

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 13th May, 2015.**

+ **LPA No.282/2010 & CM No.7396/2010 (for stay)**

UNION OF INDIA & ORS Appellants
Through: Ms. Pooja Yadav, Adv. for Ms.
Rachna Srivastava, Adv.

Versus

HEM SINGH (DECEASED) THROUGH LRS Respondent
Through: Ms. Roopali Chaturvedi, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 14th July, 2009 of the learned Single Judge of this Court of disposal of W.P.(C) No.1684/1994 filed by the deceased respondent No.1 now represented by his heirs impleaded at serial No.1(a) to 1(j).

2. The respondent No.1 filed the writ petition from which this appeal arises impugning,

(I) the order dated 30th September, 1985 of the Settlement Commissioner (Appellant No.3), Rehabilitation Division, Ministry of Home Affairs of dismissal of appeal preferred by the respondent No.1

under Section 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Displaced Persons Act) against the order dated 26th March, 1985 of the Settlement Officer-cum-Managing Officer (Appellant No.4) offering to transfer the land measuring 266 sq. yds. situated at Qutab Road, Delhi to the respondent No.1 under Rule 87 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (Displaced Persons Rules) for a price of Rs.26,01,846/- and on other terms and conditions contained therein;

(II) the order dated 4th January, 1988 of the Chief Settlement Commissioner (Appellant No.2) of dismissal of revision petition under Section 24 of the Displaced Persons Act preferred by the respondent No.1 against the order aforesaid of the Settlement Commissioner; and,

(III) the order dated 22nd July, 1993 of the Secretary, Land & Building Department, National Capital Territory of Delhi (Appellant No.1) of dismissal of a petition filed by the respondent No.1 under Section 33 of the Displaced Persons Act with respect to the orders aforesaid of the Chief Settlement Commissioner, Settlement Commissioner and the Settlement Officer.

Thus, the challenge *inter alia* in the writ petition was to the price demanded from the respondent No.1 of Rs.26,01,846/- for the land at Qutab Road in possession of the respondent No.1 / writ petitioner; according to the respondent No.1 / writ petitioner, the price should have been much less.

3. The writ petition, from which this appeal arises, was entertained and remained pending from the date of its filing in or about the year 1994 till the year 2009. When the said writ petition came up for hearing before the learned Single Judge on 14th July, 2009, the counsel for the respondent No.1 / writ petitioner, after some hearing, instead of pressing the writ petition contended that the respondent No.1 / writ petitioner was ready to pay the price demanded of Rs.26,01,846/- together with interest @ 10% per annum with effect from 1st April, 1985 and till the date of payment.

4. The learned Single Judge, upon the said offer being made, instead of adjudicating the writ petition on merits, finding the suggestion / concession made by the respondent No.1 / writ petitioner to be just, fair and equitable, disposed of the writ petition by, (i) directing the respondent No.1 / writ petitioner to pay the said sum of Rs.26,01,846/- together with simple interest @ 10% per annum with effect from 1st April, 1985, in three equal

installments stretching till 1st March, 2010 and to in accordance with the terms and conditions contained in the offer letter dated 26th March,1985, surrender 59 sq. yds. of land besides the said 266 sq. yds., illegally encroached upon by the respondent No.1 / writ petitioner and by (ii) directing the appellants to execute the transfer documents of the land in favour of the respondent No.1 / writ petitioner.

5. Aggrieved therefrom, this appeal was preferred. Notice of the appeal was issued. The respondent No.1, in terms of the order of the learned Single Judge, issued certain cheques in favour of the appellants. The counsel for the appellants on the very first date when the appeal came up before this Bench i.e. on 23rd April, 2010 informed that the cheques had not been encashed. Vide subsequent order dated 27th July, 2010, the cheques tendered by the respondent No.1 to the appellants were ordered to be returned to and the respondent No.1 directed to deposit the amount equivalent to the amount of the cheques in this Court and the said amount was ordered to be kept in a fixed deposit. The appeal, on 21st October, 2010 was admitted for hearing and ordered to be listed in the category of regular matters. Hearing of the appeal, on the application of the respondent No.1, was expedited vide order dated 6th February, 2015. We heard the counsel

for the appellants and the counsel for the respondent No.1 on 30th April, 2015 and reserved judgment, giving liberty to the counsels to file written submissions. Both have filed written submissions, which have been perused by us.

