

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 14534 of 1997

Date of Decision : January 09, 2015

Sohan Lal Petitioner

VS.

Financial Commissioner, Revenue,
Punjab, Chandigarh and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Anupam Gupta, Senior Advocate
with Mr. Ashok Kumar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

Mr. Ashwani Kumar Chopra, Senior Advocate
with Mr. Harminder Singh, Advocate
for respondent no. 2.

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DEEPAK SIBAL, J. :

Through the present petition, I propose to decide two writ petitions being **C. W. P. No. 14534 of 1997** and **C. W. P. No. 17632 of 1998**, as both these writ petitions are inter-connected and can be disposed of through a common judgment. For the sake of convenience, facts have been taken from **C. W. P. No. 14534 of 1997** titled as **Sohan Lal vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others.**

Land measuring 04 kanals 05 marlas comprised in Plot No. 168, situated at Basti Sheikh, Jalandhar City is the bone of contention between the warring parties and it has been so for the last over four decades.

As a result of unfortunate events, which took place in the year 1947 when India and Pakistan were partitioned, the petitioner and respondent no. 2, who were earlier living in Pakistan, got displaced and came to India. To rehabilitate displaced persons like the petitioner and respondent no. 2, the Government of India enacted the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as – the Act). Under the provisions of the Act, on 24.08.1959, the above referred plot in question was put to auction. Respondent no. 2 – Surinder Singh Toor, being the highest bidder, the plot was allotted to him, but after having deposited only 1/5th of the auction price on the spot, he failed to make the deposit of the balance auction price. Due to such default on his part, the allotment made in his favour was cancelled. Aggrieved by such cancellation, respondent no. 2 filed an appeal before the Chief Settlement Commissioner. The explanation given by respondent no. 2 was apparently accepted for the non-payment of the balance auction price and resultantly, on the above appeal, vide order dated 30.03.1968, the Chief Settlement Commissioner set aside the order of the cancellation of the land in question and directed respondent no. 2 to make good the shortfall by 30.05.1968.

Respondent no. 2 still failed to comply with the order dated 30.03.1968, which resulted in another order dated 02.10.1968 of cancellation passed against him. Against such cancellation order dated 02.10.1968, respondent no. 2 preferred another appeal before the Assistant Settlement Commissioner (having delegated powers of Settlement Commissioner), Jalandhar. However, this appeal was dismissed vide order dated 02.04.1969. The order dated 02.04.1969 dismissing the appeal of respondent no. 2 was challenged by him before the Settlement Commissioner (having delegated powers of Chief Settlement Commissioner) and vide order dated 13.08.1969, this revision petition was also considered and dismissed. Having left with no other remedy, respondent no. 2 approached the Government of India to exercise its residuary powers under Section 33 of the Act. The officer, delegated with the powers of Central Government under Section 33 of the Act, considered the grievance so made by respondent no. 2 and decided to grant another opportunity to respondent no. 2 to make payment of the balance consideration of the plot in question. Accordingly, his petition so filed under Section 33 of the Act, was allowed, the orders impugned were set aside and respondent no. 2 was directed to pay the balance of the sale consideration of the property in question in cash within 15 days from the date of the order, which was dated 06.02.1970. This order was pre-emptory in nature and was to the effect that in case, no payment was made by

respondent no. 2 within the time so stipulated in the order, his petition would be deemed to have been dismissed. As the order of the officer delegated with the powers of Central Government under Section 33 of the Act was dated 06.02.1970, respondent no. 2 was required to pay the balance of the sale consideration by 21.02.1970. Within this 15 days' time, so granted to deposit the balance sale consideration, no deposit was made by respondent no. 2. He thus made an application to the competent Authority, who had passed the order dated 06.02.1970, to grant him a short extension of time to make good the deposit. The reasons were duly spelt out in the application seeking extension of time. The competent Authority, after considering the reasons so spelt out in the application filed by respondent no. 2 for extension of time, allowed the same and granted 07 more days to make the deposit and thus, now the deposit could be made till 28.02.1970. It is the admitted case between the parties that within this extended period of 07 days so granted, the deposit of the entire sale consideration was made by respondent no. 2 and resultantly, the plot stood restored in favour of respondent no. 2.

