

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

+ **RSA No.159/2009**

% **8th August, 2016**

FATIMA SULTANA (SINCE DECEASED THROUGH HER LEGAL HEIR

..... Appellant

Through: Mr. S.K.Bhaduri, Ms. Kirti Parmar and
Mr. Prem Prakash, Advocates.

versus

MOHD. USMAN SINCE DECEASED THROUGH HIS LEGAL HEIRS

..... Respondents

Through: Mr. Puneet Bhatnagar, Advocate.

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 is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit. Reference to the plaintiff will include reference to the legal heirs of the plaintiff Fatima Sultana who has expired and is now represented by the appellant who is her legal heir. Fatima Sultana filed the subject suit seeking recovery of possession and mesne profits with respect to the property bearing no. 740 Kabadi Bazar, Jama Masjid, Delhi (situated on a plot of land admeasuring approximately 83 sq. yds) from the defendant Mohd. Usman, who has also expired *pendente lite* and is now represented by his legal heirs being the respondents herein.

2. The case of the plaintiff was that she had purchased the suit property from the Union of India, Ministry of Rehabilitation for a sum of Rs.9873/- vide a registered Sale Deed/Conveyance Deed dated 31.12.1963, Ex.PW5/1. It was claimed by the plaintiff that the defendant was in unauthorized occupation of the suit property, and therefore, suit for possession be decreed against the defendant and defendant be directed to pay mense profits.

3. The case of the defendant in the trial court was that he was a tenant in the suit property under the Ministry of Rehabilitation paying a monthly rent of Rs.8.50. Ownership of the plaintiff of the suit property is also denied and it was claimed that the plaintiff has got the suit property sold in her favour by using political pressure and the sale in plaintiff's favour was violative of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'the DPCR Act') and Rules framed thereunder.

4. Trial court, after pleadings were completed, framed the following issues:-

- "1. Whether the plaintiff is owner of the premises in dispute? OPP
2. Whether the defendant is in unauthorised possession of the suit premises? O.P.P.
3. Whether the defendant is a tenant of the suit premises at a monthly rent of Rs.8.50/- O.P.D.
4. Whether the plaintiff is entitled to recover any damage or compensation on account of wrongful use and occupation from the defendant and if so at what rate and for what period? O.P.P.
5. Whether the sale of the property in favour of the plaintiff is void & illegal as pleaded? O.P.D.

6. Whether the pleas covered by issue no.5 can be taken in this case?
O.P.D.
7. Relief.”

5. Trial Court vide its Judgment dated 23.2.1972 decided issue nos. 2 and 3 in favour of the plaintiff and held that the defendant never became a tenant of the suit property under the Ministry of Rehabilitation and that defendant therefore is in unauthorized possession of the suit property and hence liable to surrender the possession to the plaintiff. Issue nos. 1 and 5 were decided in favour of the plaintiff and against the defendant whereby it was held that Fatima Sultana had become owner of the suit property on account of the Sale Deed/Conveyance Deed dated 31.12.1963 issued in her favour by the Ministry of Rehabilitation. The various provisions of the DPCR Act were referred to by the trial court, alongwith the relevant rules under the said Act, to hold that there was a valid sale deed/conveyance deed in favour of the plaintiff and it was not correct as argued by the defendant that the property which formed part of compensation pool was not validly/legally sold to the plaintiff Fatima Sultana.

6. The First Appellate Court has, by its impugned Judgment dated 13.8.2009 set aside the judgment of the trial court and held that the rent receipts Ex.DW6/1 and Ex.DW6/2 stand proved by the defendant, and which are executed by the Ministry of Rehabilitation, thus showing that the tenancy was created of the suit property in favour of the defendant. The first appellate court

also has held that the provisions of the DPCR Act show that there is no valid transfer of title by the Ministry of Rehabilitation in favour of the plaintiff in terms of the Sale Deed/Conveyance Deed dated 31.12.1963 and various reasons were given by the first appellate court including of that the property under the DPCR Act could only be sold by auction or tender and not by private sale, and thus sale to plaintiff Fatima Sultana was illegal as it was not by public auction or by tender and that there was no proper order passed by the competent authority under the DPCR Act for the sale to be effected in favour of the plaintiff Fatima Sultana. The first appellate court has declared as void the Sale Deed/Conveyance Deed executed in favour of the plaintiff Fatima Sultana dated 31.12.1963.

7. This appeal was admitted for hearing by an Order of a learned Single Judge of this Court dated 23.3.2015 framing the following substantial question of law:-

“Whether the impugned judgment and decree passed by the first appellate court suffers from any perversity in the light of the evidence adduced before it.”

