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eviction and cannot remain in possession as tenants. The petition is, accordingly, accepted with costs. The respondents are, however allowed three months' time to hand over the possession of the premises to the petitioners.

It may be mentioned that Mr. Raj Kumar Aggarwal has contended in the course of arguments that no order calling upon the tenant to remove the structures or the machinery installed thereon can be passed by the Rent Controller or the Appellate Authority. It is needless to go into this matter as such an order would enure for the benefit of the tenant, and if the tenant does not wish to avail of that concession, he is at liberty to ignore that part of the order. I would thus make it clear that if the respondents wish to remove the structures and the machinery installed by them on the rented land, they will be at liberty to do so and should remove the same within the period of three months allowed to them by this order, but if they do not wish to avail of this concession, it would not affect the right of the petitioners to take possession of the premises.

R. N. M.

LETTERS PATENT APPEAL

Before S. B. Capoor and Shamsher Bahadur, JJ.

RAM CHANDER,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No 298 of 1966

November 13, 1967

Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 34—Constitution of India (1950)—Article 299(1)—Acquired evacuee properties in the compensation pool—Transfer of to the Punjab Government as “package deal”—Such transfer—Whether to be effected by instrument of conveyance under Article 299(1)—Package deal properties—Whether completely transferred to the Punjab Government—Settlement authorities—Whether can pass any orders in relation thereto—Sale of such properties by the Punjab Government—Whether can be set aside.

..

Held, that the provisions of Article 299(1) of Constitution of India are meant to safeguard the interests of the Government and there can be contracts which though not executed in the form contemplated in Article 299(1) are all the same binding on the parties concerned. Under Rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules the Central Government is competent to make a disposal or transference of the properties under the compensation pool in whatever manner it feels disposed. Under the "package deal" the Punjab State obtained surplus acquired evacuee properties from the Central Government as financial arrangement between the two Governments *iter se* by means of a letter, for which no instrument of conveyance under Article 299(1) of the Constitution was necessary. The transference was made under the statute itself and the provisions of Article 299(1) are not applicable in a transaction like this.

Held, that the "package deal" has the effect of transferring the property from the Central Government to the Punjab State and the logical result which flows from it is that the Settlement authorities as delegates of the Central Government could not pass any orders under the Displaced Persons (Compensation and Rehabilitation) Act.

Held, though after the "package deal", clause (4) of rule 92 of the displaced Persons (Compensation and Rehabilitation) Rules, empowering the Settlement Commissioner to set aside any sale if he is satisfied that any material irregularity or fraud in the conduct of sale has resulted in substantial injury to any person, stood abrogated, yet the rules promulgated by the Punjab Government itself in respect of such sales justify that such a sale can be set aside.

Letters Patent Appeal Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice P. C. Pandit passed in Civil Writ No. 2417 of 1965, decided on 9th August, 1966.

PITAM SINGH JAIN AND N. C. JAIN, ADVOCATES, for the Petitioner.

C. D. DEWAN FOR THE STATE, D. C. GUPTA AND M. R. AGGARWAL, ADVOCATES, for other Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This is an appeal under clause 10 of the Letters Patent from the judgment of Pandit, J., who dismissed the writ petition of Ram Chander appellant on 9th of August, 1966.

The facts, on which there is no dispute, are these. In village Ram Nagar of Thanesar tehsil, certain evacuee lands were put to auction.

