 1990

16th May, 2011

Constitution of India, 1950—Art.162, 226—Displaced Person (Compensation & Rehabilitation) Act, 1954—S.22—Allotment claimed on basis of migration from Pakistan—property classified as Barjar Quadim and allottee had not brought land under cultivation—Petitioner claimed to have engaged tenants who cultivated the same—Allotment cancelled on ground of being undeserved to secure benefit under the Act—Cancellation challenged under section 22 but dismissed—Revision accepted and matter remanded for fresh consideration—Petitioners filed application for purpose of property on basis of Instructions allowing even unauthorized Persons in possession of evacuee land to purchase at reserve price—Managing Officer order sale subject to payment as land revenue duly certified by Tehsildar—Claim rejected—Appeal before Settlement Commissioner—During pendency thereof, property put up for auction—Challenged by way of writ petition which was admitted and dispossession was stayed—petition dismissed as was the appeal—In SLP, Supreme Court directed that if Rules permitted sale at reserved price, auction was unnecessary—Petitioner moved application for transfer on basis of order of Supreme Court—Managing Officer dismissed the application and the Revisions arising therefrom were also dismissed—Impugned order quashed.

Held, that in view of order of Supreme Court all that remained was to see whether the Rules permitted consideration of Petitioner's claim and enquiry ought to have been directed whether they were in actual possession of the property. The Instructions favoured possession even to unauthorized occupants. If the sale was valid, there was nothing for the purchasers to make their claims for allotment or purchase of property. Unauthorized

occupation was required to be legitimized by payment of price. Authorities ought to have granted the sale of property on basis of Press notes issued in terms of Instructions. Rejection of request held to be erroneous.

Further held, that Government had been unrealistic to deny the Petitioners what they were entitled to but it would be inappropriate to allow for sale of property at the rate prevalent in the year 1981. Petitioners directed to pay price mentioned in the policy dated 25th August, 1981 with interest @ 13% p.a.

(Para 8)

B. R. Mahajan, Advocate, and V. K. Kaushal, Advocate, *for the petitioners*

S. S. Gorakhpuria, DAG, Haryana

K. KANNAN, J. (ORAL)

(1) The writ petition is at the instance of several persons who had purchased the property from the original allottee under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The original allottee Virsa Singh claimed the allotment on the basis that he had migrated from Pakistan leaving behind some lands and therefore, entitled to be allotted some property, from the pool of evacuee property, under the provisions of the Act of 1954. It appears that at the time of allotment, the entire property was classified as *Banjar Quadim* and the allottee had not ventured to bring the land under cultivation. However, it was claimed that the petitioners had been engaged as tenants, who made the property cultivable through their hard labour. They also subsequently purported to purchase the property from Virsa Singh in May, 1963.

(2) The allotment in favour of Virsa Singh was reopened by the Managing Officer, Rehabilitation Department and *vide* his order dated 25th March, 1964, he cancelled the allotment on the ground of his case being undeserved to secure the benefit under the Act. It appears that the petitioners challenged the cancellation under Section 22 of the Act but it was dismissed. They preferred a revision to the Secretary, Government Haryana, who accepted the same and remanded the matter *vide* his order dated 7th August, 1965 to the Managing Officer for fresh consideration. After the

remand, the petitioners moved an application to purchase property covered under the cancelled allotment of Virsa Singh on the basis of Instructions, issued by the Government allowing even unauthorised persons in possession of evacuee land to be purchased at a reserve price on the strength of their possession. This plea was made by the petitioners on 7th May, 1965. The Managing Officer passed an order to the effect that the order for sale would be passed only after payment was made as land revenue and duly certified by the Tehsildar. Some more information was sought at the instance of the Managing Officer from the Tehsildar, Karnal for effective consideration of the pleas of the petitioners. The Officer wanted to ensure that there are no other claims in relation to the same property. The claim was ultimately rejected *vide* order dated 5th September, 1966. This was challenged in appeal to the Settlement Commissioner but during the pendency of the proceedings, it appears that the Tehsildar (Sales) had put up a portion of the property for auction again on 29th November, 1967. A writ petition had been filed in CWP No. 2811 of 1967 against the proposed auction. The writ petition was admitted and dispossession of the petitioners had been stayed by order dated 12th December, 1967.

(3) The petitioners contending that at that time they were all bonafide purchasers and their interests shall be protected and that public auction shall not be directed to be made. The writ petition was dismissed and a writ appeal filed, which was also dismissed. In the SLP No. 1656 of 1981 filed in the Supreme Court, the Court directed that if under the rules it was permissible for the petitioners to have the land sold at a reserve price, it should be undertaken and that re-auction would in such eventuality become unnecessary. The petitioners again moved a formal application for transfer. Their case was not being taken up in accordance with the directions of the Supreme Court and when no steps were taken, they had approached this Court again in CWP No. 3452 of 1987 for appropriate directions. On representation made, on behalf of the Government that it would consider the matter afresh, the case was sent back for consideration, in accordance with law, When the matter came up before Managing Officer, he dismissed it on 9th November, 1987 (Annexure P-8). Further revisions were also dismissed which are the subject of challenge before this Court.

