

Manohar Lal v. Financial Commissioner, Haryana and others
(J. M. Tandon, J.)

N.K.S.

Before J. M. Tandon, J.

MANOHAR LAL,—Petitioner.

versus

FINANCIAL COMMISSIONER, HARYANA AND OTHERS,—

Respondents.

Civil Writ Petition No. 1528 of 1978.

October 13, 1983.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Sections 24 and 33—Transfer of evacuee land—Agreement executed between the Managing Officer and the transferee—Transferee required to pay a sum of money by instalments—Agreement providing for resumption of possession by Managing Officer on a default in payment of any instalment—Transferee committing such a default—Managing Officer taking no action but referring the matter to Chief Settlement Commissioner—Commissioner declining to accept delayed payment and directing resumption of possession—Chief Settlement Commissioner—Whether had jurisdiction to pass such an order—Order—Whether ultra vires.

Held, that the Managing Officer on behalf of the President of India and the transferee had entered into agreement and in the event of default in payment of any instalment, the possession of the land could be resumed and the purchaser evicted therefrom in terms of the agreement. The order in terms of the agreement could be

passed by the Managing Officer. The Managing Officer did not pass any such order. The matter was referred to the Chief Settlement Commissioner who in the exercise of the powers under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 declined to grant permission to get the delayed instalment deposited by the purchaser. The Chief Settlement Commissioner had no authority to grant permission to get the delayed payment deposited by the purchaser and for this reason the Chief Settlement Commissioner could also not refuse to grant such permission. His order declining to grant permission in getting deposited the delayed instalment due from the purchaser is *ultra vires*.

(Para 3)

Petition Under Articles 226/227 of the Constitution of India praying that :—

- (a) *the records of the case may please be summoned for the proper disposal of the writ petition;*
- (b) *a Writ of Certiorari quashing the impugned orders of Respondents No. 1 and 2 be issued with the direction that the sale transaction of the area in dispute be finalised in favour of the petitioner after accepting the due instalment in accordance with law;*
- (c) *Any other suitable writ, order or direction which this Hon'ble Court may deem proper in the circumstances of the case be also issued;*
- (d) *Costs of this Writ petition be awarded.*

It is further prayed—

- (i) *that in the peculiar circumstances of the case, prior issuance of notices to the Respondents may kindly be dispensed with;*
- (ii) *that auction of the area in question and petitioner's dis-possession therefrom, be stayed till the final disposal of the writ petition.*

H. S. Wasu, Advocate with Manmohan Singh, Advocate, for the Petitioner.

G. L. Batra, Sr. D.A.G., Haryana, for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) Manohar Lal, petitioner applied for the transfer of evacuee urban agricultural land bearing Khasra No. 1838 (1 Bigha 10 Biswas)

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situate at Faridabad, District Gurgaon, as a lessee. His prayer was allowed by the Chief Settlement Commissioner in revision,—*vide* order dated April 15, 1966. He was consequently allowed the transfer of this land for Rs. 2,250. The petitioner deposited Rs. 450 and the balance of Rs. 1,800 was agreed to be paid in four annual instalments with first instalment falling due on August 17, 1967, and the remaining three on 17th of each succeeding year—*vide* agreement dated October 3, 1966 (P. 2). Paragraph 6 of the agreement P. 2 reads :—

“If the purchaser shall commit default in the payment of any instalment on the due dates or if the purchaser shall at any time fail or neglect to perform and observe any of the terms, conditions and covenants herein contained and on his part to be observed and performed, then and in any such case the vendor shall be at liberty by notice in writing forthwith to determine the agreement and will have the right to resume possession of the premises and evict the purchaser. The instalments paid shall be forfeited.

The petitioner paid the first three instalments but made default in payment of the last one of Rs. 450 which had fallen due on August 17, 1970. In about 1976, the petitioner approached the Naib Tahsildar (Sales), Gurgaon for permission to deposit the fourth and final instalment. The plea raised by the petitioner before Naib Tahsildar (Sales), Gurgaon, was that he had approached the office of Regional Settlement Commissioner, New Delhi for permission to deposit the fourth instalment and he was directed to approach the Tahsildar (Sales), Gurgaon, for the purpose. He approached the Tahsildar (Sales) but his prayer was not allowed being time-barred. The Naib Tahsildar (Sales) recommended to the Chief Settlement Commissioner, (Haryana) that necessary permission to get the fourth and final instalment deposited by the petitioner may be given with interest at the rate of 4½ per cent for the period the instalment remained due. The Chief Settlement Commissioner (Haryana),—*vide* order dated June 16, 1977, (P. 4) declined to accept the recommendation. The land was directed to be disposed of according to rules. The petitioner filed a petition under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act (hereafter the Act) against the order P. 4, which was dismissed *in limine* by the Financial Commissioner,—*vide* order dated March 10, 1978, (P. 5). The petitioner has assailed the orders P. 4 and P. 5 in the present writ.

(2) The learned counsel for the petitioner has argued that the Chief Settlement Commissioner, Haryana, had been delegated with the powers under section 24 of the Act. The delegated power under section 24 did not authorise the Chief Settlement Commissioner, (Haryana) to grant permission or to decline the same for depositing the instalments which had fallen due from the petitioner. The impugned order P. 4 passed by the Chief Settlement Commissioner (Haryana) being *ultra vires* is liable to be set aside. For the same reason, the order P. 5 passed by the Financial Commissioner under section 33 of the Act cannot be sustained. The contention of the learned counsel for the petitioner must prevail.

(3) The Managing Officer on behalf of the President of India and the petitioner had entered into agreement dated October 3, 1966, (P. 2). In the event of default in the payment of any instalment the possession of the land could be resumed and the purchaser (petitioner) evicted therefrom in terms of paragraph 6 of the agreement reproduced above. The order in terms of paragraph 6 of the agreement could be passed by the Managing Officer. The Managing Officer did not pass any order. The matter was referred to the Chief Settlement Commissioner, who in exercise of the powers under section 24 of the Act, declined to grant permission to get the delayed instalment deposited by the petitioner. The Chief Settlement Commissioner had no authority to grant permission to get the delayed payment deposited by the petitioner. For this reason, the Chief Settlement Commissioner could also not refuse to grant such permission. The impugned order of the Chief Settlement Commissioner (P. 4) declining to grant permission in getting the delayed instalment due from the petitioner deposited is *ultra vires*. It is liable to be set aside on this ground. The order of the Financial Commissioner (P. 5) passed under section 33 of the Act upholding the order of the Chief Settlement Commissioner (P. 4) can also be not sustained.

(4) In the result, the writ petition is allowed and the impugned orders P. 4 and P. 5 set aside. It will be open for the Managing Officer to decide the matter afresh in terms of paragraph 6 of the agreement dated October 3, 1966, (P. 2) after hearing the petitioner and according to law. No order as to costs.