IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.649 of 2010
IN
Civil Writ Jurisdiction Case No. 8465 of 2008

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Jamuna Prasad, S/o Late Madan Mistry, Resident of Mohalla- Kotwali Chowk, P.S.- Kotwali, Distt.- Bhagalpur

.... Appellant

Versus

1. The Union of India through the Secretary, Department of Home Affairs, Govt. of Bihar, New Delhi
2. The Chief Settlement Commissioner of India, New Delhi
3. The State of Bihar
4. The Additional Settlement Commissioner-Cum-Additional Secretary, Revenue & Land Reforms, Govt. of Bihar, Patna
5. The Commissioner, Bhagalpur Division, Bhagalpur
6. The District Magistrate, Bhagalpur
7. The District Registrar/Sub Registrar, Bhagalpur
8. The Additional District Magistrate, Bhagalpur
9. The Sub-Divisional Officer, Sadar, Bhagalpur
10. The Anchal Adhikari Jagdishpur, Bhagalpur
11. Prahlad Pahuja, son of Late Arjun Singh Sindhi, R/o- Indira Nagar-'B' Block, Lucknow.
12. Nand Lal Pahuja, son of Late Arjun Singh Sindhi, R/o- Ardali Bazar, Varanashi (U.P.)
13. Chandu Pahuja, son of Late Arjun Singh Sindhi, R/o- Castains Town, P.O. and P.S. Deoghar (Jharkhand).

(Respondent Nos. 11,12 and 13 deleted vide order dated 03.03.2015).

14. Sri Parsuram Mal, Son of Late Khumbmal, Resident of Chakarbhata, Distt.- Bilaspur, Chhatisgarh
15. Sri Laxman Das @ Sri Birbhadra Das, son of Late Gulmal, R/o- of Tilda, District- Raipur, Chhatisgarh (deleted vide order dated 21.11.2013)
16. Sri Mohan Das, son of Late Paru Singh, R/o- Rajnand Gaon, P.S. and District- Rajnand Gaon, Chhatisgarh. (expunged vide order dated 13.02.2015)

16.(i). Kishanchand Das, son of Sri Mohan Das,

16.(ii). Hamam Das, Son of Sri Mohan Das,

16.(iii). Gyan Chandra Bhagat Ram

16.(iv). Sri Chand Bhagat Ram

16.(v). Rajesh Bhagat Ram

16.(vi). Ramesh Bhagat, all sons of late Bhagat Ram Mohan Das son of Mohan Das deceased, all resident of Housing Board Colony, Lal Bagh, P.O.+P.S. and District- Rajnand Gaon, Chhatisgarh.

17. Sadanand Singh, son of Late Ram Lagan Singh, R/o Mohalla- Tilka Manjhi, P.S. Kotwali, Distt.- Bhagalpur (deleted vide order dated 03.03.2015)

.... Respondents

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Appearance :

For the Appellant	:	Mr. Binod Kanth, Senior Advocate.
		Mr. Raghib Ahsan, Senior Advocate.
		Mr. Anamul Haque, Advocate.
For the State	:	Mr. Harish Kumar, G.P. 32
		Mr. Binod Kumar Sinha, Advocate.
For Respondent No.14	:	Dr. K.N. Singh, Senior Advocate.
		Mr. Dharmesh Kumar, Advocate.
For Respondent No.16(i)	:	Mr. K.N. Chaubey, Senior Advocate.
		Mr. Ambuj Nayan Chaubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 15 -10-2015

Present Letters Patent Appeal has been filed assailing Order No. 8 dated 11.03.2010 passed by learned Single Judge of this Court in C.W.J.C. No. 8465 of 2008, whereunder the said writ petition was dismissed maintaining the order dated 20.03.2001 passed by Assistant Settlement Commissioner-cum-Additional Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna in Case No. 8A/Evacuee Case No. 1 of 2000 (Annexure-3 to the writ petition), consequential Sale Certificate dated 11.08.2003 (Annexure-3/1 to the writ petition) and the subsequent order dated 24.11.2006 passed in Misc. Case No. 01 of 2000 (Annexure-1), whereunder Sale Certificate dated 11.08.2003 was corrected and another Sale Certificate dated 02.12.2006 (Annexure-1/1) was issued.