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We are concerned in this appeal only with two lots; one measuring 1 acre 6 kanals and 8 marlas was sold as Lot No. 2 for Rs. 1,075 in open auction to Bhushan Chand and his brother Rulia Ram, respondents 4 and 5 respectively, on 14th May, 1963. On the same day another parcel numbered as Lots Nos. 4 and 5 measuring 10 acres 5 kanals and 17 marlas was sold to the same respondents for a sum of Rs. 2,750. Objections were filed by various persons including the appellant. It seems that the objectors were required to deposit some amount before the confirmation of sales. The sales, however, were confirmed on 6th of July, 1963. The objectors, including the appellant, took the matter before the Settlement Officer (Sales) who passed an elaborate and detailed order in their favour on 29th of July, 1963. This order was, however, set aside subsequently by the Settlement Commissioner, Punjab on 11th of October, 1965, on the ground that the respondents who had been adversely affected by it had not been heard. Thereafter, two of the objectors, including the appellant, filed separate revision petitions before the Settlement Commissioner, both directed against the orders of confirmation of sales made on 6th of July, 1963. The appellant before this functionary made a statement on 4th of November, 1963, that he was prepared to make a bid of Rs. 6,000 for land covered by lots 4 and 5 which had been sold to respondents 4 and 5 for a sum of Rs. 2,750. With regard to the other parcel of land covered by lot No. 2, he made an offer of Rs. 2,500 against the sum of Rs. 1,075 for which it had been sold in favour of respondents 4 and 5. Earlier on 29th of July, 1963, the Settlement Officer (Sales) had also set aside the sales at the instance of the appellant who had made similar offers before him that day, though for lesser amounts, and in pursuance thereof a consolidated sum of Rs. 5,200 had actually been deposited. The Settlement Commissioner, in his order of 4th November, 1963 (Annexure C), while holding that the higher bids of the appellant in themselves did not constitute a ground for setting aside the sales, allowed his petition for revision for the reason that material irregularity had been committed inasmuch as the notice of sale which was to be issued 15 days before the date of the sale, did not include the lands which were being put to auction and whose sale was confirmed by the Tehsildar (Sales) on 6th of July, 1963. In the words of the Settlement Commissioner:—

"It is therefore, clear that at the time of publication, certain Khasra numbers were published to be auctioned which in fact did not exist.....I feel that this is a material irregularity which coupled with a substantial higher initial

bid of Shri Ram Chander objector, should be sufficient to hold that the sale of two lots made in favour of the respondents is liable to be set aside."

In the result, it was directed that the land should be put to re-auction and the first bids of Lot No. 2 and lots 4 and 5 were to be of Ram Chander for Rs. 2,500 and Rs. 6,000 respectively. Should the petitioner fail to make these bids the sum of Rs. 5,200 which had been deposited by him "shall stand forfeited".

Aggrieved by this order passed on 4th of November, 1963, by the Settlement Commissioner (Annexure C), respondents 4 and 5 moved this Court for the issuance of a writ of *certiorari* under Articles 226 and 227 of the Constitution. An assertion was made in this petition that the State Government had made certain rules for the sale of lands and these had been fully complied with. It was mentioned in sub-paragraphs (e) and (f) of paragraph 11 that the Settlement Commissioner under these rules had the power to rectify errors or mistakes and also to withhold the confirmation of sale if any material irregularity had been committed in its publication or conduct. It may be mentioned in passing that the State Government in its written reply acknowledged the existence of such rules by saying that the contents of paragraph 11 as also of sub-paragraphs were admitted. In the writ petition which kept pending in this Court for some time, Mr. D. S. Nehra, counsel for the respondent State made a statement on 29th of July, 1965, before Gurdev Singh, J., that "on reconsideration of the matter the Government have decided not to interfere in the sale of the land already made in favour of the petitioners Bhushan Chand and Rulia Ram. In view of these instructions which are reproduced in Annexure 'D', a letter from the Deputy Secretary to Punjab Government, to Mr. D. S. Nehra of 28th July, 1965, Gurdev Singh, J., dismissed the petition as infructuous on 29th of July, 1965. Though the appellant Ram Chander was a party in this writ petition as a respondent, he was not present at the time when the statement was made by Mr. Nehra and the order of dismissal passed by Gurdev Singh, J.

As the sale of 6th of July, 1963, stood resuscitated in consequence of the order passed by Gurdev Singh, J., Ram Chander appellant filed the present writ petition, Civil Writ No. 2417 of 1965, in this Court alleging that the dismissal of Civil Writ No. 2264 of 1963, had