6. The principal grievance of the appellants, of course, is that the learned Single Judge erred in directing the appellants in the year 2009-2010 to sell the immovable property to the respondent No.1 / writ petitioner at a price at which the respondent No.1 / writ petitioner had 25 years prior thereto, offered to sell the said property and though together with interest @ 10% per annum but without regard to the fact that the market price of the property in the year 2009-2010 and which alone was the criteria under the rule under which the property was offered to be sold to the respondent No.1 / writ petitioner, was far far more than the price prevalent, 25 years earlier in the year 1985 together with simple interest thereon @ 10% per annum.

7. The counsel for the respondent No.1 / writ petitioner neither during the hearing nor in the written arguments has been able to make a dent to counter the aforesaid contention.

8. We find force in the aforesaid contention of the appellants. There has been a galloping increase in prices of immovable property in Delhi,

particularly in areas which are in the heart of Delhi, as the subject property is and judicial notice of which fact has been taken by the Courts. The Supreme Court in ***Saradamani Kandappan Vs. S. Rajalakshmi*** (2011) 12 SCC 18 has held that though the third quarter of the 20th Century saw a very slow but steady increase in prices of immovable property but a drastic change occurred from the beginning of the last quarter and a galloping increase in prices of immovable properties has taken place with prices increasing steeply, by leaps and bound and judicial notice can be taken thereof. It can thus by no means be said that the increase in price of the immovable property in nearly 25 years, which the respondent No.1 / writ petitioner took to agree to the offer of the appellants and which was subject to payment being made within 30 days thereof, was @ 10% per annum only. We may add that the learned Single Judge also, in the impugned order, has not observed that the payment of 25 years old market price, even if with simple interest @ 10% per annum would be equivalent to the market price prevalent on the date of the impugned order.

9. What the learned Single Judge has done in the impugned order is, to allow the respondent No.1 / writ petitioner to at its own *ipsi-dixit* first challenge the price at which the appellants had offered to sell the property

and when unable to sustain the said challenge, to accept the said offer, ignoring that the offer was subject to payment being made in 30 days and further ignoring that in the intervening 25 years, there was a sea change in market price of the property. All this has been allowed in the name of being just, fair and equitable.

10. We are of the considered opinion that, without the learned Single Judge first returning a finding that the offer made by the appellants 25 years ago to sell the property for a price of Rs.26,01,846/- was contrary to the rules under which it was made or otherwise contrary to the law, the learned Single Judge could not have given the reason of “just, fair and equitable” for so directing a valuable immovable property of the State to be transferred to the respondent No.1 / writ petitioner. The same, in our view, would amount to the Court distributing largesse to the one knocking at its door, without finding any weight even in his knock and after that person has given up the grounds on which he earlier knocked the doors of the Court.

11. We have also wondered, whether not it would amount to giving a premium to a person who has involved the State / public property in litigation for nearly two and a half decades, on grounds which he ultimately could not sustain before the Court and chose to give up. If such a practise

were to be followed, it would encourage unscrupulous litigants to abuse the process of the Court to their advantage. We have yet further wondered that if at all the properties of the State which are public properties are to be distributed in such a manner, whether not the criteria should be it to give it to the most deserving person rather giving it virtually for free to a person who has approached the Court and who has ultimately been unable to establish his case before the Court. Any transaction which puts the public exchequer to an avoidable loss cannot be stipulated in equity or in law. It only serves private interest. It does not promote any public purpose.

12. The course of action as adopted by the learned Single Judge has been deprecated by the Courts. The Supreme Court in *Union of India Vs. Modiluft Ltd.* (2003) 6 SCC 65 held that for an order to be an order in equity, it should be equitable to all parties concerned. Finding that the respondent therein had collected the tax from the passengers as an agent of the Union of India and had failed to deposit the same and on the contrary used the same for its own purposes, it was held that the order of the High Court granting a liberal instalment to the respondent to pay the said dues was without taking into consideration the interest of the revenue and could not be termed as an order in equity. Similarly, in *Ritesh Tewari Vs. State of*

U.P. (2010) 10 SCC 677 it was held that a petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner and that equities have to be properly worked out between the parties to ensure that no one is allowed to have their pound of flesh vis-a-vis the others unjustly.

13. The Supreme Court in *P.M. Latha Vs. State of Kerala* (2003) 3 SCC 541 has also held that equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. Earlier also, in *Madamanchi Ramappa Vs. Muthalur Bojjappa* AIR 1963 SC 1633 it was held that what is administered in Courts is justice according to law and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law and unless it is so, it would introduce in the decision of the Courts an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid. Reference in this regard can also be made to *Raghunath Rai Bareja Vs. Punjab National Bank* (2007) 2 SCC 230.