2. Before proceeding to consider the submission made by the parties, it is necessary to notice a few facts which persuaded the Assistant Settlement Commissioner-cum-Additional Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna to pass the impugned orders dated 20.03.2001, 24.11.2006 as also to issue the consequential Sale Certificate dated 11.08.2003, another corrected Sale Certificate dated 02.12.2006.

3. It appears 1 Bigha 14 Katha 19 Dhurs, equivalent to 0.89 decimal of land situate in Mauza

Zawaripur, P.S. Kotwali, Bhagalpur, corresponding to Municipal Plot No. 23288, Holding No. 9(New), 4 (Old), Ward No. 2 (Old), 331 (New), Circle No. 3, Central Jail Road, Bhagalpur stood recorded in the name of Md. Shahabuddin Khan, son of Ajij Khan, resident of Mohalla- Mozamchak, Bhagalpur, who migrated to Pakistan before 01.03.1947. After migration of the recorded tenant, lands-in-question vested in the custodian of Evacuee Property in the light of the provisions of Bihar Ordinance 1949, Administration of Evacuee Property Act, 1950. Subsequently, aforesaid land became available for settlement with the displaced persons in terms of Displaced Persons (Compensation and Rehabilitations) Act, 1954 (hereinafter referred to as the "Act"). In the light of the provisions of the Act, Sri Khubomal, coming from Pakistan, executed Power of Attorney dated 06.07.1960 in favour of Sri Arjun Singh Sindhi authorizing the Attorney to file claim under Displaced Persons Compensation and Rehabilitation Act, 1954 with respect to verified claim giving detail of Index, Registration Number in respect of agricultural land for release of Rs. 4,857/- from Compensation Account Fund in M.P. region and to attend public auction for purchasing evacuee property, Government built property, agricultural land or garden at any place in

India, sign auction paper, execute indemnity bond required at the time of auction, further authorizing the attorney to procure the provisional possession of the purchased property and get attested, file consent letters, affidavits and other papers on his behalf. In the light of the aforesaid General Power of Attorney dated 06.07.1960 Arjun Singh Sindhi participated in public auction held on 08.08.1960 for purchase of the aforesaid lands-in-question on behalf of Khubomal, became the highest bidder. Clause (2) of the auction notice required the highest bidder to deposit 10% of the bid amount immediately after becoming the highest bidder. Clause (4) of the auction notice permitted the highest bidder to deposit the balance amount within 15 days from the date of auction. For ready reference Clauses 2, 4 of the Auction Notice is quoted hereinbelow:-

२. नीलामी बोली खत्म होने पर बोली की रकम का १० प्रतिशत तत्काल जमा करना होगा।

४. डाक का बाकी रुपया नीलाम मंजूर होने पर १५ दिनों के अन्दर देना होगा। दावेदार व्यक्ति दूसरे का दावा देकर अपनी रकम चुका सकते हैं। ~~जिन्हें दावा नहीं है वे भी दूसरे व्यक्तियों~~ का दावा दे सकते हैं। यदि वे आरम्भ में नीलामी रकम का २० प्रतिशत नगद अदा कर सकें। अविस्थापित व्यक्तियों को भी दावा देने का अधिकार रहेगा, यदि वे नीलामी रकम का ३० प्रतिशत नगद दें।

4. In the light of the provisions of the Act and the Auction Notice M/S Paru Singh, Gulumal also executed General Power of Attorney dated 28.08.1960, 01.09.1960

respectively in favour of said Arjun Singh Sindhi stating that they filed claim under Displaced Persons Compensation and Rehabilitation Act, 1954 with respect to verified claim giving detail of Index, Registration Number, submitted in respect of agricultural land requesting for release of Rs. 15,400/-, 22,812/- from Compensation Account Fund in M.P. region and authorized the attorney to attend public auction for purchasing evacuee property, Government built property, agricultural land or garden at any place in India, sign auction paper, execute indemnity bond required at the time of auction, further authorizing the attorney to procure the provisional possession of the purchased property and get attested, file consent letters, affidavits and other papers on his behalf.

