

Naurang Lal
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I am, therefore, of the opinion that the imposition of a recurring fine at the stage of first conviction for the breach must be held to be illegal and, therefore, that part of the order of the Panchayat in this case must be set aside. In future in such case the course to be adopted by the Panchayat is to summon the offender from time to time if he has not removed the encroachment and continue imposing on him the recurring fine as it becomes due up to the limit prescribed in the section. The petition is, therefore, accepted to this extent.

A. N. GROVER, J.—I agree.

B.R.T.

REVISION CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

JAIMAL SINGH AND ANOTHERS,—*Petitioners.*

versus

GINI DEVI *alias* GINI BAI,—*Respondent.*

Civil Revision No. 330 of 1962.

1963
Sept., 26th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 29 and Displaced Persons (Compensation and Rehabilitation) Rules 1955—Rule 90—Auction-purchaser of evacuee property—When acquires title to property and becomes landlord qua tenants occupying that property—Whether on the date of sale or its confirmation or issue of sale certificate—When can he sue for eviction or tenant—From which date is he entitled to receive rent from tenant.

Held, that Rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and the form, Appendix XXII, indicate that the auction-purchaser is declared the purchaser of the property after his bid has been accepted and the value thereof has been paid by him either in cash or by adjustment of compensation. That date is mentioned in the sale certificate. The Form clearly prescribes that with effect from that particular date, the auction-pur-

chaser is declared to be the purchaser of the said property. This date has been generally taken to be the date of confirmation of sale and this is the date from which the auction-purchaser is said to have become the owner of the property. The sale certificate may be issued later on but effect to the sale would have to be given from this date. It follows, therefore, that such an auction-purchaser can file an application for the eviction of a tenant after this date and the protection to the tenant from eviction under section 29 of the Act for a period of two years is also from this very date. In other words, the order of eviction will be passed against the tenant only after the expiry of two years from this date, though the auction-purchaser may file an application for ejection before this date.

Held, that ordinarily the landlord will be entitled to recover rent from the tenant from the date he acquires title, but if in any particular case the Department authorises him to receive the same from an earlier date, then it is from that date that he would be able to recover the same.

Case referred by Hon'ble the Chief Justice Mr. D. Falshaw on 10th May, 1963, to a larger Bench for decision owing to the importance of the question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit, decided the case on 25th September, 1963.

Petitioner under Section 15(5) of the Act III of 1949 and Section 29 of the Displaced Persons (C & R) Act, 1954, for revision of the order of Shri S. C. Mital, District Judge, Hissar, dated the 26th April, 1963, affirming that of Shri Dev Bhushan Gupta, Collector, Sirsa, dated the 4th May, 1961, ordering the eviction of the petitioners from the premises in dispute and granting them three months' time to put the respondent Smt. Gini Devi in possession of the premises in dispute.

B. S. WASU, AND H. S. WASU, ADVOCATES, for the Petitioners.

GOKAL CHAND MITAL, AND N. C. JAIN, ADVOCATES, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—This is a tenant's petition against the order of the Appellate Authority confirming the decision of the Rent Controller ejecting them from the premises in dispute.

Smt. Gini Devi purchased these premises, which formed part of an evacuee house, in which the petitioners resided as allottees under the Custodian. The house was sold by public auction on 26th December, 1956. The sale was confirmed on 23rd November, 1957, and the sale certificate was issued on 30th May, 1961. In the meantime, on 18th June, 1960, she filed an application for the ejectment of these petitioners under the East Punjab Urban Rent Restriction Act on the grounds of personal necessity and some other grounds, which were not pressed before the Appellate Authority.

Both the Rent Controller and the Appellate Authority have decided the case in her favour.

Before the Appellate Authority, the petitioners, for the first time, sought to raise the defence that the house, of which the premises in dispute formed a part, was evacuee property and Smt. Gini Devi was not the owner thereof on the date when she filed the application for ejectment, because the sale certificate was issued to her on 30th May, 1961. It was also pleaded that they were protected by the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act), which prohibited their ejectment for a period of two years from the date of the transfer of the property in favour of Smt. Gini Devi. The Appellate Authority, however, did not allow them to agitate these grounds.