14. Applying the aforesaid principles of law, the learned Single Judge, in the name of justice, fairness and equity could not have without the consent

of the appellants and without finding that the appellants even after 25 years were bound to offer the property in occupation of the respondent No.1 / writ petitioner at a price at which they had offered 25 years ago together with interest @ 10% per annum, could not have directed the appellants to so transfer the immovable property to the respondent No.1 / writ petitioner. The order of the learned Single Judge is clearly unsustainable.

15. Thus, the appeal is entitled to be allowed on this short ground alone.

16. The next question which however arises is that if this Court in appeal is to not accept the unilateral offer made by the respondent No.1 / writ petitioner and accepting which the writ petition was disposed of, whether not an opportunity has to be given to the respondent No.1 / writ petitioner to argue the case with which it has filed the writ petition.

17. Ordinarily, it would have been so. However, what we find is that the respondent No.1 / writ petitioner on 14th July, 2009, when the writ petition came up for hearing, did not press and gave up the challenge in the writ petition and rather accepted the order impugning which the writ petition was filed. For this reason, we are of the opinion that there is no need to adjudicate on merits the challenge in the writ petition or to, after allowing the appeal, remand the writ petition to the learned Single Judge for decision

afresh.

18. At the same time, we feel that may be, if the learned Single Judge had on 14th July, 2009 not accepted the unilateral offer of the respondent No.1 / writ petitioner, the respondent No.1 / writ petitioner may have pursued the writ petition further. Giving benefit of doubt and having heard the counsels, we chose to adjudicate on merits the challenge made in the writ petition. We clarify that we have chosen not to remand the matter to the learned Single Judge, finding the *lis* to be nearly 30 years old, if not more, as would be evident from the discussion herein below.

19. The case of the respondent No.1 / writ petitioner in the writ petition was:

(i) that the respondent No.1 / writ petitioner and his wife Smt. Charanjit Kaur, both holding immovable property in their respective names in what came to be known as Pakistan, pursuant to partition of the country, upon migration, filed separate claims under the Displaced Persons Act;

(ii) that however the claims of the respondent No.1 / writ petitioner and his wife, though entitled in law to be separately dealt with, were wrongly clubbed, thereby resulting in payment of compensation to

them less than what they were entitled to;

(iii) that the respondent No.1 / writ petitioner upon coming to Delhi had occupied the subject property bearing No.XIII/12-16, New Qutab Road, Delhi which was subsequently declared as evacuee property and the respondent No.1 / writ petitioner started paying rent thereof to the Custodian of evacuee properties;

(iv) that the Northern Railways claimed title to the land underneath the said property and sought release thereof and the authorized Deputy Custodian vide order dated 12th October, 1955 held that the land underneath the property was not evacuee and directed the respondent No.1 / writ petitioner in occupation of the structure built over the said property to deal directly with the Northern Railways;

(v) that thus, while the land underneath the property was non-evacuee, in ownership of Northern Railways, the superstructure over the property was evacuee, vesting in the Custodian;

(vi) that the respondent No.1 / writ petitioner applied for fixation of standard rent of the property and which was fixed and since the respondent No.1 / writ petitioner had been paying rent in excess thereof, he became entitled to refund thereof;

(vii) that the respondent No.1 / writ petitioner being a displaced person, had a right under the Displaced Persons Act to transfer of the property in his occupation in his favour;

(viii) that Section 12 of the Displaced Persons Act empowered the Central Government to acquire any evacuee property for rehabilitation of displaced persons and the Central Government is “deemed to have acquired” the land underneath the said property also for the purposes of settling the respondent No.1 / writ petitioner, a displaced person, and ought to have transferred the superstructure of the said property which was already evacuee together with land deemed to have so acquired, to the respondent No.1 / writ petitioner at the prices prevalent in the year 1955;

(ix) that vide order dated 26th March, 1985 (supra which was impugned in the writ petition), the price of Rs.26,01,846/- was demanded from the respondent No.1 / writ petitioner for transfer of the land underneath the property and the remedies taken by the respondent No.1 / writ petitioner thereagainst (and order wherein were also impugned in the writ petition) did not meet with any success;

(x) that no opportunity was given to the respondent No.1 / writ petitioner before fixing the price;

(xi) that the price was to be computed not on the basis of the prevalent market price of 26th March, 1985 but the prevalent price of the year 1955 and out of the price of 1955 also, the amount paid by the respondent No.1 / writ petitioner in excess towards rent ought to have been adjusted.