5. Auction for the lands-in-question held on 08.08.1960 appears to have been finally accepted in favour of Khubomal through Power of Attorney holder Arjun Singh on 07.11.1960 but the sale-deed conveying the lands-in-question in favour of Khubomal was not executed. It, however, appears from the photo copy of the attested copy of order dated 20.12.1966 that recovery slip was received indicating the adjustment of Rs. 2085.64 paisa from Compensation Account Fund of Gulumal and a sum of Rs.

785.49 paisa was still due from auction purchaser for which notice was issued asking the purchaser to deposit Rs. 785.49 paisa within 15 days. In the light of order dated 20.12.1966 notice dated 22.12.1966 was received by Arjun Singh Sindhi asking him i.e. the auction purchaser to deposit the aforesaid amount whereafter Arjun Singh Sindhi under his letter dated 24.01.1967 informed the Managing Officer, Patna that he has already adjusted Rs. 2871.13 paisa from the Compensation Account Fund of Sri Gul Mal Registration No. M/R/URA/G/(I)2058/IVNT and there appears to be some mistake in calculation, which should be corrected and he be furnished the details of adjustment from Compensation Account Fund of Gulumal. Managing Officer, Patna considered the representation of Sri Arjun Singh Sindhi dated 24.01.1967 and passed order dated 21.02.1968 holding that it is not possible to supply the details of adjustment made from Compensation Account Fund of Gulumal and if the auction purchaser or his attorney disputes the contents of the order dated 20.12.1966 and notice dated 22.12.1966, they may file an appeal, if any wrong adjustment has been made. Under order dated 21.02.1968 Managing Officer allowed Arjun Singh Sindhi 15 days further time to make good the arrears of Rs. 785.49

paisa. It further appears that Arjun Singh Sindhi under letter dated 17.04.1968 giving reference of the notice dated 22.02.1968 submitted before Managing Officer, Patna that the arrears of Rs. 785.49 paisa be adjusted from Compensation Account Fund No. M/Durg/287273/ of Sri Paru Singh. In this connection, he also mentioned in the letter that the aforesaid amount is refundable due to cancellation of sale of land of evacuee Zahoor Ahmad of Santhal Pargana. Managing Officer, Patna having received the request of Arjun Singh Sindhi dated 17.04.1968, whereunder he has requested for adjustment of Rs. 785.49 paisa from Compensation Account Fund No. M/Durg/287273/ of Sri Paru Singh made a reference to Regional Settlement Commissioner, Rajasthan and M.P., Jamnagar House, New Delhi under letter dated 08.07.1968 for adjustment of Rs. 785.49 paisa from the Compensation Account Fund of Paru Singh on account of cancellation of sale of property of evacuee Zahoor Ahmad of Santhal Pargana. The aforesaid request remained pending and reminders dated 30.08.1968, 14.10.1969 was issued. The department having considered the aforesaid request, reminder of Arjun Singh Sindhi initiated a suo motu proceeding before Assistant Custodian General-cum-