8. Before the appeal was admitted, a detailed Order was passed in this RSA on 23.1.2014 calling for the file of the Ministry of Rehabilitation, and which was essential to decide two aspects. Firstly, as to whether at all the rent receipts Ex.DW6/1 and Ex.DW6/2 issued in favour of the defendant by the Ministry of Rehabilitation have any correlation with the official record of the

Ministry of Rehabilitation thereby showing that the defendant was a tenant in the suit premises, with the second aspect to be determined from the official site as to whether the defendant Mohd. Usman was the son of Mohd. Ismail and which Mohd. Usman s/o Mohd. Ismail was the original rightful occupant of the suit property or was it that the defendant Mohd. Usman is son of Mohd. Sadiq and not son of Mohd. Ismail, and therefore, he was not the original occupant of the suit property, and would only have rights if the present defendant Mohd. Usman son of Mohd. Sadiq proved that the tenancy was created in his favour by the Ministry of Rehabilitation. This Order dated 23.1.2014 reads as under:-

“1. One of the issues which would arise in the present case would be as to whether the original defendant had been let out the suit property in his name prior to executing of the conveyance deed in favour of the appellant/plaintiff. Counsel for the respondents (legal heirs of the original defendant) argues that the competent authority can under Section 20(b) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 grant a lease and it is not necessary that property in compensation pool should only be given with respect to compensation which is awarded for evacuee properties left in Pakistan. Reliance is further placed upon Section 19 of the Act to buttress the argument.

2. Counsel for the appellants on the other hand argues that no tenancy was created in favour of the original defendant, and that the defendant was only a trespasser because he is taking advantage of his name being identical with the present Mohd. Usman, the occupier, who was actually the son of Mohd. Ismail whereas the defendant Mohd. Usman was the son of Mohd. Saddique. It is also argued on behalf of the appellants that there is nothing on record of the trial Court that even assuming there is no confusion of identity yet the lease was validly created in favour of the original defendant.

3. In my opinion, in the present case, there is ambiguity in the trial court record in view of insufficient evidence as regards the identity of the alleged original occupier/tenant Mohd. Usman, as also regards the fact that whether at all Mohd. Usman son of Mohd. Ismail or even Mohd. Saddique ever became a tenant of the Department of Rehabilitation. On the one hand two rent receipts have been proved by the defendant, which are of course disputed by the plaintiff, really creation of tenancy is a considered and deliberate act of a landlord which is the Department of Rehabilitation in this case. There is no record of creation of the tenancy in favour of Mohd. Usman whether as the son

of Mohd. Ismail or the son of Mohd. Sadique, except the above stated rent receipts.

4. There is also an issue as to whether defendant had claimed tenancy in his favour but that right was declined under Section 33 of the Act and which is shown by the statement of DW8.

5. I may hasten to observe that aforesaid observations made by me are only prima facie in nature with respect to the merits of the case, and only made for the purpose of passing of the present order which I am passing exercising my powers under Order 41 Rule 27 CPC read with Section 165 of the Evidence Act, 1872, by which a Court is always empowered at any stage to ensure that such evidence comes on record for clearing ambiguity, bringing about necessary clarity and to ensure that justice is done.

6. In my opinion therefore it is necessary that complete original file of the suit property bearing No.740 (Old No.436), Kabari Bazaar, Jama Masjid, Delhi which is lying in the Rehabilitation Department of the Ministry of Urban Affairs be summoned before this Court, and which file can clear various aspects which have to be determined in this appeal including the aspects which have been noted in the present order.

7. Accordingly, let the Department of Rehabilitation through its authorized official produce the file of the suit property in this Court on the next date of hearing. A copy of this order be given dasti to the counsel for both the parties so that this order can be served upon the concerned department of the Ministry of Rehabilitation or the relevant department including officer of the Regional Settlement Commissioner, Delhi so that the concerned official brings the file of the suit property on the next date of hearing.

8. List on 20th March, 2014.

9. Interim order to continue till further orders unless varied by the Court.”

9. Two issues are therefore required to be determined by this Court alongwith its sub-issues. The first issue is as to whether the defendant was a tenant in the suit property with the tenancy being created in his favour by the Ministry of Rehabilitation. The second issue is as to whether the Sale Deed/Conveyance Deed dated 31.12.1963 executed by the Ministry of Rehabilitation in favour of the plaintiff Fatima Sultana is a valid document or has been rightly declared by the first appellate court to be a void document.

10. The fact that the rent receipts Ex.DW6/1 and DW6/2 have been issued by the Ministry of Rehabilitation is an aspect which in my opinion cannot be disputed on behalf of the appellant. These documents are very much the documents which are shown as being issued by the Ministry of Rehabilitation, being printed by the Ministry of Rehabilitation and also bearing the stamp of the Ministry of Rehabilitation. In fact the rent Receipt, Ex.DW6/1 dated 22.2.1961 refers to an earlier Receipt dated 21.12.1960 issued in favour of the defendant by the Ministry of Rehabilitation bearing no. 321823. What has to be decided is that whether issuing of such rent receipts is conclusive with respect to creation of tenancy of the suit premises by the Ministry of Rehabilitation in favour of the defendant.

11. In order to decide this aspect the first document which would be relevant would be the Notings dated 12.8.1959 and 19.8.1959 alongwith the Statement of the defendant dated 12.8.1959. These notings and the statement of the defendant are part of the file produced by the Ministry of Rehabilitation pursuant to the Order of this Court dated 23.1.2014. These official notings are taken as a relevant document for the purpose of disposal of this second appeal inasmuch the Order dated 23.1.2014 was passed under Order XLI Rule 27 CPC read with Section 165 of the Indian Evidence Act, 1872. These Notings dated 12.8.1959 and 19.8.1959 read as under:-

“Government of India
Ministry of Rehabilitation

Office of the Regional Settlement Commissioner
(Management Wing)

Dated

Rent/I Fee at the rate of Rs.3/- per hundred sq. ft. be assessed.