20. We have perused the writ record annexed to the appeal. The same discloses:

(a) that the claims of the respondent No.1 / writ petitioner were verified and assessed on 24th October, 1951 and the claims of the wife of the respondent No.1 / writ petitioner were assessed on 18th April, 1951;

(b) that the said claims were settled; neither the respondent No.1 / writ petitioner has pleaded the date of settlement of claims nor is the same decipherable from Annexure P-4 to the writ petition but which certainly discloses that the claims were settled / adjusted; we can safely assume that it must be soon thereafter;

(c) that though the respondent No.1 / writ petitioner has pleaded

that by clubbing his claim with that of his wife, he / his wife were paid much less compensation than what was due but it is not their case that they took the remedies available in law thereagainst; again, neither there is any pleading nor has the respondent No.1 / writ petitioner filed any document to show that any grievance was raised about the claims having been wrongly assessed or having not been paid / adjusted / settled;

(d) that be that as it may, the challenge in the writ petition from which this appeal arises was also not with respect to the assessment of the claims or non-payment / non-satisfaction thereof; again, it can safely be assumed that the dispute with respect to the claims or their non-payment did not survive;

(e) that the Assistant Custodian (Judicial) vide order dated 2nd September, 1952 in a enquiry under Section 7(1) of the Displaced Persons Act held that Mohd. Yasin was the lessee of the Railways with respect to the subject land and had constructed the superstructure thereon and that the said Mohd. Yasin was an evacuee and the superstructure was evacuee property;

(f) that the Deputy Custodian vide order dated 29th May, 1956 held

that the Union of India (Railways) is the rightful owner of the subject property and accordingly ordered the de-notification of the said property, subject to the rights of the allottees;

(g) that vide notification dated 16th June, 1956, the said property was declared as a non-evacuee property and deleted from the list of evacuee properties; the said order has also attained finality and was not under challenge in the writ petition from which this appeal arises; there is also neither any plea nor anything on record that the respondent No.1 / writ petitioner otherwise challenged the order of de-notification of the property as evacuee property or protested against the same;

(h) that the respondent No.1 / writ petitioner filed as Annexure P-19 to the writ petition, an order dated 9th May, 1960 of the Settlement Commissioner and from which it appears that some part of the unpaid / unadjusted claim of the respondent No.1 / writ petitioner and his wife was being adjusted towards rent of the subject property; vide the said order, it was held that since with effect from 17th September, 1957, the respondent No.1 / writ petitioner had been asked to attorn in favour of the Northern Railways, the adjustment of unpaid

compensation from rent thereafter was wrong;

(i) that there is neither any plea nor any document to show the background on which the letter dated 26th March, 1985 supra was issued to the respondent No.1 / writ petitioner; vide the said letter, under Rule 87 of the Displaced Persons Rules, the land measuring 266 sq. yds. under the subject property was offered to be transferred to the respondent No.1 / writ petitioner on payment of the current price of Rs.26,01,846/- with upto date arrears of rent on the following terms and conditions:

(i) that the sum of Rs.26,01,846/- with upto date arrears of rent is deposited within 30 days;

(ii) that the respondent No.1 / writ petitioner surrenders physical possession of about 59 sq. yds. unauthorisedly encroached portion;

(j) the Settlement Commissioner vide order dated 30th September, 1985 supra in appeal preferred by the respondent No.1 / writ petitioner held, that the case being of transfer of property under Rule 87, any other matter except valuation could not be raised; the need for considering the challenge to valuation however did not arise since the

offer made to the respondent No.1 / writ petitioner in the letter dated 26th March, 1985 had since been cancelled and thus the appeal was infructuous;

(k) the Chief Settlement Commissioner in order dated 4th January, 1988 supra in the revision petition under Section 24 of the Displaced Persons Act preferred by the respondent No.1 / writ petitioner, held that the question of valuing the land under Rule 24, as was sought by the respondent No.1 / writ petitioner, did not arise as the land was offered to be transferred to the respondent No.1 / writ petitioner, under Rule 87, on the specific request of the respondent No.1 / writ petitioner; it was again held that since the respondent No.1 / writ petitioner had failed to avail the offer made vide letter dated 26th March, 1985, there was no merit in the revision petition;

(l) that it is recorded in the order dated 22nd July, 1993 of the Secretary, Land & Building that the Ministry of Rehabilitation had acquired the land underneath the property along with other land from the Railways with the purpose of setting up a shopping centre but could not do so because of the subject property being in occupation of the respondent No.1 / writ petitioner and eventually vide letter dated

26th March, 1985, the property was offered to the respondent No.1 / writ petitioner;

(m) that the offer made to the respondent No.1 / writ petitioner was, of sale of property of the Department as part of the compensation pool and not in adjustment of compensation and not by way of rehabilitation of a displaced person.

