

Charan Dass
Dogra and
others
v.
The Punjab
State and
others

Dua, J.

The result, therefore, is that this petition succeeds and allowing the same, we quash and set aside (i) the impugned order of respondent No. 2, dated 23rd May, 1965, declaring Kumari Chuneshwari Gaur as a co-opted member, (ii) the resulting impugned order, dated 24th May, 1965, by respondent No. 3, allowing Kumari Chuneshwari Gaur to exercise the right of vote in accordance with the order of the Deputy Commissioner, dated 23rd May, 1965, and (iii) the impugned election, held on 24th May, 1965. In the circumstances of the case, however, there would be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before P. D. Sharma, J.

SARAN DASS SON OF PT. BHIKU RAM,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 185-D of 1962

1965

August, 5th

Evacuee Interest (Separation) Act (LXIV of 1951)—S. 2(d)(i) Landlord—Whether a co-sharer with the occupancy tenant of the land.

Held, that a landlord cannot become a co-sharer with the occupancy tenant of the land as the rights of landlord are distinct from the rights of the occupancy tenant and at no stage the rights of one coalesce into the rights of the other. For a person to be called as a cosharer with another person in the land it is necessary that both the persons should have rights of the same character in the land. The rights of landlord and occupancy tenant in any parcel of the land can by no stretch of imagination be called as of allied nature; on the other hand, these are exclusive of each other.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to quash the illegal and ultra-vires order dated the 7th April, 1962, passed by respondent No. 1 rejecting the application filed by the petitioner under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1964 and for the issue of a Writ in the nature of Certiorari, Mandamus or any other appropriate writ.

BHAWANI LAL, ADVOCATE, for the Petitioner.

S. N. SHANKAR, DALJIT SINGH, D. K. KAPUR WITH MISS INDU SONI, ADVOCATES, for the Respondents.

ORDER

SHARMA, J.—This order will dispose of two civil writ petitions Nos. 185-D and 826-D of 1962, filed by (1) Saran Dass and (2) Amar Singh and another, under Articles 226 and 227 of the Constitution. Amar Singh and Parkash Chand, petitioners in writ petition No. 826-D of 1962 are also respondents in the other writ petition. Similarly Saran Dass petitioner in writ petition No. 185-D of 1962 is a respondent in the other writ petition. A few facts relevant for the disposal of these writ petitions may briefly be recapitulated. Shyama and Naul owned one-fourth share in the land comprising Khasra Nos. 44, 45, 435/47 and 48 situate within the urban limits of Siahagla, tehsil Sadar, district Mandi (Himachal Pradesh). They sold their share in it for Rs. 350 by registered sale-deed dated 30th September, 1953, in favour of Saran Dass, petitioner. The Revenue Authorities on the basis of this sale-deed sanctioned the necessary mutation (Annexure B) in favour of the vendee who got into physical possession of the land. Maru, a Muslim evacuee enjoyed occupancy rights in the above land. The Settlement Commissioner, Mandi, on a report submitted by the Managing Officer passed an order dated 5th April, 1961, selling the occupancy interest in the land as acquired evacuee property by negotiation in two equal shares to Shri Parkash Chand and Amar Singh petitioners for Rs. 5,900 each (Annexure D). Saran Dass felt aggrieved from the above order and filed an appeal before the Chief Settlement Commissioner. He alleged that occupancy rights of Maru in the land had not been declared as evacuee property. Therefore, neither the Managing Officer nor the Settlement Commissioner, or the Chief Settlement Commissioner had any jurisdiction to dispose of the same. He pleaded in the alternative that if the occupancy rights of Maru could be deemed to have been declared as evacuee property, then the entire property was composite as this term is defined in the Evacuee interest (Separation) Act, 1951, and so the Settlement Commissioner or the Chief Settlement Commissioner had no jurisdiction in the matter. The property could have been disposed of

Sharma, J.

Saran Dass
son of Pt.
Bhiku Ram

v.
The Union
of India
and others

Sharma, J.

by the Competent Officer, Mr. C. P. Sapra, Settlement Commissioner with delegated powers of Chief Settlement Commissioner dismissed the appeal but he was not happy on the indecent haste shown by the Settlement Commissioner in completing the whole transaction in a short period. He left this aspect of the matter open for examination by the Chief Settlement Commissioner on the executive side. Saran Dass was not satisfied with the order passed by Shri C. P. Sapra in the matter and he moved the Central Government under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, for proper redress but his petition there also brought no relief to him. The Central Government all the same set aside the sale of Maru's occupancy rights in the land in favour of Amar Singh and Parkash Chand by the Settlement Commissioner and ordered that those rights should be sold in public auction.

Saran Dass prays that the orders passed by the Settlement Commissioner, Chief Settlement Commissioner and the Central Government referred to above might be quashed because the land was composite property and could have been dealt with by the Competent Officer while exercising powers under the Evacuee Interest (Separation) Act, 1951, and that it could not have been dealt with by the Officers exercising powers under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. In his petition he had also urged that Maru's occupancy rights in the land had not been declared as evacuee property and so they could not have been acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and as such the three impugned orders were bad in law, but this plea was given up by his learned counsel at the time of arguments.