Rent/I Fee therefore comes to Rs.8/8/- P.M.

I, therefore suggest that he may be charged at Rs.8/8/- P.M. as 1/Fee and be treated as an unauthorised occupant.

Mukesh Chandra
F.I.
12/8/59

AC(E) II may kindly see. Action at 'A' may please be approved and damages may be recovered.

I have prepared the challan charging Mohd. Usman at Rs.8/8/- PM from 1/59 to 3/59.

Mukesh Chandra
F.I.
19/8/59

Statement of Shri. Mohd. Usman S/o Mohd. Sadiq, resident of House No.XI/2523 New Kucha Baqa Wallah Ghas Ki Mandi Delhi, aged 32 years.

I occupied the damaged property bearing No.IX/740 new approximately Jan 1959. I have not paid rent to any body. I am prepared to pay its rent to custodian. Prior to my occupation no body was in occupation.

R.O. &A.C.
Sd/- (Urdu)
12/8/59

Mukesh Chandra
F.I.
12/8/59

While checking of status of property No. IX/436 Old IX/739-40 new, it came to light that portion bearing No.IX/740 new which was lying collapsed has been taken possession of by one Mohd. Usman S/o Mohd. Sadiq. I recorded his statement which appears above and also made enquiry which revealed that he took possession in the month of Jan 1959.

The space within is as under:

12' x 20'

8 x 18

384 sq. ft. ”

(emphasis is mine)

12. A reading of the Notings and the Statement of the defendant dated 12.8.1959 and 19.8.1959 does show that the defendant was found in possession of the suit premises in August, 1959 and he was assessed for payment of the license fee at eight rupees and eight annas i.e Rs.8.50 per month i.e payment of

Rs.8 and 8 annas (Rs.8.50) is not as rent. As per these aforesaid notings and taken alongwith the rent receipts, on behalf of the defendant it is argued that the same is conclusive of existence of tenancy in the suit property of the defendant. Is it so? In my opinion not. The reasons are given hereinafter.

13. A reference is firstly required to be made to the provisions of Section 19(4) of the DPCR Act and this Section 19 in its entirety reads as under:-

19. Power to vary or cancel leases or allotment of any property acquired under this Act—(1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.

(2) Where any person—

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub- section (1), or

(b) is otherwise in unauthorized possession of any evacuee property or any other immovable property forming part of the compensation pool; he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorized by such officer or corporation.

(3) If any person fails to surrender possession of any property on demand made under sub- section (2), the managing officer or managing corporation may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary.

(4) Where a managing officer or a managing corporation is satisfied that any person, whether by way of allotment or lease, is, or has at any time been, in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled, under the law under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that person, the

managing officer or the managing corporation may, having regard to such principles of assessment of rent as may be specified in this behalf by the Central Government, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed for the period for which the property remains or has remained in his possession:

Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard.

(5) Where any person is, or has at any time been, in unauthorised possession of any evacuee property acquired under this Act the managing officer or the managing corporation may, having regard to such principles of assessment of damages as may be specified in this behalf by the Central Government, assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard.” (underlining added)

14(i) Sub-Section 4 of this Section 19 of the DPCR Act is very important and it shows that even if a person is an unauthorized occupant, the Ministry of Rehabilitation, acting under the DPCR Act, is entitled to assess and require payment of rent by the unauthorized occupant. On account of the language of Section 19(4) of the DPCR Act once rent can be assessed and directed to be paid by a person who is not entitled to a property but is still found to be in possession, then merely because rent is charged from such a person would not mean that such a person would become a tenant in the property because the expression rent is used in Section 19(4) only to determine charges for use and occupation called as rent. This reasoning and conclusion of mine is buttressed by reference to the documents being the file Notings dated 12.8.1959 and 19.8.1959 and which clearly show that defendant was an unauthorized occupant and license fee and not rent was to be charged from him.

(ii) This aspect is also established beyond doubt from documents relied upon, filed and proved by the defendant himself in the trial court being the documents Ex.DW8/1 to Ex.DW8/3 and which are the office notings in the file of the Ministry of Rehabilitation. These notings were proved and exhibited before the trial court and the same read as under:-

“True copy of noting on C.S.C’s office file No.43(12)/Comp & Prop/62.

.....

Property No.IX/740 (New) about which Shri Sikander Bakht has written to Honourable Minister is an acquired evacuee property and is in possession of one Shri Mohd Usman. The access to this property is through property No.IX/739 (New) which was purchased by Shrimati Fatima Suleman (it should have been Sultana) in auction held under the orders of the Competent Officer. The sale deed was issued to her on 9.12.60 with the clear stipulation that the occupant of H.No. IX/740 (New) will have the right to access through H.No.IX/739. The latter property was put to auction on 19.10.1963 when it fetched the highest bid of Rs.6000/- against the reserve price of Rs.9827/- (it should have been Rs.9873/-). The bid was rejected as it was below the reserve price. The property will be included in the next sale programme which will commence after 9th January, 1964.