Authorized Chief Settlement Commissioner, U.P. bearing No. AUTH/CSC/R.46/UP/69 who under order dated 18.11.1969 held that the auction for sale of the lands-in-question was held on 08.08.1960. Bid was accepted on 07.11.1960. On 23.08.1966 a sum of Rs. 2085.64 paisa was adjusted from the Compensation Account Fund of Gulumal. Again a sum of Rs. 628.87 paisa was adjusted from Compensation Account Fund of Sri Khubomal. Balance of Rs. 784.19 paisa remained unpaid towards the price of the property. He also held that the Managing Officer sent a registered notice dated 22.12.1966 which was served on the respondent i.e. M/S Arjun Singh Sindhi, Khubomal on 04.01.1967 asking them to deposit the deficit of sale money within 15 days of the receipt of the notice, failing which the sale was liable to be cancelled subject to the forfeiture of earnest money. The purchaser kept quite till 24.01.1967 then he submitted application before Managing Officer requesting him to intimate the details of adjustment from Compensation Account Fund of Gulumal. On 22.02.1968 Managing Officer sent another notice asking the purchaser to deposit the amount. Purchaser, however, again kept quite but on 17.04.1968 requested that the arrears of the sale amount be adjusted from the Compensation Account Fund of Paru

Singh as there was fund available after cancellation of the sale of property of evacuee Jahoor Ahmad. Aforesaid request dated 17.04.1968 of the purchaser for adjusting the arrears of the sale price from the Compensation Account Fund of Paru Singh was referred by the Managing Officer to the Assistant Custodian General-cum-Authorized Chief Settlement Commissioner who under his aforesaid order dated 18.11.1969 held that under the provisions of the Act and the Rules the Managing Officer has no power to extend the period of 15 days within which the auction purchaser is bound to deposit the sale money. Regional Settlement Commissioner, however, has the power to extend the period of deposit by 15 days but in the instant case request having been made for extension of time after lapse of over a month, the Regional Settlement Commissioner also could not have condoned the delay. Assistant Custodian General-cum-Authorized Chief Settlement Commissioner, however, under the same order held that the facts of the case disclose that the Managing Officer erred in accepting the balance cost of money beyond the time permissible with the result that the sale is liable to be cancelled along with forfeiture of earnest money and having held as above, allowed the suo motu revision cancelling the sale dated 07.11.1960. After cancellation of the sale made in favour of Khubomal writ petitioner who was close to the family member of the recorded tenant Md. Shahabuddin Khan as per the instruction of his father Md. Moinuddin Khan was in cultivating possession of the lands-in-question from 1955 filed application dated 12.01.1970 before the Chief Settlement Commissioner, Jaisalmer House, New Delhi requesting the Commissioner to settle the lands-in-question in his favour as he belongs to the Backward Class, was in cultivating possession of the lands-in-question from 1955. In the light of the request contained in the application dated 12.01.1970 Managing Officer, Patna sought report under his letter dated 24.01.1970 from Circle Officer, Jagdishpur, Bhagalpur about the contents of the application. In this connection a reminder dated 12.03.1970 was also issued. In the light of the report received from the Circle Officer confirming the fact that writ petitioner Jamuna Prasad was in cultivating possession of the lands-in-question and that he belongs to the Backward Community Managing Officer, Patna under letter dated 07.05.1970 asked the petitioner to deposit Rs. 3500/- towards cost, Rs. 150/- towards arrears of rent of the aforesaid property within 15 days of the receipt of the notice, failing which allotment of the land in his favour will be cancelled. In this connection Managing Officer under letter dated 24.06.1970 informed the District Sub-Registrar, Bhagalpur that vendee Jamuna Prasad is not liable to pay stamp duty in terms of Section 29 of the Indian Stamp Act. Writ petitioner Jamuna Prasad having deposited Rs. 3500/- as the consideration amount for transfer of the land and Rs. 150/- as rent of the lands-in-question sale-deed dated 30.05.1970 conveying the lands-in-question in his favour was executed on behalf of the President of India by Sri B.P. Maithani, Managing Officer, Patna and it is submitted that he being a bona fide transferee of the lands-in-question without cancelling the said sale-deed dated 30.05.1970 impugned order dated 20.03.2001 concluding that with the acceptance of the balance money by the authority having power under the Act the ownership of the lands-in-question stood transferred in favour of Arjun Singh Sindhi in principle and the same should be accepted by granting him and after his death his wife Bhagwati Devi and other successor sons and daughters the sale certificate dated 11.08.2003 for the lands-in-question ought not to have been issued and the subsequent order dated 24.11.2006 modifying the order dated 20.03.2001 and another sale certificate dated 02.12.2006 ought not to have been issued.