Though the above payment was made by respondent no. 2 on 28.02.1970, but in the integrum, a vital development had taken place. The Department of Rehabilitation, on 17.01.1969, had put the plot in question to another auction (hereinafter referred to as – the second auction). In the second auction, it was the petitioner – Sohan Lal, who emerged as the

highest bidder, but before the petitioner could have paid the entire sale consideration for the plot in question, on 28.02.1970, on deposit of the entire sale consideration by respondent no. 2, the allotment of the plot in question, made in favour of respondent no. 2, had been restored. Thus, on 28.02.1970, this fact regarding restoration of the plot in question in favour of respondent no.2 stood as a wall between the petitioner and the allotment of the plot in question in his favour. Attempting to break such a wall, the petitioner approached this Court under Articles 226/227 of the Constitution of India challenging the order dated 06.02.1970 passed by the competent Authority. This petition was dismissed by a learned Single Judge of this Court on 15.12.1970, against which the petitioner preferred an intra-court appeal under Clause X of the Letters Patent bearing **L. P. A. No. 63 of 1971** - **Sohan Lal etc. vs. Union of India etc.** A Division Bench of this Court considered the entire matter in great detail and vide order dated 14.10.1971, allowed the appeal filed by the petitioner. Resultantly, the Division Bench, reversing the order of the learned Single Judge, set aside the order passed by the competent Authority granting extension of time to respondent no. 2 for the deposit of the balance of the sale consideration. As a consequence, the auction sale dated 04.08.1959, in favour of respondent no. 2, was also set aside. The Rehabilitation Department was granted liberty to take further proceedings regarding the auction sale held in favour of the petitioner on 16.01.1969, in accordance with law. Respondent no. 2, aggrieved by the

order of the Division Bench of this Court, knocked the doors of the Apex Court to challenge the above referred order passed by the Division Bench. The Special Leave Petition, after being converted into a civil appeal – **Civil Appeal No. 2062 of 1972** titled **Surinder Singh vs. Central Government and others**, was allowed, vide order dated 26.09.1986, in the following terms :-

“We therefore allow the appeal partly and modify the order of the High Court to the extent indicated hereinabove. The Central Government or the authority exercising its power under Sec. 33 of the Act is directed to consider the appellant's petition afresh, in accordance with law after giving notice and affording opportunity of hearing to Sohan Lal and Sunder Lal, respondents. In these circumstances of the case there will be no order as to costs.”

In compliance with the above reproduced order passed by the Apex Court, the matter was taken up by the Financial Commissioner, Revenue, Punjab at Chandigarh, who, at that time, was the competent Authority delegated with the powers of the Central Government under

Section 33 of the Act. The Financial Commissioner considered the entire matter afresh and after hearing all the concerned parties to the lis, passed an order dated 01.09.1997 restoring the plot in question in favour of respondent no. 2. Through that order, the Financial Commissioner further directed refund of the part of the bid amount deposited by the petitioner and his brother along with 12% interest from the date of deposit till the date of payment. It is this order which is challenged before me through the present writ petition.

Mr. Anupam Gupta, learned senior counsel appearing on behalf of the petitioner has laid attack to the impugned order by terming the same to be an order without application of mind. He argues that a reading of the impugned order shows that there is no independent application of mind by Financial Commissioner himself while deciding the issue. According to him, the Financial Commissioner got swayed by certain observations made by the Apex Court in its order dated 26.09.1986 and has simply followed some of the observations made therein. According to the learned counsel, there being no independent application of mind by the Financial Commissioner, the order was vitiated and thus, liable to be set aside on that score alone. Learned counsel further submitted that there were no reasons given for condoning the delay on the part of respondent no. 2 for making balance payment of the consideration for the plot in question. It was submitted that the plot in question was auctioned in the year 1959. At

that time, only 1/5th of the auction price was paid by respondent no. 2. Thereafter, respondent no. 2 had kept silent for about 09 years when in the year 1968, he started making requests for permitting him to pay the balance sale consideration. According to the learned counsel, the inordinate delay, especially without any satisfactory explanation, could not have been condoned by the respondent authorities and thus, all the orders permitting respondent no. 2 to make good the balance payment for the plot in question were liable to be set aside. For this proposition, learned counsel relied upon the following judgments of the Apex Court :-