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worked into an injustice and the order had been passed without any information to him and behind his back. Pandit, J., dismissed this petition for two reasons, firstly, on the ground that the evacuee properties in the compensation pool having been transferred to the Punjab Government, the officials of the Central Government ceased to exercise any powers under the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter called the Act) and the orders passed by the Settlement Commissioner on 4th of November, 1963, had consequently become ineffective and inoperative, the powers of this authority, as a delegate of the Central Government having ceased to exist. The second ground on which the petition has been dismissed by learned Judge is that the appellant failed to appear before Gurdev Singh, J., to raise the objections which have now been raised. So far as the first point is concerned, it is common ground that the surplus evacuee land has been acquired by the Punjab State from the Central Government under what is called a 'package deal'. In the connected writ petition of *Banta Singh v. The Settlement Commissioner*, Civil Writ No. 402 of 1964, which had been heard along with this appeal, a letter from the Chief Settlement Commissioner addressed to the Secretary to Punjab Government, (Annexure R-1) of 3rd June, 1961, has been filed and there are reproduced in it the terms of this transaction. An area of about 80,000 standard acres of surplus land was sold by the Central Government to the Punjab Government at a flat rate Rs. 445 per standard acre. Likewise, surplus rural houses, tairs, ghair mumkin land and other land, which was not fit for cultivation, were transferred to the Punjab Government on specified terms. The entire price, of these properties was to be paid by the Punjab Government within a period of three years commencing from the 1st of April, 1961, in half-yearly instalments. The 'package deal' was described in an affidavit filed by the Deputy Secretary to Punjab Government as a financial arrangement between the two Governments *inter se* about the disposal of the acquired evacuee properties, for which no instrument of conveyance under Article 299 of the Constitution has been drawn up. It is not disputed that a considerable amount as the stipulated price of this property has been paid by the Punjab Government in six half-yearly instalments as contemplated in the agreement.

The learned Single Judge having taken the view that the package deal divested the Central Government and its officers of any authority over lands which had been transferred to the Punjab State has found that the orders of the Settlement authorities as delegates of the Government of India on which reliance has been placed by the appellant

are no longer binding or operative. Mr. Jain, on the other hand, submits that no instrument of conveyance having been executed under Article 299(1) of the Constitution and the package deal being only a financial arrangement the provisions of the Act continued to apply. It is to be observed that sub-section (1) of section 16 of the Act empowers the State Government to "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". In the Displaced Persons (Compensation and Rehabilitation) Rules there is a provision for transfer of properties in rule 34 and the date for each transfer is to be reckoned as provided for in the four sub-clauses. The relevant provision for our purposes is sub-clause (d) which says that :—

"Where any property is transferred to any person under this chapter, the property shall be deemed to have been transferred to him:—

- (a) * * * * *
- (b) * * * * *
- (c) * * * * *

(d) in any other case, from such date as the Central Government may, by general or special order, specify."

Under this provision it seems to us that the Central Government is competent to make a disposal or transference of the properties under the compensation pool in whatever manner it feels disposed and from the contents of the letter of 3rd of June, 1961, there seems to be no doubt that the Punjab Government had been made an owner of the evacuee properties and it does not seem to be disputed that the price of these properties had been paid off by April, 1963. It is futile in the circumstances to urge that Article 299(1) of the Constitution, by which "all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor and shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise", puts the transaction of 1961 outside the pale of consideration as the constitutional instrument had not been executed in due form. The transference was made under the statute itself, this being the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and it seems to us that the provisions of

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Article 299(1) would not be applicable in a transaction of this nature. In *Chatturbhuj Vithaldas v. Moreshwar Parasheram* (1), Mr. Justice Bose speaking for the Court, observed that :—

“The provisions of Article 299(1) were not inserted for the sake of mere form. They are there to safeguard Government against unauthorised contracts. If in fact a contract is unauthorised or in excess of authority it is right that Government should be safeguarded. On the other hand, an officer entering into a contract on behalf of Government can always safeguard himself by having recourse to the proper form. In between is a large class of contracts probably by far the greatest in numbers, which, though authorised are for one reason or other not in proper form. It is only right that an innocent contracting party should not suffer because of this and if there is no other defect or objection Government will always accept the responsibility”.

What is true of contracts between Government and individuals also holds good in the case of the present contract which was between the Central Government and the State of Punjab. The details of the transaction of transfer had been settled between the two Governments and these conditions set out in detail in the letter of 1961 have been fulfilled and the transaction completed. It has not been disputed that the entire amount due to the Central Government has been paid and it would be pointless in such a situation to contend that the transfer, not having been executed in the form envisaged in Article 299(1) becomes void and inoperative altogether. As Mr. Justice Bose observed, the provisions of Article 299(1) are meant to safeguard the interests of the Government and there can be contracts which though not executed in the form contemplated in Article 299(1) are all the same binding on the parties concerned. In our view, therefore, the package deal put an end to the ownership of the Central Government of the properties comprised in the compensation pool and the State Government thereafter had full authority to dispose them.