The tenants then filed a revision in this Court, which came up for hearing before Falshaw, C.J. The learned Judge was of the opinion that there was some conflict between the decisions of learned Single Judges of this Court on the question as to when could a landlord, who had purchased an evacuee property, takes steps to recover rent from or evict a tenant, who was in occupation as an allottee under the Custodian. Mahajan, J., in Civil Revision No. 524 of 1959 (*Ranjit Singh v. Anup Singh*), decided on 3rd August, 1960, held that the title in the property passed only on the issue of the sale certificate and the two years' protection given under section 29 of the Act only started from that date. On the other hand, there were decisions which took the view that in an auction-sale of evacuee property, the auction-purchaser could file an application for ejection two years after the date of the confirmation of sale in his favour, even though the sale certificate was issued to him some time later, because the sale certificate dates back to the date when the sale was confirmed. Reference in this connection was made to the learned Judge's own decision in *Mohar Singh v. Mool Chand* (1). In view of this conflict, the case was referred to a Division Bench for decision. That is how, this revision has been placed before us.

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I may mention that the learned counsel for the petitioners did not argue the point regarding personal necessity and did not challenge the finding of the Appellate Authority regarding the same. The only point that was taken by the learned counsel was the one which has been mentioned in the referring order.

It is note-worthy that the point on the basis of which the learned Single Judge has referred this case was not taken by the petitioners before the Rent Controller. If the same had been agitated there, all the

(1) 1963 P.L.R. 253.

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relevant facts would have come on the record. It is true that this point was raised before the Appellate Authority but he refused to go into this matter, because it could not be decided without taking additional evidence. The petitioners had neither challenged in the written statement the status of the respondent as the landlord of the premises nor had they raised the plea that they were protected under the provisions of section 29 of the Act, but since the learned Single Judge in this Court in revision permitted them to raise this point, we will decide this case on the facts which are admitted by the counsel for both the parties, namely, that the auction in favour of the respondent took place on 26th December, 1956, the sale was confirmed on 23rd November, 1957, the sale certificate was issued on 30th May, 1961, and the application for ejectment had been filed on 18th June, 1960.

The main point for decision is that in such a case when does the title in the property pass to the auction-purchaser? Is it from the date of the issue of the sale certificate or is it from the confirmation of the sale in favour of the auction-purchaser? I may at once state that the expression "confirmation of sale" does not occur in the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules). The procedure with regard to the sale of the property by public auction is given in Rule 90. Briefly, it is that first of all a proclamation of sale is issued, wherein various particulars of the property to be sold are mentioned. At the time of the sale, the person giving the highest bid has to deposit a sum not exceeding 10 per cent of the amount of his bid. This bid is subject to the approval of the Settlement Commissioner or an officer appointed by him for this purpose. Intimation of the approval of the bid or its rejection has to be given to

the highest bidder by registered post and where the bid has been accepted, he is required within 15 days of the receipt of that intimation to produce before the Settlement Commissioner or any other officer appointed by him for this purpose, a treasury challan in respect of the deposit of the balance of the purchase money. This period of 15 days can in suitable cases be extended. It may be mentioned that the balance of the purchase money can also be adjusted against the compensation, if any, payable to the auction-purchaser or against the compensation payable to any other person holding a verified claim, who is willing to associate himself with the auction-purchaser in the purchase of the property. If the auction-purchaser does not deposit the balance of the purchase money within the specified period, then the initial deposit made by him is liable to forfeiture and he shall not have any claim to the property. On the other hand, in a case, where the purchase price has been realised in full from the auction-purchaser, the Managing Officer shall issue to him a sale certificate in the form specified in appendix XXII or XXIII of the Rules, as the case may be. If the auction-purchaser is a displaced person and has associated with himself other displaced persons for purchasing this property, the sale certificate shall be made jointly in the name of all such persons and it shall also specify the extent of interest of each of them in the property. Appendix XXII is the form of the certificate of sale with regard to freehold properties. It is as follows:—

“APPENDIX XXII

Certificate of Sale.

Freehold properties

Rule 90 (15).

This is to certify that _____ having given the highest bid at a sale by public auction held in pursuance of the powers conferred upon me under

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section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), on the _____ day of _____ 195 , of the property described in schedule and his bid having been accepted and the value thereof having been paid by him in cash/by adjustment of compensation due on his/associates' claim has been declared the purchaser of the said property with effect from the _____ day of _____, 195 .

