

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

+ **RSA No.132/2008**

% **18th October, 2016**

KISHAN LAL

..... Appellant

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Rajender Aggarwal, Adv.

versus

MOHD. IDRISH, DECEASED THROUGH HIS LEGAL HEIRS & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the one of the legal heirs of the deceased defendant in the suit against the concurrent Judgments of the courts below; of the Trial Court dated 3.3.1984 and the First Appellate Court dated 29.3.2008; by which the suit filed by the respondents/plaintiff for recovery of rent of Rs.324/- was decreed. Original plaintiff in the suit was one Mohd. Noor Khan who died *pendente lite* and his legal heirs being the present respondents were thereafter substituted in his place. The original defendant was one Sh. Kundan Lal who also expired during the

pendency of the suit and was substituted by his legal heirs and one of whom is the appellant in the present second appeal. For the sake of convenience reference in this judgment will be made to the appellant as defendant and respondents as the plaintiff. The other legal heirs of the deceased defendant are respondent nos.7 to 13 in the present second appeal.

2. The issue in the present case is with respect to the ownership of the suit property being H. no.VII/1786-B (Old) and new number 2893, situated in Mohalla Shah Ganj, Delhi. The case of the respondents/plaintiff was that the suit property which was owned by him was wrongly declared as an evacuee property and thereafter the same was accordingly held in favour of the plaintiff by the Order dated 30.4.1965 of the Deputy Custodian General of Evacuee Property. Defendant (now the appellant) was the tenant in the suit property who had purchased the suit property in terms of a registered Sale Deed dated 28.9.1968 (Ex.D1) executed by the Managing Officer under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short 'DPCR Act'). The Sale Deed though was dated 28.9.1968, but it was to be operative from 10.10.1955 inasmuch as by 10.10.1955 the defendant had cleared all payments which were to be made towards price of purchase of this suit property.

3. The following facts are not in dispute between the parties:-

- (i) The suit property was originally owned by the plaintiff.
- (ii) The suit property was wrongly declared to be an evacuee property at serial no. 9707 in the Gazette Notification of the Government of India dated 19.4.1949.
- (iii) Plaintiff had filed a claim for release of the suit property as it was wrongly declared as an evacuee property by the Gazette Notification dated 19.4.1949, but, the said claim was dismissed by the Order of the competent Authority dated 16.12.1950.
- (iv) In a challenge by an appeal filed against the Order dated 16.12.1950 of the competent Authority the appellate authority, though dismissed the appeal vide Order dated 11.7.1952, yet gave right to the plaintiff to seek release of the suit property and for having been wrongly declared as an evacuee property, in view of such right being provided by the provision of Section 16 of the Administration of Evacuee Property Act, 1950.
- (v) The proceedings initiated by the plaintiff under Section 16 of the Administration of Evacuee Property Act culminated in the Order dated 30.4.1965 of the Deputy Custodian General of Evacuee Property under Section 27 of the Administration of Evacuee Property Act releasing the suit property by declaring the same as not being an evacuee property.

(vi) There is a provision of Section 20-B of the DPCR Act which provides the position that even if a property is declared as a non-evacuee property, however, on account of circumstances which the government/competent authority thinks exist, then, instead of the ownership being given back of the property declared as non-evacuee property to the owner, the government/competent authority may instead grant monetary compensation to the owner whose property was wrongly declared as evacuee property. This provision existed because it was possible that between the period of declaring the property as an evacuee property and passing of the order releasing the property on the ground that it is not an evacuee property, third party rights may have come into existence. Section 20-B of the DPCR Act reads as under:-

“Section 20-B Restriction on restoration of certain property.”-(1) Where any person is entitled to the restoration of any property by virtue of an order made by the Custodian General under section 27 of the Administration of Evacuee Property Act, 1950 (31 of 1950), or by the competent officer or the appellate officer under the Evacuee Interest Separation Act, 1951 (64 of 1951), and the Central Government is of the opinion that it is not expedient or practicable to restore the whole or any part of such property to that person by reason of the property or part thereof being in occupation of a displaced person or otherwise then, notwithstanding anything contained in the said Act or this Act, it shall be lawful for the Central Government-

(a) to transfer to that person in lieu of the property to be restored or any part thereof, any immovable property in the compensation pool or any part thereof being in the opinion of the Central Government as nearly as may be of the same value as the property to be restored or, as the case may be, any part thereof, or

(b) to pay to that person such amount in cash from the compensation pool in lieu of the property to be restored or part thereof, as the Central Government, having regard to the value of the property to be restored or part thereof, may in the circumstances deem fit.