2. Shrimati Fatima Sultan approached us for transfer of property No.740 to her on the ground that it was not an independent property and was situated inside property No. 739 already purchased by her. She also contended that the property was situated in a predominantly Muslim area and that it should be transferred to her according to the policy of the Government. The matter was enquired into and it was found that the property was not situated in a predominantly Muslim area and therefore, the question of its transfer to her did not arise. The property cannot be transferred to her by negotiated sale as she is not in possession of it.

3. The occupant, Shri Mohd Usman s/o Mohd. Sadiq, has also requested for regularisation of his occupation and transfer of the property to him on the ground that he is a member of the Backward class and is the sole occupant of the property. He also contended that the property was situated in a predominantly Muslim area. This property was originally occupied by Mohd Usman s/o Mohd. Ismail who left the property in January, 1959 and thereafter the property came to be occupied by Shri Mohd Usman son of Mohd Sadiq. He is an unauthorised occupant and has not paid any rent to the Department. In the circumstances, the property cannot be transferred to him and the petition made by him u/s 33 of the Displaced Persons (C & R) Act, 1954 which is at page 27-28/C is, therefore, liable to be rejected.

4. The request of Smt. Fatima Sultan for transfer of property to her was examined by OSD (J), Shri Tara Chand Aggarwal, in his note dated 5.8.63 at page 20/ante when he observed that the only point in favour of transfer of property to her by negotiation was that there is right of passage over her house to the property in dispute and he accordingly suggested that the property might be transferred to her at the reserve price of Rs.9873. Shri Sikandar Bakhi was requested to intimate whether she was prepared to purchase the property at the above price and since there was no response either from Shri Sikandar Bakhal or Smt. Fatima Sultan, H.M.desired that the property should be put to sale. In this connection please see H.M.'s minutes dated 17.8.63 at page 21/ante.

5. The reserve price of the property is Rs.9,873/-. It fetched the highest bid of Rs.6,000/- in auction held on 19.9.63. The bid was, however, not accepted. The property is still available for transfer to Smt. Fatima Sultan if she is prepared to pay the reserve price of Rs.9873/-. If approved, we may again extend the offer to her.

Sd/Gobind Ram
23.11.63

ASC (P)
Dy. C.S.C.(P)

Sd/-H.R.Nair 26.11.63.

P.S. TO H.M spoke to me about this a few days ago. He may see. We may send a written offer to the lady and if she does not reply within 7 days, the property will again be put to auction. From what I can see, however, she is not willing to pay the reserve price.

Sd/N.P.Dube 27.11.63

Shri Sikandar Bakhat told me that Smt. Fatima Sultana is prepared to pay Rs.9873 for the property. The money will be deposited within two days.

Sd/- V.K.Harurey
19.12.63.

CSC

Sd/N.P.Dube
19.12.63

ASC(P)/RSC/Shri Vohra

MO to see for compliance. He should keep on his file relevant copy of noting. Thereafter this file is to be returned.

Sd. O.N.Vohra 20.12.63

True Copy Sd. Bishan Lal M.O.27.12.63.”

(emphasis is mine)

(iii) The aforesaid documents Ex.DW8/1 to Ex.DW8/3 show that no doubt possession of the suit property was of the defendant and that the original rightful occupant of the property was one Mohd. Usman son of Mohd. Ismail

and not the defendant Mohd. Usman son of Mohd. Sadiq. The defendant is specifically referred to in the document Ex.DW8/1 as an unauthorized occupant.

15. Therefore, mere fact that the defendant has in his favour receipts Ex.DW6/1 and Ex.DW6/2, when the same are read with the provisions of Section 19(4) of the DPCR Act and documents being the file Notings dated 12.8.1959 and 19.8.1959 and also the documents Ex.DW8/1 to Ex.DW8/3, it becomes clear that there is no creation of tenancy in favour of the defendant of the suit property but the rent receipts are merely charges collected for use and occupation by an unauthorized occupant being the defendant Mohd. Usman son of Mohd. Sadiq.

16. There is another reason for this Court to reach this conclusion because there is a stamp existing on the receipt Ex.DW6/1 that collection by the Ministry of Rehabilitation of rent as per the rent receipts will not amount to giving any status to the person from whom the rent is collected. This stamp exists because of the language of Section 19(4) of the DPCR Act which states that mere receiving of rent will not confer a status or any right, title or interest to an occupant of an evacuee property. Section 19(4) of the DPCR Act specifically uses the expression 'without prejudice' and this expression is found in the receipt Ex.DW6/1, and this aspect has been correctly noticed and so observed by the trial court in its judgment for holding that rent receipts Ex.DW6/1 and Ex.DW6/2 being without prejudice will not create any tenancy

right in favour of the defendant in the suit property. Also, merely because in the rent receipt Ex.DW6/1, there is shown existence of another rent Receipt dated 21.12.1960 numbered 321823 will not mean creation of tenancy because the said rent Receipt dated 21.12.1960 will obviously be a same type of document as Ex.DW6/1 and will be governed by similar observations already made in this para on account of the provision of Section 19(4) of the DPCR Act read with the notings of the Ministry of Rehabilitation dated 12.8.1959 and 19.8.1959 and the statement of defendant of the same date with the related documents being exhibited as Ex.DW8/1 to Ex.DW8/3.