1. **Basawaraj and another vs. Special Land Acquisition Officer** reported as **(2013) 14 Supreme Court Cases 81** and
2. **Pundlik Jalam Patil (Dead) by LRs vs. Executive Engineer, Jalgaon Medium Project and another** reported as **(2008) 17 Supreme Court Cases 448.**

Learned counsel appearing on behalf of the petitioner further submitted that since respondent no. 2 has now migrated to Canada and that the entire litigation on his part was through the General Power of Attorney holders, he ceases to be a displaced person, as defined under Section 2 (b) of the Act. Lastly, it was submitted that while deciding the present writ, this Court may take into consideration the fact that the petitioner is a poor and needy person as compared to respondent no. 2, who apparently is a rich man, now settled in Canada. It was thus submitted that the concept of

social justice, as promised in the Constitution of India, be applied to the facts of this case to tilt this case in favour of the poor and needy persons like the petitioner. For this proposition, the learned counsel has relied on a judgment of the Apex Court in the case of **U. P. Bhoodan Yagna Samiti, U. P. vs. Braj Kishore and others** reported as **(1988) 4 Supreme Court Cases 274.**

Per contra Mr. Ashwani Kumar Chopra, learned senior counsel appearing on behalf of respondent no. 2 argued that the Financial Commissioner's order is a well reasoned and speaking order, in which not only has the Financial Commissioner aptly considered the entire background of the case, but has also, after due application of mind, decided the matter. He argued that just because the final decision has been rendered against the petitioner, it would not clothe him with a right to challenge the order on the ground that the same was a result of non-application of mind. On the issue of delay, learned senior counsel submitted that the petitioner was nobody to raise such a question before this Court. The permission granted by the Authorities to respondent no. 2 to make good the balance payment after several years of the auction, according to learned counsel for respondent no. 2, was a matter between the Authorities and respondent no. 2. He submitted that the petitioner had no locus to question such permission granted to make good the balance payment since the petitioner came into the picture only on 17.01.1969 i.e. the date of the second auction.

He submitted that much before the date of the second auction, the proceedings under the Act had been initiated by respondent no. 2 seeking permission of the Authorities to make good the balance sale consideration of the plot in question. Thus, it was submitted that the petitioner was nobody to question the delay, if any, on the part of the Authorities permitting respondent no. 2 to make good the balance payment of the plot in question. Irrespective of the same, learned senior counsel would submit that the orders, permitting respondent no. 2 to make good the balance payment of the plot in question, would be ample proof of the fact that only after the acceptance of the explanation so given by respondent no. 2, the permission had been granted. The learned senior counsel would further submit that at the time of the auction of the plot in question, respondent no. 2 was a displaced person. The Authorities had never questioned his entitlement then and even today, after a passage of 55 years, there is no dispute over the eligibility of respondent no. 2 to be considered for the allotment of the plot in question as a displaced person under the provisions of the Act.

I have heard learned counsel for the parties at great length and with their able assistance, I have also gone through the record of the case.

The grievance of the learned counsel for the petitioner, that the impugned order is an order passed without application of mind, is misplaced. On the contrary, after going through the order impugned by the

petitioner, I find the same to be a well reasoned order, in which the Authority concerned has, after considering the entire gamut of the matter, has deftly decided the issues raised before it. The operative part of the order is reproduced below :-

“9. After giving due consideration to the pleadings of both the parties, I feel that their Lordships of the Apex Court, have allowed the appeal of the petitioner, Surinder Singh to the extent that the authorities below including Shri Rajni Kant have passed orders without giving an opportunity of hearing to the respondents, as such, their orders were bad to that extent. In this case, the only contention of the respondents was that a great hardship could be caused to them in case reduction made in their favour was not approved. There are certain things which requires deep consideration by this Court. It is a fact, as established from record that the petitioner had purchased the property in the year 1959 and deposited 1/5th at the spot.

