

(10) On this aspect of the case, we are clearly of the view that the executive instructions and the constitution of the Internal Committee herein cannot be held as either supplementary to the rule or a mere filling of a gap therein. Consequently, the present case is one to which the ratio of *Sant Ram's case* (supra) is not at all attracted.

(11) In this judgment of affirmance, it is perhaps wasteful to elaborate the matter as it appears to us that the view taken by the learned Single Judge on merits is impeccable and does not call for the least interference. However, even independently, we have arrived at the conclusion that on the totality of the peculiar circumstances of this case, it must be held that the executive instructions had the effect of overriding and supplanting the power of appointment vested in the Commissioner. Once that is so, it is more than amply well settled that the mere executive instructions cannot possibly conflict with or override the provisions of statutory rules. The answer to the question posed at the out-set, therefore, must be rendered in the negative.

(12) In view of the above, the only issue now arising in this appeal has to be decided against the appellants. The appeal is without merit and is dismissed. However, in view of the relatively fair stand taken by the learned counsel for the appellants, we do not wish to burden the State with costs.

J. V. Gupta, J.—I agree.

S. C. K.

Before D. S. Tewatia, J.

DIAL CHAND and others,—*Petitioners*.

versus

HARI CHAND,—*Respondent*.

Civil Revision No. 1219 of 1977.

April 23, 1980.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 24—Sale certificate issued and conveyance deed executed—Chief Settlement Commissioner—Whether becomes functus officio—Such Officer—Whether can subsequently cancel sale certificate and conveyance deed.

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Held, that once a sale certificate and conveyance deed is made out, the Chief Settlement Commissioner does not become *functus officio* as his powers, are plenary in character and the said officer has the jurisdiction to set aside the sale and consequently recall the sale certificate and cancel the conveyance deed. (Para 12).

Petition under section 15 of East Punjab Urban Rent Restriction Act, 1949 for the revision of the order of the Court of Shri V. P. Aggarwal, District Judge (Appellate Authority) Hissar, dated 16th May, 1977 setting aside the order of Shri V. K. Klaushal, Rent Controller, Hissar dated 31st March, 1973 and dismissing the application for ejectment and leaving the parties to bear their own costs.

Prem Chand Mehta, Advocate and Hari Khanna, Advocate, for the Petitioners.

Jaswant Jain, Advocate, for the Respondent.

JUDGMENT

D. S. Tewatia, J. (Oral).

(1) This revision petition is directed against the order dated 16th May, 1977 of the appellate authority under the East Punjab Urban Rent Restrictions Act, 1949, hereinafter referred to as the Act, whereby it accepted the appeal of the tenant-respondent (hereinafter referred to as the 'tenant') and set aside the order of ejectment passed by the Rent Controller.

(2) The landlord-petitioners (hereinafter referred to as the 'landlord') had purchased in an auction held on 17th January, 1956 properties Nos. 109 to 122, which were evacuee properties and formed part of the compensation pool, being administered by the Rehabilitation Department in accordance with the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as the 'Rehabilitation Act', and the rules framed thereunder, and a sale certificate had been issued in their favour on 9th January, 1963, Exhibit P.W. 4/1. Later on, a corrigendum, Exhibit P.W. 4/2, was issued by said Department stating that property sold to the landlords in the said auction included property No. 108 as well. In the meantime, the tenant is said to have purchased property No. 108 from the Rehabilitation Department and conveyance deed was issued in his favour on 31st December, 1962.

Thereafter, the landlords made a representation that property bearing No. 108 was, in fact, a part and parcel of the property purchased by them in auction on 17th January, 1956. On this representation, Shri P. N. Bhanot, Settlement Commissioner with delegated powers of the Chief Settlement Commissioner,—*vide* his order dated 4th February, 1963, Exhibit PW4/3, held that the property bearing No. 108 was included in the area of properties Nos. 109 to 122, which had been purchased in auction from the competent officer by the representationists (that is, the landlords). He ordered that the area of property No. 108 be included in the area of properties Nos. 109 to 122 purchased by the said representationists (that is, the landlords) Shri O. N. Vohra, Settlement Commissioner with the delegated powers of the Chief Settlement Commissioner, by his order dated 5th January, 1965, Exhibit PW4/4, took action under section 24 of the Rehabilitation Act and accepted a reference made by the Department and set aside the sale as well as deed of conveyance issued in favour of the tenant regarding property No. 108 after complying with the requisite formalities of issuing a notice and of reasonable opportunity of being heard.