Amar Singh and Parkash Chand petitioners in the second writ petition No. 826-D of 1962 have prayed for setting aside of the order passed by the Central Government by which the sale of Maru's occupancy rights in the land in their favour was set aside and it was ordered that the same should be disposed of by public auction. The grounds urged by them were that transfer and sale of the occupancy rights in the same land by the Settlement Commissioner in their favour was not only permissible under the Rules but highly desirable inasmuch as it secured the

highest possible price for the land and thereby no loss to the compensation pool had been made out. They further contended that the Settlement Commissioner sold the land to them according to Rules and not in any arbitrary manner.

The Union of India and the Chief Settlement Commissioner-respondents maintained that, the land in question was not a composite property as this term is defined in the Evacuee Interest (Separation) Act, 1951, and so Saran Dass Petitioner was not justified in pleading that the Officers in the exercise of powers under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, could not dispose it of. They further averred that the Central Government very correctly ordered auction of the occupancy rights in the land as is provided in Rule 87 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. According to them the order passed by the Central Government was within law and hence it could not be questioned in the present proceedings.

The term "Composite property" has been defined in clause (d) of section 2 of the Evacuee Interest (Separation) Act, 1951, as:

- "2. (d) "Composite property" means any property which, or any property in which an interest, has been declared to be evacuee property or has vested in the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950) and—
- (i) in which the interest of the evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other person, not being an evacuee; or
 - (ii) in which the interest of the evacuee is subject to mortgage in any form in favour of a persons, not being an evacuee; or
 - (iii) in which, the interest of a person, not being an evacuee, in subject to mortgage in any form in favour of an evacuee; or
 - (iv) in which an evacuee has such other interest jointly with any other person, not being an evacuee, as may be notified in this behalf by the Central Governmnet in the Official Gazette."

Saran Dass
son of Pt.
Bhiku Ram

^{v.}
The Union
of India
and others

Sharma, J.

Saran Dass
son of Pt.
Bhiku Ram
v.
The Union
of India
and others

Sharma, J.

The learned counsel for Saran Dass petitioner urged that his case fell within sub-clause (i) of the above clause (d) as in his opinion the word "co-sharer" therein had a very wide meaning. He wants me to hold that Saran Dass by acquiring one-fourth share in the landlord's right became a co-sharer with the occupancy tenant of the land. This, in my opinion, is not plausible because the rights of the landlord are totally distinct from the rights of the occupancy tenant in the land and at no stage the rights of one coalesce into the rights of the other. Further, if the interpretation put by the learned counsel to the word "co-sharer" is accepted, then sub-clauses (ii), (iii) and (iv) of clause (d) become redundant because the mortgagor and the mortgagee both have interest in the land though not of an identical character but still they could be termed as co-sharers according to him. In that event, there was hardly any occasion for including their cases in clauses (ii) and (iii) as has been done. For a person to be called as a co-sharer with another person in the land it is necessary that both the persons should have rights of the same character in the land. The rights of landlord and occupancy tenant in any parcel of land can by no stretch of imagination be called as of allied nature; on the other hand these are exclusive of each other and that being so, Saran Dass petitioner and the occupancy tenant could not be called as co-sharers in the land in dispute. His writ petition is thus devoid of all merits.

The petition put in by the other two, namely, Amar Singh and Parkash Chand, similarly has no force. The Settlement Commissioner by his order dated 5th April, 1961, noted that five persons only had applied for purchase of the land. The two petitioners were considered as the most deserving out of the lot by him. On this assumption he proceeded to transfer the land in equal shares in their names on payment of Rs. 5,900 by each. Shri C. P. Sapra, Settlement Commissioner with delegated powers of Chief Settlement Commissioner in his order dated 27th May, 1961, which he passed in appeal against the order of the Settlement Commissioner observed that the whole transaction had been completed in an indecent haste and that it was not clear as to why the land was withdrawn from auction particularly when none of the five claimants had any rights to get the land transferred in his favour. But he declined to upset the order under appeal because in

his opinion this aspect of the matter could best be looked into on the executive side. Shri S. Pershada, Deputy Secretary, who heard the revision put in by Saran Dass under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, against the order of Shri C. P. Sapra after carefully examining all the circumstances of the case unhesitatingly came to the conclusion that the best way to dispose of the land would be by auction. This order indeed he could pass under Rule 87 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which provides:—

Saran Dass
son of Pt.
Bhiku Ram

v.
The Union
of India
and others

Sharma. J.

“87. 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, be general or special order, direct.”

The order passed by the Central Government was within the powers vested in it under the law and as such cannot be impugned in these proceedings. I would like to mention here that the Central Government exercised its discretion in the best interest of the compensation pool and not in a perverse manner.

For the above reasons, the two civil writ petitions are dismissed but the parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before Chief Justice D. Falshaw and Mehar Singh, J.

MOHAN LAL AND OTHERS,—*Appellants.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

(L. P. A. 110 of 1965)

Punjab Town Improvement Act (IV of 1922)—Ss. 1 and 4—Improvement Trust—Whether can be created for a municipal area when the Municipal Committee has been suspended—Municipal Committee constituted and thereafter Improvement Trust dissolved—Another Improvement Trust—Whether can be created when the

1965

August, 17th