With regard to non-payment of the balance of the amount, he has given sufficient reasons and the circumstances under which he could not deposit the balance amount. The reasons given by the petitioner for the non-payment of the shortfall, by the stipulated date, appears to be convincing. I am afraid that the Rehabilitation Department in a bit of haste disposed of the property on 17.01.1969, knowing fully well that appeal/revision filed by the petitioner were pending for decision, as such, they should have kept their hands off this property. Interestingly, the respondents could not wriggle out of their contention, since during the pendency of the appeal, filed by Surinder Singh before the Assistant Settlement Commissioner, they moved an application for being impleaded as a party meaning thereby that they were aware of litigation started by Surinder Singh against earlier order. Again their Lordships of the

Supreme Court did not find any fault, in the order of Shri Rajni Kant, while deciding petition under Section 33 of the Act ibid on 6.2.70. Their Lordships only observed that the 'competent authorities' should have given hearing to the respondents meaning thereby that their Lordships have upheld the order of Shri Rajni Kant. I also find no fault in the order dated 6.2.70, recorded by Shri Rajni Kant as such, uphold that order.

10. In the given premises, I uphold the order dated 6.2.70 recorded by Shri Rajni Kant and allow the petition of Surinder Singh with the direction to State Government to refund the part of the bid amount, deposited by the respondents Sohan Lal and Sunder Lal with 12% interest from the date of deposit till the date of payment. There are no order as to cost.

Announced.”

A perusal of the above extracted part of the impugned order shows that the Authority concerned passed the above findings after due

application of mind on all the issues raised before it.

The petitioner has further questioned the very entitlement of respondent no. 2 to be allotted the plot in question as according to the petitioner, respondent no. 2 does not fall within the definition of under Section 2 (b) of the Act. The Authorities, right from the year 1959 till date, have not questioned the eligibility of respondent no. 2 to be considered for the allotment of the plot in question as a displaced person under the provisions of the Act. Even the petitioner, in the proceedings before the Authorities under the Act, right up to the Apex Court in **Civil Appeal No. 2062 of 1972** titled **Surinder Singh vs. Central Government and others** (*supra*), as also before the Financial Commissioner, never questioned the eligibility of respondent no. 2 under the Act that he was not a displaced person. In fact, in the entire proceedings, which had taken place prior to the filing of the present writ petition, the disputes have been decided only after considering both – the petitioner and respondent no. 2 to be displaced persons under the Act.

In view of the above, I would not allow this issue to be taken up on behalf of the petitioner now for the first time in the present writ petition. Even otherwise, the issue raised by the petitioner, that respondent no. 2 has now gone to Canada and has settled there, would not take away his right to be considered as a displaced person which he was, as defined under the Act at the time when the auction of the plot in question had taken

place, in which he was declared to be the highest bidder.

It is the undisputed position before me that the statutory appeal, as provided under the Act, was being pursued by respondent no. 2 much before 17.01.1969, when the second auction took place, in which the petitioner emerged as the highest bidder. Once the Authorities were aware that respondent no. 2 was pursuing his statutory rights under the Act to get the plot in question restored, then, in my opinion, the Authorities should have not put the plot in question to a second auction, which they did on 17.01.1969. According to me, they should have awaited the proceedings already initiated at the behest of respondent no. 2 to have attained finality. Even otherwise, in my opinion, any auction made, while respondent no. 2 was pursuing his statutory remedies, would always be subject to the final decision in those proceedings. It is not that the petitioner was not aware of such proceedings. In fact, it is also undisputed before me that the petitioner moved applications to become party in the proceedings initiated by respondent no. 2 for restoration of the plot in question. The fact, of the petitioner having filed an application soon after he had bid for the property in question, for impleadment in the restoration proceedings initiated by respondent no. 2, is admitted by the petitioner himself in paragraphs 11 and 12 of the writ petition, which are reproduced below for ready reference :-

*“11. That on the other hand, an
appeal under Section 22 of the Act was*

filed by respondent No. 2 before the Settlement Commissioner. This was rejected by Shri S. N. Behl, Authorised Settlement Commissioner, Jalandhar, vide order dated 2.4.1969.