(3) The landlords have sought ejectment, *inter alia*, on the ground that the tenant, had failed to pay the arrears of rent.

(4) The tenant disputed the relationship of landlord and tenant by setting up his own ownership to House No. 108 situated in Mohalla Dogran, Block No. 18, Hissar, which is in dispute.

(5) The Rent Controller held that the relationship of landlord and tenant was established to his satisfaction and also further held that the tenant-respondent had failed to tender rent on the first date of hearing. He also found all other grounds in favour of the landlords, which are not relevant to the disposal of the revision petition.

(6) The appellate authority differed from the Rent Controller only regarding the question of relationship between the petitioners (landlords) and the respondent (tenant). The decision of this question turns on the determination of the fact as to whether the purchase of the property in dispute by the tenant Hari Chand, which admittedly was an evacuee property and formed part of compensation pool, stood valid on the date on which the petition for ejectment against him had been presented by the landlords.

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(7) The tenant has placed on the record Conveyance Deed dated 31st December, 1962 from the Rehabilitation Department, while the landlords have placed on the record the order of the Chief Settlement Commissioner dated 5th January, 1965, Exhibit PW4/4, cancelling the sale of the house in dispute in favour of the tenant, as also the conveyance deed dated 31st December, 1962. The appellate authority, on the strength of the Division Bench decision of this Court in *Lila Krishan and others v. Union of India and others*, 1970 P.L.R. 719, took the view that after the execution of the conveyance deed, the Rehabilitation Department, that is, the Chief Settlement Commissioner became *functus officio*, as thereafter the property went out of the compensation pool and no longer remained evacuee property to be dealt with by the Rehabilitation Department in any manner and held that the order of the Chief Settlement Commissioner, Exhibit PW4/4, dated 5th January, 1965 not being within his competence and jurisdiction, was null and void and of no effect. In the light of the said finding, the appellate authority held that the respondent continued to be the owner of the property in dispute, the consequence whereof was that the petitioners would not be the owners of the property in dispute, as there could not be two owners at the same time of the same property.

(8) Mr. P. C. Mehta, appearing for the landlord-petitioners, has urged that the appellate authority had taken absolutely a wrong view of the law and had wrongly interpreted the ratio of the Division Bench decision of this Court in *Lila Krishan and others' case* (supra).

(9) There is merit in what Mr. Mehta submits. That decision was given in a case where the facts were that the evacuee property had been sold and the sale-certificate had been given. Thereafter, the Rehabilitation authorities took steps under section 19 of Rehabilitation Act read with rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, hereinafter referred to as the Rehabilitation Rules, to dispossess the person who was an unauthorised occupant that the Rehabilitation Department having sold away the property, the same no longer continued to be in the ownership of the said Department and, therefore, his possession was good against everyone except the true owner — the true owner in that case being the person who had purchased the property from the Rehabilitation Department. In that case, the sale in favour of the party concerned stood intact and so long that position remained, that party alone continued to have any right over the property that was

in the possession of the unauthorised occupant and not the Rehabilitation authorities. The position would be otherwise when the order of sale in favour of the party itself is set aside by a competent authority under section 24 of the Rehabilitation Act.

(10) In *Bara Singh v. Joginder Singh and others*, (1), the facts were that the Chief Settlement Commissioner in exercise of powers under section 24 of the Rehabilitation Act cancelled the order of sale, as also the sale certificate. This order was assailed on the ground that once the sale certificate was granted, the purchaser became the full owner of the property and the said property no longer remained part of the compensation pool, with the result that the Rehabilitation authorities were left with no power over the said property and, consequently, the Chief Settlement Commissioner was not competent to cancel the sale certificate.