17. In my opinion if there was a specific creation of tenancy rights in favour of the defendant, and which tenancy is different than the subject matter of Section 19(4) of the DPCR Act, then the file of the Ministry of Rehabilitation which has been produced pursuant of the Order dated 23.1.2014 would have shown as to creation of a tenancy in favour of the defendant but on the contrary the Notings dated 12.8.1959 and 19.8.1959 and documents Ex.DW8/1 to Ex.DW8/3 clearly show the defendant to be an unauthorized occupant and not a tenant of the Ministry of Rehabilitation. Creation of tenancy is differentiated from taking charges called as “rent”, and which “rent” is only an assessment charge paid under Section 19(4) of the DPCR Act for unauthorized occupation of a property of the Ministry of Rehabilitation. The Ministry of Rehabilitation is

entitled to assess and require such payment as per Section 19(4) of the DPCR Act.

18. In view of the aforesaid discussion this Court is in no manner of doubt that never was any tenancy created of the suit property in favour of the defendant by the Ministry of Rehabilitation finally because the 'rent' receipts relied upon by the defendant are those issued after and pursuant to the Notings and Order dated 12.8.1959 and 19.8.1959 which determine the status of defendant as an unauthorized occupant from whom the license fee is to be charged, secondly the "rent" talked of in the receipts are only charges for use and occupation from an unauthorized occupant as per the language of Section 19(4) of the DPCR Act and finally the use of expression 'without prejudice' in 'rent' receipt that no status of tenant is conferred. While on this aspect I would like to incidentally refer to the aspect that the plaintiff/appellant is already the owner of the property no.739, Kabadi Bazar, Jama Masjid, Delhi, and through which property there is entrance to the suit property bearing no. 740. Also when the suit property bearing no. 740 was put to auction it was put so on the condition that owner of property no. 739 will provide access to the owner of property no. 740 and thus the property no. 740 was treated as a property independent of property no. 739.

19. The second issue which is required to be addressed is as to whether the Sale Deed/Conveyance Deed in favour of the plaintiff dated 31.12.1963

Ex.PW5/1 is a void document as held by the first appellate court. For this purpose, in addition to reference to the already above mentioned documents Ex.DW8/1 to Ex.DW8/3, reference is also required to be made to various provisions of the DPCR Act as to under which authority a sale deed is executed, if it is executed then when does it have finality and whether the civil court at all can go into the finality of transfer of title by the Ministry of Rehabilitation to an allottee/person by execution of conveyance deed/sale deed in favour of such a person/allottee. I may note that 'allottee' means an allottee under the sale deed i.e a purchaser under the sale deed.

20. The following provisions of Sections 3, 12, 13, 14, 16, 17, 20, 22, 23, 24, 27, 33, 34 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rules framed under that Act are relevant:-

3. *Appointment of Chief Settlement Commissioner, etc.*—(1) The Central Government may, by notification in the Official Gazette, appoint a Chief Settlement Commissioner, a Joint Chief Settlement Commissioner,¹ and as many Deputy Chief Settlement Commissioners, Settlement Commissioners], Additional Settlement Commissioners, Assistant Settlement Commissioners, Settlement Officers, Assistant Settlement Officers and managing officers as may be necessary for the purpose of performing the functions assigned to them by or under this Act and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2) Subject to the provisions of this Act, the Joint Chief Settlement Commissioner,² all Deputy Chief Settlement Commissioners, Settlement Commissioners], Additional Settlement Commissioners, Settlement Officers and managing officers shall perform the functions assigned to them by or under this Act under the general superintendence and control of the Chief Settlement Commissioner.

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12. Power to acquire evacuee property for rehabilitation of displaced persons—(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub- section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in sub- section (1) in respect of—

- (a) all evacuee property generally; or
- (b) any class of evacuee property; or
- (c) all evacuee property situated in a specified area; or
- (d) any particular evacuee property.

(4) All evacuee property acquired under this section shall form part of the compensation pool.

13. Compensation for evacuee property acquired under this Act—There shall be paid to an evacuee compensation in respect of his property acquired under section 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan.

14. Compensation pool— (1) For the purpose of payment of compensation and rehabilitation grants to displaced persons, there shall be constituted a compensation pool which shall consist of—

- (a) all evacuee property acquired under section 12, including the sale proceeds of any such property and all profits and income accruing from such property;
- (b) such cash balances lying with the Custodian as may, by order of the Central Government, be transferred to the compensation pool;
- (c) such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State Government;
- (d) such other assets as may be prescribed.

(2) The compensation pool shall vest in the Central Government free from all encumbrances and shall be utilised in accordance with the provisions of this Act and the rules made thereunder.

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16. *Management of compensation pool*—(1) The Central Government may take such measures as it considers necessary or expedient for the custody, management and disposal of the compensation pool in order that it may be effectively utilised in accordance with the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may, for the purposes referred to in sub-section (1), by notification in the Official Gazette,—

(a) appoint such officers as it may deem fit (hereinafter referred to as managing officers); or

(b) constitute such authority or corporation, as it may deem fit (hereinafter referred to as managing corporation).

(3) Every managing corporation shall be constituted under such name and shall consist of such number of persons as may be specified in the notification, and every such corporation shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued;

Provided that one-third of the members of every managing corporation shall be non-officials.

17. *Functions and duties of managing officers and managing corporations*—(1) All managing officers or managing corporations shall perform such functions as may be assigned to them by or under this Act under the general superintendence and control of the Chief Settlement Commissioner.