21. Rule 87 of the Displaced Persons Rules in Chapter XIV thereof titled “Procedure for Sale of Property in the Compensation Pool” is as under:

“87. Mode of sale of property—Any property forming part of the compensation pool may be sold by public auction or by inviting tenders or in such other manner as the Chief Settlement Commissioner may, by general or special order, direct.”

A reading of the aforesaid Rule leaves no manner of doubt that the sale thereunder has to be at market price only inasmuch as the mode of sale by public auction and tender are adopted to fetch a market price. This is also evident from Rules 88 to 90 following thereafter.

22. It was / is not the case of the respondent No.1 / writ petitioner that the price of Rs.26,01,846/- demanded from him was not the market price. However his case was / is that he was entitled to transfer in his favour at the price as prevalent in the year 1955 and not as prevalent in 1985.

23. The only question for adjudication therefore is, whether the appellants in the year 1985 were liable to offer the property to the respondent No.1 / writ petitioner at the price prevalent in the year 1955.

24. The respondent No.1 / writ petitioner admits that he would have been entitled to purchase the property at the prices of 1955, if the same was to be sold to him for satisfaction of the compensation assessed in his favour. Rule 24 of the Displaced Persons Rules which the respondent No.1 / writ petitioner invoked also so provides. However, to assert so, what the respondent No.1 / writ petitioner was required to establish was that the compensation payable to him had remained unsatisfied and was due to him and that the property had been offered to him in satisfaction of compensation. However that case the respondent No.1 / writ petitioner has neither pleaded nor proved. Though averments were made in the writ petition that less compensation was assessed by wrongfully clubbing the claims of the respondent No.1 / writ petitioner with separate claims of his wife but it is not the case of the respondent No.1 / writ petitioner that the same was challenged. The respondent No.1 / writ petitioner has also not pleaded / proved that even if the compensation assessed wrongfully remained unpaid, what steps were taken by the respondent No.1 / writ

petitioner therefor. Rather, the respondent No.1 / writ petitioner by filing the petition for fixing of standard rent, accepted his status in the property as that of a tenant and not that of a allottee. The respondent No.1 / writ petitioner after 30 years, when the property was offered to him under Rule 87, cannot be heard to revive 30 years old claims, even if remaining unsatisfied till then and which had become time barred by then. Rather, in Annexure P-4 to the petition referred to hereinabove, a reference is found to the compensation having been adjusted against a house at Patel Nagar and of which no reference whatsoever is made in the writ petition.

25. The counsel for the respondent No.1 / writ petitioner even in the hearing or in the written submissions has not addressed the said issues and has merely repeated the contents of the writ petition.

26. There is another aspect of the matter. At the time when the claims / compensation of the respondent No.1 / writ petitioner were being settled / adjusted, the subject property was not even evacuee property which could have been adjusted against the compensation; though at one time declared as evacuee property, the same had been de-notified as an evacuee property. Though as per the order of the Secretary, Land & Building, it was subsequently acquired but the date of acquisition is not available. The

respondent No.1 / writ petitioner in the writ petition pleaded that the same is “deemed to have acquired”. There is nothing to show that the property was acquired to settle the claims of the displaced persons as the respondent No.1 / writ petitioner. On the contrary, it is on record that the property was acquired along with other adjoining railway land for the purposes of development as a Shopping Complex and which purpose could not be achieved. The appellants cannot certainly be compelled to sell the said property against old dead claims, even if any of the respondent No.1 / writ petitioner as a displaced person. The respondent No.1 / writ petitioner, after allowing his claims, even if any remaining unpaid / unsatisfied, to have become stale, cannot on a subsequent independent offer for transfer being made, be permitted to revive the same.

27. We therefore on merits also, do not find any merit in the claim in the writ petition from which this appeal arises.

28. The counsel for the appellants in the written submissions has referred to certain judgments on the powers of the Court, while exercising the jurisdiction of judicial review but in the light of the above, need is not felt to refer thereto.

29. The appeal is accordingly allowed; the order dated 14th July, 2009 of

the learned Single Judge is set aside and the writ petition from which this appeal arises is dismissed.

30. In the light of the aforesaid facts, we also find the respondent No.1 / writ petitioner to have indulged in frivolous litigation and to have abused the process of the Court and as a result whereof he has perpetuated his possession of the property for the last nearly 30 years at least, if not more and owing whereto the plans of development of the subject land in accordance wherewith the subject land along with the adjoining land was acquired from the Railways, have also been aborted. We accordingly burden the respondent No.1 / writ petitioner with costs of Rs.50,000/- and also direct the appellants to now forthwith take steps in accordance with law for recovery of possession of the subject property from the respondent No.1 / writ petitioner / his heirs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 13, 2015
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