The property, the compensation of which has been adjusted against the value of this property was mortgaged with Shri _____, son of _____, in West Pakistan and or Shri _____, the purchaser had obtained a debt of Rs. _____ of Shri _____, son of _____, in West Pakistan. The said mortgagee/creditor has obtained a decree for Rs. _____ from the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951, the intimation of which has been received by the Chief Settlement Commissioner from the Tribunal concerned. The mortgagee/creditor would, therefore, have a lien over this property to the extent of mortgage charge/debt of Rs. _____, according to the provisions of the above Act, until the mortgage charge/debt is satisfied or is redeemed by the mortgagor/debtor.

Given under my hand and seal of my office, this _____ day _____ of _____.

SCHEDULE.

Signature

Name

Designation of the Officer."

This Rule and the form, Appendix XXII, would indicate that the auction-purchaser is declared the purchaser of the property after his bid has been accepted and the value thereof has been paid by him either in cash or by adjustment of compensation. That date is mentioned in the sale certificate. The Form clearly prescribes that with effect from that particular date, the auction-purchaser is declared to be the purchaser of the said property. In the present case, this date is 23rd November, 1957. Learned counsel for the petitioners however, submitted that this date was the date of the approval of the bid and, as such, the landlord could not be deemed to be the owner of the property on this date. It was only on the issue of the sale certificate, namely, 30th May, 1961, that she became the owner thereof. Thus, according to the learned counsel for the petitioners, the confirmation of the sale in favour of the auction-purchaser merely means the approval of the bid given by her. It is common ground that 23rd November, 1957, is the date mentioned in the sale certificate, with effect from which Smt. Gini Devi has been declared to be the purchaser of the property in dispute. Since this point, as already mentioned above, was not raised by the petitioners before the Rent Controller, it cannot be positively decided as to from which date the Department declares the auction-purchaser to be the owner of the property. Presumably, it is the date after he has paid the balance of the price on the bid having been approved by the officer concerned. This date has been generally taken to be the date of confirmation of sale in the various decisions of this Court. In my view, this is the date from which the auction-purchaser is said to have become the owner of the property. The sale certificate may be issued later on but effect to the sale would have to be given from this date. It follows, therefore, that such an auction-purchaser can file an application for the eviction of a

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tenant after this date and the protection to the tenant from eviction under section 29 of the Act for a period of two years is also from this very date. In other words, the order of eviction will be passed against the tenant only after the expiry of two years from this date, though the auction-purchaser may file an application for ejection before this date.

So far as the recovery of rent is concerned, ordinarily, the landlord would be entitled to recover rent from this very date, but if in any particular case the Department authorises him to receive the same from an earlier date, then it is from that date that he would be able to recover the same.

In *Bishan Paul v. Mothu Ram* (2), G. D. Khosla, C.J., held that the title in evacuee property put to auction by a competent officer passed when the sale was confirmed, because it was that date on which the auction-purchaser was recognised officially as the owner and was entitled to obtain possession of the property. When a sale certificate was issued, it dated back to the date when the sale was confirmed. Therefore, failure of the tenant to pay rent to the auction-purchaser from the date of confirmation rendered him liable to ejection. Similarly in *Harkishan Lal v. Bansi Lal* (3), the same learned Judge held that once the sale certificate was granted, the title to the auction-purchaser dated back to the date of the confirmation of the sale. This authority was followed by Shamsheer Bahadur, J., in *Harbans Singh v. Sohan Singh and another* (4), *Bishan Paul's* case was followed by Falshaw, C.J., in *Mohar Singh v. Mool Chand* (1), where it was observed that in an auction-sale of evacuee property even when a sale certificate was issued later, it dated back to the date when the sale was confirmed in favour of the auction-purchaser and

(2) I.L.R. (1961) 2 Punj. 898—1961 P.L.R. 470.

(3) 1962 P.L.R. 55.

(4) 1962 P.L.R. 834.

he could sue to eject the tenant two years after the date of confirmation of sale.