(2) Subject to the provisions of this Act and the rules made thereunder, a managing officer or managing corporation may take such measures as he or it considers necessary or expedient for the purpose of securing, administering, preserving, managing or disposing of any property in the compensation pool entrusted to him or it and generally for the purpose of satisfactorily discharging any of the duties imposed on him or it by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(3) Any amount due to the Custodian in respect of any evacuee property acquired under this Act for any period prior to the date of the acquisition shall vest in, and be payable to, the Central Government and shall be recoverable by the managing officer or managing corporation from the person liable to pay the same.

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20. *Power to transfer property out of the compensation pool*—(1) Subject to any rules that may be made under this Act, the managing officer or managing corporation may transfer any property out of the compensation pool—

(a) by sale of such property to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person, whether the property is sold by public auction or otherwise;

(b) by lease of any such property to a displaced person or an association of displaced persons, whether incorporated or not, or to any other person;

(c) by allotment of any such property to a displaced person or an association of displaced persons whether incorporated or not, or to any other person, on such valuation as the Settlement Commissioner may determine;

(d) in the case of a share of an evacuee in a company, by transfer of such share to a displaced person¹ or any association of displaced persons, whether incorporated or not, or to any other person], notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913 .) or in the memorandum or articles of association of such company;

(e) in such other manner as may be prescribed.

(1A) For the purpose of transferring any property out of the compensation pool under sub- section (1), it shall be lawful for the managing officer or the managing corporation to transfer the same to a displaced person jointly with any other person or an association of displaced persons or otherwise.

(2) Every managing officer or managing corporation selling any immovable property by public auction under sub- section (1) shall be deemed to be a Revenue Officer within the meaning of sub- section (4) of section 89 of the Indian Registration Act, 1908 (16 of 1908).

(3) Where the ownership of any property has passed to the buyer before the payment of the whole of the purchase money, the amount of the purchase money or any part thereof remaining unpaid and any interest on such amount or part shall, notwithstanding anything to the contrary contained in any other law, be a first charge upon the property in the hands of the buyer or any transferee from such buyer and may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

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22. Appeals to the Settlement Commissioner—(1) Subject to the provisions of sub- section (2), any person aggrieved by an order of the Settlement Officer or a managing officer under this Act may, within thirty days from the date of the order, prefer an appeal to the Settlement Commissioner in such form and manner as may be prescribed:

Provided that the Settlement Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from an order of the Settlement Officer under section 5 if the difference between the amount of public dues as determined by the Settlement Officer and that as admitted by the applicant is less than one thousand rupees or such other amount not exceeding one thousand rupees as may be specified by the Central Government in this behalf, by notification in the Official Gazette.

(3) The Settlement Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit.

23. Appeals to the Chief Settlement Commissioner—(1) Subject to the provisions of sub- section (2), any person aggrieved by an order of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or a managing corporation under this Act may, within thirty days from the date of the order, prefer an appeal to the Chief Settlement Commissioner in such form and manner as may be prescribed:

Provided that the Chief Settlement Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from any order passed in appeal under section 22.

(3) The Chief Settlement Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit.

24. Power of revision of the Chief Settlement Commissioner—(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer an Assistant Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under sub- section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit.

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27. Finality of orders—Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceeding.

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33. 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.

34. Delegation of powers—(1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in the notification.

(2) Subject to the provisions of this Act and the rules and orders made thereunder, the Chief Settlement Commissioner may, by general or special order, delegate all or any of his powers under this Act to the Joint Chief Settlement Commissioner,¹ a Deputy Chief Settlement Commissioner], a Settlement Commissioner, an Additional Settlement Commissioner or an Assistant Settlement Commissioner, subject to such conditions, if any, as may be specified in the order.

(3) Subject to the provisions of this Act and of the rules and orders made thereunder, a Settlement Commissioner may, by general or special order, delegate all or any of his powers under this Act to an Additional Settlement Commissioner, an Assistant Settlement Commissioner, a Settlement Officer or an Assistant Settlement Officer, subject to such conditions, if any, as may be specified in the order.

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36. Bar of jurisdiction—Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.” (emphasis is mine)

21. Section talks of various officers appointed under the DPCR Act and who work under the control and supervision of the Chief Settlement

Commissioner. Sections 12 to 14 of the DPCR Act show as to how an evacuee property vests with the Government of India, and which property thereafter forms part of the compensation pool. Section 16 deals with measures to be taken by the Central Government for management and disposal of the properties forming part of the compensation pool including by appointing Managing Officers or vesting the compensation pool properties with a Managing Corporation. Section 17 clarifies that a Managing Officer or a Managing Corporation appointed as per Section 16 will work under the general superintendence and control of the Chief Settlement Commissioner. At this stage, it may be noted that the provision of Section 17 of Managing Officers and Managing Corporation working under the control and supervision of Chief Settlement Commissioner is a similar provision to Section 3 and more particularly its sub-Section 2 thereof that the Settlement Commissioner is all in all and he has complete authority to discharge all the functions or do every duty under the DPCR Act including of general superintendence and control. On account of huge quantity of work, in addition to the Settlement Commissioner, therefore various other officers are appointed and who work under the Settlement Commissioner and to which other officers various duties are delegated as per Section 34 of the DPCR Act. Section 19 is not discussed here as it has already been elaborated by me at the time of referring to the first issue. Section 20 sub-Section (i) (a) is relevant because it provides that the property forming part of compensation pool being the subject matter of control and

supervision by the Managing Officer or Managing Corporation, including the Settlement Commissioner as per Section 17, is sold by public auction **or otherwise**. Thus Ministry of Rehabilitation can sell the property forming part of compensation pool by a public auction or otherwise ie not only through public auction. The question is, what is the meaning of the word “or otherwise”.