I had occasion to deal with this question sitting singly in *Lajja Ram Kapur v. Union of India* (2) and was of the view that the ‘package deal’ as a result of the memorandum of 10th March, 1961, resulted

(1) A.I.R. 1954 S.C. 236.

(2) A.I.R. 1963 Punj. 405.

in a transfer of the properties in the compensation pool from the Central Government to the State Government. Narula, J., in the referring order in Civil Writ No. 402 of 1964, which is being heard with this case, made reference to an unreported judgment of D. K. Mahajan, J. of 2nd March, 1964, in Civil Writ No. 918 of 1962 (3). No definite conclusion was reached by the learned Judge on this aspect of the case and it was said that the State Government having denied that the property had ceased to vest in the Central Government the question for determination did not arise. In this appeal, as well as in the connected writ petition, the existence of the 'package deal' has been admitted before us and all that is said on behalf of the Union of India and the State Government is that the legal consequences of this transfer do not justify the contention which has been raised that the orders passed by the authorities as delegates of the Central Government are not binding and operative. In our opinion, the package deal has the effect of transferring the property from the Central Government to the Punjab State and the logical result which flows from it is that the Settlement authorities as delegates of the Central Government could not pass any orders under the Act.

It follows, therefore, that though the order was passed by the Settlement Commissioner under the Act as a delegate of the Central Government, its validity would not be affected if it had been in contemplation of the Rules framed by the State Government governing such sales. As has been pointed out earlier, respondents 4 and 5 in Civil Writ No. 2264 of 1963 had themselves stated in sub-paragraphs (e) and (f) of paragraph 11 of the petition that the State Government had made certain rules for the sale of lands and the existence of these rules was impliedly admitted as the State Government had admitted the contents of this paragraph. It follows therefore, that the rules contemplated that the sale could be set aside if the authority concerned found, as has been done in the present instance, that the subject-matter of the sale was not actually included in the notice of sale. Mr. Jain is, therefore, right in his submission that though after the package deal clause (4) of

(3) C. W. No. 918 of 1962, decided on 2nd March, 1962.

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rule 92 of the Displaced Persons (Compensation and Rehabilitation) Rules, empowering the Settlement Commissioner to set aside any sale if he is satisfied that any material irregularity or fraud in the conduct of sale has resulted in substantial injury to any person, stood abrogated, yet the rules promulgated by the Punjab Government itself in respect of such sales justify the order which has been passed in favour of the appellant by the Settlement Commissioner as a delegate of the State Government.

The question still remains whether the appellant could challenge the order passed by Gurdev Singh, J. on 29th of July, 1965, dismissing the writ petition of respondents 4 and 5 as infructuous? It seems plain to us that the appellant having got the sale set aside and the sum of Rs. 5,200 paid by him in pursuance of his own higher bids still remaining in deposit with the Government, is and always had been vitally interested in the result of the petition filed by respondents 4 and 5. It is stated at the Bar that the appellant was represented by the late Mr. Shamair Chand who at the time of hearing was not well enough to be present in Court, when the case was taken up immediately after the instructions which had been received by Mr. Nehra a day earlier from the Government. The Government seems to have adopted a policy of non-interference with the sales which had already taken place and in furtherance of that policy instructed the counsel to submit to the Court that they would not object to the sale in favour of respondents 4 and 5 being upheld. In the setting and background of this case, we consider that it would be an act of manifest injustice if the sale is allowed to stand merely on the ground that the appellant failed to put an appearance before Gurdev Singh, J. In our view, the appellant has made good his case to have the sale of 6th of July, 1963, in favour of respondents 4 and 5 set aside, and we would accordingly, allow this appeal and direct that the authorities concerned should re-auction the properties in accordance with the directions which had been given in the impugned order of the Settlement Commissioner (Annexure C) passed on 4th of November, 1963. In the circumstances, there would be no order as to costs of this appeal.

S. B. CAPOOR, J.—I agree.

K.S.K.