A contrary view was, however, taken by Mahajan, J., in *Ranjit Singh v. Anup Singh*, Civil Revision No. 524 of 1959, decided on 3rd August, 1960, where the learned Judge relying on *Messrs. Bombay Salt and Chemical Industries v. L. J. Johnson and others* (5), held that title to the property passed to the auction-purchaser on the date when the sale certificate was issued in his favour and not before. It may be mentioned that the Supreme Court decision was considered by Khosla, C.J., in *Bishan Paul's case* (2) and it was observed as under:—

“In that case some evacuee property was in possession of the Bombay Salt and Chemical Industries. The property was put up to sale and was purchased by Parvatibhai Wadhmal and Kakanbai Tulsimal who were respondents in the proceedings before the Supreme Court. Before the sale certificate could be issued, the Managing Officer of Evacuee Property took steps to evict the occupiers. He actually ejected them and put the auction-purchasers into possession. The previous occupiers then filed an appeal to the Supreme Court from the order of the Chief Settlement Commissioner evicting them and putting the auction-purchasers into possession. The argument raised before the Supreme Court was that since no sale certificate had been issued in favour of the auction-purchasers, title had not passed to them and the right to evict the occupiers vested with Managing Officer. This argument was accepted and the appeal of the aggrieved

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(5) A.I.R. 1958 S.C. 289.

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tenants was rejected. In the concluding portion of their judgment, their Lordships observed:—

“Mr. Purshotam Trikamdas contended that the certificate will in any event be granted and that once it is granted, as the form of this certificate shows, the transfer will relate back to the date of the auction. It is enough to say in answer to this contention that assuming it to be right, a point which is by no means obvious and which we do not decide, till it is granted, no transfer with effect from any date whatsoever takes place and none has yet been granted.”

Two things are quite clear from these observations, (i) that their Lordships had not before them the question of whether title passes only on the date when the sale certificate is granted because in that case the sale certificate had not yet been granted. In the second place, their Lordships quite clearly and unequivocally stated that they were not deciding the point raised by counsel before them. There is, therefore, nothing whatsoever in the observations of their Lordships of the Supreme Court to support the view that when a sale certificate is actually issued, it is the date of issue which is the date on which title passes to the auction-purchaser. In my view, title passes when the sale is confirmed, because it is that date on which the auction-purchaser is recognised officially as the owner and is entitled to obtain possession of the property. The issue of the sale certificate is invariably delayed because certain routine formalities have to be complied with and it is in very rare cases that an office can be so prompt as to issue the sale certificate on the very day the sale is confirmed. But when

a sale certificate is issued, it dates back to the date when the sale was confirmed.”

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I am in respectful agreement with the view taken by the learned Chief Justice and, therefore, this authority does not support the view that the title in the property passes to the auction-purchaser on the date of the issue of the sale certificate only and not from the date of the confirmation of sale in his favour. Besides, in *Ranjit Singh's case*, this precise point was not before the learned Judge, because there on one date, that is, 22nd November, 1956, the sale was confirmed as well as the sale certificate was issued in favour of the auction-purchaser. In *Hira Lal Khanna v. Gurcharan Singh*, Civil Revision No. 461 of 1960, decided on 30th March, 1961, Gosain, J., also took the view that it was from the date of the issue of the sale certificate that two years had to be counted under section 29 of the Act for giving protection to the tenant. This view was based on the Supreme Court ruling mentioned above and *Manohar Lal v. Rent Control and Eviction Officer, Bareilly* (6). For the reasons stated above, the Supreme Court decision does not help the present petitioners' case. In the Allahabad case, J. K. Tandon, J., had held that the sale did not become complete until the sale certificate under Rule 90 of the Rules was issued. In that case, the sale certificate had not been issued and only the bid made by the auction-purchaser was accepted. Moreover, there was no date mentioned on which the auction-purchaser had been declared to be the purchaser of the property. The learned Judge was only considering the date of the auction and the date with effect from which the Department had asked the tenants to attorn to the auction-purchaser. As against these two dates, the learned Judge held that the date

(6) A.I.R. 1959 All. 388.

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of the issue of the sale certificate was the correct date from which two years' protection to the tenant within the meaning of section 29 of the Act should start.

In *Motondas v. Gopaldas Basarmal* (7), it was held by S. B. Sen, J., that the period of two years, to which the displaced persons were entitled under section 29 of the Act, started from the date on which the sale certificate was issued and not from the date of auction. In this case, again, reliance was placed on the Supreme Court decision, which has already been discussed above, and *Deptylal v. Collector of Nilgiris* (8). In the Madras authority, Balakrishna Ayyar, J., had also placed reliance on this very Supreme Court ruling. Moreover, in that case, no sale certificate had at all been issued.

In the present case, as already mentioned above, the Department had declared the landlord to be the purchaser of the property with effect from 23rd November, 1957, and the application for ejection, having been filed on 18th June, 1960, was in order.

The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

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(7) A.I.R. 1962 M.P. 307.

(8) A.I.R. 1959 Mad. 460.