22. Learned counsel for the respondents has placed reliance upon Rules 87 to 91 framed under the DPCR Act to argue that ‘otherwise’ can only mean by public auction or tender and that there cannot be sale by private negotiations of a property forming part of compensation pool. In order to appreciate the arguments urged on behalf of the respondents, I would only refer to Rule 87 inasmuch as the other Rules 88 to 91 provide for procedure and which type of persons are eligible to offer for purchase or the procedure for the public auction or tender. This Rule 87 reads 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.” (underlining added)

23 In my opinion the endeavour of the respondents/defendant to confine the entitlement of the Chief Settlement Commissioner and officers acting under him as per Sections 3, 17, 20 and 34 of the DPCR Act by arguing that a property in the compensation pool cannot be sold by private negotiations, is a wholly misplaced endeavour. If I accept the same, the same will amount to ignoring not only the expression “or otherwise” which is a very wide

expression, but also the clear language of Rule 87 which provides for sale by public auction or by tender or any other manner as directed by the Chief Settlement Commissioner or by special or general order. Putting it in another words, independent of sale of a property in compensation pool by public auction or tender, a property can be sold by private negotiations in terms of a special or general order of a Chief Settlement Commissioner. It is therefore not permissible for the respondents/defendant to argue that the suit property which has been sold by the private negotiations to the plaintiff is not a valid mode of transfer of title in the suit property to the plaintiff Fatima Sultana.

24. There is another reason why the argument urged on behalf of the respondents/defendant that the suit property is not validly transferred to plaintiff has to be rejected because I fail to understand as to what is the *locus standi* of the respondents/defendant to question the transfer of the title of the suit property by the Ministry of Rehabilitation to Fatima Sultana and that too which is done by a duly registered conveyance deed. If the government who is the owner of the property in the compensation pool, and ownership of government cannot be challenged in view of the provisions vesting under Section 12 of the DPCR Act, then surely without any doubt the defendant has no right to question the execution of the registered conveyance deed by the Ministry of Rehabilitation in favour of the plaintiff Fatima Sultana, once the Ministry of Rehabilitation in no

manner at any point of time has ever questioned the transfer of title by it to the plaintiff Fatima Sultana.

25(i) The issue can also be looked into in one another way that every person has a right to question a document by filing a suit seeking its cancellation under Section 31 of the Specific Relief Act, 1963. Admittedly, the defendant never filed a suit seeking cancellation of the registered Sale Deed/Conveyance Deed dated 31.12.1963 executed in favour of the plaintiff Fatima Sultana, and on a mere defence raised in the written statement also called as a counter claim, no decree could have been passed by the first appellate court for cancellation of a sale deed/conveyance deed in favour of the plaintiff Fatima Sultana. This is more so especially because there is no dispute that no court fee was ever paid on the counter claim and the defence in the written statement is not framed/pleaded in the nature of counter claim of a suit valuing such counter claim specifically for cancellation of the sale deed in favour of Fatima Sultana by the Ministry of Rehabilitation. Also, no such counter claim could have been filed by the defendant and adjudicated by the court without making the Ministry of Rehabilitation as a party to the suit.

(ii) I reject the argument urged on behalf of the respondents/defendant that it is enough that by a defence in the written statement a registered sale deed executed by the Ministry of Rehabilitation in favour of the plaintiff can be sought to be got declared as null and void more so when the Ministry of

Rehabilitation who transferred the property to the plaintiff never has questioned the Conveyance Deed dated 31.12.1963 and that the Ministry of Rehabilitation is not a party to the present suit.

26(i) There is yet another way in which the issue can be looked at and which is because of the provisions of Sections 27 and 34 of the DPCR Act. Section 27 provides that an order made by an officer or authority acting under the DPCR Act is final and will not be called in question in any court by filing either of an appeal or revision or by filing of an original suit or application or execution proceedings. We have seen the documents Ex.DW8/1 to Ex.DW8/3 and these documents make it clear that a specific order is passed by the Settlement Commissioner not only rejecting the claim of the defendant to the tenancy of the suit premises but more importantly allowing transfer of title of the suit property to the plaintiff Fatima Sultana noting that Fatima Sultana is prepared to pay Rs.9,873/- for the property. The last noting Ex.DW8/3 of the Settlement Commissioner who is the final authority under the DPCR Act talks of “MO to see for compliance” i.e giving finality to the transfer of title in favour of Fatima Sultana who had bid for the suit property in the auction but the auction could not succeed on account of the reserve price not being bid by Fatima Sultana. Merits of the decision of the competent authority to transfer title in favour of Fatima Sultana taken in the year 1963 cannot be undone by simply filing the written statement containing these averments in December,

1966, and which in any case cannot be done in a civil suit as per Section 27 of the DPCR Act. The only way in which such a decision Ex.DW8/1 to Ex.DW8/3 could have been challenged was by filing of a writ petition as filing of a suit is barred by way of Section 27 of the DPCR Act. I may note that defendant's claim is that he was never informed of the decision comprised in Ex.DW8/1 to Ex.DW8/3 but once during the pendency of the suit admittedly the decision of the Settlement Commissioner to sell the property to the plaintiff Fatima Sultana by private negotiations came to light, defendant had to challenge such a decision, but from the year 1966 till today in the year 2016 i.e now for about 50 years no writ petition has been filed by the defendant to question the order of the Settlement Commissioner comprised in the documents Ex.DW8/1 to Ex.DW8/3.