6. From perusal of order dated 20.03.2001 it appears that thereunder Additional Custodian-cum-Additional Settlement Commissioner-cum-Deputy Secretary to the Government observed at internal page 7-8 that Arjun Singh under his petition dated 17.04.1968 requested the Managing Officer to adjust the arrears of Rs. 785.49 paisa from the Compensation Account Fund of Paru Singh as in the said fund Rs. 5548/- was available due to refund on account of the cancellation of the evacuee property of Md. Jahoor Ahmad of Santhal Pargana. For the said adjustment a reference was made to Regional Settlement Commissioner, Rajasthan and M.P., Jamnagar House, New Delhi by the Managing Officer, Patna under letter dated 08.07.1968 addressed to Regional Settlement Commissioner, Rajasthan and M.P. Jamnagar House, New Delhi that sum of Rs. 785.49 paisa be adjusted from the amount of Rs. 5548/- available in the Compensation Account Fund of Paru Singh as the balance of sale price of Rs. 2714.51 paisa had already been adjusted from Compensation Account Fund of the purchaser and associate Sri Gulumal. In order to secure the aforesaid adjustment Managing Officer also wrote reminder dated 30.08.1968 and 14.10.1969. From the order dated 20.03.2001 it does not appear that in the light of the request

of the Managing Officer contained in letter dated 08.07.1968 amount of Rs. 785.49 paisa was ever adjusted which is also evident from the order dated 18.11.1969, Annexure-4 to the writ petition. Arrears of the sale price amounting to Rs. 785.49 paisa having not been adjusted, impugned order dated 20.03.2001, Annexure-3, and the sale certificate dated 11.08.2003, Annexure-3/1 as also the order dated 24.11.2006, Annexure-1 modifying the sale certificate dated 11.08.2003 and the another sale certificate dated 02.12.2006, Annexure-1/1 could not have been issued, so submitted learned counsel for the writ petitioner appellant and then submitted that sale-deed dated 30.05.1970 conveying the lands-in-question in favour of the writ petitioner executed by the Managing Officer and registered, this Court should quash the order dated 24.11.2006 passed by Respondent No. 4 in Misc. Case No. 1/2000 whereunder instructions have been given to issue Sale Certificate for the lands-in-question in favour of Respondent Nos. 14, 15 and 16 as also to quash the Sale Certificate dated 02.12.2006 and further quash the order contained in Letter No. 1183(6) dated 16.08.2007 (Annexure-2) issued by Respondent No. 4 directing District Collector, Bhagalpur, Respondent No. 6 to implement the aforesaid order of settlement dated

24.11.2006 and Sale Certificate dated 02.12.2006 within a period of three months, quash the order dated 20.03.2001, Annexure-3 passed by Respondent No. 4 the Assistant Settlement Commissioner-cum-Additional Secretary, Revenue & Land Reforms, Govt. of Bihar Patna in Case No. 8A/Evacuee Case No. 1/2000, by which order has been passed to issue Sale Certificate for the lands-in-question in favour of Respondent Nos. 11,12 and 13 and also quash the Sale Certificate dated 11.08.2003 and direct the respondent authorities not to interfere with the title, possession of the writ petitioner over the lands-in-question in the light of the sale-deed dated 30.05.1970 executed by the then Managing Officer on behalf of the President of India and registered by the competent authority.