(2) Where in pursuance of sub-section (1) any person has been granted any immovable property from the compensation pool or has been paid any amount in cash from the compensation pool, his right, title and interest in the property to be restored shall be deemed to have been extinguished.”
(underlining added)

(vii) Because of the provision of Section 20-B of the DPCR Act, the competent Authority vide its Order dated 20.3.1968/Ex.DW3/7 ordered that instead of releasing the property to the plaintiff as a non evacuee property, the plaintiff should instead be paid monetary compensation and which was because the defendant had already paid complete price towards the suit property by 10.4.1964. This letter Ex.DW3/7 reads as under:-

“No.11-IV(13)/65-Prop.
Government of India
Ministry of Labour, Employment & Rehabilitation
(Deptt. of Rehabilitation)

New Delhi-11, the 20 March, 68.

To

The Custodian of Evacuee Property,
Jamnagar House,
Delhi.

Subject:-Property No.VII/1780-B/2893(new) Delhi payment of compensation.

Sir,

With reference to the correspondence resting with this office letter of even number dated 18.3.1967 and your letter no.MO/I-X/D-K/2133/8006 dated 17.5.67 on the above noted subject, I am directed to state that it has been decided to pay compensation to Shri Noor Mohd. and others under Section 20-B of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. You may therefore take further action in the matter accordingly.

Yours faithfully,
Sd/-
(R.C.Vazirani)
Section Officer

For under Secretary to the Govt. of India.”

(underlining added)

(viii) The letter Ex.DW3/7 was preceded by notes Ex.DW3/5 and Ex.DW3/6 which were of the years 1966-1967 whereby proposal had emanated to give the plaintiff only monetary compensation under Section 20-B of the DPCR Act. These notes from 4.3.1967 till 25.4.1967 are reproduced as under:-

“Sl. No. 30(R)

Please see notes on pages 2-7 ante.

The case was referred to CEP Delhi to intimate the present value of the property restored to Shri Noor Khan and others. The CEP has reported that the Asstt. Valuation Officer Delhi has re-examined the case and intimated to him that the valuation of Rs. 2336/- already assessed by him is correct and is as per the Schedule prevailing in 1958. He has given the details of his valuation as under:-

Land value (42 Sq. Yds.)	Rs.1680/-
Structure Value	Rs.656/-

He has therefore stated that the allegation of Shri Noor Khan and others that the property is worth Rs.15,000/- is baseless.

If approved, we may inform the applicant that his request cannot be acceded to. The value of the property as assessed at Rs.2336/- is correct.

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Shri Noor Khan and others moved an application dated 3.11.65 to the M(R) requesting that the property bearing Municipal No. VII/1786B (old)/2893(New, Mohalla Shah Ganj, Delhi, be restored to them and that the Custodian be directed not to transfer the said property. A report was called for from the Custodian. His report dated 5.1.66 is on page 32/0. The Custodian reported that the order releasing the property as non-evacuee property was passed by the DCG on 30.4.65 but before the passing of that order, the property had already been transferred in favour of Shri Kundan Lal, a displaced claimant, as acquired property for Rs. 2336, out of which a sum of Rs.365/- was deducted from his compensation on 8.12.62; another sum of Rs.1497/- was paid by the transferee in cash on 10.4.64 and the balance of Rs.473.38 is to be adjusted from the amount of excess rent already paid by the transferee. Thus, according to the custodian, the entire price had been paid by Shri Kundan Lal and only a conveyance deed remained to be issued in his favour. In this view of the matter, the Custodian recommended that the petitioners should be allowed compensation under Section 20-B of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, and that necessary steps were being taken by

the Managing Officer to pay compensation to them. He stated that the property could not be physically restored to the petitioners.

In their application dated 3.11.65, Shri Noor Khan and others had stated that the property was of the value of Rs.15,000/- and that it was being transferred for a sum of Rs.2336/- only. After discussions between CSC and JCSC, a further report was called for from the Custodian regarding the correct valuation of the property and whether Shri Kundan Lal had made any alteration or additions after the transfer of the property to him. The Custodian then in his report dated 14.4.66 on page 47/C reported that Shri Kundan Lal had made additions and alternations in the property to the extent of Rs.2,000/- in the year 1964-65. In his subsequent report dated 1.3.67 on page 123/C, he also reported that the value of the property was correctly assessed at Rs.2336/-.