12. That in the mean time, since the petitioner had gave the bid, he filed an application before the Authorised Settlement Commissioner, Jalandhar that he may be impleaded as a party but since the appeal itself had been rejected, the application was disposed of stating that no action was required.”

In view of the facts mentioned above, I feel that while respondent no. 2 was pursuing his statutory remedies to get the plot in question restored, it was not proper on the part of the Authorities to put the same to re-auction without having waited for the statutory remedies being availed by respondent no. 2 to attain finality. The Authorities were aware of the proceedings initiated by respondent no. 2 much prior to the second auction. They were further aware of all the proceedings being pursued by respondent no. 2 as they were put to notice qua all these proceedings at all stages. That being so, the Authorities acted in haste and rather irresponsibly

to have put the plot in question to the second auction, when the first auction-purchaser was pursuing his legal remedies to get the plot restored in his favour and the Authorities were in knowledge of the same. For this act of haste on the part of the Authorities, respondent no. 2 cannot be faulted with.

Section 33 of the Act, under which respondent no. 2 has been granted relief, is reproduced below for ready reference :-

“Certain residuary powers of Central Government – The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto 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 thereunder.”

The powers of the competent Authority under the above quoted Section to grant relief so granted to respondent no. 2 can no longer be questioned in view of the interpretation given to this Section by the Apex Court in **Civil Appeal No. 2062 of 1972** titled **Surinder Singh vs. Central Government and others** (*supra*), preferred by respondent no. 2, in this very matter. In the above matter, while considering the relief

granted to respondent no. 2 under Section 33 of the Act, the Apex Court held as under :-

“Sec. 33 reads as under :

“Certain residuary powers of Central Govt. -

The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto 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 thereunder.”

The power conferred upon the Central Govt. under this provision is a residuary power in nature as the title of the Section itself indicates. By enacting this section Parliament has conferred wide powers on the Central Govt. to call for the record of any case and to pass any order which it may think fit in the circumstances of the case. The only limitation on exercise of this power is that the Central Govt. shall not pass any order which may be inconsistent with any of the provisions of

the Act and the rules made thereunder. Therefore the Central Govt. or the delegated authority has power to set aside any order of the subordinate authorities, or to issue directions which it may consider necessary on the facts of a case subject to the aforesaid rider. This power is intended to be used to do justice and to mitigate hardship to a party unriddled by technicalities. Shri Rajni Kant while exercising powers of the Central Govt. under sec. 33 of the Act had ample jurisdiction to set aside the orders of the subordinate authorities cancelling the auction held on August 24, 1959 and to permit the appellant to deposit the balance amount of the purchase money and he further had jurisdiction to extend the time initially granted by him.”

Once under Section 33 of the Act, the competent Authority could grant relief so granted to respondent no. 2, then the next question arises whether there were sufficient reasons to grant the relief so granted. In this regard, reference to the order impugned may be made, wherein the competent Authority has specifically returned a finding that there were justifiable reasons existing on the record to permit respondent no. 2 to

make good the balance payment for the plot in question. The relevant portion of the order is reproduced below for ready reference :-

“.....With regard to non-payment of the balance of the amount, he has given sufficient reasons and the circumstances under which he could not deposit the balance amount. The reasons given by the petitioner for the non-payment of the shortfall, by the stipulated date, appears to be convincing.”