7. Learned counsel for the State and private Respondent No. 16(i) submitted that the sale-deed dated 30.05.1970 executed in favour of the petitioner is required to be ignored as the same has been executed only after receipt of Rs. 3500/- as consideration money and Rs. 150/- as the arrears of rent of the lands-in-question. In this connection, it is pointed out that on 08.08.1960 the lands-in-question was put on auction and the highest bid amount of Rs. 3500/- was accepted and for failure of the highest bidder to deposit

the entire amount within the required time, the sale which was confirmed on 07.11.1960 was cancelled under order dated 18.11.1969. In the circumstances, the sale of the same land under deed dated 30.05.1970 in favour of the petitioner could not have been effected for Rs. 3500/- and in appreciation of such fact, this Court should ignore the sale-deed and permit the State and its functionaries to take control of the property-in-question which is an evacuee property.

8. Having considered the rival submissions, it is established from the pleadings made by the parties as also the records made available to us by the counsel for the State that the lands-in-question is evacuee property. Auction for the sale of the lands-in-question was held on 08.08.1960. Khubomal through Power of Attorney holder Arjun Singh became the highest bidder for Rs. 3500/- to purchase the said land. Bid was finally accepted in favour of the highest bidder on 07.11.1960, but the sale deed conveying the lands-in-question in favour of the highest bidder was not executed. On 23.08.1966 a sum of Rs. 2085.64 paisa was adjusted from the Compensation Account Fund of Gulumal. Again a sum of Rs. 628.87 paisa was adjusted from the Compensation Account Fund of Khubomal. Balance of Rs.

784.19 paisa remained unpaid towards the bid amount. In spite of notice, repeated opportunity to deposit the arrears of the bid amount of Rs. 784.19 paisa, the same was not paid and the sale dated 07.11.1960 was cancelled under the aforesaid order dated 18.11.1969, passed by Custodian General-cum-Authorised Chief Settlement Commissioner, U.P. After cancellation of sale dated 07.11.1960 under order dated 18.11.1969 sale deed dated 30.05.1970 for the lands-in-question has been executed by the competent Managing Officer in favour of petitioner, which has also been registered. In the circumstances, impugned order dated 20.03.2001, Annexure-3, sale certificate dated 11.08.2003, Annexure-3/1, order dated 24.11.2006, Annexure-1, sale certificate dated 02.12.2006, Annexure-1/1 and instructions contained in Letter No. 1183(6) dated 16.08.2007, Annexure-2 ought not to have been issued recognising the sale dated 07.11.1960, which has already been cancelled for failure to deposit the arrears of sale amount of Rs. 784.19 paisa, as such, for the reasons aforementioned, impugned order dated 20.03.2001, Annexure-3, sale certificate dated 11.08.2003, Annexure-3/1, order dated 24.11.2006, Annexure-1, sale certificate dated 02.12.2006, Annexure-1/1 and instructions contained in letter No. 1183(6) dated 16.08.2007, Annexure-

2 to the writ petition are quashed and the impugned order No. 8 dated 11.03.2010, passed by the learned Single Judge in C.W.J.C. No. 8465 of 2008 is also set aside.

9. Before parting with this judgment, we would like to observe that the sale deed dated 30.05.1970 executed by the competent Managing Officer conveying the lands-in-question in favour of the petitioner has been executed without following the due procedure provided for transfer of evacuee property and that too without receipt of due consideration from the petitioner, as admittedly the lands-in-question has been transferred on 30.05.1970 for a sum of Rs. 3500/- which was the highest bid amount for the lands-in-question on 08.08.1960, as such, there cannot be any difficulty in concluding that on the date of execution of sale deed dated 30.05.1970 by Managing Officer due consideration for the lands-in-question was not paid by the petitioner, yet the transfer was effected in his favour by the competent Managing Officer through sale deed dated 30.05.1970. In view of the fact that the sale deed dated 30.05.1970 has been executed without receipt of due consideration from the petitioner, we are not in a position to direct the authorities to protect the rights of the petitioner-appellant emanating from the sale deed dated 30.05.1970.

10. In the result, the appeal is allowed with the aforesaid observation in Paragraph 9.

(V.N. Sinha, J)

Ahsanuddin Amanullah, J   I agree.

(Ahsanuddin Amanullah, J)

P.K.P./Rajesh/
N.A.F.R./A.F.R.

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