(11) This proposition did not find favour with the Bench and was repelled and it was held that the Chief Settlement Commissioner was competent to set aside the sale and quash the sale certificate or the conveyance deed, for the sale certificate or the conveyance deed had no independent existence. Once the sale was set aside, the sale certificate or the conveyance deed automatically became invalid.

(12) The view that found favour with the appellate authority in the present case and which had not found favour with this Court in *Bara Singh's case* (supra) was accepted by a Full Bench of Rajasthan High Court reported in *Partumal and another v. Managing Officer, Jaipur and others* (2). This led the case of *Smt. Balwant Kaur v. Chief Settlement Commissioner (Lands), Jullundur*, (3) to be referred to the larger Bench, which by a majority held that powers under section 24 of the Rehabilitation Act were plenary in character and the Chief Settlement Commissioner, under the said section, had the jurisdiction to set aside the sale and consequently recall the sale certificate. This view was upheld by their Lordships of the Supreme Court in *Mithoo Shahani and others v. The Union of India and others*, (4) and the view taken by the Full Bench of the Rajasthan High Court in the case of *Partumal and others* was expressly overruled.

(1) AIR 1959 Pb. 370.

(2) AIR 1962 Raj. 112.

(3) AIR 1964 Pb. 33.

(4) AIR 1964 S.C. 1536.

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(13) In view of the above discussion, it has to be held that the appellate authority incorrectly held that the order of the Chief Settlement Commissioner dated 5th January, 1965 was without jurisdiction and null and void.

(14) Once it is held that the landlord-petitioners were the owners of the property in dispute, the next question that arises for consideration is as to whether the respondent was the tenant on the property. An effort was made to show that he was not a tenant, as, in fact, he was an allottee from the Rehabilitation Department and was, therefore, a licensee. That contention was rightly negatived by both the Courts below. It was found as a fact that the respondent on his own admission was paying rent to the Rehabilitation Department. He could not have been an allottee, as he was not a displaced person.

(15) The moment it is held that the relationship between the Rehabilitation Department and the respondent was that of landlord and tenant, then after the purchase of the property in question by the landlord-petitioners they stepped into the shoes of their predecessor-in-interest, that is, the Rehabilitation Department *qua* the respondent and the respondent became tenant under the petitioners (landlord).

(16) It was, however, contended by Mr Jaswant Jain on behalf of the respondent that the respondent at one stage having purchased the property in dispute from the Rehabilitation Department, his status as a tenant of the Rehabilitation Department had come to an end and even if the sale of the property in question in his favour had later on been cancelled by the Chief Settlement Commissioner, his prior status as a tenant would not revert *qua* the Rehabilitation Department and consequently *qua* the landlord-petitioners as well.

(17) There is no merit in this contention as well. The moment the sale certificate in favour of the tenant of the house in question was cancelled by the Chief Settlement Commissioner, he reverted to his original status whatever it was. That status has been found to be that of a tenant. Hence, he reverted to the status of a tenant *qua* the Rehabilitation Department and consequently *qua* the landlord-petitioners.

(18) Now the only issue that survives is as to whether the landlord-petitioners had established any of the grounds on which they had sought the ejection of the respondent. The petitioners had sought

ejectment on many grounds, as already observed, but one ground that stands established concurrently pertains to the non-payment of arrears of rent. It has been held by both the Courts below that the arrears of rent were due and the same had not been tendered on the first date of hearing.

(19) Mr. Mehta does not rightly press his other ground for ejectment based on his personal necessity for the simple reason that the necessary ingredients of sub-clauses (b) and (c) of clause (i) of sub-section (3) of section 13 of the Act had not been specifically pleaded. He also does not press the remaining grounds of ejectment. In this view of the matter, the findings of the Court below on other issues are sustained.

(20) However, in view of the finding that the petitioners are the landlords and the respondent is the tenant under them and the respondent-tenant had failed to tender the arrears of rent on the first date of hearing, this petition has to be allowed and consequently the ejectment application has also to be allowed. I order accordingly. There would, however, be no order as to costs.

S. C. K.