Once the above reproduced findings had been recorded by the competent Authority in the order impugned by the petitioner, it was up to the petitioner to assail such findings before me by way of pleadings or otherwise. The above findings have nowhere been controverted by the petitioner either in the writ petition or at the time of hearing. It has not been shown to the Court that the above findings were factually incorrect or that no sufficient cause was ever shown by respondent no. 2 before the Authorities concerned. Further, a perusal of the record reveals that this issue was never raised by the petitioner in the earlier round of litigation before a learned Single Judge, then before the Division Bench of this Court and then before the Apex Court.

Once the competent Authority has recorded the above finding,

in the absence of any mala fide alleged, I do not intend to interfere with the same. It may be noticed that even earlier, the competent Authority had, after going through the reasons given by respondent no. 2, permitted him to make good the balance payment for the plot in question. Further, it is admitted between the parties that respondent no. 2 has actually deposited the entire payment way back on 28.02.1970 and as a result thereof, the plot in question stood restored in his favour.

Even otherwise, in view of the above facts, after 44 years of the restoration of the plot in question in favour of respondent no. 2, I do not intend to go into the question of sufficiency of reasons for permitting respondent no. 2 for making good the balance payment for the plot in question, especially when a clear cut finding to that effect has been recorded by the competent Authority in the impugned order and in the earlier order passed by the competent Authority and further when the petitioner has not taken up this issue earlier.

The issue of delay raised by the petitioner also needs to be considered to be rejected. The competent Authority has exercised its power under Section 33 of the Act to do justice between the parties. As per the interpretation given to Section 33 of the Act by the Apex Court, as referred to above, the competent Authority could do so. Further, respondent no. 2 started pursuing his statutory remedies for the restoration of the plot in question in the year 1968. At that time, the petitioner was nowhere in the

picture. Had the petitioner come in the picture before respondent no. 2 started pursuing his statutory remedies, then may be he could have had something to say on the issue of delay but as this is not so, according to me, the petitioner cannot be allowed to raise the issue of delay on the part of the Authorities to permit respondent no. 2 for making good the balance payment.

I have gone through the judgment of the Apex Court passed in the case of **Basawaraj** (*supra*). In that case, the Apex Court has held that the law of limitation has to be harshly applied, when the Statute so prescribes and that the Court has no power to extend the period of limitation based on equitable grounds. It has further been held that there cannot be an unlimited limitation as the same would lead to a sense of insecurity and uncertainty. To the same effect is the judgment rendered by the Apex Court in the case of **Pundlik Jalam Patil** (*supra*). There is no quarrel with the proposition laid down by the Apex Court as referred to above. However, the facts of the case, as enumerated in the earlier paragraphs, clearly bring out a distinction for the application of the above proposition of law to the facts of the present case.

So far as the reliance on the judgment of the Apex Court in the case of **U. P. Bhoodan Yagna Samiti, U. P.** (*supra*) is concerned, I find that in that case, the facts and the proposition of law have no applicability to the facts of the case in hand. That was a case where lease in favour of the

respondent therein was cancelled in favour of the Additional Collector, Kanpur. The same was quashed by the High Court leading to the filing of the **Special Leave Petition (SLP)** before the Apex Court and this judgment was cited by learned counsel for the petitioner to persuade me to decide the present case while doing social justice as it was submitted that the petitioner is a poor man, whereas respondent no. 2 is rich and has now settled in Canada. In view of what has been held by me earlier, I feel that this judgment has no application to the facts of the case in hand.

In view of the above, I find no reason to set aside the well reasoned order passed by the competent Authority, which exercised powers of the Central Government under Section 33 of the Act. However, since I have held that it was wholly inappropriate on the part of the Authorities to put the plot in question to the second auction when respondent no. 2 was pursuing his statutory remedies for restoration of the plot in question and that the Authorities were aware of the same, I give liberty to the petitioner to claim damages from the Authorities by initiating proceedings before an appropriate Forum, in accordance with law. Resultantly, both the petitions i.e. C. W. P. No. 14534 of 1997 and C. W. P. No. 17632 of 1998 are dismissed with the liberty granted as aforesaid.

(DEEPAK SIBAL)
JUDGE

Pronounced on : January 09, 2015