(4) The favourable consideration for the petitioners did not obtain in view of the position taken by the Government that the allotment to Virsa Singh had been secured fraudulently and even the mutations had been rejected by the Revenue Officers. Referring to the claim of the petitioners that they were staking rights on the basis of press releases and Government Policies for sale of property in the capacity as unauthorised occupants, the Government held that the petitioners themselves had never applied for transfer of land under the instructions issued on 18th January, 1968 or the instructions dated 25th August, 1981 but they had claimed as purchaser from Virsa Singh and hence, they were not entitled for favourable consideration.

(5) Learned counsel appearing for the petitioners points out that all that was required to be done by the officers, was to consider the rights of the petitioners for sale before re-auctioning the property in the status of unauthorised occupants. If rules or instructions permitted such sales, it was irrelevant that they had purchased the property from a bogus allottee. The law consigned even a right to purchase to an unauthorised occupant through the instructions and therefore, the rejection of the petitions by the State functionaries was erroneous. The learned counsel appearing for the State reiterated the position of what has contained in the orders and set forth in the reply that petitioners had never applied for transfer under the Government Instructions and since the claim was in pursuance to purchases from Virsa Singh, they were not entitled to any favourable consideration.

(6) The learned counsel appearing for the petitioners points out that the instructions and the Press Notes issued by the Government, had the force of law as an Executive Instruction under Article 162 of the Constitution. The Instructions that provide for sale of property at particular prices, mentioned in the instructions, were to be applied to any person even in unlawful occupation. A person who holds possession, from even a bogus allottee, will qualify the status of an unauthorised occupant and consequently, such persons are entitled to the purchase rights at the price, mentioned in the Notification issued on 18th January, 1968 and subsequently revised on 25th August, 1981. The latter Press Release was indeed a liberalisation of policy, relating to disposal of surplus rural/sub urban evacuee land. For transferees, other than members of Scheduled Castes, the first two standard acres was to be sold @ Rs. 15000 per S.A. and for the next three standard

acres it was @ Rs. 20,000 per S.A. In '**Bharat Singh versus Financial Commissioner, Revenue, Haryana and others, (1)**' this Court had held that the prices which had to be determined shall be on the rate prevalent on the date of application and the right to purchase has to be determined on the date when the application has been filed to purchase.

(7) The stand taken by the State for rejecting the petitioner's claim takes a myopic view that unless the applications are filed with specific reference to the policy statement itself, the petitioners cannot have the benefit of the Notifications. I see this objection to be more a matter of procedure than of substance. The application dated 7th May, 1965 makes a specific plea regarding the fact that they are in possession of the land though they claimed in that letter that they had purchased it from Virsa Singh, which was subsequently cancelled on 24th March, 1964. When the Government made a statement before the Supreme Court that they were willing to consider the petitioners' claim, if the rules permitted and again when writ petition had been filed subsequent to the disposal of the case in Supreme Court in CWP No. 3542 of 1987, disposed of on 20th December, 1987, all that was necessary to be seen was whether the rules permitted such a course and the enquiry must have been directed to see whether they were actually in possession of the property. The instructions truly favoured possession, even to unauthorised occupants. The purchaser from original allottee whose allotment was held liable for cancellation will a fortiori qualify for being treated as an unauthorised occupant. If the sale was valid, there was nothing for the purchasers to make their claims for allotment or purchases of the property. The issue of purchase of the property at a fresh price determined over and above the amounts they claimed that they had paid to the original allottee itself arose only because the sales were invalid and the possession must have been unauthorised. That unauthorised occupation by the statement of Government Policy was required to be legitimised by payment of price. So long as the request for purchase was already pending before them and when they were renewing the plea after the decision of the Supreme Court, the authorities ought to have granted the sales of the property on the basis of the Press Notes issued already

in terms of the instructions issued in the year 1968 and 1981. The rejection of the request, in my view, was erroneous and the impugned orders rejecting the claim was unjustified.

(8) On 11th May, 2011, at the time when a third party application for impleadment was rejected, I had directed the counsel for the State to seek appropriate instructions for disposal of the property at a reserved price in terms of any policy that may have been issued. The learned counsel appearing for the State Shri S.S. Gorakhpuria would state that the property, which was stipulated at the price mentioned in the year 1981, is grossly low and the appropriate price would be the Collectors' office valuation, which is prevalent now. According to him, the present valuation is in the range of 4.75 lakhs per acre. If this case were to be treated as a fresh consideration of the petitioners' request on the ground that the petitioners did not avail to themselves the opportunities of purchases earlier, directions for payment of the prevalent price. If only they were making claims before this Court for the first time, then it would have been fair and appropriate for the State to collect the price prevalent at the present market conditions. I cannot allow for such a consideration in a case where the Government had been unrealistic to deny to the petitioners what they were entitled to. Still it would seem inappropriate to allow for the sales of the property at the rate prevalent in 1981. The only additional benefit that the State could obtain and which the petitioners ought to, in all fairness be applied to the petitioners is to pay the price mentioned in the policy dated 25th August, 1981 but also pay interest @ 12% P.A. from the said date till the date when the sales are affected or completed. The respondents shall be at liberty to stipulate prices, work out on the above basis, within 6 weeks of the receipt of the order and the petitioners shall make the payments and claim the right of purchase of the lands. If they fail to avail such an opportunity and commit any default, the right protected through this order shall be taken as forfeited and the State shall be at liberty to obtain resumption of the property in accordance with law.

(9) The impugned orders are quashed and the writ petition is allowed subject to the directions referred to above.