In the above circumstances, the suggestion of the Custodian to pay compensation to Shri Noor Khan and others under Section 20-B of the Displaced Persons (Compensation & Rehabilitation) act, 1954, may be accepted, if so approved.

(RAJNI KANT)

8.3.67.

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The petitioners have stated that they have not asked for the physical possession of the property but only asked for symbolic possession and directing the occupants to pay rent to them may have refused that the tenants may be attorned to them.

In this connection SC(J)'s note dt. 8.3.67 on pages 14-16-/N may be seen. As the property has already been transferred to its sitting allottee, it was recommended to the RSC Delhi to pay compensation to the rentees u/s 20 -B of the DP(C&R) Act 1954 as physical or symbolic possession of the property was not possible. In this circumstances, the request of the applicants for symbolic possession cannot be acceded to. If approved we may give them a negative reply."

(ix) The Order of the competent authority dated 20.3.1968/Ex.DW3/7 was final as the same was not challenged by the plaintiff. Section 36 of the DPCR Act gives finality to the orders of the central government and bars the jurisdiction of the civil court to entertain a suit against the decision of the central government taken under the DPCR Act. The order under Section 20-B of the DPCR Act therefore could only

have been challenged by filing of a writ petition under Articles 226 and/or 227 of the Constitution of India by the plaintiff but the plaintiff did not do so. The Order dated 20.3.1968 Ex.DW3/7 therefore achieved finality and was binding on the plaintiff.

4. This appeal was admitted vide Order dated 5.5.2015 when the following substantial question of law was framed:-

“As to whether the findings, especially of the ownership of suit property, against the appellant, returned by the trial court vide judgment and decree dated 03.03.1984 and affirmed by the First Appellate Court on 29.03.2008 suffers from any perversity and if so to what effect?”

5(i) Learned senior counsel for the appellant has only argued one issue before this Court and which is that even if the Order passed under Section 16 read with Section 27 of the Administration of Evacuee Property Act dated 30.4.1965 is to be taken as final and the property is to be taken as released as non-evacuee property in favour of the plaintiff, yet, the fact of the matter is that the same would not give ownership of the suit property to the plaintiff for the reason that the competent authority being the Central Government vide its Order dated 20.3.1968/Ex.DW3/7 had decided in exercise of powers under Section 20-B of the DPCR Act that plaintiff instead of being restored of the suit property should only be given monetary compensation. This Order dated 20.3.1968/Ex.DW3/7 was passed in view of the fact that with respect to the suit property, before passing of the Order

dated 30.4.1965, the defendant had already paid complete price towards purchase of the suit property and was in fact also in possession thereof.

(ii) Reliance in support of the abovesaid argument on behalf of the appellant is placed upon the judgment of the Supreme Court in the case of *Abdul Qadir (Since Deceased) by Lrs.Vs. The Managing Officer-cum-Asst. Custodian of Evacuee Property and Ors. AIR 1980 SC 89* which holds that in spite of a certificate issued under Section 16 of the Administration of Evacuee Property Act, the central government can yet disallow restoration of the property and instead only pay compensation.

(iii) I completely agree with the argument urged on behalf of the appellant inasmuch as it is not in dispute that though the suit property was declared as non-evacuee property in terms of the Order of the competent Authority dated 30.4.1965, however, central government in exercise of its powers under Section 20-B vide order dated 20.3.1968/Ex.DW3/7 had decided to pay the plaintiff only compensation instead of restoring to the plaintiff ownership of the suit property and which becomes clear from the documents Ex.DW3/5 to Ex.DW3/7 and which have been reproduced above. Because of Section 36 of the DPCR Act there is finality to the order of the central government and no civil court can entertain a suit to challenge such an order issued by the central government. The only method for the plaintiff to have questioned the Order of the competent Authority dated *RSA No.132/2008*

20.3.1968/Ex.DW3/7 was by way of filing of a writ petition in this Court but admittedly the same was not done. The matter therefore necessarily has to rest there giving finality to the order dated 20.3.1968 by the competent Authority whereby the plaintiff was only to be granted compensation of the suit property and not be restored the ownership of the suit property.

6. In view of the aforesaid discussion, the substantial question of law framed is answered in favour of the appellant/defendant and against the respondents/plaintiff and thereby the impugned judgments of the courts below dated 3.3.1984 29.3.2008 are set aside and the suit filed by the respondents/plaintiff would stand dismissed. Parties are left to bear their own costs.

OCTOBER 18, 2016
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VALMIKI J. MEHTA, J