(ii) Whatever doubt remains is removed by Section 36 of the DPCR Act which provides that a civil court will not have any jurisdiction to entertain a suit or proceedings in respect of any matter which the central government or any officer or authority under the DPCR Act is entitled to determine, and once that is so, the decisions contained in Ex.DW8/1 to Ex.DW8/3 become final because at no point of time the defendant has challenged this decision to sell the suit property to plaintiff Fatima Sultana by filing of a writ petition in this Court.

27(i) I may at this stage note and dispose of an argument urged on behalf of the respondents/defendant by referring to his Letter dated 6.1.1962,

Ex.DW6/3. Though I have really failed to understand what could be an argument at all of the defendant on the basis of this letter but since an argument has been addressed on the basis of this letter, let me deal with the same. This Letter dated 6.1.1962 addressed by the defendant to the Managing Officer under the DPCR Act reads as under:-

“Before the Managing Officer, Ward No.IX, Delhi.

Subject: Transfer or Property No.IX/436 old/740 new, Near Jama Masjid, Delhi.

.....

Sir,

The above property is situate in the predominant Muslim locality of Jama Masjid, Delhi and is in lawful occupation of the petitioner as a tenant of the Department.

2. That the property was put to auction twice, but both times it was reported as a case of no bid.

3. That the petitioner besides being a Muslim occupant of the property, is also member of the Backward Classes being a Saqqa by caste.

Moreover the property having got demolished and having been reconstructed by the petitioner at his own cost, the petitioner is entitled to the transfer of the property by allotment at its reserve price, for the all three reasons stated below

(i) The property is situate in the predominant Muslim locality of Delhi and the petitioner is its lawful Muslim occupant.

(ii) The petitioner is a member of the Backward Classes.

(iii) The superstructure of a major part of the property belongs to the petitioner.

It is therefore prayed that the property in question may be ordered to be transferred to the petitioner at its reserve price and the petitioner may be issued a challan for the deposit of 1/5th cost of the property in cash, the balance to be paid by him by instructions, or by association of the claims of others in accordance with the Rules. The petitioner has already submitted a number of applications to this effect. It is requested that the matter may kindly be decided at an early date.”

(ii) On a query being put by the Court to the counsel for the respondents/defendant as to why this Letter dated 6.1.1962 is being referred, the counsel for the respondents/defendant argued that this letter showed the occupation of the defendant Mohd. Usman of the suit property with the fact that he was always ready to purchase the suit property. Let us take it so that by this letter defendant Mohd. Usman showed his willingness to purchase the property and was shown in the occupation of the suit property, but then so what. Merely wanting to purchase is different from becoming an owner inasmuch as the suit property in fact has been sold and transferred by the Ministry of Rehabilitation to the plaintiff Fatima Sultana vide Ex.PW5/1 dated 31.12.1963 and also that occupation of the defendant once is found as an illegal occupation the same will hence not confer any entitlement to remain in possession once the plaintiff/owner seeks possession of the suit property by means of the present suit. This argument urged on behalf of the respondents/defendant is also of no effect and hence rejected.

28. In view of the above discussion, the substantial question of law is answered in favour of the appellant/plaintiff holding that the courts below have committed a gross illegality and gross perversity in holding that defendant was a tenant in spite of the provision of Section 19(4) of the DPCR Act providing otherwise and which has been reproduced and discussed above. Also, the defendant is nobody to question transfer of title by the Ministry of

Rehabilitation in favour of the plaintiff Fatima Sultana and more so not before the civil court in this suit in view of the provisions of Sections 27 and 36 of the DPCR Act.

29. No other issue or aspect has been urged on behalf of the parties before this Court, except the aspects which have been discussed above.

30. I may note that this suit is pending since the year 1966 having been filed on 22.8.1966. Today, we are 50 years down the line and appellant is deprived of his entitlement to possession of the suit property. No doubt, litigation takes time in this country but in such litigation it is also necessary that when the same comes to an end, the successful party must be compensated. It is required to be noted that mesne profits only at the rate of Rs.75/100/- per month have been awarded by the trial court. It is therefore necessary that appellant/plaintiff be compensated by means of sufficient costs. While allowing the present appeal therefore I order that respondents will pay costs of Rs.2 lacs to the appellant as costs of the present litigation in this second appeal. Costs be paid within six weeks from today.

31. Accordingly, this second appeal is allowed by restoring the Judgment of the Trial Court dated 23.2.1972 and reversing the Judgment of the First Appellate Court dated 13.8.2009.

AUGUST 08, 2016
godara/ib/Ne

VALMIKI J. MEHTA, J